

Public Administration and Constitutional Affairs Committee

Oral evidence: Electoral intimidation and voter identification, HC 1366

Tuesday 11 September 2018

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Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones.

Questions 1 - 113

Witness

I: Chloe Smith MP, Minister for the Constitution, Cabinet Office.

Examination of witness

Witness: Chloe Smith MP.

Q1 **Chair:** Can I welcome the Minister from the Cabinet Office at this session to look at the Government's proposals for voter identification? Could I ask you to identify yourself for the record, please?

Chloe Smith: Chloe Smith, Minister for the Constitution. I am very pleased to be with the Committee today.

Q2 **Chair:** Thank you. We will rattle through as quickly as we can. If we can keep the questions short, and maybe you could also keep the answers short, we will get through as speedily as we can so that we can get all our questions in. In brief, why is the Government so committed to introducing voter ID?

Chloe Smith: First of all, it is that the current law is quite considerably out of date. When you go to a polling station for any election, you are asked to identify yourself with your name and address. It is nothing more than that—a verbal check—and it is heavily out of date. It is part of the quite historical set of electoral roll law that we have. I would go as far as to argue that it is obsolete, because it dates from the time when the staff at the polling station knew who everybody in a village was, and that is



not the way we live anymore. I would strongly argue that the current identification check is out of date and ineffective.

The Government are also responding to evidence that has been gathered by several rather important reports, so you have the Eric Pickles report that looked into electoral fraud in some detail. That was following the 2015 Tower Hamlets court judgment. You then have organisations such as the OSCE and the ODIHR, which is the Office for Democratic Institutions and Human Rights, who are advocating this, so there is an evidence base there. Furthermore, the Electoral Commission has argued for this for some years.

We are working from the point of view of a quite considerable evidence base and it comes down to a principle, which is that we think our democracy ought to be protected. We think this is an obvious weakness in our democracy that lets voters down and could allow people to be the victim of their vote effectively being stolen. The people that could happen to can often be some of the most vulnerable in our society, and the Electoral Commission identifies that. All round, we think this is an important thing to do to protect our democracy.

Q3 Chair: Some people suggest that there is no significant evidence of there being a problem. The Democratic Audit has argued that ID proposals were a solution in search of a problem, given that 45 million votes were cast in the UK last year but there were only 28 allegations of personation. Is this not a bit of a sledgehammer to crack a nut?

Chloe Smith: No, I do not think it is. I reject those arguments from the ERS, which I think is the one that principally makes those arguments. By the way, the ERS comes from a starting point of horrendous inaccuracy. If you look at what it had to say on polling day about this result, it was far out of the traps with wildly inaccurate, misleading and scaremongering figures on what was happening with this pilot on the polling day in question, so I think it has a little explaining to do.

This comes down to a principle, rather than the numbers. I would say to the Committee—and have argued this consistently through the pilot so far, and through the work that lies ahead on this—that this is a matter of principle. If there is vulnerability in our electoral roll system, it is wrong to leave it unchallenged, unfixed. What we are doing is acting on a very important principle here, which is that everybody's vote, individually and collectively, deserves to be protected.

Q4 Chair: You have determined that the pilot schemes were successful, but on the basis of what? How many fraudulent votes do you think were prevented in the pilots?

Chloe Smith: It is not possible for me to give that kind of answer, and I do not think anybody would try to. I do not think that is the kind of data that could be known.

Q5 Chair: How did you determine that these pilot schemes were successful?



Chloe Smith: As I am sure the Committee has done, when you read our evaluation and the Electoral Commission's evaluation, you will find there the fact that polls were conducted successfully, that polling staff felt well able to conduct these additional requirements as part of running their elections. You will find there was no discernible impact on particular demographic groups in society. Of course these were all concerns that were expressed before the pilot, so what we were seeking to do in those evaluations was test whether those concerns had a basis. We do not think they have, and so it is on that basis that we call it a success.

I am also very happy to turn briefly to the numbers that we do use, and those are to express the number of people who did not return once they had been asked to do so with ID, in other words the number of people who were affected by this policy. That was only 340 across all five pilots. As a proportion of the number of votes cast, the percentage of people who did not return was 0.14%, a very small number. It is on that basis that I say that this was a successful pilot, because it demonstrated that we can protect our democracy—protect individuals from having their votes stolen—with a very small percentage of people who chose for various other reasons not to return.

Q6 **Ronnie Cowan:** You have the statistic that, projected across England, there were 17,000 people who refused to go back. That is not a massive number, but it can affect the outcome of an election. I am concerned that we do not know how many people are not turning up to vote in the first place because they do not have the right identification to get their vote. The polling card is not good enough, but they do not have a passport or photographic ID or a driving licence. We have no idea how many people are affected.

Chloe Smith: There are a number of things to say to the arguments you are raising. The first is that nobody in these pilots was obliged to bring a driving licence. For the pilot that used photographic ID—principally Woking—there was a range of ID accepted, so nobody has to go out and buy a driving licence. I am conscious of the cost argument that some advance. In all of the pilot cases, a free alternative type of ID was available through the local council, so there is no argument there on financial exclusion.

Q7 **Ronnie Cowan:** What was the take-up on that?

Chloe Smith: I will find out for you as the session goes on, or I will write to you with it afterwards. It is available here in the detail, and I will make sure that you have it. The other part of what you ask is: how do we know about those who did not choose to vote? You will find in our evaluation a quantitative analysis of that through opinion polling, which the Cabinet Office did alongside the pilots, which shows that overwhelmingly the largest single reason given for those who did not vote at these elections was that they were too busy, rather than something related to the ID requirement.



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Q8 Mr David Jones: Pursuing the same point, you have indicated that only 340 people did not return. Therefore, they effectively lost their vote, as Mr Cowan has said. If you extrapolate that figure for the 2016 referendum across England, that amounts to some 17,000 people. As the Chairman has indicated, 45 million votes that were cast in the UK last year, and there were only 28 allegations of personation. Are you not concerned that the voter ID proposals pose a bigger threat to democratic engagement than the problem that they seek to address?

Chloe Smith: Thank you, Mr Jones. No, I am not, and it really starts with the point that I think is applicable to all reporting of crime. Of course we do not know how much of any category of crime is not reported, so there have been times over all our time in Parliament where somebody argues that such-and-such a crime is underreported, and someone else says, "Well, who needs to worry about that?" These are unpalatable arguments. We should look at any rate of any type of crime and make sure that we are able to address it. We are able to address this by quite a reasonable and proportionate measure; therefore we are doing that.

Q9 Mr David Jones: I appreciate that you wish to deter crime, but these 340 people were not all necessarily criminals. In fact, very likely none of them was a criminal. They simply did not come along with their ID and they could not be bothered to come back again. Therefore, we are not deterring crime; what you are doing is depriving people who otherwise would have voted of the right to cast their vote.

Chloe Smith: No, that is not the case at all. I will explain that with a view to the pilots that have just passed and in terms of what we are going to do in the future. In the pilots that have just passed, each of the councils made preparations for an alternative form of identification. Every eligible voter had every opportunity to ensure that they had the ID available. Couple that with a full communications campaign explaining what was going on in that local area and, again, in the evaluations you will see that the penetration rates of that campaign were good. That means that people had every opportunity to be able to cast their vote.

In the design of those pilots by local authorities, in some cases those arrangements were kept open until the evening of polling day. That is a considerable safety net going on there for eligible electors. It is not the case that eligible electors did not have the opportunity to cast their vote.

Q10 Mr David Jones: I did not suggest that. What I said was that these people were very likely not criminals—certainly not all of them—but as a consequence of the ID requirements they were deprived of their vote, because they turned up at a polling station without their ID, for whatever reason, and they simply did not return. Had they not been required to present ID, they would have been able to vote.

Chloe Smith: I think you would admit that it is hard for either of us to know what the motivation of any individual is, so I do not think it is possible to either say or not say.



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Q11 **Mr David Jones:** What is absolutely clear is that these people did not vote. Therefore, they lost their vote as a consequence of the ID requirement.

Chloe Smith: The Association of Electoral Administrators said at the time of the pilots that there are lots of reasons why various people either do not choose to come to vote or indeed, when they do so, cannot vote. The idea that, on election day, in any election, there are a number of people who are unable to cast their vote on the spot happens at any election. There is almost a baseline of that as a concept, and the AEA put its name to that.

Q12 **Mr David Jones:** I understand that perfectly well, but the point is that on this occasion the reason that they could not cast their vote was because they did not comply with the ID requirements that were introduced in these pilot areas. That was the only reason they could not vote.

Chloe Smith: With respect, Mr Jones, we do not know that was the only reason for those 340. We cannot speak their minds.

Q13 **Mr David Jones:** Let us say that half of them were deprived of their right to vote for that reason. That is still a very large number of people who otherwise would have been voting.

Chloe Smith: It is legitimate to ask the question: should they have been voting? We do have the crime in this country, under electoral law, of personation.

Q14 **Mr David Jones:** It is a very small crime; 45 million votes were cast in the UK last year and there were only 28 allegations of personation.

Chloe Smith: It is my contention, from principle, that we ought to protect our democracy against the crimes committed against it. That is what we are doing.

Q15 **Mr David Jones:** That means that a large number of people—an extrapolated number of 17,000 across England, on the basis of your pilot—would not have been able to vote in the EU referendum of 2016.

Chloe Smith: The point of a policy that seeks to protect from fraud is that some people will not be able to cast their vote on the day. If they are eligible to vote, if they are the person they say they are, there was every safety net made available in these pilots.

I did say I would turn to the future intentions and I want this particular protection to remain the case for any future pilots. It is very important. Of course, any eligible voter should have every opportunity to cast their vote. That is absolutely the base of this, but it is quite reasonable and quite proportionate to seek to protect our elections from those who would commit fraud. Other countries do this and, indeed, what you see in those countries is that over time citizens get used to the requirements. The example closest to home is Northern Ireland. As I am sure you will have



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heard, colleagues in the House from Northern Ireland have explained very clearly on the Hansard record that this is in no way a problem. People have got used to the requirements and it is quite a normal thing for them to do. On that basis, I think the principle here is right, and I think the practice is right. It is something that I am looking to make sure of and to hone through the pilots that we will go on to do.

Chair: Two colleagues are very interested in the next question, starting with Rupa Huq.

Q16 Dr Rupa Huq: In America, research has shown that the categories that could be dissuaded by these extra requirements in elections include ethnic minorities, and there was the letter that was written to you in March by 40 different charities, including Operation Black Vote, the NUS, Age UK, Salvation Army, Stonewall and 40 different civil society groups. What safeguards are you putting in place to prevent disenfranchising of those who are already less likely to vote? They might not have a passport—they might never go anywhere—or a driving licence, all those sorts of standard photo ID types of thing. What are you doing to combat that?

Chloe Smith: Thank you very much for the question. This is an incredibly important part of the work of these pilots. As I was beginning to develop in the answer to Mr Jones, the point of pilots, of course, is to make sure the policies work, and work fairly and effectively, so I would say at this stage we are doing pilots because we want to make sure that these concerns can be addressed.

As I referred to earlier, in our evaluation we found no evidence that any particular demographic group had a specific impact. That is very important. That tells us that we are not in a position of discriminating against anybody. That is one of the concerns that have been put, and I would suggest that our evaluation meets that concern. Of course the Electoral Commission's evaluation comes in here as well.

That exchange of letters in March, which you refer to, Dr Huq, was incredibly helpful. The first of them was leaked, so I do not mind at all quoting from the second, which is the EHRC's reply to me. That said the EHRC appreciates the importance that I place on promoting equality and diversity for the purpose of British democratic processes, and that my reply demonstrated that we share a view on the necessity of preserving the confidence that we all share in equality and in democracy. I am keen to make sure that all the work we do delivers on our public sector equality duty. That was the nature of that correspondence.

More broadly, the answer is in the design of the pilots. As I have been explaining, the pilots made sure that everybody could have an alternative form of ID if they did not already have one of the requested forms. I hear the arguments about prevalence of certain types of ID in certain demographic groups, but that was not relevant to these pilots because there were provisions made.



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- Q17 **Dr Rupa Huq:** The Electoral Reform Society said innocent voters are going to be denied a say and, as we have heard, hundreds of people did not come back. As someone who had a majority in the first Parliament of 274, that does irk me, and as David Jones said, only 28 cases out of the millions of votes cast in last year's general election does seem to be a sledgehammer to crack a nut. The poorer, ethnically diverse people are the ones who are going to be put off by all of this.

Chloe Smith: There is a real problem, Dr Huq, in the ERS's work. Either you care about small numbers or you do not. The argument is advanced that those with small majorities should worry about this.

- Q18 **Dr Rupa Huq:** I think democracy should worry about this. It would be 17,000 if we extrapolate. That can make a big difference.

Chloe Smith: Indeed, and so society should worry about small numbers either way, right? Therefore, we should worry about any crime being committed in small numbers. It comes back to a principle. Either you want to tackle electoral fraud or you do not. I really do stand by that principle here—that we can help all those in society who may indeed otherwise be vulnerable to being robbed of their vote.

The Electoral Commission very clearly says that victims of electoral fraud are more likely to be vulnerable than not. That is a very important concept here. Those who can be victims of electoral fraud are some of the most vulnerable. As an example, you can see the article that Nimco Ali, the British Somali activist, wrote: she says she sees women being systematically robbed of their votes, and that this is a policy that could help against that.

Dr Rupa Huq: The Royal National Institute of Blind People—all those people are dead against this as well.

- Q19 **Kelvin Hopkins:** With a constituency such as mine moving towards 50% BAME, I have very similar concerns to my colleague, Rupa Huq. I think you have touched on the particular concerns of Mencap and RNIB: that people with disabilities will not have passports and driving licences, and they may be disadvantaged if photo ID is mandated.

I have a broader question, if I may. You will remember that some years ago, there was a very controversial attempt by the previous Labour Government to introduce a much broader ID system with all sorts of personal information, which eventually bit the dust and disappeared. Is the Government so keen on this because they see it as a possibility of introducing a general photo ID for all of us? I express no opinion one way or the other, but there is at least a suspicion that the Government might be interested in everybody having photo ID, particularly to look at things like illegal migration, for example.

Chloe Smith: I think the answer is no to that. I do understand the line of argument, and I think the answer is no. The Government are not intending to return to the ID cards—what we will call the ID cards' policy



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more broadly—at any time, whereas, on the other hand, this policy was a commitment in our manifesto. They are separate policies.

Q20 Kelvin Hopkins: It is at least possible that when this ID is in place, if it is followed through on, public bodies like the health service and the police might require people to show their ID, and if they do not have an ID it could be uncomfortable for them.

Chloe Smith: I do not think I am in a position to comment on the wider policy you are trying to drive at, but I would draw a point out of this from the way we live, in that we use ID all the time. If you have recently collected a parcel from the post office, you will have had to demonstrate that you are who you say you are—that you are Mr Hopkins. If you have done something—for example, no doubt hundreds of your constituents have been involved in claiming benefits at one time or another—they will have had to prove that they are who they say they are. It is not an unusual concept and, really, it returns to the point that this is a very reasonable and proportionate policy that does something that is quite acceptable in most people's everyday lives.

Kelvin Hopkins: Thank you. I have to say, I have my own ID for rail travel.

Chloe Smith: There we go.

Q21 Chair: Have the Government received any representations of any kind to suggest that these proposals might advantage one party over another in any particular electoral circumstance?

Chloe Smith: Yes, I think it is fair to say, Sir Bernard, that in the cut and thrust of parliamentary debate, this point has been made. I am sorry to have to report that it is the Labour party that I think has this problem. I have put on record before that it is a case of double standards when that argument is made, because in fact it is the Labour party that already requires ID, for example, in their local party meeting processes. It is therefore a little rich to object to it as a matter of policy for everyone else in the country.

Also, I would place on record that I think it is quite distasteful if any party were to try to own a certain type of voter and say that they may not have the free choice at elections to do what they wish to do with that vote. The key point here is that we are protecting the way in which people cast their votes, so that their democratic choice can be made and respected.

Q22 Chair: Moving on to the question of cost, what is your cost estimate of implementing this nationally?

Chloe Smith: I do not have a full cost estimate for you at this stage, in terms of a full general election rollout of this, because we are not at that point yet. If I may, I will answer the question for the parts where we do have that information. To be clear for the Committee, it is our intention to proceed in due course to a full national model of voter identification,



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but to get to that point, there are a number of decisions to be made. For example, which of the five models that have been piloted so far was the best? Which could be used as a single national model? I think the argument that you ought to have one single national model is quite clear, by the way. I do not think we would continue with a multiplicity of methods.

To get to that answer, we are doing more pilots. It is possible to answer your question in the chunks of the pilots that have already been done; but the pilots that are to come in 2019 would have to be done before we could get to the fuller answer.

Q23 **Chair:** Can I just be clear that the Government has taken the decision to roll these out nationally?

Chloe Smith: Yes.

Q24 **Chair:** But you do not know how much that is going to cost?

Chloe Smith: That is right, because there are different methods by which you could do it, so it is not possible to give you method A, B or C and the cost with it, although in our evaluation—

Q25 **Chair:** I appreciate there is very good reason why you do not have that cost estimate, but it seems rather odd that you have committed to the policy without understanding the cost of the policy.

Chloe Smith: I do not think that is fair to say, Sir Bernard, because as I was going to explain, we are able to make sure you have the clear costs of what has happened per pilot. Then what we can all do is use those to understand what it would more fully be. We have put that kind of data in our evaluation document, so it is clear for all to see we are not hiding from it in any way.

Q26 **Chair:** What was the cost of running the local communication campaigns in the five pilot areas?

Chloe Smith: We are completing the accounting process for that at the level of invoices, so we will shortly be able to provide you with that figure. As I am sure the Committee knows, each local authority has to be able to state precisely what their costs were, and then they are reimbursed that nationally. That figure will be available shortly. As I say, the Cabinet Office and the Government do reimburse those costs, so that will be able to be scrutinised, in Government terms, very shortly.

We have an estimate of what it was for the 2018 pilot. This includes both what we call voter ID, but also the ones that were running postal votes, so that is eight pilots in total, not just five. It is eight because there were three that tested methods in improving postal voting. We have a near final estimate of £1.9 million that relates to that across those eight. Sorry, that is larger than just the communication costs that you were inquiring about. That is the net cost.



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Q27 **Chair:** The briefing that we have suggests that you have not yet included the cost of these local communication campaigns in your evaluation of the overall cost of the pilots. You seem to be confirming that.

Chloe Smith: I will be very happy to double-check to make sure the Committee has accurate figures, because this is very important.

Q28 **Chair:** How can you assess the costs of these pilots without including the publicity campaigns?

Chloe Smith: Indeed, Sir Bernard, and if you do not mind, that is the argument I was trying to make a couple of minutes ago. We are getting towards the position of being able to assess the overall costs, but the information comes in chunks or comes in a process, so what we are seeking to do is to make sure that we have everything in hand and can then answer your questions more fully.

Q29 **Chair:** Do you have a figure for the net cost to the Cabinet Office of the 2018 pilots?

Chloe Smith: Yes, that is the £1.9 million I just referred to.

Q30 **Chair:** What is the budget for the next round of pilots?

Chloe Smith: I am sorry to disappoint you, but again, that is not a simple figure that I can give you straight away. I would be very happy to make sure you have it as soon as we do, but crucially it depends on the design choices of the next pilots. The reason why design choices differ in cost is set out quite clearly in our evaluation document of the 2018 pilots, and you will see there the range of figures that related to what method each authority chose. For example, those that chose to use the testing of bar-coded poll cards had a higher IT cost because they needed to scan poll cards on the spot. That is a different order of costs to asking somebody to bring ID with them from home. Those differences are set out in our evaluation, and I would be very happy to come back to the Committee with the figures as soon as we get them from our processes.

Q31 **Chair:** I think we would like a comprehensive memorandum about this, because I appreciate you are being very straightforward with us about what you do not know yet. How will you assess the financial and administrative impact on the local authorities of a voter ID policy when it is rolled out? How will you do that to ensure that they are going to be compensated adequately?

Chloe Smith: They will be compensated adequately; that is simply the way that we do things. As I said in the first answer, authorities submit their costs for elections and they are reimbursed. So that stands as the first rule here.

What we are also doing is working with representatives of local authorities, such as the AEA who I mentioned earlier on, SOLACE, which is the Society of Local Authority Chief Executives, and indeed the Electoral Commission, as part of the project board that oversees this



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work and some other policies to do with elections. That is a further way of being able to scrutinise the costs and the asks, and to ensure that they are sensible.

Q32 Chair: When you have all these figures, will you also put in your memorandum to us how you are going to judge what is value for money in terms of this proposal, against other ways you could spend that money on improving public confidence in elections?

Chloe Smith: Yes, of course, I would be happy to answer on that. I think we are looking at the same concept here. I think we have the same value here. It is very important that this policy is seen in terms of the confidence that it can give the public about their elections, and that that is the principle that I am starting from here. I am happy to do that, and I will come back to the Committee when I am able to.

Q33 Ronnie Cowan: To pick up on the point about improving public confidence, the Electoral Reform Society has costed introducing voter ID at £20 million per election. Its suggestion is that the Government should focus on more pressing charges, such as illegal political campaign financing. The perfect example is what has happened in Scotland: SUAT, the Scottish Union Association Trust—it may or may not be a trust—has been promoting and funding Scottish Conservative campaigns. Is that not an area that the Government should be looking at?

Chloe Smith: First of all, in general terms, you would not expect me to comment on individual investigations into any allegation. That is for the Electoral Commission to do. If I understand your example correctly, it relates back to the 2016 referendum campaign, and the Electoral Commission has been looking at all sides of that referendum and their spending records.

More broadly, is this voter identification policy one worth doing against other priorities? Yes, it is, and there are many things that we are seeking to do to improve our democracy, to open it up, to protect it, to improve it. The House is well aware of a number of reports in recent months that propose ways of improving our electoral roll regulation. The Electoral Commission, the Information Commissioner and the DCMS Select Committee have reported on this. There is a lot of material and a lot of proposals there that, absolutely, the Government are giving proper consideration to, as you would expect us to.

This policy is an important part of protecting our electoral system for the reasons I have already set out. It goes alongside things we are doing to make sure that our electoral system is also inclusive. For example, I could point to some reforms done in recent months to make sure that survivors of domestic abuse are more easily able to register, or that disabled people are more easily able to register and to vote. I ought to have said, in response to Mr Jones, that that is work that we do with the RNIB and Mencap and others. Very important members of charity organisations help us to do that. Indeed, I want to, and have already



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offered to, continue working with them on this policy to make sure that their members' needs are properly considered.

In summary, Mr Cowan, yes, this is an important policy, and it has its place alongside a number of other things we are doing to protect our democracy. Meanwhile, on the other big and also important issues you raise, consideration is going on of a number of recommendations that have been made.

Q34 Ronnie Cowan: To absolutely clarify, the SUAT case—the dark money—was about funding Scottish Conservative candidates during the general election.

Chloe Smith: Forgive me, I was unaware of the example you were referring to.

Q35 Mr David Jones: Can I pursue this issue of identification further? One of the Electoral Commission recommendations was that, in terms of the polling card means of identification, further work be done to see whether they can be used without the necessary scanning technology. How does this work? If a polling card is handed over to a poll clerk with a barcode on it, and is read by the machine that was presumably in the polling station, what does that show up? Does that show a photograph of the voter?

Chloe Smith: In the case of the two authorities that used that in 2018, I do not believe it did show a photograph of the voter.

Q36 Mr David Jones: What does it show? How does it prove the identity of the person bearing it?

Chloe Smith: It connects the holder of that card to the recipient of that card. What we are talking about in all cases here is the fact that you register to vote at one point, and then you come physically—or indeed by post—to vote at a later point. What all the pilots were seeking to address was: is this the same person who did both of those things? That is what the polling card is trying to do.

Q37 Mr David Jones: All that it proves is that the person who is presenting the card has the card in his or her possession. It does not do any more to prove that the person who is presenting the card is indeed the person who is entitled to that vote. All it proves is that he is carrying that card.

Chloe Smith: It proves a one-to-one relationship, which is important. It certainly shows that that poll card may only have been used once.

Mr David Jones: That is true.

Chloe Smith: That is a characteristic.

Q38 Mr David Jones: How does it prove identity?

Chloe Smith: I think it modernises and draws forward somewhat the test that I was talking about at the very opening of this session. The test



that already stands in law is that you have to say what your name and address is. The poll card gives both the voter and the poll clerk the confirmed information that that is it. You make a fair point, Mr Jones: without the photo on it, or without a photo back in the records, it is correct that you do not have that perfect method of doing it. That is the stuff of this debate. There were a number of methods piloted, and the trick here is to try to see which has been most effective.

Q39 Mr David Jones: In fact, obtaining that card would be a very effective means of personation, wouldn't it?

Chloe Smith: It is a known way of doing it. One of the things that some authorities have told me—and the Electoral Commission and Crimestoppers are very much aware of this as well, because we worked together on a further awareness campaign around the same time as this pilot entitled "Your Vote is Yours Alone"—is that there is a possibility here that somebody arranges for a poll card to come to a different address and uses it. That is what we are talking about when we talk about electoral fraud. From the methods that we have seen used, we need to be able to select the ones that best give that confidence in our democracy.

Mr David Jones: Yes, I understand that, but it seems to me that this is a particularly expensive method of voter identification, and yet it does not amount to a guarantee that the person who is presenting the card is in fact entitled to the vote. In fact, it is much less effective than a piece of photographic identity, such as a driving licence or a passport, but they of course have the other objections that we have discussed today.

Chair: Can Ronnie have a supplementary question on this point?

Mr David Jones: Yes, of course.

Q40 Ronnie Cowan: Do the pilot schemes include proxy voting and postal voting?

Chloe Smith: There were three separate pilots of methods of improving postal voting in three authorities that have had a history of problems; that is a matter of public record. They are Tower Hamlets, Peterborough and Slough. They tested various ways in the postal voting process of engaging with voters to check that they had their own vote, or that they were confident that they still had their own vote. I will happily send the Committee more detail on that. I think it is the lesser told story of these eight pilots, and it is very important. I do not know if there was a question in that from Mr Jones, but it is a really crucial point.

The evaluation we have done goes piece by piece through the methods that we used, and the Committee will be able to read for itself the merits and demerits of the different models. At this point, I am not going to join Mr Jones in expressing a final opinion on which one is the best, because I want to see—

Mr David Jones: I was not expressing an opinion at all, Ms Smith. I was



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simply probing you.

Chloe Smith: Very good. I want to see more from the pilots we run ahead, and see how we can improve the design of what we run and also improve the range of places in which we run it, to be able to come to better conclusions.

Q41 **Mr David Jones:** How do you intend to address the concern that pilots at a local election cannot predict the impact in a general election, given of course the much larger turnout?

Chloe Smith: As I say, we want to run more pilots, so that we get to a larger-scale test. I think it can occasionally be a little disparaging, perhaps, to voters who vote in local elections when you hear people say, "Oh, yes, they are a different type of person from those who vote in general elections." You do hear that said. I think that is perhaps the weaker of the arguments put.

Q42 **Mr David Jones:** The turnout is proportionally much higher in a general election.

Chloe Smith: Yes, that is true, so what we want to be able to do ahead of the next general election is to be able to pilot as widely and as extensively as will give us a better picture. I think it is a matter of common sense to say that if you used general elections themselves to do piloting, you would be a very long time about it, because under the Fixed-term Parliaments Act, they ought to be five years apart. Naturally, unless you took one general election to pilot for a later one, you would never be able to pilot in a general election. There is going to be a certain leap that we have to make between having piloted at local elections to then being ready to do so at a general election. It is the kind of thing on which I will be working extremely closely with my officials and all the partners involved, to make sure that we prepare for it very carefully.

Q43 **Mr David Jones:** All the five pilots last year were in England, and as I understand it, the next round of pilots is going to be solely in England. Is that right?

Chloe Smith: I do not think that need be the case. I would be delighted to work with councils across the country for this.

Q44 **Mr David Jones:** What are your plans at the moment?

Chloe Smith: As you may know, we have put out a prospectus—

Q45 **Mr David Jones:** Yesterday was the deadline, is that right?

Chloe Smith: That is right. 10 September was the deadline for expressions of interest from local authorities in England. I am turning to the timetable to be able to fully answer your questions. We intend to proceed on that basis towards England in 2019. The crucial point—as I am sure you will know from your constituency, Mr Jones, and indeed Mr



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Cowan as well—is that electoral matters are beginning to be devolved in Wales and have been in Scotland. I work very closely with—

Q46 **Mr David Jones:** At a local level?

Chloe Smith: Yes. I work very closely with my counterpart, the relevant Minister in both of those Administrations, to look at various matters. There are lots on which we are working together. I would welcome working on this with them also.

Q47 **Mr David Jones:** Have you invited your colleagues in Wales and Scotland to participate in these pilots?

Chloe Smith: As you rightly identified, this is an invitation in England only, so I suppose the answer is no.

Q48 **Mr David Jones:** Have you invited them?

Chloe Smith: It is a matter of working together with them to do so, if they would like to.

Q49 **Mr David Jones:** Yes, I understand that, but have you extended the invitation to them to participate in the next round of pilots, as well as the local authorities in England? Have you invited the Scottish and Welsh authorities to participate, too?

Chloe Smith: Not in the same format as this prospectus, but in terms of conversation, yes.

Q50 **Mr David Jones:** What has the response been?

Chloe Smith: At a political level, I understand that both the Labour party in the Welsh Administration and the Scottish National party in Scotland take their own party political view on this policy, so I think it is probably clear for all to see that they would not immediately want to do it. I think that is a shame.

Q51 **Mr David Jones:** Do I infer from that that you have invited both the Welsh and the Scottish authorities to participate in pilots, but they have declined your offer? Is that right?

Chloe Smith: We have discussed it. For example, in a three-way conference call between me and the two Ministers, which we do as a regular way of staying in touch, we have had a discussion of this policy. I do not think it needs to be thrown up into a row. It is simply—

Q52 **Mr David Jones:** I am not suggesting that. All I want to know is whether you have extended an invitation to the Welsh and Scottish authorities to participate in pilots. If you have done so, is it the case or not that they rejected that offer?

Chloe Smith: Verbally that has been done, and it is my understanding that neither Administration is going to go forward to do it. That is the answer.



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- Q53 **Mr David Jones:** Is it fair to infer that from what you have just said?
- Chloe Smith:** It could be. What I am saying to you, Mr Jones, is that I do not have a letter from them saying they are not going to do it.
- Q54 **Mr David Jones:** Is it fair to say that you raised the prospect of their participating in pilots at a local level, and they have not accepted that offer?
- Chloe Smith:** Yes, I suppose that is fair to say.
- Q55 **Mr David Jones:** Thank you. How are you planning to obtain the evidence you are going to need to inform the rollout of voter ID in Wales and Scotland at the next general election, which of course is not a devolved election? It is an election for which Westminster is responsible.
- Chloe Smith:** Yes. One of the things I want to show in the 2019 pilots is that this policy continues to be, as I have argued, a reasonable, proportionate and effective policy, and it would certainly be my hope that the 2019 pilots demonstrate that that is true across a wider area than was done at 2018. I see no reason why there should be something specific here that is different between England, Wales and Scotland—and, crucially, Northern Ireland—returning to the original point.
- Q56 **Mr David Jones:** Yes, I was going to ask about that. What is your experience of voter ID in Northern Ireland?
- Chloe Smith:** Obviously, personally I have not voted in Northern Ireland, if that is what you asked.
- Q57 **Mr David Jones:** What is your assessment of the experience in Northern Ireland?
- Chloe Smith:** My assessment is that it has been a good policy that started with a particular political imperative that rose out of particular circumstances in Northern Ireland. The principle remains exactly the same: voter fraud is a crime, and should and can be addressed. The Northern Ireland experience shows that it can be done in a way that is very reasonable and acceptable to people as they come to vote. Crucially, in the Northern Ireland case, assessments show that there is no effect on turnout. That is very important.
- Q58 **Chair:** But there was a particular problem in Northern Ireland, wasn't there?
- Chloe Smith:** Historically, yes.
- Q59 **Chair:** There was voter intimidation on quite a large scale by some rather nasty organisations. To what extent is that a problem in the rest of the United Kingdom?
- Chloe Smith:** It is less of a phenomenon. That is probably obvious because of the history of the Troubles, but there we return to a matter of principle: if it is right for one part of the United Kingdom, why is it not right for others? If it is right for one citizen to have their vote protected,



why is not right for others? We think it is very important to be able to protect our democracy.

I would also note—returning to one of the party political aspects of this—that it was a Labour Minister at the time, while introducing the changes to that scheme in Northern Ireland, who said that this would be a sensible way of going ahead without unduly affecting ordinary eligible voters who would turn up to vote in the normal course of their business. That is the history of that policy in Northern Ireland. It is a cross-party one, and I do not see why that should not also be applied to the protection of other voters in the rest of our country.

Q60 Kelvin Hopkins: What would the pilots need to show for you to rethink implementing voter identification nationally? What impact on turnout would be unacceptable?

Chloe Smith: I do not think I am able to give you a numbered answer to that, Mr Hopkins. I understand why you would want me to, but I do not think I can. What I am putting my energies into instead is making sure that they go well. Crucially, we all want to make sure that all eligible voters get registered and come out to vote. That is the bottom line on this. I do not think I am going to be able to answer your question with a number for you.

Q61 Kelvin Hopkins: My concern would be the difference between different sorts of constituencies. If you had a very affluent, middle-class and overwhelmingly white constituency, and contrasted it with a much less affluent constituency with large minorities, for example, if there were significant differences, would that not make you think again?

Chloe Smith: One of the things I want to address in the 2019 pilot, as I was just saying, is a wider geographical range so that that need not be a concern for people. I am in the business of trying to address concerns, rather than seeing them as barriers.

Q62 Kelvin Hopkins: On Northern Ireland, when the change took place requiring ID, was there any research to show that there had been a significant change because there had been a reputation there, which may have been false or untrue? There was the old slogan "Vote Early, Vote Often", which was perhaps a slur on Northern Ireland. Nevertheless, if personation was widespread and then it suddenly stopped, it would be a significant change. Do you know what research was done on that?

Chloe Smith: Research has been done. There are a number of academic pieces looking into that, which I would be happy to send to the Committee. There is some detail on that.

Q63 Kelvin Hopkins: What was the result, roughly?

Chloe Smith: The conclusion is that, over time, the problem of the crime has been addressed and turnout has remained as you would want to see it. I would be very happy to send that as a reference to the Committee.

Q64 Kelvin Hopkins: Was there a significant reduction in turnout as a result?



Chloe Smith: No.

- Q65 **Mr David Jones:** Turning to the proposed creation of new offences, as I understand it you are proposing to make existing criminal offences electoral offences, to combat intimidation at elections, rather than creating a new offence, as was recommended by the Committee on Standards in Public Life. Why have you decided to take that particular approach?

Chloe Smith: It is correct that that is the approach we are taking and that is clear in our consultation document. We have taken that approach to try to get around the difficult issues that attach to this subject of defining intimidation. It is already defined in law, in that range of existing criminal offences. We think the common sense path is to use those existing laws and then say that, when they occur during an election period, they have an extra significance and thus trigger electoral sanctions. We are trying to find a common sense way—

- Q66 **Mr David Jones:** The election itself is an aggravating factor?

Chloe Smith: I do not think in the technical legal sense of that phrase, but figuratively, yes. We say it is a special period. I suppose the argument I was building in the first part of this session was that our elections are very important and deserve protection and voters taking part in those elections should be able to make their choice peacefully and free from intimidation, so we mark that by saying that when such an offence is committed in an election period it is dealt with in an additional way.

- Q67 **Mr David Jones:** The offences you are using are under section 5 of the Public Order Act—a standard one that anyone who has practised in the courts will know—is using offensive words or behaviour.

Chloe Smith: I am terribly sorry, Mr Chairman, I am struggling to hear Mr Jones.

Mr David Jones: Is the microphone working?

Chloe Smith: I am so sorry I just could not quite hear.

- Q68 **Mr David Jones:** One of the offences you are using is under section 5 of the Public Order Act, which is a well-known offence frequently used by the police to address offensive or threatening words or behaviour. You also propose to use section 1 of the Malicious Communications Act on sending malicious communication. How would you differentiate someone who is just being offensive one to another and someone who is being offensive to a campaigner in an election?

Chloe Smith: Here is the crucial point about why it is sensible to use the existing set of offences: it is already defined in law. No doubt the Home Affairs Committee has, over time, gone into exactly that question in great detail, and rightly so. Essentially, judges and the courts are already able to draw the distinction that you are scrutinising.



The new thing that we are adding is that this occurs in an election period with particular actors in it: campaigners in the example you just gave; candidates and campaigners in the consultation document. "Candidates" is easily defined. "Campaigners" is also definable. One thing that we hope to be able to do out of the back of the consultation is to make sure that that is workable in law, so that this is clear for courts.

Q69 **Mr David Jones:** How do you propose to define the campaigner?

Chloe Smith: There are some approximate definitions already in law and guidance. The Electoral Commission uses them. I am sure each of us, as practising politicians, is already aware of the definitions that apply through electoral law around seeking to promote or procure a particular outcome or work with a particular candidate. We are going to start with those existing elements and ensure, with the help of the CPS, that we can clearly express this so that the police and courts can use it.

Q70 **Mr David Jones:** If I happen to be a Conservative supporter, and I put out a single tweet, and then I am met with a barrage of offensive, threatening, malicious tweets from other people, do I constitute a campaigner for the purpose of your proposed legislation?

Chloe Smith: As a starting point, you would want to be able to explain whether you were seeking to promote or procure a certain electoral outcome. We are talking about those kinds of building blocks here in the law. Secondly, you would need to be able to demonstrate the backlash you describe, which I think has a technical term.

Q71 **Mr David Jones:** It is not so much the backlash I am interested in, but if I happened to be someone who cast my vote for the Conservative Party every five years or whatever, and I just happened to put up one tweet saying, "I hope that the Conservative Party wins this election", and I am met with a barrage of offensive and abusive tweets from other people, am I constituted as a campaigner for the purpose of your proposed legislation if that is the only thing I do in connection with that campaign?

Chloe Smith: It is probably unlikely, but you will appreciate that at the point we are at in the consultation that that is not a definitive answer to you yet. What I was going to go on to add, though, is that you would have to be able to demonstrate that the backlash that occurred was because you were acting in that capacity, as opposed to for some other reason, and it simply occurred during the month of April in an election year. You would need to be able to demonstrate under these proposals and under the CSPL's original idea that this was specifically connected to your capacity in political terms.

The important thing here is that you would need to be able to convince a court, as per the framework around these existing offences, that something unlawful had happened and that it merited that.

Mr David Jones: That would be for the CPS to convince the court, not the complainant.



Chloe Smith: Of course, yes.

- Q72 **Mr David Jones:** One of the criticisms that the CSPL made of the proposal to use existing offences as the basis of the new offences is that both the police and the CPS set a very high bar and they are very broad offences, but not sufficiently detailed. Therefore, they were somewhat critical of the proposal to use these existing offences for the purpose of creating the new aggregated offences of doing this in the context of a campaign.

Chloe Smith: Yes, and I understand that concern, and I ought to take this opportunity to thank the CSPL for all they had done. It is a very important report that they have done and I am very grateful to them, not only for that but then also continuing to be involved in how we work it.

As legislators, all of us know that what we have to make sure of here is workable law. That is what I am aiming for. I will be very interested to see not only the CSPL but also many others, I hope, put into the consultation to help us in that goal.

- Q73 **Mr David Jones:** If you accept the criticism of the CSPL and what we have is very broad offences, how confident are you that your proposals will not lead to spurious election petitions that are founded upon the contents of, for example, a single tweet?

Chloe Smith: The key point about the pegging of this to existing offences means I am confident that this will be quite proportionate and quite familiar in existing law. I do not expect that this will result in some radically unfamiliar and radically disproportionate avalanche on to people. What I want is to mark out the importance of our elections and to say, in a way that is legally sensible, that disgusting behaviour in our electoral discourse that hurts voters is not on.

- Q74 **Mr David Jones:** That is obviously laudable. I think any of us who have stood for election would have been the recipients of this sort of abuse and it is becoming more prevalent with the growth of social media. But my concern is that there might be a disproportionate consequence in that, as I said, election petitions may be raised as a consequence of a fairly small and not particularly significant act of intimidation, unpleasant though it is. In other words, the consequence might be disproportionate to what has actually happened.

Chloe Smith: I think we need to try to answer this question in terms of some mechanics as to how these different processes work. The petitions process would not be changed, per se, by this proposal. It would remain as it is. Within that process is a time limit, which is important because it puts a bookend on the elections and says, "The result has been declared" and, therefore, we have a stable method of governing, whether that is at parish council level or any other level right up into the biggest affairs of state. For a nightmare scenario of more petitions, as you have just described, Mr Jones, to be true, what you would have to see here is some



very fast work by individuals, the police, the CPS and courts for that to be material to the petitioning process.

By the way, in no way am I denigrating the police, the CPS and the courts. They have important work to do and they do it well and I am looking forward to working with them closely to make all of this bundle a success, but I am just pointing out that the speed of the timescales in the petitions process means that I suspect it may not fit the new thing we are doing here, which I think perhaps could be better described as a deterrent. I hope this is more in the field of a deterrent to people who may exhibit the kind of appalling behaviour that has been well documented and deter them from doing so because, of course, that is the outcome we would all prefer.

- Q75 **Mr David Jones:** As I say, that is entirely laudable, but you could get a consequence when a candidate wins with a very small majority and his opponent says, "I was subject to treatment that constitutes offences under this new legislation and, as a consequence, I want this election overturned and I am going to launch an election petition". Is it your view that that is not a serious prospect?

Chloe Smith: It is absolutely a serious point and it is a possible prospect, but I will just draw on your point about the deadline within which that would have to be done and it remains relatively short for election petitions for that other good reason.

- Q76 **Chair:** Looking at the periods outside election campaigns, there is still a great deal and perhaps an increasing amount of political intimidation. What are you thinking of doing in order to protect campaigners and candidates outside election periods?

Chloe Smith: This is back to the existing criminal law. That relates year round, of course, and that is there. We think that is sufficient as a body of law to do that job. We are not trying to make this policy stretch all year round because—as I was seeking to get across—we want to try to emphasise that elections are a special function, are an important and special time, and that ultimately it is voters who get this protection because it is their choice, at the end of the day, during that election period. Electoral law ultimately has to be there to help electors do their job and do it peacefully, so that is why you have these definitions of a candidate at that time. The very word "candidate" is election-specific and the very word "campaigner" will in all likelihood be defined as election-specific. For the rest of the year, the rest of the criminal law is there and I hope able to do its job.

- Q77 **Chair:** Someone of unimpeachable integrity is the Member for Birkenhead, Frank Field. The second reason he gave for resigning the Labour Whip was that, and I quote from his letter, "A culture of intolerance, nastiness and intimidation now reigns in too many parts of the party nationally and is sadly manifest within my own constituency Labour Party in Birkenhead". Do you think this is something that should



fall into the category of a matter about which we should be concerned if we are regulating—we are all grown-ups, we are all capable of putting up with a certain amount of flak, but I do not think someone like Frank Field would be resigning his lifelong membership of the Labour Party lightly unless he was genuinely concerned about the kind of intimidation he is being confronted with. Is this a concern that Government should be concerned about?

Chloe Smith: Yes, it is a concern and I entirely agree with the gravity of that situation. I am just looking here at the opening pages of the CSPL's report where they say the same, "Intimidation in public life presents a threat to the very nature of representative democracy in the UK. Addressing this intimidatory, bullying and abusive culture matters". Of course absolutely it does, but I think the better way to do that year round is to use the existing criminal law. I am not in any way giving advice on this particular case but it seems to me that it might be possible to look at those grievances through the lens of the existing criminal law and that is, as I have been saying to Mr Jones, the point here of using the existing framework and then adding something special in electoral law.

On the first question Mr Jones was asking me, about why we have done something different to what the CSPL asked for, the obvious common thread is that it was saying, "Create a new electoral offence" and that is exactly what we have done. To create a new electoral offence is a technical term different from creating a new criminal offence. We are using the existing criminal offences and adding a new electoral one, but we are pegging them together in a way that I hope essentially makes the system work sensibly.

Q78 Mr David Jones: Do you anticipate that the police and CPS will adopt a different approach to these new offences from the one they adopt for the underlying offences that exist at the moment?

Chloe Smith: Yes, I do hope for that because what is being put out on an evidenced and cross-party basis by the CSPL—and what the Government agree with and are taking forward—is that this stuff really matters, this stuff is vile and has no place in our democracy and it really matters, and that now is the time to take it seriously and put a stop to it. Yes, I do hope that all parties will—

Q79 Mr David Jones: When I used the expression "aggravating" a little earlier, with which you took mild issue, I think I was actually right. It would be regarded as an aggravating factor if it was in the context of an election.

Chloe Smith: I think this is only a technicality, in the sense that electoral law provides that function rather than having to categorise it as an aggravating factor. As it happens, being in public service is already an aggravating factor in certain types of crime and I will be happy to give the Committee precisely that reference so that you know what I am



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referring to there. I think we are saying the same thing but I am trying to be technically clear for the Committee.

- Q80 Dr Rupa Huq:** It does seem a bit curious. I do not know who is an expert on Labour Party meetings in this room, apart from me who went to one yesterday evening after we finished. The barriers did not come down; I did not have to present my passport; in fact nobody did, just as a point of information, Minister. I think sometimes these things get a bit exaggerated. As for Frank Field, I do not want to get into his thing but I know he had differences of opinion with his party and there were things going on there.

However, I wonder about the nuts and bolts of how these things will be enforced. We know we have shrinking police numbers, a shrinking number of civil servants, so introducing new offences will only be effective if they are enforced. Given past experience, how confident are you that the police and CPS will prosecute cases of intimidation of candidates or campaigners?

Chloe Smith: I am confident of that and I think it is worth noting that there is a set of actions here. In the original CSPL report there was a set of actions, only some of which were for Government. Others were for other parties including the police, the Electoral Commission and political parties. What I want to do here is to work with all of those different organisations, all those different bits in the system, to make the whole package come about. From that I would say, yes, I am confident that we can do this.

- Q81 Dr Rupa Huq:** Richard Mawrey, the QC who did the Tower Hamlets' case in 2015, said that, "The petition system is obsolete and unfit for purpose. It is wholly unreasonable to leave it to defeated candidates or concerned electors, like the present petitioners, to undertake the arduous process—" with lots of layers, and the timescales and everything are prohibitive. Is it really realistic to expect candidates who have been intimidated to rely on election petitions as a way forward?

Chloe Smith: No, and I think that is not the point of the policy. As I was explaining earlier on, the petitions process is separate to this policy.

- Q82 Dr Rupa Huq:** The Law Commission came up with a comprehensive set of recommendations for reforming electoral law in 2016—so that was in the last Parliament—including modernising electoral offences and election petitions. When do you intend to implement those recommendations?

Chloe Smith: I think I misheard you at the beginning. Did you say the Law Commission or the Electoral Commission?

Dr Rupa Huq: The Law Commission, yes.

Chloe Smith: The Law Commission's body of work is incredibly helpful and very important. In this consultation, as I am sure eagle-eyed readers will have seen, section 2 is about improving the offence of the polling station aspect of intimidation. Sorry, let me put that more clearly. It is



about clarifying the electoral offence of undue influence, which Mawrey, the Law Commission, Sir Eric Pickles and others have looked at in detail over time. It is under that offence where we can do even better in defining what intimidation is at polling stations and act accordingly.

In answer to your question, Dr Huq, we are looking at the Law Commission's work in this consultation document and are very grateful for it. There is a bigger body of what they have also looked at over time. I do not think it will be news to this Committee that parliamentary time is not likely to be free and easy in this Parliament, so there is not an opportunity to do everything that they have asked for. But, as I did say to Mr Cowan earlier in the session, there have been very many recommendations made recently about electoral law and they deserve to be looked at together.

Q83 Dr Rupa Huq: There is no urgency to implement those 2016 recommendations or no date that they will see the light of day?

Chloe Smith: No, I cannot give you a date—for the reason I have explained—but certainly one of them that we think is very important is here in this consultation and that is about the existing offence of undue influence, which does link up very much to the first part of this consultation. That is the concept that we are talking about here: how do you protect voters from undue influence and how do you protect our elections, at a slightly more abstract level, from that undue influence, undue intimidation? These issues are linked and we hope can be addressed by what we are proposing here.

Q84 Mr David Jones: The proposal is to amend the law to “include behaviour intended to intimidate voters into voting in a particular way, which takes place either inside or outside a polling station”, even if it does not involve threats of violence or other harm. Why are you proposing to set a lower threshold for what counts as intimidation or undue influence of voters in and around a polling station than, for example, just around the corner?

Chloe Smith: I think because there has been a specific historical precedent. If you look at Richard Mawrey's comments after the Tower Hamlets court case that is where you find the very clear rationale that there was a set of behaviour there that was not possible to prosecute under existing laws. We are responding to a particular thing that has happened and also, as I say, responding to the Pickles' review and the Law Commission's work.

Q85 Mr David Jones: Presumably, just interrupting, there will be a definition of what outside a polling station means?

Chloe Smith: Yes.

Q86 Mr David Jones: A radius will be set, will it?

Chloe Smith: I think that is already set out. The definition of a polling station already exists in law.



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Q87 **Mr David Jones:** What radius would that be?

Chloe Smith: I haven't the figure in front of me but would be happy to supply it.

Q88 **Mr David Jones:** Yes, okay. How will you ensure that this is not used to prevent behaviour that may be enthusiastic, the sort of behaviour you get at election times, but is not intimidatory? How will you differentiate between the two? You are stripping out the need for a threat of violence or harm. Is it a very fine line that you are treading here?

Chloe Smith: It is indeed a fine line and you are absolutely right, Mr Jones. Every single one of the issues we are dealing with in this consultation paper is a fine line and this will not be simple work to get right.

Q89 **Mr David Jones:** Polling day is an event. Obviously spirits frequently get high. How will you differentiate simply between those high spirits and something that would constitute an offence under what you are proposing, even if it did not include any threats of violence or harm?

Chloe Smith: As we have set out in the consultation—and I will turn to the correct page in front of me, which I am sure the Committee also has—we are trying to accommodate all behaviour that currently falls within the scope of existing legislation. The simplified offence should not be drawn any narrower than the original offence. As I have also touched on in previous answers, we are, therefore, looking to use the traditional methods of our judicial processes to be able to decide when that line has been crossed.

Q90 **Mr David Jones:** Yes, but the courts will need guidance from the legislation itself, won't they?

Chloe Smith: Yes, and that is what we begin to set out in the consultation. Being a consultation, it is not the final proposal yet but we hope, with the help of answers given to this, that we will be able to provide courts with a clear text for those.

Q91 **Mr David Jones:** I hope it is not the Government's intention to put a damper on the high spirits that prevail on polling day.

Chloe Smith: No, I do not think so and, no, it is not. I do not think that was the intention of, for example, Mr Mawrey in the very considered explanation he gave of the behaviour that happened in Tower Hamlets. What we are looking at is a very much more serious canker in our democracy that we have to address.

Q92 **Mr David Jones:** Should it be an offence to photograph an elector on his or her way to the polling station?

Chloe Smith: I do not think I have a personal opinion on that. There is currently an offence against—

Q93 **Mr David Jones:** That was one of the things that was complained of in



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Tower Hamlets, if I remember rightly.

Chloe Smith: Yes, indeed, but I do not have an opinion to offer the Committee on that one.

Q94 **Mr David Jones:** Do you think that that is something you may look at in the course of your consultation?

Chloe Smith: I would be happy to look at it and see the arguments around it, certainly.

Q95 **Ronnie Cowan:** I am going to touch on digital imprints in a minute, but just to go back to the point Mr Jones made there, it is my experience in elections—and we have all seen far too many of them—that when we spend our days in polling places, the polling stations are inside the polling place. The building is a polling place. It is up to the officer inside to define where the perimeters are. They vary in every single building you go to and because of that people do not know, “Where can I stand? What can I wear? Do I wear my rosette inside the building, outside the building? Where can I approach people?” It is very vague. It is always on the day left up to one person who is the returning officer for that entire area and he can have 40, 50 or 60 polling places going. Potentially his phone is going to be going all day long with people saying, “Somebody has parked a car inside a polling place that has got a sign on the window. Can you do that? Can you move the car?” It is very vague and open to interpretation on the day.

Chloe Smith: One of the principles is that the presiding officer is in charge of their polling place and that would remain the case. I do not think we are proposing to change that because, as you share yourself, Mr Cowan, obviously every building is different so I do not think it would be possible for national guidance to take that localised view away. What we are aiming to do in the middle section of this consultation is to give more clarity on this very serious aspect of behaviour. I do not know if that will cover every eventuality that you have in mind there, but what we are looking for here is that most serious kind of behaviour that is grievous in our democracy. I hope that that will help in giving clarity to people who have business at polling stations.

Q96 **Ronnie Cowan:** Maybe a stronger guidance on what buildings can and cannot be used as polling places, which are appropriate. I have seen some places that are completely unsuitable and you think, “This should never be a polling place”, buildings with three or four entrances to them. Maybe a stronger guidance that says, “This can or cannot be used” and if you can define a building you can start to set parameters as to how they should be used.

Chloe Smith: It is for returning officers in their role at councils to select appropriate polling stations that serve the needs of the community. That is where this derives from. It may be quite separate to the point of intimidation and how might you make use of three doors in a polling station to do something nefarious. Separate to that, it is an established



principle of our elections that it is for returning officers to make the appropriate provision in their stations.

One other reason, of course, why this is incredibly important—just to offer this to the Committee—is accessibility. Another piece of work I have been doing recently is about accessibility of elections, going all the way through from how you register to how you cast your vote. It is incredibly important across our society that polling stations are appropriate as physical places to what we ask of them.

- Q97 **Ronnie Cowan:** Pressing on, digital imprints. Your consultation identifies a number of different issues with requiring an imprint on digital material. In the current scenario of paper, every leaflet or every newsletter that goes out has to have an imprint at the bottom saying, “Printed by, on behalf of”, but with digital material it is a lot more vague. Our websites or Facebook pages during election times carry what is effectively the same imprint but beyond that you are going to get tweets, posts on Facebook. How do we control that or do we want to control that?

Chloe Smith: The aim of this section, following on in spirit from parts 1 and 2, is to protect the voters, to allow the voters an informed choice and to help them have that. That is the spirit in which we are doing this and it is in that spirit that we need to be able to answer all the technical ways that consists of. As you will see from the consultation document, this being a consultation we are very interested in hearing people’s technical submissions on how this can best be done. I certainly do not want to put the Government in the position of chasing after the latest thing to define in law when we all know that this is a field that is going to keep on moving. I want to make sure that we are defining this in a way that is as future proofed as it can be. I think that is certainly the least that you would expect here.

The technicals of how you do that per type of social media or per type of digital material will be quite various right now and no doubt will be just as various or more various in five, 10 or 20 years’ time. What I am hoping to get from the consultation is a better ability to frame those definitional points in a way that will work and stand the test of time in our law.

- Q98 **Ronnie Cowan:** But does it come down to organisations or does it come down to an individual? I am thinking of the scenario when Professor Plum writes an article saying, “I think remain” or “I think leave” and then somebody says that the professor is a member of an organisation. Shouldn’t they be required to state that? Currently if you write an article in the newspaper you have to say at the bottom “SNP” so people know where I am coming from. Should individuals be required to state on everything they publish that I am sitting on the board of the Remain or the Leave campaign or something of that ilk?

Chloe Smith: This comes back a little to the earlier discussion about what is a campaigner and what is the campaign in which we are taking



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part? For example, in the case of Remain or Leave, I suppose there is a legitimate question to ask: do those continue to be campaigns or are they past campaigns? That is a legitimate question that you might ask there. We intend to be in a position to define those questions. We have deliberately left it quite open in the consultation to be able to get in that technical response from people. My general answer to your question is that, yes, we want voters to be able to see who has said something and where it has come from. That is the bottom line of this.

Q99 **Ronnie Cowan:** You are saying there is going to be a more detailed programme published soon?

Chloe Smith: Indeed. This is a consultation paper so I am genuinely asking open questions here that I hope will allow me to be able to formulate this into law that works. That is absolutely the endeavour of this, so in due course there will be a fuller document.

Q100 **Ronnie Cowan:** Do you have a timescale?

Chloe Smith: No, but the consultation closes shortly—as you know, in the next couple of weeks—and we will follow on as quickly as we can from there.

Q101 **Ronnie Cowan:** Before the next general election?

Chloe Smith: As always that is the remit of any Minister, so I aim to serve and aim to do so before the next general election.

Q102 **Dr Rupa Huq:** Carrying on with the leave and remain, I know that I had people on the doorstep saying, “What is the point of electoral reform if, knowing all that we know now, nothing is going to happen with the referendum?” We know that malpractice took place—I think on both sides—but given the margin of the victory and the overspend I know that is not going to be reopened. The DCMS Select Committee recently said that electoral law in this country is not fit for purpose in the digital age and it did a fake news inquiry with a set of recommendations. When is the Government going to come up with their reforms?

Chloe Smith: As I am sure you and the Chair respect and appreciate, the Government will respond to that Select Committee on its recommendations and look forward to doing so. I think it will be the Department for Digital, Culture, Media and Sport that leads the way in doing that because it was that Select Committee. I think it is the case that that report was also only an interim report, so there is more material to come on that, as there is from, for example, the Information Commissioner.

As I was saying earlier on, there is a lot of material there that needs to be responded to in the round. I think that is a very fair thing to say, so there is not a date answer. I cannot tell you it will be Monday next week. It is a major piece of work.



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As the Minister responsible for the electoral system, the reflection I would draw is that we should begin by being quite proud of our democracy and what it does. We are an historic democracy, a global leader in this and we should be proud of that. There are things we want to improve and I have mentioned a few throughout this Committee. Indeed, the policy we began by discussing is an example of how we can continue to improve our democracy.

Of course, we want to make sure that the law is up to date for the society in which we all live, which is a fundamental tenant. The idea we have in this consultation document—which, by the way, preceded that report—is a very important starting point. It lets voters be informed, which is fundamentally a building block of all this. Voters have to be able to be informed and also be able to cast their vote in a system that protects their vote through a secure election system. All of that is the work I am contributing to, this much bigger piece of, “Let us make sure our democracy is fit for the times in which we live”.

Q103 Dr Rupa Huq: I have a constituent—maybe I should not reveal too much—who works within the Electoral Reform Society. They said nothing will happen because of the referendum. It would have to have been raised 40 days after 23 June 2016. It is like the judge was saying after the Tower Hamlets thing that these constraining timescales mean nothing will ever happen. That is something that should be looked at; 21 days for an electoral petition, for example. This malpractice comes out afterwards so it is never going to—

Chloe Smith: Are you making a specific point that we should change the petitions’ process or a point we should reopen the European Union referendum?

Q104 Dr Rupa Huq: In general, when you do your reforms, as well as looking at the fake news things, you should look at these timescales. It seems to the average layperson in the street, “What is the point of electoral law if nothing ever results?”

Chloe Smith: There are two quite important things to get out here. One is that the punishment is already there inside electoral law. It is just not true to say electoral law is meaningless, which is simply not the case. Parliament over the years has seen fit to make sure there are sanctions within electoral law for misbehaviour. In the case of the ones that have recently been uncovered by the Electoral Commission—which relate to the 2016 referendum spending—sanctions have already followed. Fines are following and, indeed, police action in some cases is also potentially following. Therefore, the punishment is already there in electoral law.

I reject the argument that says you also need to reject the result. That is not the right answer. The punishment is already there in electoral law. It is incorrect to say such acts have gone unpunished. They have not. The punishment is there. It is fines and in some cases further police action as well.



On the petition question, connected to: should we annul any given result we do not like? There is a very important principle here that you do need to be able to govern with stability. Whether it is a parish council election or whether it is a referendum, the result of which your constituent may not like, you have to be able at a certain point to draw a line under the result and say, "Right, that is what we are doing". In the case of the referendum, the arguments are very well rehearsed and the Prime Minister most recently has set them out very clearly. We are delivering the result of that referendum and intend to make a success of it rather than overturn it.

Q105 Dr Rupa Huq: The analogy is often made—I think we are going to have to end here anyway—that if you cheat in the Olympics they take away your medal. That is what the person in the street sees, or my electorate in Ealing sees anyway, a slap on the wrist, bit of a fine and nothing really changed.

Chloe Smith: In parliamentary terms, I would draw the observation that those punishments are what Parliament has already put in law. As with anything, it is absolutely for the Parliament to decide if the laws of the land should be different.

However, what I will be doing, from the perspective of the Government, is coming back in due course with a fuller answer to the number of reports that have come out recently that touch on this area. Perhaps it might be something we will return to in the Committee in due course when we have done that.

Q106 Chair: I should perhaps place on the record that I was intermittently involved with Vote Leave, as a director of Vote Leave.

I would be very concerned if the Electoral Commission had suggested to you the referendum result was in any way unsafe. Have you had any such suggestion from the Electoral Commission?

Chloe Smith: No. Indeed, the Electoral Commission has also concluded that it was a well-run poll, which refers to the other mechanics of that as an election we can all have some confidence in.

Q107 Chair: Can I ask one final question about the boundary review, which we have now published? What are the prospects this boundary review is going to come into effect?

Chloe Smith: The first part of it coming into effect is that an order needs to be laid before Parliament, which obviously the Government is under a legal duty to do and we shall be doing it. It will take a few months before we are able to do that, because effectively that requires transcribing the weight of the four reports we all saw yesterday into an order. As soon as we are able to, we will be putting that order before Parliament. I do not think you would expect me to comment on Parliament's voting behaviour, which is not for me to comment on, but certainly the order will be put before Parliament.



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We think it is very important to proceed with this. We certainly hope the House supports these proposals because they put right some problems in our electoral system. For example, the data on which we work is getting older. If Parliament does not support the changes in the Boundary Commissions' current reports we are going to be looking at having data that is the oldest in recent political history, older than before the Second World War, which is quite a thing.

Q108 Chair: I agree with you. This Committee offered the Government an alternative way forward at the beginning of this year, which was to go for a much less contentious boundary review in time for 2022. However, the Government flatly rejected that proposal before almost the ink was dry on our report.

We now find ourselves in the position where I do want you to comment on the voting behaviour in the House of Commons, the fact is we did not get the previous boundary review through because it had become a partisan issue. The previous Prime Minister's policy to equalise the constituencies with only a 2.5% variation, and to reduce the number of constituencies, has resulted in a polarisation along party lines about boundaries. What are we going to do to detoxify the whole question of boundaries so we can go back to the common understanding that used to exist between the main parties? It is an unhealthy thing in a democracy for boundaries to be a partisan issue.

Chloe Smith: I certainly agree that any nature of partisanship as to how boundaries are drawn is a problem. That is why I think in this country we are able to be proud of having independent boundary commissions that do their job.

Q109 Chair: That is not the issue here. We know what the issue is. The previous Conservative Administration decided to pick a fight over the boundaries' question, regardless of the support of any other political party. What are we going to do to put that situation right? It is quite clear this boundary review is either unlikely to go through—which is my view—or if it does go through will be regarded as, or declared to be, a fix by other political parties. How is this good for our historic democracy?

Chloe Smith: It is not factually accurate to say it was the last Conservative Government who did this with no other party consideration. It was the Conservative and Liberal Democrat Government, which automatically means that it was not a one party consideration.

Chair: Correct. However, in any coalition, there all kinds of extraneous influences that encourage parties to change their policies, like power.

Chloe Smith: What we working with right now is the process that Parliament has already agreed.

Q110 Chair: I agree. However, what are we going to do to put this right? We have polarised politics over something that should be a matter of consensus, what are we going to do to put that right?



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Chloe Smith: Maintain the trust that rightly belongs with the independent boundary commissions. I cannot think of a different answer to your question other than that we have independent boundary commissions.

Q111 **Chair:** That is not the issue. The issue is the framework. Nobody contests the independence of the boundary commissions.

Chloe Smith: Good.

Chair: What people contest is the objective nature of the legislation, which determines what the boundary commission can do. It is the legislation that has toxified the atmosphere around boundaries. What are we going to do about it?

Chloe Smith: As I say, it was Parliament that passed that legislation. I have no quibble with a previous Parliament. In general, you would not expect me to have a quibble with any Parliament because it is Parliament's ability to vote and decide and, of course, that Parliament was comprised of many parties. That is the process we are currently following. It is the latter stages of that process that were decided upon in the last Parliament.

It is for this current Parliament to take its view in the next couple of months on the reports that have now been drawn up by the boundary commissions. I am glad the Committee agrees our boundary commissions are independent, which must surely be a foundation of this discussion.

The next steps after that vote are not possible for me to comment on. I certainly hope that Parliament will support them for the reasons that—as you argue yourself, Sir Bernard—we need to be able to have confidence in our democracy. We should be able to agree upon a boundaries' arrangement that works on sensible cut-off data that is not grotesquely outdated, which it risks becoming.

If we do not pass these reforms we are talking about MPs ending up representing constituencies that are based on data that is over 20 years-old. It obviously disregards significant changes in house building and, indeed, voters being born, given that the age of voting is 18.

The original case for equal-sized boundaries goes all the way back to the Chartists. Historically speaking, it is rather difficult to make a better case than that for the reforms we are putting to the House of Commons.

Q112 **Ronnie Cowan:** One point, on the question about the commissions' job. They were only given a remit that said, "Come up with 600 constituencies", which was the problem. They were not told, "Go away and find a way of getting the country a better voice and better representation. Go away and find a way of helping MPs do their job more effectively". They were given a number and they have worked down to that number. Some of the constituencies they have come up with—I am only referring to Scotland—are horrific. Ironically, they are bigger than



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independent countries and yet one MP has to cover that. To do surgeries you would have to drive, stay overnight in a hotel and get a ferry the next day. A lot of Scottish MPs do summer tours of the constituency because it is the only way they can get around them all. This has made the situation even worse because they gave the wrong remit in the first place.

Dr Rupa Huq: There are 2 million extra people on the roll for the referendum, which are not counted. These are 2015, they are not too old. We need a new one.

Chloe Smith: There are two questions there, Sir Bernard. To Mr Cowan, the core point is this: the independent boundary commission—in this case the Boundary Commission for Scotland—is given its remit by Parliament. I have no argument with the remit that was given to this boundary commission.

I am well aware obviously—as I think any person in politics is—of some of the geographical stretches this means for Scotland in particular. However, to be fair, I think those exist already. There are plenty of colleagues who already have to use a ferry, a helicopter and a hotel and so on.

Ronnie Cowan: It is time they get better.

Chloe Smith: Parliament gave those commissions their remit and that is the law we are following. Having asked the commissions to do their work, we present it to Parliament—which has just been done, as you know—and then the order is to be laid.

To Dr Huq's point on the data in use—the idea that this is based on 2015 data instead of anymore recent data—again, that was set in law by the previous Parliament, by the Act that governs this. The governing legislation is perfectly robust in the way it says every review must be done on periodically updated data. That is how you give a boundary commission its instructions. You have to take a point in time and say, "You will take the data from here" and then you repeat the process for periods to come. That is how you do it.

We should be proud of the fact that the most recent register for the 2017 general election is the largest we have ever had. Our democracy is in good health. However, you have to take a point in time for a boundary review to be conducted. That is the process we have followed so far.

As a Committee, whether you wish to design an entirely different beast that does all these things and does them differently is a matter for you. However, we are respecting and following the process laid down by Parliament and then conducted by the independent boundary commissions.

Q113 **Kelvin Hopkins:** Very briefly—to reinforce what the Chair and others have been saying—nobody is arguing we do not need a boundary review.



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It is well out of date and the constituencies were all distorted. The Boundary Commission is unimpeachable. It was not the Boundary Commission that came forward with the idea of reducing the number of seats in Parliament, reducing the number of MPs; it was the Government of the time that did that. I want to be on record as supporting exactly what the Chair said.

Chloe Smith: It was Parliament that voted for them. As I think we all know, and we all respect, it is Parliament that is sovereign and that legislation was passed by the last Parliament.

Chair: Minister, we have given you a good run around and you have given us some very, very full answers. We would like the memorandum about costs and we hope the information about costs will precede the decision about rollout. We will no doubt continue the conversation about boundaries at some future occasion. Thank you very much for coming to the Committee today. We are very grateful to you.