

# Response to PACAC call for evidence on the Government's Constitution, Democracy and Rights Commission

December 2020

The Electoral Reform Society (ERS) welcomes the opportunity to respond to this call for evidence on the government's proposed Constitution, Democracy and Rights Commission. We welcome the government's commitment to looking at issues affecting our constitution, as stated in their 2019 manifesto. Too often, constitutional issues are not given the importance they merit.

## About the Electoral Reform Society

The Electoral Reform Society is the UK's leading voice for democratic reform. We work with everyone – from political parties, civil society groups and academics to our own members and supporters and the wider public – to campaign for a better democracy in the UK.

Our vision is of a democracy fit for the 21st century, where every voice is heard, every vote is valued equally, and every citizen is empowered to take part. We make the case for lasting political reforms, we seek to embed democracy into the heart of public debate, and we foster the democratic spaces which encourage active citizenship.

## 1. What form should the Commission take?

**a. How should it be composed?**

**b. Should the Commission engage the public, and if so how?**

**c. How should the Commission proceed in its work? Over what timescale?**

If the government wants the Commission to be a meaningful exercise in exploring how our constitution and democracy operate, it is crucial that the public are engaged in the process in a substantive way. This cannot be the work of politicians and academics alone. Ultimately, our constitution and system of democracy exist to serve the citizens of the UK, so if substantial changes are being considered, it is vital that there is some mechanism for involving the public in these deliberations.

An ideal way of proceeding would be to set up a citizens' assembly. These are an increasingly popular way of ensuring citizens' input into the policy making process. For example, the Citizens' Assembly of Scotland is currently concluding its deliberations into the question of what kind of country Scotland should be.<sup>1</sup> There are a number of key aspects of citizens' assemblies which makes them particularly suited to addressing complex issues in a comprehensive way: participants are randomly selected to reflect the demographic and geographic make-up of the country and in most cases other attitudinal characteristics (such as party affiliation or position on certain issues); they hear from a variety of experts and advocates of different viewpoints; and participants engage in detailed deliberation with each other over weeks and months, ensuring in-depth consideration of the issues.

The process would happen in stages. Firstly, cross-party parliamentarians and academic experts would be selected to serve on the Commission. The

<sup>1</sup> <https://www.citizensassembly.scot/>

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Commission would then draw up a broad remit and questions to be addressed. The Commission would be responsible for setting up a citizens' assembly that would consider these questions, as well as having the opportunity to address other constitutional questions if so desired. After this point, the operation of the citizens' assembly would be independent of the Commission. The citizens' assembly's conclusions and recommendations would be delivered to the Commission which would then produce its own report, addressing the citizens' assembly's recommendations. While the Commission would be under no obligation to accept recommendations of the assembly, there would be a very strong presumption that the Commission would engage seriously with all recommendations. Final say over the implementation of any Commission recommendations would be in the hands of parliament.

## **2. What should be the main purpose and output of the commission? a. How should the Commission report its findings?**

As described above, the citizens' assembly process would conclude with a report containing conclusions and recommendations that would be delivered to the Commission. The Commission would produce its own report in response to the citizens' assembly's recommendations. While the Commission would be under no obligation to accept recommendations of the assembly, there would be a very strong presumption that the Commission would engage seriously with all recommendations. Final say over the implementation of any Commission proposals would be in the hands of parliament. Consideration could also be given as to whether a Joint Committee of both Houses of Parliament should be established to consider and report on any Commission recommendations, before the proposals go before parliament as a whole. This would follow the example of Ireland, where a Joint Committee of the Oireachtas produced a report on the recommendations of the Citizens' Assembly on the Eighth Amendment, with their report being delivered to both Houses of the Oireachtas.<sup>2</sup>

<sup>2</sup> <https://www.oireachtas.ie/en/committees/32/eighth-amendment-constitution/>

## **3. Given the remit of the Commission to look at “the broader aspects of our constitution” and “come up with proposals to restore trust in our institutions and in how our democracy operates” are there issues not on the Government’s list that need to be examined?**

Any serious exploration of how democracy in the UK operates must consider the electoral system used for elections to Westminster. We are one of very few democratic countries still using the First Past The Post (FPTP) electoral system. This system means that how people vote is not properly reflected via representation in the House of Commons and vast swathes of the population can be ignored by politicians because they live in ‘safe’ seats, which are unlikely to change hands. For example, at the 2019 general election, over half the constituencies in Great Britain were so safe that the outcome in these seats could be predicted before a single vote was cast.<sup>3</sup> A staggering number of voters saw their vote count for nothing at the last general election. Of the 32 million votes cast, only 9.4 million votes (29.2% of the total) were ‘decisive’ in securing a candidate’s election (i.e. were needed to elect the winning candidate). Across the UK, 14.5 million people (45.3% of all voters) cast their vote for a non-elected candidate, while 8.1 million votes (25.2%) were ‘surplus’, i.e. they were cast for the elected candidate but did nothing to contribute to their election. Over 22.6 million votes (70.8%) did not contribute to electing an MP.<sup>4</sup>

<sup>3</sup> <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/electoral-reform-society-predict-the-election-result-in-half-of-seats-in-britain/>

<sup>4</sup> Electoral Reform Society (2020). *Voters Left Voiceless: The 2019 General Election*. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/the-2019-general-election-voters-left-voiceless/>

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FPTP is no longer just an anomaly in the wider world, it has become one in the UK itself. Systems of proportional representation are used to elect representatives to the Northern Ireland Assembly, the Scottish Parliament, the Welsh Senedd and the London Assembly. Scottish local authorities are also elected via a system of proportional representation, the Single Transferable Vote (STV), and legislation is proceeding through the Senedd that will allow Welsh local authorities to choose STV for their elections.

Every devolved parliament and assembly that has been created in the UK in the last 20 years uses a system of proportional representation to elect its representatives. Any serious exploration of the state of democracy in the UK must include the question of whether FPTP is the right system to elect representatives to the House of Commons.

#### **4. What areas should be a priority for the Commission and why?**

There are two key priorities that the ERS would like to see considered.

- a. Whether FPTP is the best system to use to elect MPs to the House of Commons or whether we should move to a proportional system, in line with the vast majority of democratic countries and also in line with the other parliaments and assemblies created in the UK over the last 20 years. This question goes to the heart of our democracy and people's right to have their vote count.
- b. The composition and role of the House of Lords: Westminster's second chamber is currently made up of approximately 800 peers, who find themselves there via a variety of routes – because they have been appointed by a Prime Minister; because they are a bishop; because of a hereditary title. No members of the House of Lords are accountable to the public and they are unrepresentative of the UK, in terms of gender, ethnicity, region and professional background. Given that the House of Lords plays a key role in scrutinising and passing legislation, it is vital that this state of affairs is considered by the Commission and the citizens' assembly. Reforming our second chamber can improve the health of our democracy by allowing for the fair and equal representation of the UK's nations and localities. A second chamber elected on a territorial basis, via proportional representation, could serve as a forum in which the four nations (including English localities, depending on how they choose to be represented at the national level) can work together.<sup>5</sup>

If this Commission is to be effective and timely, the government must soon set out its proposals for the make-up and remit of the Commission and a timeline for its work. The government should also allow for a period of consultation on its proposals for how the Commission will operate.

<sup>5</sup> Electoral Reform Society (2019). *Westminster Beyond Brexit: Ending the Politics of Division*. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/westminster-beyond-brexits-ending-the-politics-of-division/>