



PACAC (Public Administration and Constitutional Affairs Committee)

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Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and Communities
Minister for Intergovernmental Relations
Department for Levelling Up, Housing and Communities

12th April 2022

Dear Michael,

The Elections Bill

I am writing to follow up on the Government's response to the Committee's report on the Elections Bill and your appearance before the Committee on 1st March, where some of these issues were further raised. We also note that the Committee's concerns were shared by the House of Lords Constitution Committee, who have supported and echoed many of our recommendations. The Committee continues to have concerns about the Bill, and is awaiting your response on a number of matters.

State of electoral law

The Committee expressed concern that the Elections Bill was a missed opportunity to carry out urgent consolidation and reform of the UK's body of electoral law, which is voluminous and fragmented across a raft of primary legislation and accompanying secondary legislation. The Committee urged the Government to set out the timeline for this necessary consolidation legislation to take place.

In response to our recommendation "the Government to set out a timetable for undertaking a wholesale review and consolidation of electoral law", the Government said the UK electoral law "is robust and we can, as we have in the past, rely on it and our electoral administrators to underpin free and fair elections and have confidence in their results". While the Committee hopes the Government is right in this assessment, we are very concerned at the assessment of the Association of Electoral Administrators, that "*Elections are often delivered in spite of rather than because of the fragmented and outdated legislative framework*". This consolidation and simplification of electoral law is both necessary and urgent work and until it is carried out there is a not insignificant risk of something unforeseen taking place could occur with a UK election, damaging our democracy. With this in mind, we appreciate your openness to initiating this work once the Elections Bill has become law. This is a substantial piece of work should be started as a matter of urgency. We note that the House of Lords Constitution Committee recommended that this consolidation should be completed before the next General Election. We agree. As such, we are calling for the Government to include a commitment in the Queens Speech to begin this work on a cross party basis.

Post-legislative scrutiny

The Committee raised concerns regarding the insufficient consultation and evidence for key elements of the Bill. The Committee also raised concerns that there was no pre-legislative scrutiny for the Bill, in the form of a draft bill being scrutinised by a Joint Committee of both Houses, as was used for the Dissolution and Calling of Parliament Act. This is a fact that the Government incorrectly refuted in its response to our Report. Given the significance of several of the measures in the Bill, and their expected longevity given the Government's current reluctance to undertake a much-needed overhaul of the entire body of electoral law, the Committee recommended that the Government:

amend the Bill to introduce a requirement that, within five years of the entry into force of the Act, a committee comprising a majority of Members of the House of Commons is established to review the operation of the Act and, if appropriate in consequence of its findings, make recommendations to the Government and to the House for reform (including making arrangements for the publication of the committee's findings and recommendations, if any).

In your response, you stated that a post-legislative scrutiny requirement on the face of the Bill was unnecessary, saying that "it is standard practice for the Government to conduct post-legislative scrutiny of Acts following Royal Assent", and "in order for post-legislative scrutiny to be able to effectively review the impact of the legislation, it will be important to allow time for elections to take place". We are glad that the Government has in place a practice of reviewing legislation after its passage, but this is not the post-legislative scrutiny referred to in the Committee report, and this position appears to have been made without taking account of the Committee's actual recommendation above, which was omitted from the response. As you can see, the Committee is clear that post-legislative scrutiny is carried out by Parliament, and allows time for the Act to have been in operation before it is reviewed, including a full election cycle. The response in this regard fell far below the standard expected, and did not leave the Committee with confidence that the Government had given proper consideration to its Report or recommendation. Given this we were encouraged by your willingness when you appeared before the Committee to consult with your colleagues about including the recommended provision. We hope that having considered this recommendation properly, the Government will use the opportunity to amend the Bill before it come back to the Commons to place this basic review and safeguard provision in the Bill. If the Government is not able to do this it is imperative that a Minister make a commitment at the dispatch box that there will be the opportunity for parliamentary post legislative scrutiny within five years of it coming into effect.

Voter Identification Requirement

As you will be aware, the Committee did not take a position for or against the introduction of a Voter ID requirement. The Committee was clear, however, that the information and evidence provided on the impact of introducing such a significant change to the UK's electoral arrangements by the Government was insufficient. While we appreciated the Response says, "the Government takes its Public Sector Equality Duty seriously" and that as part of this a "nationally representative survey, conducted in 2021, found that the vast majority - 98% - held a form of photographic identification that will be accepted under

the new voter identification rules”. However, we are concerned that while this was a substantial piece of work, it was not adequate for the purposes of determining the impact on minority groups. For example, the survey only asked four people from the Traveller community, did not ask any questions to determine if a person was transgender, and did not differentiate between different types of severely limiting disability (e.g. blind people are likely to have a different experience than people who use wheelchairs). Furthermore, the Cabinet Office report on this research mentions how homeless people and people in care homes are likely to be under-represented, a point about which Age UK expressed severe concerns to us.

The Committee also expressed a concern that in the only large scale introduction of photographic Voter ID in the UK, in Northern Ireland in 2003, the Electoral Commission found that 2.3% of people did not vote as a result of the introduction of this requirement. This is of particular concern as the 2003 photo ID requirement, was only a move from a non-photographic ID requirement, to a photographic ID requirement. While the Electoral Commission opinion research results on the perception of ease of participation in elections in Northern Ireland the Government quote are encouraging, they do not address the concern about the impact of introduction in the rest of the United Kingdom, nor whether the requirement has had a longer term impact on participation in elections or not in NI. The Government has said that the introduction of a Voter ID requirement is proportionate. Given the potential for a significant number of people not to vote as a consequence of the voter ID requirement based on past experience, the Committee asked the Government to provide the criteria it used that were used in this proportionality assessment – between the Government’s stated aim to make elections more secure and the risk of disenfranchisement – and to explain the weight given to each criteria in the assessment. The Government did not provide this information in response to the Committee’s report. When we raised this issue with you, you on 1st March, you committed to “provide all the data required in order to show why it is that we have made this judgment”. This information is still outstanding, and we request that this information is provided to the Committee no later than 22 April.

Strategy and Policy Statement for the Electoral Commission

The Committee is extremely concerned about the potential impact of the provisions in the Bill introducing a Government Strategy and Policy Statement for the Electoral Commission. In our Report, we noted the widespread concerns presented in written and oral evidence that there was no formal or public consultation on these proposals and that there is a lack of supporting evidence to demonstrate that the proposed measures are either necessary or proportionate. The Committee also emphasised the importance of upholding the actual and/or perceived independence of the Electoral Commission. The Committee also specifically highlighted the concern about the potential for conflict between the statutory requirement to have ‘regard to the Statement’ and the Electoral Commission’s other statutory duties. Due to the significant concerns raised and the lack of consultation on this measure, the Committee recommended that these Clauses be removed to allow a formal public consultation on the proposed measures. The Government response stated that it disagrees with the Committee’s recommendation, but does not refute that the measure has not received adequate consultation. We appreciate that the Government think this measure is “necessary and represent a proportionate approach to reforming the accountability of the Electoral Commission whilst respecting

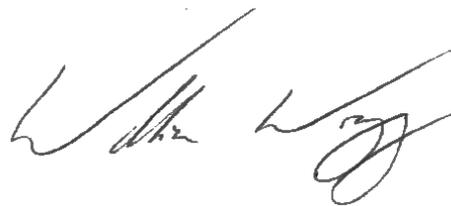
its independence". However if the Government is right in this, a public consultation and greater consideration of whether this the best way to achieve the Government's stated aim of the Electoral Commission being "fully accountable to Parliament for the way it discharges its functions" should support the Government's proposals.

Furthermore, the Electoral Commission has now written to you also stating its "firm view" that the Strategy and Policy Statement "is inconsistent with the role that an independent Electoral Commission plays in a healthy democracy". It would, they argue "provide a mechanism driven by the then governing party enabling that parties ministers to shape how the electoral law is applied to them and their political competitors". The risk inherent in these provisions is evident for all to see. This is an unacceptable risk to the functioning of our democracy, regardless of the Government's statements regarding their particular approach to the Strategy and Policy Statement. We strongly urge the Government to accept the amendment laid in the House of Lords in the name of the Noble Lord, Lord Judge, that would remove Clauses 15 and 16 of the Bill, as this Committee recommended in its Report.

If the Government will not accept the removal of these Clauses, the Committee again urges the Government to accept the Committee's compromise recommendations:

1. That "*the Bill be amended to provide that the Electoral Commission is able to depart from the guidance set out in the Statement if it has a statutory duty to do so or if it reasonably believes it is justified in specific circumstances*". All this amendment would do if give affect the Government's stated intention that the Statement will not amount to a power to direct the Electoral Commission, and to protect the Electoral Commission's independence.
2. To apply "*the 'super-affirmative procedure' for approval of the Statement, to ensure that parliamentarians have the formal opportunity to feed into and make recommendations on the draft Statement before it is laid for approval (via the 'affirmative' parliamentary approval procedure)*". Given the Government's stated objective of these measures is to improve Parliamentary scrutiny of the Electoral Commission, and make the Commission "*fully accountable to Parliament for the way it discharges its functions*", this amendment represents the bare minimum that should be applied, given the concerns raised.

I look forward to your full and considered response on these issues by Friday 22nd April, ahead of the Bill's next stages in the House of Lords. I am also copying this letter to the Chair of the Levelling Up, Housing and Communities Committee, Clive Betts MP.



William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee
(approved by the Chair remotely)