

THE GOVERNMENT'S CONSTITUTION, DEMOCRACY AND RIGHTS COMMISSION

Response to the Consultation by the
Green Party of England and Wales

Written on behalf of the England and Wales Green Party
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INTRODUCTION

We welcome the government's decision to establish a Constitution, Democracy and Rights Commission since we share the concern that our democracy is not performing well and has lost the trust of the people in whose interests it should function. To rebuild this trust we would suggest that, running parallel to its own Commission, the government should establish a People's Constitutional Convention, in the form of a citizens' assembly. We should trust the people to choose what form of government works best for them.

We are glad to look at 'the broader aspects of our constitution' but would suggest that the inquiry needs to be considerably wider than currently proposed, as detailed below. We believe that only a broad-ranging and transparent investigation into how power is acquired, maintained, and exercised will permit the government to 'come up with proposals to restore trust in our institutions and in how our democracy operates'.

We are concerned that the remit of the inquiry – and potentially the Commission itself – is determined by a number of quotations from the Conservative Party manifesto from 2019. We would stress that democracy belongs to everybody in this country and should not become – or be seen to be – the purview of one party or clique. Hence, the first step for the Commission should be to extend its remit to include all constitutional issues of concern to UK citizens, especially those identified by respondents to the public consultation.

To address your questions directly:

1. WHAT FORM SHOULD THE COMMISSION TAKE?

A. HOW SHOULD IT BE COMPOSED?

The Commission should be composed in thirds:

- A third to be elected from amongst their membership by the Houses of Parliament and drawing especially on constitutional expertise from the House of Lords;
- A third to be nominated and then elected from local councils and regional and national parliaments to ensure that local and regional perspectives are not neglected;
- A third to be made up of academic and other experts chosen by the other two thirds and based on their technical competence rather than political commitment.

B. SHOULD THE COMMISSION ENGAGE THE PUBLIC, AND IF SO HOW?

The Commission's aim should be maximum public engagement and maximum public support. This is not an academic exercise, and nor should it be split along factional or party political lines. If the Commission's output is to be legitimate, then it must command the support of a super-majority of the public.

The public involvement should be based around the following principles:

- **Direct participation** through face to face discussion (potentially online, e.g. Zoom)
- **Active participation** through a facilitated, inclusive, transparent and informed debate
- **Involvement of disempowered, marginalised and oppressed groups**, recognising that the fundamental purpose of a constitution is to regulate the distribution and exercise of power within society.
- The Commission should seek **cross-party, consensus-based outcomes** which weaken the hold of ideologies, factions and political parties.
- We would recommend the use of the **Open Space Model** for developing inclusive decision-making, where participants **set the agenda** for their participation.
- The public involvement should result in the **specific outputs** which then form the **basis** of the Commission's further work.

C. HOW SHOULD THE COMMISSION PROCEED IN ITS WORK? OVER WHAT TIMESCALE?

- The Commission should establish a Constitutional Commission as a **permanent body**. This Constitutional Commission will have as its primary role the drafting of a written constitution. It will also oversee and arbitrate the process of decentralisation of power, and take over the functions of the Boundary Commission and the Electoral Commission.
- The Constitutional Commission should also be responsible for overseeing the appointment of an independent judiciary.
- The Commission must be transparent, accountable, representative, diverse, aware of practical requirements and grassroots concerns, and independent of Westminster.
- The Commission should, as suggested above, be formed of elected members representing all levels of Government in all parts of the UK countries involved, together with expert members.
- It should be supported and informed by a People's Constitutional Convention established in the form of a citizens' assembly
- The Commission should be empowered by an Act of Parliament and a Royal Charter to grant it the fullest constitutional authority to conduct its work.

2. WHAT SHOULD BE THE MAIN PURPOSE AND OUTPUT OF THE COMMISSION?

- The main output of the Commission should be a **draft written constitution**, codifying, updating and reforming the UK constitution.
- The constitution should provide clear answers to question about how power is and should be shared in our democracy and should include a clear statement of our human and civil rights in the form of a prefatory bill of rights.
- The main purpose should be securing **maximum public consensus** for the proposed constitution and rebuilding trust that the UK's political institutions work for the people and are of the people.

A. HOW SHOULD THE COMMISSION REPORT ITS FINDINGS?

From the outset, the Commission should develop a specialist engagement and communication strategy to ensure that its methods, tone and techniques of communication reach beyond those currently engaged in political debate.

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?

The Commission should consider the following issues:

A Constitution Fit for the 21st Century

- Considering the form and structure of a UK Constitution fit for the 21st Century making explicit how power is, and should be, shared between the national Parliament, regional and national parliaments, and local government, and including an initial statement of the fundamental rights of UK citizens.
- The viability of constitutional norms and conventions in the modern political context, and whether constitutional conventions are being so routinely violated by constitutional actors that they should be replaced by legally enforceable rules of conduct.
- The purpose and function of the House of Lords, and the process of appointments/elections to the House of Lords. The role of the House of Lords relative to the House of Commons, and establishing how the House of Lords derives its legitimacy. In particular, there are important questions such as what purpose does the House of Lords serve if the House of Commons routinely rejects Lords’ amendments to Bills, and whether the House of Lords would play a more important constitutional role if it had the legitimacy of being an elected chamber.
- The need to evolve beyond the idea of a ‘Royal Prerogative’ towards a full democracy with no constitutional role or powers for the sovereign, whether directly or exercised on her behalf by others. Whether the anachronistic model of ‘parliamentary democracy’ should be replaced with a figurehead monarchy on the Scandinavian model.
- The legitimacy of hereditary positions in the UK, including hereditary peers, the Earl Marshal, the Lord Great Chamberlain, and the Monarch.

- The separation of Church and State – in particular questioning the Church of England’s role in the UK constitution and automatic presence of Archbishops in Parliament.

Relationship between Legislature and Executive

- The role of Prime Minister and Number 10 Downing Street, that have developed significantly over recent decades so as to centralise power, resources and decision-making in an opaque way that is inappropriate in a parliamentary democracy.
- The dominance of the Executive over Parliament, for example in setting the agenda and timetable for legislation. In particular, exploring whether the business of Parliament would better reflect issues of key public concern if legislative time was fairly allocated across the political groups and elected representatives, rather than being almost exclusively dominated by the Government party and if the Houses were able to set their own agendas.
- The role of the Supreme Court in upholding the constitution and citizens’ basic rights.

Power Exercised at the Lowest Appropriate Level

- The role of the UK Parliament in a modern constitutional arrangement, vis-a-vis devolved parliaments, assemblies, regional/metropolitan mayors and local authorities.
- The need for a clear and consistent devolution of the same powers to the same tiers across the country so that all citizens have access to the same form of governance and the same access to resources.

Free and Fair Elections

- Consideration of electoral reform at all levels of government, to ensure that elected bodies truly represent those entitled to elect them. This might include a robust analysis of Single Transferrable Vote, Alternative Vote Plus, Additional Member Systems and First Past the Post. In particular, an assessment of what impact ‘wasted votes’ have on public perceptions of the democratic system and the citizen’s place in the political system.
- Funding and expenses of political parties and standing for election with an assumption that the political system should not be, or be perceived to be, influenced by political donations. This may require moving towards a system where political parties are publicly funded and cannot accept donations from private individuals or companies. In addition, an assessment of the impact of candidate deposits and the disproportionate impact election deposits have on independent candidates and smaller parties.

Wider and Deeper Public Engagement

- An examination of a role for forms of deliberative democracy such as citizens' assemblies, especially in areas where greater engagement is required to ensure that policies will be effective, such as Covid-19 and the climate crisis.
- Measures for greater public involvement in public decision-making and power, such as the ability of citizens to:
 - Begin Citizens' Initiatives, which place a proposition on a ballot paper which, if passed by a public vote, would be binding on a relevant public body.
 - Recall Members of Parliament via petition of registered electors in a constituency.
- Automatic voter registration and maximising engagement in elections at all levels.
- Restoring Citizenship as a compulsory and properly resourced part of the national curriculum.

Transparent and Accountable Government

- The purpose, function and enforceability of the Ministerial Code, and whether it is proper for the Prime Minister to be the ultimate arbiter of breaches of the Code. In particular, the Commission should consider recent examples of conduct by Ministers which, in the Commission's opinion, violate the Ministerial Code, and compare that view with the decisions made by the Prime Minister in enforcing the Code.

Separation of Governance and Financial Functions of Government

- The existence, function and legal basis of the City of London Corporation, including whether it is appropriate for it to continue to hold ancient rights and privileges, and whether the Corporation and its assets should be incorporated into the Greater London Authority.
- Examining the constitutional legitimacy of the role of the City Remembrancer.
- The governance, function, and constitutional role of the Bank of England.

Public Audit and Media Ownership

- Review of the need for a public audit function, abolished with the Audit Commission in 2014, to examine the potential for conflict of interest between private auditors working for private corporations and also representing public bodies who tender from the same companies.
- A re-examination of how both traditional and digital media allow those with wealth and power to distort democratic outcomes and proposals for regulating media operation and ownership to ensure a healthy and flourishing democracy where citizens have a fair and unbiased understanding of key issues and the proposals of the parties they can choose to vote for.

4. WHAT AREAS SHOULD BE A PRIORITY FOR THE COMMISSION AND WHY?

- The Commission's highest priority must be to establish itself as fully independent of Government control.
- It must be a high priority to secure public trust in the Commission.
- The Commission might also seek to learn from other countries with more modern democracies that have higher rates of citizen engagement, effectiveness and trust.