



House of Commons
Public Administration
and Constitutional Affairs
Committee

**Electoral law: The
Urgent Need for
Review: Government
Response to the
Committee's First
Report of Session 2019**

**First Special Report of Session
2019–21**

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Contents

| | |
|---|----------|
| First Special Report | 3 |
| Government Response | 3 |
| Section 1: The urgency of updating electoral law | 4 |
| Section 2: Reducing fraud and improving voter confidence in electoral law | 6 |
| Section 3: Intimidation of candidates and campaigners | 9 |

First Special Report

The Public Administration and Constitutional Affairs Committee published its First Report of Session 2019, [Electoral law: The Urgent Need for Review](#) (HC 244) on 1 November 2019. The Government's response was received on 1 May 2020 and is appended to this report.

Government Response

Introduction

The Government welcomes the report of the Public Administration and Constitutional Affairs Committee (PACAC or the Committee), *Electoral Law: The Urgent Need for Review*, which examined three key points:

- The urgency of the need to update electoral law.
- The Government's proposals for voter ID and postal voting reform.
- The intimidation of candidates and campaigners.

The Committee's report provides a useful overview of particular challenges in the electoral landscape, as well as highlighting issues that can help us improve and strengthen the electoral system. In particular we welcome the Committee's support for the Government's proposals to introduce a digital campaign imprint regime, an electoral offence of intimidation of candidates and campaigners and postal vote reforms.

A key focus of the Committee's inquiry and its report was the question of codification and simplification of electoral law. Whilst the Government agrees that the clarification of electoral law would certainly be beneficial, we are aware of more immediate challenges outside of the structure of electoral legislation, including operations, resilience, fraud and confidence. Our priority is to ensure our elections are secure and updated for the age, maintaining confidence and the integrity of people's choices.

Voters deserve to have confidence in our democracy and the Government is absolutely committed to ensuring this remains the case. We will do this by protecting our democratic process, systems, and institutions from foreign interference; strengthening electoral integrity and transparency; encouraging respect for open, fair and safe democratic participation; as well as promoting fact-based and open discourse online.

This response addresses the issues set out in the PACAC report and the recommendations addressed to the Government, as well as setting out the actions that the Government is taking to improve our electoral system.

Section 1: The urgency of updating electoral law

Candidates, agents and political parties

Recommendation (Paragraph 16): As part of electoral law reform, the Government should consult stakeholders on how the law on notional spending can be clarified but reform should only be taken forwards on the basis of clear consensus.

The Government notes this recommendation and is aware that concerns have been raised by parliamentarians from across the political spectrum that the interpretation of election law made by the Supreme Court in 2018 on notional expenditure could have unintended consequences. The Government has held cross-party discussions on this subject and is now exploring options to clarify this area of the law.

In 2019, following the 2018 Supreme Court judgement, the Electoral Commission produced a factsheet on notional expenditure to provide guidance on what matters would constitute notional expenditure.

Electoral administrators

The Committee's report highlights the challenges faced by electoral administrators due to the complexity of the electoral legal framework. We recognise the pressures on administrators to deliver elections, particularly if there are multiple elections in one day, and we continue to work with stakeholders, including the Association of Electoral Administrators and the Society of Local Authority Chief Executives, to consider an appropriate programme of electoral reform and to minimise any risks to the successful running of elections.

We note the reference to queues outside polling stations during the 2010 General Election and the challenges this caused for administrators. We have since amended the legislation to allow a voter to vote if he or she is in a polling station or in a queue outside a polling station at 10 pm on polling day. This change was introduced in the Electoral Registration and Administration Act 2013 and it has been welcomed by the electoral community. We are not aware of any ongoing issues relating to this matter.

We are aware of the operational error that took place with regard to poll cards in Plymouth in 2017. This highlights the issues with operational delivery and supplier systems as being something that is a priority for us to consider. The Government is working closely with administrators and suppliers on these kinds of issues.

Voters

Recommendation (Paragraph 31): We agree with the Law Commission's recommendation that the election petition system is brought into the modern court system. As part of any such reform, the Government must ensure the right balance is struck between ensuring access to justice for electors and also preventing vexatious attempts to challenge elections.

The Committee's report outlines challenges with the current election petition system. As stated in our response to Sir (now Lord) Eric Pickles report on electoral fraud, the Government agrees on the need to bring forward legislation to modernise the election petition system.

The current election petition process is in place to ensure certainty of election results, and to avoid vexatious complaints by candidates or electors that bring the count result into question and ask for recounts once the result has been declared. Nonetheless, the Government is aware of the difficulties with the current challenge system, notably the high cost and complexity of the process.

Any changes brought forward will, as PACAC suggests, need to provide a balanced system that ensures access to justice for petitioners, whilst also preventing futile or vexatious petitions.

Recommendation (Paragraph 34): There is value in having a centralised complaint mechanism for people who wish to register a grievance but without seeking to challenge the validity of an election. For example, this would provide greater visibility about the sort of issues voters wish to register complaints about. We recommend such a mechanism is created.

We agree with the Committee's recommendation to create a centralised complaint mechanism for people who wish to register a grievance but without seeking to challenge the validity of an election. This requires detailed consideration of how such a system would operate and what result it could provide for the complainant. We will consider this further, in consultation with stakeholders, when examining the current election petition system.

Electoral law reform – simple consolidation or more radical reform?

Recommendation (Paragraph 42): We recommend that the Government should initially prioritise non-controversial consolidation of electoral law that can command cross-party support. The Government should base this work on the final report of the Law Commission on electoral law, due in 2020. Once this initial consolidation has been achieved, the Government should then proceed to evaluate the effectiveness of electoral law more generally to determine whether more substantive reforms should be introduced.

Undoubtedly the rules that govern our electoral landscape are vast and complex and the Government agrees in principle that electoral law needs consolidation. It supports the work of the Law Commission in this respect and we will consider the issues raised in its final report, which was recently published on 17 March 2020, in conjunction with our wider programme of electoral integrity reforms.

We also acknowledge the breadth of such a project and the resource and time that it would require. As outlined in the introduction, we are aware of more immediate challenges outside of the structure of electoral legislation, including operations, resilience, fraud and confidence, and our priority is to ensure our elections are secure and updated for the age, maintaining confidence and the integrity of people's choices.

Digital campaigning

Recommendation (Paragraph 44): We welcome the Government's plans to introduce a digital campaign imprint regime. As part of the greater evaluation of electoral law we suggested in paragraph 42, the Government should consider in particular the impact of modern digital tools on election campaigning.

The Government takes seriously the issue of modern digital campaigning on our electoral system and is committed to increasing transparency so voters are empowered to make decisions about the trustworthiness of information. We agree with the Committee that the Government should pay particular attention to the impact of digital technology on modern election campaigning. We have announced plans to implement a digital imprints regime for online election material and further details will be available in due course. In addition, we continue to work closely with the Department for Digital, Culture Media and Sport, the Electoral Commission and other key stakeholders on these issues to ensure the regulatory framework for digital campaigning is as effective as possible.

Section 2: Reducing fraud and improving voter confidence in electoral law

Voter ID

Recommendation (Paragraph 60): We recommend that the Government should continue with voter ID pilots to provide a greater evidence base on the impacts of voter ID on particular demographics and the likely cost of the national roll-out of voter ID.

We welcome the Committee's interest in this matter and note their recommendation that the government should continue with further voter ID pilots. We do not currently have plans to continue with the pilots as running two sets of pilots provided the government with valuable insight to inform the implementation of national policies. Both the 2019 and 2018 pilots helped demonstrate what works best for voters and the evaluations helped shape the final model of voter ID which will be rolled out across England, Scotland and Wales. The cost of implementing photographic voter ID requirements nationally will be defined during preparatory work with local authorities and other stakeholders and will be published at a later date.

The Government's policy

The Committee's report refers to the proposed voter ID measures announced in the Queen's Speech on 14 October 2019. The Government is committed to introducing measures to improve the integrity and security of each elector's vote, whether it is cast at a polling station or remotely. Those measures are part of a much wider initiative to improve trust in the integrity of the electoral process, maintain public confidence and support inclusivity in our electoral system. The Government has reiterated this in its manifesto for the 12 December 2019 General Election.

The proposed measures divide into two categories: anti-fraud measures such as voter ID and changes to postal and proxy voting; and accessibility measures. The voter ID measure will require electors to show an approved form of photographic ID before casting their

vote in a polling station at national UK-wide elections in England, Scotland and Wales, and at local elections in England. Any voter who does not have an approved form of ID will be able to apply, free of charge, for a local electoral ID from their local authority.

The measures related to postal and proxy voting will improve the integrity of voting that takes place remotely.

The proposed accessibility measures include increasing the range of support available to voters with disabilities in polling stations, and allowing a wider range of people (such as carers) to assist disabled voters in polling stations.

The Government is committed to introducing Voter ID. We will bring forward legislation enabling the implementation of the proposed measures when parliamentary time allows. However, as indicated in the Committee's report, implementation will not be before May 2022.

The merits of voter ID

Voter ID is part of a body of work this Government is delivering to strengthen the integrity of our electoral system and give the public confidence that our elections are secure and fit for the 21st century.

In our current system, there is undeniable potential for electoral fraud and the perception of this undermines public confidence in our democracy. Showing ID is something people of all backgrounds already do every day, for example to take out a library book, claim benefits or pick up a parcel from the Post Office. Proving who you are before you make a decision of high importance at the ballot box should be no different.

Whilst the Committee's report references indications of a low instance of electoral fraud allegations and convictions, it is crucial to remember that electoral fraud is not a victimless crime. The impact of electoral fraud on voters can be significant and takes away their right to vote as they want, whether through intimidation, bribery or by impersonating someone and casting their vote. There is undeniable potential for people to cast other people's votes unless their identity is effectively checked at the polling station.

Voter ID is supported by the independent Electoral Commission and has also been backed by international election observers, such as the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights, which have repeatedly called for the introduction of ID in polling stations in Great Britain, saying its absence is a security risk.

The Committee's report also points to concern from the Electoral Reform Society about the impact of voter ID on electors with protected characteristics. We have successfully conducted 15 local authority pilots which provided the government with valuable insight to inform the implementation of national policies.

Both the independent Electoral Commission and Cabinet Office evaluations show that the voter ID pilots were a success and the overwhelming majority of electors cast their vote without a problem. Based on the evaluations, there is no indication that any consistent demographic was adversely affected by the voter ID models.

Other democracies across the world such as Canada, the Netherlands, France and Germany also require voter ID and utilize this with ease. Voter ID has applied to elections in Northern Ireland since 1985, with photo ID being required since 2003. Both the pilots and the Northern Irish experience demonstrate that the requirement to provide ID before voting does not have a negative effect on election turnout or participation. We are committed to rolling out this effective anti-fraud measure and bringing the whole of the United Kingdom into line with Northern Ireland.

Strengthening the integrity of our electoral system will give the public confidence that our elections are secure and fit for the 21st century. If people have confidence in our electoral system, they are more likely to participate in it.

The results of the 2019 pilots

As highlighted in the Committee's report, the Cabinet Office's evaluation of the pilots demonstrated that all models of voter ID are workable. However, in its security assessment of the voter ID models the Electoral Commission identified the photographic ID model as the most secure. It stated that photographic identity documents can be reasonably checked by non-experts in polling stations and that locally issued ID with a photo would provide strong evidence that it was issued to the person showing it.

The Electoral Commission's statutory evaluation of the 2019 pilots also found that in elections where photo ID was required, 99.6% of electors coming to polling stations were able to cast their vote. Based on the evaluations of the pilots, there is no indication that any consistent demographic was adversely affected by the voter ID models.

We will continue to work closely with the Electoral Commission and other organisations expert in the delivery of elections, and continue to welcome the views of all stakeholders with an interest in voter ID as we take forward measures to improve the integrity and accessibility of our elections.

Postal voting

We welcome and support the Government's planned postal voting reforms outlined in the Queen's Speech 2019.

As noted in the Committee's report, the Government plans to introduce new measures that will ban party campaigners from handling postal votes, limit the amount of postal votes that any voter can hand in at a polling station, and require voters to re-apply for a postal vote every three years. We are very pleased to have the support of the Committee as we take forward these planned reforms.

Additionally, we will bring forward measures to ensure that voters will only be allowed to cast a maximum of two proxy votes.

Limits of this kind should reduce the risk of fraud and reassure voters. It will prevent anyone from collecting vast numbers of postal votes or exercising many proxy votes, over which they might have unfair influence.

Section 3: Intimidation of candidates and campaigners

Recommendation (Paragraph 65): We welcome the Government's proposals to introduce an electoral offence of intimidation against a candidate or campaigner during an electoral period and agree with the Government's approach of not to make illegal anything which is currently legal under criminal law. We recommend that the creation of electoral offences of intimidation of candidates and campaigners should be included in the Law Commission's final report on Electoral Law.

In the Government's response to the consultation '*Protecting the Debate: Intimidation, Influence and Information*', we committed to introducing a new offence in electoral law of intimidation against a candidate or campaigner during an election period. We welcome the Committee's support for this measure and we intend to legislate for this offence when parliamentary time allows. Democracy is a cornerstone of British values and key to a healthy democracy is having respectful, vibrant, and open debate. However, this freedom cannot be an excuse to cause harm or spread hatred, and a line is crossed when disagreement mutates into intimidation, violence or abuse.

Rising levels of intimidation in public life can stop talented people, particularly women and those from minority backgrounds, from standing for public office. We recognise that several MPs have cited the ongoing abuse they have faced as a factor in their decision to stand down. Intimidation of this nature impacts on the proper functioning of our democracy which is not fair to citizens across the country exercising their democratic right to vote. The Government's intention is to attach electoral sanctions to existing criminal law offences of intimidation when they are committed against a candidate or campaigner during an election period. Nothing that is currently legal under criminal law will be made illegal. The individual found guilty of the offence would be prohibited from standing for any public office for up to five years.

In addition to the proposed new electoral offence, in summer 2019, the Government announced the Defending Democracy programme to pull together existing work and expertise from a number of departments. This cross-government programme, led by the Cabinet Office, has been set up to:

- Protect and secure UK democratic processes, systems and institutions from interference, including from cyber, personnel and physical threats.
- Strengthen the integrity of UK elections.
- Encourage respect for open, fair and safe democratic participation.
- Promote fact-based and open discourse, including online.

The Government remains committed to strengthening the integrity of elections and democratic processes in the UK, ensuring they are secure and fit for the modern age. We will ensure Government is accountable to the people, placing British citizens' participation at the heart of our democracy.

The Government thanks the Committee for their interest in these matters; we look forward to working with the Committee on this in the future.