

## Fawcett Briefing: The Need for Positive Action

At the last election the number of women MPs fell for the first time since 1979. Britain currently has one of the lowest levels of political representation of women in Europe. Fawcett believes that the best way to counter this trend is for the parties to use positive action mechanisms such as all-women shortlists. Where positive action has been used in the UK and in Europe it has dramatically increased women's representation. The Government declared in the Queen's Speech its intention to change the law to make it legal for parties to use positive action. However the timing and content of this bill are unclear at this stage. This briefing covers the following issues: how many women were elected in the 2001 election?; what is positive action?; why is positive action needed?; why does the law need to change?; responses to criticisms of positive action and the options of how the law might be changed.

### HOW MANY WOMEN WERE ELECTED IN THE GENERAL ELECTION?

	Total MPs	Women MPs	+/- women pre election
Lab	413	95	-5
Conservative	165	14	Same
Lib Dem	52	5	+1
SNP	5	1	-1
PC	4	0	Same
Sinn Fein	4	1	+1
DUP	5	1	+1
UUP	6	1	+1
SDLP	3	0	Same
<b>Totals</b>	<b>657<sup>1</sup></b>	<b>118</b>	<b>-2</b>

On the 7<sup>th</sup> June 2001, the general election saw 118 women elected to Parliament, two less than in 1997. This is the first time that women's representation has fallen since 1979. Currently only 18% of British MPs are women. This compares with 43% - Sweden, 31% - Germany, 28% - Spain and 23% - Belgium. In the EU, only Ireland and France have lower representation of women in national parliaments, although France looks set to dramatically increase its representation of women following the recent adoption of radical positive action mechanisms.

### WHAT IS POSITIVE ACTION?

Positive action is essentially quotas that are used by political parties to boost the representation of women. Positive action mechanisms are used widely by political parties in Europe and have been tentatively used by most political parties in Britain. The following are types of positive action that have been used in Britain and elsewhere:

#### All-women Shortlists

This mechanism is used in single member constituency elections (e.g. The House of Commons and the majority of seats in the Scottish Parliament and Welsh Assembly) where local parties select one candidate. All-women shortlists require that a proportion of local parties only shortlist women candidates to ensure a woman is selected in that seat. This was the mechanism the Labour Party used from 1993-96.

<sup>1</sup> In addition the Speaker and one independent candidate were elected, both male.

### **Twinning**

This system is an adaptation of all-women shortlists intended to avoid the legal obstacles. It too applies in single member constituencies. Under the twinning system two local parties select their candidates jointly, with a requirement that one man and one woman be selected. This ensures equal representation of men and women. This system was used by the Labour Party in the 1999 elections to the Scottish Parliament and Welsh Assembly and in the 2000 election to the London Assembly.

### **Clustering**

This system is similar to twinning and again is used in single member constituencies. It involves several constituencies 'clustering' together with a requirement to select a certain amount of women between them. This system has been proposed but never actually used, by the Liberal Democrats.

### **Zippering**

This system is used for proportional list elections. Here the members selecting candidates on a list are required to alternate men and women on the list. This system is widely used in Europe and was used by the Liberal Democrats in the 1999 European election and by Plaid Cymru in the 1999 Welsh Assembly election.

Under proportional electoral systems, positive action mechanisms such as zippering make a significant difference. However, under the First-Past-the-Post electoral system, only twinning, clustering and all-women shortlists are viable mechanisms. In elections for Westminster, twinning and clustering cannot be used due to the large number of sitting MPs. This leaves all-women shortlists as the only viable means of making a significant impact on the numbers of women in Parliament.

### **WHY IS POSITIVE ACTION NEEDED?**

Positive action is not needed because women are not able to succeed on merit, but because discrimination in the selection process means that they are rarely given the opportunity to try. Experience from across Europe has demonstrated that use of positive action is the key factor in determining whether or not a country has high levels of women's representation. Whilst other measures, such as better training and support for potential women candidates are, of course, desirable, when used on their own, without positive action mechanisms, they do not make a significant difference. As far as we are aware, no country has ever significantly increased its level of women's representation without the use of positive action mechanisms by some of the parties.

### **WHY DOES THE LAW NEED TO CHANGE?**

The law needs to change because in 1996, the Labour Party's use of all-women shortlists in the run-up to the 1997 general election was challenged by two male Labour Party members in an industrial tribunal. The tribunal found in favour of the plaintiffs and ruled all-women shortlists illegal under the Sex Discrimination Act. Since then, there has been confusion over whether other forms of positive action are legal or not. Political parties have tentatively used mechanisms such as 'zippering' and 'twinning', but have been extremely hesitant about doing so for fear of legal challenge.

### **WINNING THE ARGUMENT FOR POSITIVE ACTION**

Positive action mechanisms have been the subject of attacks by sections of the media, certain politicians and some political activists. Here we outline some of the more common arguments against change and the counter-arguments that make clear why positive action works and is the only way forward.

#### **Q – Candidates should be selected on merit. The best candidate for the job should be selected regardless of gender.**

**A** – In an ideal world, of course candidates should be selected on merit. However, at the moment this does not happen. There is a tremendous amount of discrimination inherent in the selection processes of the political parties. If a constituency party is determined to choose a male candidate then no matter how good a woman candidate is, she will not be selected. Positive action is not needed because women cannot succeed on the basis of merit, but because discrimination means that too often, women are not given the opportunity to try.

**Q – You shouldn’t counter discrimination with more discrimination against men. Two wrongs don’t make a right.**

A - Under all-women shortlists, men will still be able to compete for selection in half of all seats. Positive action is not designed to discriminate against men as revenge for the discrimination suffered by women, but to level the playing field to allow women to compete for parliamentary selection on the same basis as men.

**Q – It is patronising to women to suggest that they need special treatment.**

A – Women are being discriminated against during party selection processes. If they were not prevented from succeeding on merit, then positive action would not be needed. It is not patronising to use mechanisms to correct this discrimination and allow women to compete on the same basis as men. Until recently the vast majority of parliamentary selections operated under ‘all-male shortlists’ by virtue of the fact that no women were ever included on the lists – no one ever suggested that it was patronising to men for constituency parties to exclude women from consideration.

**Q – The problem is not that women are being discriminated against, but that not enough women are putting themselves forward for selection.**

A – There are less women coming forward for selection than there are men and this is a problem. However, this is not the only problem. Even taking into account the numbers coming forward, proportionally less women are getting selected than men. Every political party has talented women who have been trying for years to get selected to fight safe/marginal parliamentary seats. For example, half the aspiring candidates shortlisted in every safe Labour Party seat were women and yet only 10.3% of these seats went to women<sup>2</sup>. The key problem is the discrimination these women encounter in the selection process. It is also likely that if this problem were addressed, then more women would come forward.

**Q – Women may be coming forward, but they are not good women. With positive action we will end up with low-quality MPs. The women elected under all-women shortlists in 1997 are a prime example of this.**

A – There is absolutely no evidence to suggest that women selected under all-women shortlists are any better or worse than the rest of their parliamentary colleagues, whether male or female. Some of the key members of the government team were elected under all-women shortlists. They would not have received this promotion were they not capable politicians. It is patronising to suggest otherwise.

**Q – The women who are elected with positive action will feel different and will be treated differently because they are ‘token women’.**

A - The women MPs selected under all-women shortlists in 1997 have not been treated differently due to this fact. Indeed, very few people are aware of which women were and which women were not selected using this mechanism.

**Q – The law should not interfere with how political parties operate.**

A – The proposed legislation is permissive – it is there for political parties to take advantage of *if they wish*. It will not force any political party to adopt positive action mechanisms as is the case in some other countries.

**Q – Even if we change the law in this country, it will still be declared illegal under European law.**

A – An excellent piece of research by the Constitution Unit has conclusively demonstrated that this is extremely unlikely to happen<sup>3</sup>. The majority of European countries use positive action mechanisms themselves and there would be immense pressure on the European Court of Justice to uphold their right to do so. Recent judgements on similar cases suggest this would be the case. Although a challenge under the Human Rights Act is possible, it would hold little danger if the legislation was permissive as is proposed by the government.

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<sup>2</sup> ‘Women In Parliament’ (2001) ‘Equal Opportunities Commission’

<sup>3</sup> ‘Women’s Representation in UK Politics: What Can be Done Within the Law?’ (June 2000) The Constitution Unit, School of Public Policy, University College London, 29/30 Tavistock Square, London, WC1H 9EZ, Tel: 020 7679 4977

**Q –What about all-ethnic minority/ gay/ disabled/ working-class lists?**

A –Fawcett believes that Parliament should be truly representative of all the people it serves. That means not only more women, but more black, Asian, gay, disabled, working-class MPs. Parties must also take action to address this under-representation. At present, the government’s commitment is to introduce legislation to allow positive action for women.

**Q – OK, so women need more help in getting selected. We should provide women with more training and mentoring, even quotas on shortlists but all-women shortlists is a step too far. Other measures can and will make a difference.**

A –Political parties have tried other measures in the past and they have failed to make any significant impact on the levels of political representation. If a constituency party is determined to select a man then no amount of training in the world is going to make a difference. The problem is not that women are not good enough to be selected, but that they are being discriminated against. In 1997 the Labour Party ensured that all the shortlists for their safe seats contained 50% women, yet only 1 in 10 selected a woman. Training and confidence building are important but they will only work when used in conjunction with positive action. As far as we know, not a country in the world has significantly increased its level of women’s representation without the use of positive action. Positive action works and it is the only solution to the under-representation of women in British politics.

**HOW SHOULD THE LAW BE CHANGED?**

Fawcett is delighted that the government has announced its intention of changing the law to allow political parties to adopt positive action mechanisms without fear of legal challenge. However, the timing and content of this bill are at present unclear. Fawcett believes it is vital that however the law is changed, it must allow parties to adopt all-women shortlists. We also believe that the changes to the law must ensure that candidates are still protected from negative discrimination. From the excellent research on this issue produced by the Constitution Unit<sup>4</sup>, it is clear there are three drafting options open to the government:

**OPTION 1 - Amend the Sex Discrimination Act to Allow Positive Action by Parties**

Under this option candidate selection continues to be treated as employment related and hence subject to the Sex Discrimination Act, but a clause is added to the Sex Discrimination Act allowing positive action within this process.

**OPTION 2 – Amend the Sex Discrimination Act to Exempt Political Selections**

Under this option candidate selection would be exempted from the Sex Discrimination Act altogether.

**OPTION 3 – A New Electoral Law Permitting Positive Action**

Under this option, candidate selection would be removed from the Sex Discrimination Act and hence the employment field as in Option 2. However, in addition a new small body of law relating specifically to the candidate selection process would need to be created. This would continue to outlaw negative discrimination whilst stating that positive action was allowed.

Fawcett has produced a separate briefing outlining these options in more detail and with an assessment of their advantages and disadvantages.

**To get a copy of this briefing or for more information, please contact Laura Shepherd-Robinson on tel: 020 7628 4441 or [laurasr@fawcettsociety.org.uk](mailto:laurasr@fawcettsociety.org.uk)**

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<sup>4</sup> ‘Women’s Representation in UK Politics: What Can be Done Within the Law?’ (June 2000) and ‘The Women’s Representation Bill: Making it Happen’ (July 2001); The Constitution Unit, School of Public Policy, University College London, 29/30 Tavistock Square, London, WC1H 9EZ, Tel: 020 7679 4977

