



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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# The Work of the Electoral Commission: Government Response to the Committee's Second Report

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Fourth Special Report of Session  
2022–23

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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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### Powers

The committee is a select committee, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

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### Committee staff

The current staff of the Committee are Gavin Blake (Clerk), Dr Richard Douglas (Committee Specialist), Iwona Hankin (Committee Operations Officer), Gabrielle Hill (Committee Operations Manager), Dr Philip Larkin (Committee Specialist), Susanna Smith (Second Clerk), Dr Patrick Thomas (Committee Specialist), and Gina Degtyareva (Senior Select Committee Media Officer).

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## Fourth Special Report

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The Public Administration and Constitutional Affairs Committee published its Second Report of Session 2022–23, [The Work of the Electoral Commission](#) (HC 462) on 20 October 2022. The Government's response was received on 9 January 2023 and is appended below.

## Appendix: Government Response

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### Introduction

The Government welcomes the publication of the Public Administration and Constitutional Affairs Committee's Report on 'The Work of the Electoral Commission'. We are grateful for the Committee's recommendations to which we have responded below.

This government is committed to ensuring that our elections are secure, fair, modern and transparent, and it is important that the regulatory framework supports that. The framework, and the way it is enforced, should facilitate a level playing field between campaigners, and support democratic engagement and public confidence in the integrity of our elections. The Electoral Commission's functions as set out in law play a central role in supporting these objectives.

The Elections Act 2022 brought forward many key changes to reflect the Government's manifesto commitment to strengthen electoral integrity, including introducing the requirement for voters to show photographic identification to vote at polling stations and increasing the safeguards for postal and proxy voting. Work is now underway to implement the reforms legislated for in the Act. Amongst other changes, the implementation of the Elections Act will improve the voting experience of voters with disabilities; increase the Parliamentary oversight and accountability of the Electoral Commission; introduce measures to help tackle the rising level of intimidation in public life, modernise and clarify the law surrounding political finance; make the law associated with undue influence of voters clearer and introduce a new imprint regime for digital political campaigning material.

Beyond this, the Government keeps electoral law under review and, in doing so, we are committed to ensuring that any future changes work in the best interests of voters, the electoral sector and those regulated by electoral law so that people can remain confident our elections.

Finally, we welcome the Committee's recommendations relating to the draft Strategy and Policy Statement for the Electoral Commission. If approved by Parliament, the Statement will support the work of the Commission and contribute positively to public confidence in its work. We will consider the Committee's comments about the Statement alongside the views of statutory consultees before laying the draft Statement before Parliament in early 2023.

## Oversight of elections and delivery of referendums

1. It has been twenty years since the Electoral Commission was established and we believe it still plays a fundamental role in overseeing free and fair elections and referendums and regulating political finance, and should continue to do so. However, its ability to effectively fulfil its statutory functions is directly impacted by the unnecessary complexity of the law governing this area. There is a consensus that the law is in urgent need of rationalisation and simplification, and the Government missed an opportunity with the Elections Act 2022 to build an elections framework fit for the modern day. We are concerned by the reluctance from the Government to prioritise the necessary reform of electoral law. Changes to the way the Electoral Commission works will only go so far without a consolidated legal framework for elections and referendums for it to operate within. (Paragraph 13)

2. *The Government should prioritise implementing the Law Commission's recommendations to rationalise electoral law and immediately start work towards setting out a long-term strategy, with cross-party support, ahead of the next General Election.* (Paragraph 14)

### Government response

As set out in the Government's response to PACAC's Fifth Report of Session 2021–22 on 'The Elections Bill' and in debates during the passage of the Bill, the Government agrees that simplifying and consolidating electoral law would be desirable. Electoral law is vast and complex, partly because of the various pieces of legislation and amendments that have been made over the years, but also because it needs to cover such a wide range of activities, to a high degree of detail.<sup>1</sup>

The Government remains committed to ensuring that our electoral law is fit for purpose, now and into the future. We also acknowledge that the process of consolidating electoral law will be a long-term project that will take significant consideration and policy development and is not something to rush.

The Elections Act 2022 ('the Act') delivered the Government's manifesto commitment to protect the integrity of our democracy. The Act addressed more immediate challenges such as potential opportunities for electoral fraud – as seen in Tower Hamlets in 2014. Our immediate priority is to implement these changes to ensure that our elections remain secure, fair, transparent and up to date.

3. **The Committee notes the high levels of satisfaction in the Electoral Commission's role in guiding the practical administration of elections and delivering referendums. Nevertheless, we remain concerned by the challenges that lie ahead for the Electoral Commission in supporting electoral administrators, political parties, campaigners, and voters to understand and navigate the increasing complexity of electoral law and levels of divergence across the UK.** (Paragraph 15)

4. *We welcome the Government's recent update that it is taking a staged approach to implementing the Elections Act 2022, which will support the electoral community in*

1 Public Administration and Constitutional Affairs Committee, '[The Elections Bill: Government Response to the Committee's Fifth Report](#)', Fourth Special Report of Session 2021-22, 10 February 2022, HC 1133, p1; Baroness Scott of Bybrook, Debate, Elections Bill, Volume 821, [Column 85](#), 25 April 2022

*preparing to implement the necessary changes. While there is now limited time for the statutory instruments for voter ID to come into force and for the Electoral Commission to finalise its guidance ahead of elections in May 2023, the Committee is somewhat reassured by the Government's assertion that it has shared draft legislation with the Electoral Commission to support them in drafting the relevant guidance and that it expects the statutory instruments to come into force by mid-January 2023.*

*Ahead of this date, the Committee expects to see the draft statutory instrument in order for our comments to be taken into consideration alongside other scrutiny committees. The Committee also recognises that the decision to prioritise voter ID implementation inevitably means that the timetable for implementing other measures under the 2022 Act will be compressed throughout 2023–24. Accordingly, the Government must, as a matter of priority, provide clarity on its timetable for the implementation of the remainder of the secondary legislation envisaged under the Act, so that the Electoral Commission can provide the necessary support and guidance to the electoral community and voters in advance of upcoming elections. Furthermore, in the interests of supporting the Electoral Commission's UK-wide role, we reiterate our call, set out in our Fifth Report of Session 2021–22 on the Elections Bill, for the four governments of the United Kingdom to develop a more coordinated approach to electoral policy and law, which will, in turn, further reduce the complexity of the system. The UK Government should lead this work.*  
(Paragraph 16)

### **Government response**

The Government laid the draft Voter Identification Regulations before Parliament on 1st November 2022. The Regulations have, as required, been the subject of statutory consultation with the Electoral Commission and the content discussed with a wide range of partners in the electoral sector throughout its development. We are grateful to all those experts who gave their time to this work.

The Voter Identification Regulations have since been affirmed by both Houses and are on track to be in force for mid-January. In addition, the Political Finance and Notional Expenditure statutory instruments are now in force, with the Accessibility statutory instruments due to come into force on 29th December.

The Elections Act confers multiple new activities for the electoral sector, in addition to business-as-usual activities. Many of these changes will be complex to implement, and so in order to ensure the sector can absorb these changes, the intention has always been to implement these measures over a sequenced and pragmatic timetable. As previously described a further tranche of measures, including those extending the franchise for overseas electors, enabling online applications for absent voting and reforming the rules on postal and proxy votes will be brought into force from Summer 2023, with further measures to follow in the autumn in good time for the scheduled polls in May 2024.<sup>2</sup> Our detailed programme timeline and plan has been shared with the Electoral Commission to support their own delivery plans for associated guidance and communications, and officials will continue to coordinate with the Commission throughout implementation.

<sup>2</sup> Department for Levelling Up, Housing and Communities, Policy Paper – '[Overseas electors: Delivering 'votes for life' for British expatriates](#)', 3 February 2022 (last accessed 9 January 2023)

The Government notes that the electoral landscape will become more diverse as a result of many factors, including current and planned changes in the devolved administrations and the changes from the Elections Act. This is a natural consequence of devolution. We are actively working with devolved counterparts including through the Interministerial Group for Elections and Registration, to manage issues that arise from this divergence and are committed to finding solutions that reduce both burdens on administrators and any potential electoral confusion that might arise.

5. **The Electoral Commission should demonstrate greater awareness of the specific nature of referendums, particularly the short-lived existence of many campaign groups and be sensitive to the stressful nature of the duties required to be fulfilled by Responsible Persons or other nominated individuals after such groups have been wound up. (Paragraph 17)**

6. *The Electoral Commission must ensure it has the institutional knowledge and capacity to support those it regulates equally in both election and referendum contexts, noting their distinct and unique characteristics. There should be comprehensive training for Electoral Commission staff to ensure its guidance and regulatory approach is tailored to each specific poll. We expect the Electoral Commission to report back to the Committee on its implementation of an improved training programme. (Paragraph 18)*

### **Government response**

The Government notes that this recommendation is addressed to the Electoral Commission.

### **Provision of guidance**

7. **The Electoral Commission invests significant resources into providing guidance to candidates, parties, and non-party campaigners to support their understanding of complex legislation, and this is largely welcomed by those it regulates. However, as a matter of priority, further action is required to address issues such as ambiguous advice, slow responses to requests for information during elections and referendum campaigns, and a gap in support for smaller and newer parties and campaigners. (Paragraph 31)**

8. *The Committee welcomes the proposed steps from the Electoral Commission to improve guidance provision, including a strategy to support smaller parties, reviewing response times, exploring the viability of 'account managers', increasing consultation with parties and campaigners on draft guidance, and delivering more training. As part of the training offer, we recommend interactive modules on the relevant legislation and including case studies in the guidance for both parties and non-party campaigners to support volunteers. We recommend the inclusion of the Government's view in the draft Strategy and Policy Statement that the Electoral Commission should be seeking regular feedback from stakeholders when preparing guidance should be maintained in the final iteration of the Statement. Furthermore, stakeholder engagement should extend to parties and campaigners of all sizes, in addition to larger parties through the four party panels, to ensure the training and guidance meets the needs of its users. (Paragraph 32)*

9. **The Committee believes, regardless of the complexity of the legislation, it is vital that the Electoral Commission has sufficient internal expertise to clarify ambiguities**



*in the law or guidance in a timely manner, particularly during regulated periods. The Electoral Commission should report back to the Committee on the viability of shortening its response time to within 48 hours in the two months prior to and after an election or referendum, and increasing its response rate outside those periods to 100% within five working days. These improvements should be in place before the next General Election. We would welcome an update on their implementation in April 2023.* (Paragraph 33)

### **Government response**

The Government notes that these recommendations are primarily addressed to the Electoral Commission. We note, however, the Committee's recommendation that the reference in the Strategy and Policy Statement to the importance of the Commission engaging with stakeholders to source regular feedback on the guidance it produces is expanded to specify parties and campaigners of all sizes. We will consider this suggestion alongside other views and make any changes deemed necessary before laying the draft Statement before Parliament. We will also publish a response to the statutory consultation as required by the provisions in the Elections Act.

### **Regulating political finance**

10. **The Committee recognises the complexity of the dual regimes for candidates under the Representation of the People Act 1983 and parties and campaigners under the Political Parties, Elections, and Referendums Act 2000. Consolidating the law into one regulatory framework should be within the scope of the Government's work on the long-term strategy to rationalise electoral law recommended by this Committee.** (Paragraph 61)

11. **The Committee recognises the rationale behind advocating an expansion of the Electoral Commission's investigatory and enforcement powers to provide maximum transparency to voters, incentivise regulatory compliance, and increase the pace of investigations and enforcement action. However, we believe more evidence is needed to ensure that any expanded powers for the Electoral Commission, such as powers to monitor and investigate in real-time and impose civil sanctions for breaches of candidate finance law, would not place disproportionate burdens on the largely voluntary workforce that support political campaigns.** (Paragraph 62)

12. ***We welcome the Government's view in the draft Strategy and Policy Statement for the Electoral Commission that the Commission's enforcement of political finance rules should be proportionate to the voluntary nature of political parties' infrastructure. We recommend this is maintained in the final iteration.*** (Paragraph 63)

### **Government response**

We note the Committee's recommendation to retain in the final draft of the Statement guidance relating to the need for the Commission to be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure in the discharge of its relevant regulatory functions (paragraph 20(a)). We will consider the Committee's comments about the Statement alongside the views of statutory consultees.

On consolidation, and as outlined earlier in our response, we remain committed to ensuring that our electoral law is fit for purpose, now and into the future.

The Government's view is that it is vital that the civil sanctioning regime strikes the right balance between providing an effective deterrent while not being disproportionate to the point where it risks causing a chilling effect on participation and campaigning, especially given the largely voluntary workforce that support political campaigns.

**13. The Committee notes the concerns from non-party campaigners that the lower tier of registration with the Electoral Commission, introduced under the Elections Act 2022, may have the unintended consequence of deterring political campaigning by small groups that lack the resources to comply with the transparency requirements. If this is the case, it will be important not to exacerbate the issue further. (Paragraph 64)**

**14. *The Government should commit to reviewing the impact of the lower tier of registration for third party campaigners as part of its statutory review of the Elections Act 2022, due in four to five years' time, to be published and laid before Parliament. Any future reform to the regulatory powers of the Electoral Commission by the Government should consider the potential impact of deterring political engagement. We agree with the recommendations from the Committee on Standards in Public Life that the reporting timelines for parties and campaigners spending over £250,000 should be reduced from six to four months and that the Electoral Commission should publish returns within two months of receipt. However, these timeframes should be kept under review with regular feedback from parties and campaigners. Additionally, it is important that transparency goes both ways and, therefore, the Electoral Commission should ensure it communicates on its website any expected delays in this timeline.* (Paragraph 65)**

### **Government response**

The Government recognises the important role third-party campaigners play in the political process. Our democracy is strengthened by people campaigning for what they believe in. Of course, the existing rules and those introduced by the Elections Act 2022 only apply to qualifying election expenditure, not wider, non-electoral campaigning that groups may undertake. Increased transparency is important, but it should not act as a barrier to campaigners' participation. Therefore, the new "lower tier" of third-party campaigner registration has been designed to be proportionate to the level of campaign spending and will place a minimal regulatory burden on campaigners that fall within the scope of the new requirement. Those campaigners will be required to register with the Commission but will not be subject to the same reporting requirements as those spending more on election campaigning. For example, they will not be subject to donation reports or required to submit spending returns.

It is in this vein of taking a balanced approach and weighing the intended benefits and the potential administrative impact, that the Government considers proposals to reduce the reporting timelines for those spending over £250,000 and the time frame during which the Electoral Commission must publish these returns. The Government recognises the balance needed between providing information about election spending to the public in a timely manner and political parties and other campaigners having a reasonable amount of time to prepare their spending returns. The current law seeks to achieve that balance and



these recommendations would require careful consideration and stakeholder engagement to determine whether they would be workable, identify any unintended consequences and ensure the rules strike the right balance.

The Government introduced a statutory duty for post-legislative scrutiny to the Elections Act, in response to PACAC's recommendation in its Fifth Report of Session 2021–22 on 'The Elections Bill'.<sup>3</sup> This provision already ensures that the impact of the Elections Act 2022, including the impact of section 28 (the lower tier of registration), is assessed within four years of the Act being passed.

**15. The Committee recognises the potential gaps in transparency and weaknesses in the permissibility checks on donations to prevent foreign influence in UK politics, particularly through unincorporated associations (UAs). However, we also note the important role that UAs play in supporting democracy through fundraising. It is vital that any further reporting requirements or mandatory checks on donations that may result from the Government's forthcoming guidance on donations referenced in its response to the Committee on Standards in Public Life's report on Regulating Election Finance are proportionate, and do not adversely affect the organisations subject to them. (Paragraph 66)**

**16. *The Government should provide an update in its response to this report on the guidance it said it was considering in its response to the Committee on Standards in Public Life's Regulating Election Finance Report, that would support campaigners to take a "risk-based" approach to donations, similar to the "know your customer" requirements in financial services. (Paragraph 67)***

### **Government response**

UK electoral law sets out a stringent regime of donations controls to ensure that only those with a legitimate interest in UK elections can make political donations and that political donations are transparent. All registered political parties, recognised third-party campaigners, candidates, registered referendum campaigners and regulated donees must check donations (valued at more than £50 to candidates, or £500 to political parties and other campaigners) to ensure they come from a permissible source within 30 days of receiving them. If a donation is found to be impermissible, it must be returned to the donor.

The law is already clear about who is a permissible donor. To be a permissible donor, an unincorporated association must be made up of two or more persons, wholly or mainly carry out its business in the UK and have its main office in the UK. Unincorporated associations making political contributions of over £25,000 during a calendar year must notify the Electoral Commission. They are then required to report certain gifts they receive (and have received in at least the preceding 12 months) to the Commission, information about which is published by the Electoral Commission. Members' associations, many of which are unincorporated associations, have additional obligations and must report on donations and loans they receive.

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<sup>3</sup> Public Administration and Constitutional Affairs Committee, '[The Elections Bill](#)', Fifth Report of Session 2021-22, 13 December 2021, HC 597, p15

As the Committee indicates, it is important to consider the potential impacts of any further regulation. What may constitute an unincorporated association is broad and can include many different types of groups such as voluntary groups and local sports clubs and societies. It is important to avoid potentially discouraging the democratic participation of those groups.

The Government absolutely recognises the risk posed by those who wish to evade the rules on donations. There are already provisions which explicitly prohibit money being funnelled through permissible donors on behalf of impermissible donors and it is an offence for donors and campaigners to purposefully evade the rules.

The Electoral Commission already produces extensive guidance which helps campaigners identify if a donor is permissible. Beyond this, political parties may decide to undertake additional due diligence checks before they accept certain donations. Any additional guidance on non-statutory additional due diligence checks on donations would need to be carefully considered in terms of the value it would offer and who would be best placed to produce such guidance. The Government currently has no plans to produce guidance of this kind. However, the Government keeps the rules on donations under review to ensure they continue to provide an effective safeguard to the integrity of our political system.

**17. Although the Electoral Commission has an overall strong record in relation to monitoring, investigations and enforcement, we were concerned by the individual cases of extremely lengthy investigations and poor communication raised throughout this inquiry. The Electoral Commission has said it will factor in the conclusions from this inquiry into its updated Enforcement Policy, due for consultation in the coming months, and we expect the issues raised by these individuals to be considered. We welcome the reforms the Electoral Commission has set out to its regulatory approach to date, including mandatory case reviews if a case approaches six months in duration; new evidence trackers to aid disclosure of used evidence when proposing sanctions; accelerating the process of identifying and citing relevant evidence; and moving away from the practice of expanding existing cases when new potential offences arise. However, it is disappointing that the Electoral Commission has resisted calls to impose fixed time limits on investigations. (Paragraph 68).**

**18. *We agree with the Committee on Standards in Public Life that investigations under the Political Parties, Elections and Referendums Act 2000 should be opened within 12 months of the date of the potential offence being committed or, from the date the Electoral Commission was aware of the potential offence, with ability to be extended by application to a court. There should also be a 12-month limit on the duration of investigations, with the possibility of a court extension where appropriate.***

***Throughout investigations, the Electoral Commission should improve its communication and explain clearly to those being investigated all actions and decisions. The Electoral Commission should report back to this Committee within a year setting out its progress in implementing its proposed changes to its regulatory approach. (Paragraph 69).***

### **Government response**

The Government agrees with the Committee's view that it is important to resolve investigations within a reasonable time period. Currently, prosecutors have six months

from receiving sufficient evidence to bring such proceedings in relation to summary offences under the Political Parties, Elections and Referendums Act 2000 (PPERA) (and within a period of three years post-offence), but more serious offences (and the Commission's use of civil sanctions) are not subject to a time limitation. By contrast, under the Representation of the People Act 1983 (RPA) prosecutions of an offence under that Act must be commenced within 12 months of an offence being committed (with the potential to extend the deadline by 12 months by making an application to a court).

As set out in the Government's response to the Committee on Standards in Public Life's (CSPL) 'Regulating Election Finance' Report, we will continue to keep under review the potential benefits in aligning the PERA regime with the RPA regime, given the RPA court application regime has worked effectively where necessary.<sup>4</sup> The Government notes the Commission's written evidence to your Committee's Report which sets out that the majority of its investigations are currently completed in less than six months (98% in 2021–2021) and that since it was given powers to conduct investigations in 2010, it is not aware of any investigation which has lasted over 24 months.<sup>5</sup> The Government will consider this alongside the evidence given by some witnesses to your Committee who welcomed the idea of fixed time limits on investigations, as well as the findings from the CSPL Report that prolonged investigations can cause potentially unwarranted reputational damage (including during electoral campaigns) and distress to those that are under investigation.<sup>6</sup>

**19. We believe the Electoral Commission should be sensitive to the role of volunteers in campaigns and the potential for inadvertent reporting errors to occur. We welcome the Electoral Commission's proposed changes to the Political Finance Online platform to support individuals to input their financial returns accurately. We agree with witnesses to our inquiry that the current maximum sanction of £20,000 for breaches of the Political Parties, Elections and Referendums Act 2000 may not act as an effective deterrent for well resourced political parties and non-party campaigners. However, we also believe a larger fine would need to be carefully enforced to ensure it does not disproportionately impact smaller groups. (Paragraph 70)**

**20. *We agree with the House of Lords Democracy and Digital Technologies Committee, and the Committee on Standards in Public Life, that the maximum fine the Electoral Commission can impose for breaches of Political Parties, Elections and Referendums Act 2000 should be increased to £500,000 or 4% of total campaign spend, whichever is higher. Equally, we believe that regulated individuals, parties, and campaigners should have the opportunity to amend minor, administrative reporting errors before civil sanctions are imposed, and that there should be consistency in making and a clear explanation for sanctioning decisions. This should be factored into the updated Enforcement Policy expected in the coming months. (Paragraph 71)***

4 Cabinet Office, Corporate report – "[Government response to 'Regulating Election Finance'](#) ", 15 September 2021 (last accessed 9 January 2023)

5 Public Administration and Constitutional Affairs Committee, Written evidence, Electoral Commission, [TEC0051](#), pp.4–5

6 Public Administration and Constitutional Affairs Committee, Oral evidence, 'The Work of the Electoral Commission', 29 June 2021, [HC 43](#); Committee on Standards in Public Life, '[Regulating Election Finance](#)', July 2021, para. 961, p121

## Government response

The Commission already has extensive investigatory powers for offences under PPERA. As part of its civil sanctioning powers, where a campaigner is found to have committed an offence under PPERA, the Commission is able to issue fines ranging from £200 for a fixed monetary penalty to between £250 and £20,000 per offence for a variable monetary penalty depending on the type of the offence committed. Criminal matters can be, and are, referred to the police and in certain cases taken to a criminal prosecution. The courts have the power to levy unlimited fines for some offences and impose custodial sentences. The Commission should be consistent and provide a clear explanation in relation to sanctioning decisions, which is why the draft Statement contains guidance for the Commission to that effect (paragraph 20(a)).

The Government considers the existing levels of penalties available to the Commission suitable to ensure that the sanctioning regime is effective but does not cause a chilling effect on electoral participation and campaigning. Any extension to the Commission's fining powers would need to be considered carefully to assess the necessity and proportionality.

We agree with the Committee's view that minor, administrative reporting errors should be dealt with proportionally by the enforcement authorities. It is for this reason that the draft Statement also includes guidance requiring the Commission to have regard to the need to ensure robust, consistent, transparent and proportionate enforcement of the rules legislated by Parliament, by balancing the need to engage constructively with campaigners to support compliance, with the need to sanction breaches of the rules (paragraph 20(a)).

## Adapting to the digital age

**21. Digital technology is allowing more parties, campaigners, and voters than ever to participate in political debate. While we view this as a positive step for democracy, we must recognise that it has created a more complex regulatory environment for the Electoral Commission. The framework for regulating political campaign spending during elections and referendums has not kept pace with the challenges presented by the growth of social media, targeted advertising using big data, and viral online marketing campaigns. We are concerned by the fact a significant amount of transparency for digital campaigning comes from voluntary initiatives by social media platforms to create "advert libraries" and that there is no standard definition of a political advert. (Paragraph 84).**

**22. *The responsibilities of multiple regulators in the digital space interlock with the Electoral Commission's role to regulate money spent on political campaigning. The Government's draft Strategy and Policy Statement for the Electoral Commission encourages cooperation between regulators to avoid duplication but does not provide any detail on how this can be achieved. We recommend the Government puts forward proposals and if necessary legislates through the Online Safety Bill to enable digital regulators, such as the Information Commissioner's Office, Ofcom, the Electoral Commission and Advertising Standards Authority, to formally share appropriate levels of information to support their regulatory duties and create a coherent regulatory system. We recommend that Ofcom, as the prospective online safety regulator, should***

*be given a power to set minimum standards for advert libraries and advert labelling to provide maximum transparency and consistency across these databases.* (Paragraph 85).

### **Government response**

Cooperation between national regulatory authorities is essential to ensuring consistency, clarity and protection for UK users as well as industry in the digital space.

The Government agrees that it is important that the Electoral Commission can co-operate with other regulators when it comes to the enforcement of political finance rules. The Electoral Commission has said that it already has a power to share information that relates to ensuring compliance with electoral law with relevant bodies; and where it has reasonable grounds to suspect that a person has committed an offence or contravened any restriction or other requirement under PPERA, it can compel the provision from any person of documents, information or explanations that the Commission reasonably requires to investigate. Further, the Commission has said that it can also share information relating to breaches of data protection with the Information Commissioner's Office (ICO).<sup>7</sup>

The Government welcomes the steps taken by the Electoral Commission to increase regulatory dialogue and cooperation with other relevant regulators, such as the ICO and Ofcom, on matters related to political advertising. The Government remains committed to ensuring effective cooperation between the Electoral Commission and other regulators in the digital space and continues to keep the need for any additional powers for information sharing under review. The Government is also legislating via the Economic Crime and Corporate Transparency Bill to enhance data sharing between Companies House and public authorities, including the Electoral Commission.

The Government's intention is to ensure that Ofcom has the powers it needs as the online regulator. Ofcom has strong existing relationships with other regulators, such as the Information Commissioner's Office, including through the Digital Regulation Cooperation Forum (DRCF). This includes work to ensure join-up across new regulatory regimes, such as the forthcoming publication of a joint statement on the interactions between the online safety and privacy regimes. The DRCF, in turn, engages comprehensively with other regulators, including the Electoral Commission, via quarterly roundtables to ensure a coherent regulatory approach.

Where appropriate and proportionate, the Government has used legislative measures to strengthen cooperation between regulators. This is something we are doing in the Online Safety Bill by ensuring Ofcom can effectively share information with other regulators and by requiring Ofcom to consult with the ICO on codes of practice and when issuing guidance that could have a privacy impact.

On the regulation of political advertising, the Government welcomes the steps taken by social media companies to create "advert libraries" and institute advert labelling on political advertising. We do not currently propose mandating advert libraries or the criteria applying to such libraries when existing initiatives already provide the public with transparency in this area.

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<sup>7</sup> Electoral Commission, Report – '[Digital campaigning – increasing transparency for voters](#)', 1 June 2018 (last accessed: 9 January 2023)



23. **The introduction of digital imprints on paid-for and certain unpaid digital material is welcome, but, in their current form, the requirements have notable limitations. This includes a potentially wide scope of activity that will not require an imprint, as well as challenges envisaged by our witnesses in enforcing the regime and providing sufficient transparency on the funding of online campaigns.** (Paragraph 86)

24. *As recommended in our Fifth Report of Session 2021–22 on the Elections Bill, acknowledging the need for legislation to keep pace with rapid technological changes, the Government should commit to monitoring and conducting regular reviews of the digital imprints scheme, to ensure effectiveness in the monitoring and enforcement of the legislation and to prevent any unintended consequences or loopholes arising or emerging. We suggest particular consideration is given to whether the scope of material that requires an imprint should be widened and whether the rules are being effectively enforced.* (Paragraph 87)

### Government response

Once implemented, the digital imprint regime, introduced in the Elections Act 2022, will be one of the most ambitious ones in the world, providing voters with much needed transparency about who is seeking to influence their views online. The regime's existing scope delivers the Government's objective of increasing transparency whilst ensuring the rules are proportionate and enforceable.

The regime as set out in the Act will already go much further than the print imprint rules by capturing any organisation or individual (including unregistered campaigners) paying to advertise relevant digital political material. The rules for paid-for material will not be limited to specific elections, referendums or periods of time and will apply to a broad range of digital material of a political nature. The regime will ensure that the imprint explicitly states who is the promoter (and any person on behalf of whom material is being published, if different from the promoter) of the content. Members of the public expressing their political views online, unless they pay to advertise material within the scope of the regime, will not require an imprint under our regime.

In terms of evaluation, this is a new regime, and as with any primary legislation initiated by the Government, we are committed to monitoring the implementation of the digital imprint regime to measure the extent to which it delivers our policy objectives. As explained in the Government's response to the Committee's Fifth Report of Session 2021–22 on 'The Elections Bill', as part of this monitoring we may for instance seek to measure levels of compliance with the digital imprint rules, increased levels of transparency for voters regarding digital campaigning material in scope of the regime and improved enforcement of spending rules by the authorities. Further, as part of its reporting requirements (in clause 55 of the Elections Act), the Electoral Commission will monitor the enforcement of digital imprints, including reporting on convictions for digital imprints offences, orders to take down electronic material, and the Electoral Commission's use of its power to request information.<sup>8</sup>

Any future expansion to the scope would need to be carefully considered alongside the evaluation evidence to ensure the rules remained proportionate.

8 Public Administration and Constitutional Affairs Committee, '[The Elections Bill: Government Response to the Committee's Fifth Report](#)', Fourth Special Report of Session 2021–22, 10 February 2022, HC 1133, p13



Finally, in order to ensure that the regime operates as intended, as well as accommodate technological changes, the digital imprint regime includes regulation-making powers for the Secretary of State to, if needed, modify key definitions; add, modify or remove the details to be included in the imprint; as well as amend the exceptions to the imprint requirements. Moreover, the statutory guidance, which will provide campaigners with practical direction on how to follow the regime, can be updated or amended by the Electoral Commission or when directed by the Secretary of State.

**25. *We agree with the Electoral Commission that each of the four governments of the UK should amend the rules for reporting spending to provide greater transparency on the money being spent on digital campaigns in their jurisdictions. There should be a separate category for digital campaigning to be included in spending returns. We recommend that this is implemented before the next General Election.*** (Paragraph 88)

### **Government response**

The Government recognises the importance of ensuring appropriate transparency in relation to online campaigning, which is why spending on digital campaigning at an election must already be reported. The current wording in the law already ensures that all types of advertising are covered, regardless of the medium or tools used. Registered political parties, recognised third parties, and candidates are already required to report money they spend during elections and provide invoices for payments over a certain amount—including on digital campaigning. These returns are then made available for public scrutiny, which provides an important level of transparency about campaign spending.

The Government keeps the political finance framework under review to better ensure that it reflects modern campaigning practices and emerging risks. However, it is important to consider the risks of making express provision for digital campaigning in spending returns, which are already covered by the broader category “advertising”, in order to avoid unintended consequences of omitting certain types of spending.

### **Governance and Accountability**

**26. *The Electoral Commission has an effective governance structure. Commissioners, including those who are nominated by political parties, play a useful role in the governance of the organisation. However, this system only works if Commissioners abide by the clear standards of behaviour set out in the Board Code of Conduct and refrain from public activity that may damage their perceived impartiality, particularly in and around electoral events. The Electoral Commission should be mindful of the fact that any detriment to public trust in its independence and impartiality could diminish the perceived legitimacy of elections and the democratic process as a whole.*** (Paragraph 104)

**27. *It is vital that the impartiality and independence of the Electoral Commission is maintained at all times. Commissioners must act in accordance with the Board Code of Conduct and refrain from expressing any personal opinions that may suggest political bias. In the event of a future referendum, the Electoral Commission should produce specific guidance for Commissioners on how biases can and will be managed, and impartiality maintained.*** (Paragraph 105)

### Government response

The Government notes that this recommendation is addressed at the Electoral Commission.

28. **The Committee believes that periodic parliamentary scrutiny of the work of the Electoral Commission, in the form of inquiries such as this, dovetails effectively with the ongoing oversight by the Speaker's Committee on the Electoral Commission.** (Paragraph 106)

29. **Operational independence is a fundamental aspect of the Electoral Commission. The Government's ability to set the strategic direction of the Electoral Commission through the issuance of a Strategy and Policy Statement, as set out in the Elections Act 2022, significantly alters the Electoral Commission's relationship to Government as an independent body.**

We welcome the three-month statutory consultation period for the draft Strategy and Policy Statement and will continue to take an active interest in this area of constitutional significance, supporting the statutory consultees where appropriate. Following the consultation, it is vital that the Statement is afforded appropriate scrutiny through super-affirmative parliamentary scrutiny. As highlighted in our Fifth Report of Session 2021–22 on the Elections Bill, the Speaker's Committee on the Electoral Commission, as the body that will scrutinise the Electoral Commission's compliance with the Statement going forward, must be seen to exercise its powers impartially, with cross-party support. We note the support from witnesses to our inquiry that no single party should exercise a majority on the Speaker's Committee. (Paragraph 107)

30. *We welcome the timetable provided by the Government to scrutinise the draft Strategy and Policy Statement and recommend a commitment is made that the same timeframe should apply to future Strategy and Policy Statements.* (Paragraph 108)

31. *The Committee welcomes that the Strategy and Policy Statement for the Electoral Commission will be subject to super-affirmative parliamentary procedure, in line with our previous recommendation. The Government must now ensure a motion is tabled for the draft Statement to be debated on the floor of both Houses, before it is brought forward for final approval.* (Paragraph 109)

### Government response

The duty to have regard to the Strategy and Policy Statement will not replace or undermine the Electoral Commission's other statutory duties nor will it allow the Government to 'set the strategic direction of the Electoral Commission' as suggested in the Committee's Report. This duty will only require the Commission to consider the Statement in its decision-making process—it is not a direction. The Electoral Commissioners and the Commission's executive leadership remain responsible for determining the Commission's strategy, priorities and how the Commission should discharge its duties, including its day-to-day operations.

The Government welcomes the important engagement of the statutory consultees and parliamentarians with the draft Statement through this extensive consultation period. As recommended by your Committee during the passage of the Bill, we also provided for the subsequent extended parliamentary scrutiny process. The draft Statement

will be scrutinised according to the requirements set out in the Act. This will enable parliamentarians to make representations about the draft Statement before choosing whether to approve or reject the Statement in full.

The Government does not agree with the Committee's recommendation to apply the same timeframe for consultation for all future Strategy and Policy Statements. As explained in the Government's response to PACAC's Fifth Report of Session 2021–22 on 'The Elections Bill' regarding the setting of specific minimum timeframes for consultation, we consider that it would be overly rigid and inflexible.<sup>9</sup> The Act requires the Secretary of State (at least once every five years since a Statement was last designated) to review, consult on and then designate (or withdraw) a Statement subject to the approval of the UK Parliament. In this event the duration of the consultation period with statutory consultees will be set on the basis of what is considered appropriate at the time and in line with the government's published consultation principles.<sup>10</sup> Beyond this five year requirement, it is important for the Secretary of State to have the power to make changes to the Statement where deemed appropriate. Under the provisions in the Act, any revisions that go beyond clerical or typographical errors to the Statement will be subject to consultation unless the Secretary of State makes a determination under new section 4E(4) of PPERA (as inserted by section 16 of the Elections Act 2022) that this obligation does not apply. Before taking this decision the Secretary of State must consult the Speaker's Committee on the Electoral Commission.

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9 Public Administration and Constitutional Affairs Committee, '[The Elections Bill: Government Response to the Committee's Fifth Report](#)', Fourth Special Report of Session 2021-22, 10 February 2022, HC 1133, p11

10 Cabinet Office, [Guidance – 'Consultation principles: guidance'](#), 17 July 2012 (last accessed 9 January 2023)