

PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

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Rt Hon Michael Gove MP
Secretary of State
Department for Levelling Up, Housing and Communities
4th Floor, Fry Building
2 Marsham Street
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21st September 2021

Dear Secretary of State,

Elections Bill – follow up to the oral evidence session of 14th September

On 14th September, Chloe Smith MP, the then Minister for the Constitution and Devolution, gave [oral evidence](#) to PACAC on the Elections Bill, during which she committed to follow up outstanding issues with the Committee. Following the changes to Ministerial roles and recent developments that will impact the scope of the Elections Bill, I am writing to you to seek further information on the points set out below.

Consultation and parliamentary scrutiny of the Bill

Noting concerns expressed to my Committee about limited consultation of key measures proposed in this Bill prior to its publication, the complexity of the Bill and the speed with which it is being progressed through Parliament, could you please:

- Confirm whether the Government will commit to placing a duty to conduct post-legislative scrutiny on the face of the Bill via amendment; and
- Provide the dates on which the Bill was shared with the devolved administrations ahead of publication?

Voter ID

- In her letter to the Committee (8th September) and oral evidence to the Committee, Chloe Smith said that voter fraud in NI had been ‘virtually’ eliminated, but was unable to give numbers for voter ID fraud. Could you please provide the voter fraud data for Northern Ireland since 2003?
- Chloe Smith was also unable to provide data on the number of people who have been unable to vote in Northern Ireland elections due to the requirement of voter ID. The Electoral Commission estimates that around 25,000 people did not vote due to the photo voter ID requirement in the 2003 Assembly election. Could you provide data on subsequent elections in Northern Ireland and, if not, we ask that

you to explain why this has not continued to be monitored/was not monitored alongside the Government's voter ID pilots in 2018 and 2019.

- Chloe Smith argued that personation is a crime of deception and that voter ID would prevent personation. When asked about people who voted with fake ID, she said this would be a different crime of 'falsifying identification'. Could you please confirm to the Committee whether voting with fake ID would be a crime of personation and falsifying identification, or would only be a crime of falsifying identification?
- Please can you provide the Committee with data on the scale of false identification in the UK and research that the Government has carried out into the likelihood of fake ID being used to vote.
- Please can you confirm whether youth passes and concessional railcards would be a valid form of photo ID under the Bill.
- The Government's survey said that 31% of voters would apply for a voter ID card. Could you confirm, as per the Government's estimates set out in the Impact Assessment, that if 31% did apply for a voter ID card, the cost of voter ID would be around £450 million?
- Chloe Smith raised concerns about the survey which produced the 31% figure. Could you provide details of what additional surveys and other research has been carried out or the Government intends to carry out in this regard?
- Could you confirm the percentage of people in Northern Ireland who have an electoral ID card?

Proxy voting

- The Government has data on the number of people who hold four or more proxy votes in Northern Ireland. Chloe Smith committed to finding out whether the Cabinet Office had the power to find out how many people have four or more proxy votes in the rest of the UK. Please can you confirm whether the Cabinet Office (or another Government department) has this power and, if so, when this information could be provided?

Overseas voters

- Chloe Smith highlighted to the Committee that the Government's manifesto commitment was not just to remove the 15-year limit on overseas voters, but also to make it easier for people overseas to vote. What measures do you propose to include in this Bill (via amendment) to address this issue, and if there are no plans to amend this Bill, how does the Government intend to meet this commitment?

The Electoral Commission

- How does the Government intend to monitor how the proposals set out in the Bill will impact upon public confidence in the Electoral Commission, and what criteria or benchmarks will the Government use in this regard?
- In respect of the scope of the Statement and the Commission's duty to 'have regard to' the Statement when carrying out its functions, can you confirm that this is a substantive duty placed on the Electoral Commission and explain what this substantive duty entails?

- We note the illustrative Strategy and Policy Statement shared with Parliament on 15th September. Please can you explain its legal status and the extent to which this could be relied on by the Electoral Commission or others before the courts to ensure the Commission’s operational independence?
- Clause 4C(3)(a) states that the Secretary of State must make whatever changes to the draft Statement he/she considers “necessary” in light of responses to the consultation. Why is “necessary” not defined in the Bill?
- Clause 4E(4) gives the Secretary of State the power to disapply the consultation requirements in respect of revising the Statement in certain cases. Chloe Smith agreed *“that that power would be exercised sparingly, possibly in cases simply of triviality or extreme urgency... and it would not be carte blanche for the Secretary of State to override the consultation process generally”*. Can you provide further examples of where the Secretary of State can set aside the consultation when revising the Statement and whether further guidance will be issued in this regard?
- The Explanatory Notes accompanying the Bill explain that the Electoral Commission *“will be able to depart from this guidance [set out in the Statement] if it felt that was justified or if it had a statutory duty to fulfil”*. What happens if the Electoral Commission considers it is justified in not complying with the Statement or is not obliged to comply with certain elements or guidance set out in the Statement and the Speaker's Committee disagrees?
- The Statement will undergo a consultation process with statutory consultees and be subject to Parliamentary approval via the affirmative procedure on a non-amendable motion (which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period). In respect of parliamentary input into, and approval of, the Statement, Chloe Smith stated during the oral evidence session that:
 - *“I am envisaging significant debate on it...and that by that mechanism Parliament is fulfilling its role of being able to satisfy itself of what is in the [S]tatement.”*
 - *“You will have debate, experience and insight flowing into the [S]tatement from the Chamber of the Commons as a whole and you will have SCEC then being able to use that statement at a much more granular level”*.
 - *“Parliamentary debate has a value in its own right, and on the natural function of being able to influence the Government as to what needs to go into the statement.”*

Please can you clarify how the Government will facilitate debate of this Statement in both Houses and at what stage in the proposed designation process?

- Can you confirm that the parameters of the Statement would be capable of judicial review if they were to purport to impinge on the operational independence of the Commission?
- Can you explain the checks and balances that the Government has in place to prevent against potential abuse of the operational independence of the Electoral Commission?
- Chloe Smith committed to write to the Committee on the outcome of the Government’s discussions with the devolved administrations on the Statement and whether or not they would approve a legislative consent motion. Please could you provide an update in this regard.

Criminal proceedings

- Clause 15 of the Bill prevents the Commission from developing prosecution capabilities in England, Wales and Northern Ireland. Why does the Government want to remove the power of the Electoral Commission to develop its prosecution function?
- Please could you share the Government's analysis on which body/bodies it considers is best placed to investigate and bring forward criminal prosecutions under PPERA and why.
- Please could you confirm whether more resource and training will be provided to the police to investigate alleged criminal offences under PPERA?
- What consideration has been given to developing a specialist police force or unit, at a national level, which would effectively lead the policing response in this area?

Regulation of political finance

- In respect of the Committee on Standards in Public Life (CSPL) report on Regulating Election Finance of 7th July, the then Minister noted "*[i]t is not always possible to turn on a sixpence in the middle of a Bill's proceedings, to suddenly include 50 recommendations that have been made a few months beforehand. That is just a rather boring process point but I think it is fair to say here.*" Following the [Government's response to the CSPL's Report of 15 September](#), please could you clarify which of the CSPL's recommendations not already included in the Bill the Government will introduce via amendment (given that they were not included at introduction), and when or how the Government proposes to give legislative effect to recommendations that will not be included in the Bill?
- The proposed changes to notional expenditure appear to be broadly welcomed. To what extent has the Government consulted practitioners who will be using this legislation going forward to make sure it has clarity of purpose and can be understood and complied with? Furthermore, what is the Government's assessment of whether the term 'encouraged by' could lead to confusion and/or need further clarification?
- Written and oral evidence to this Committee broadly supports the principle of extending the reporting requirements for spending on joint campaigns to include political parties and third-party campaigners who are working together at an election, but concern has been expressed that the current joint spending do not work and should be removed from the Bill, pending a review of the rules. What changes to the joint spending rules would you support to increase clarity for parties and campaigners?

Written Ministerial Statements of 15th September

On 15th September, the then Minister for the Constitution, Chloe Smith, issued two Written Ministerial Statements in relation to Election Finance and Policy ([HCWS290](#)) and Elections Systems ([HCWS289](#)).

We note that during the oral evidence session, Chloe Smith alerted the Committee of the Government's intention to lay an illustrative Statement and to respond to the CSPL's report, as set out in HCWS290.

However, Chloe Smith did not inform the Committee of the Government's intention to amend the Bill by including additional measures on the voting system for all Police and Crime Commissioner, Combined Authority Mayoral and London Mayoral elections. As a result, the Committee was denied an important opportunity to explore the timing, purpose and implications of the proposed amendments. Please can you explain the Government's reasons for seeking to amend the scope of the Bill at this stage, including an assessment of the expected impact of these changes.

Furthermore, given that this instruction—if acted upon by the Elections Bill Committee—will extend the scope of the Bill, we reiterate the importance of the Government giving due consideration to amendments that will assist in supporting the stated aims of the Bill. The Committee is clear that this should include a statutory commitment to post-legislative scrutiny of the Bill and that the Government should table an amendment to that effect at the earliest opportunity.

Given the pace at which this Bill is progressing, and the significant changes to be introduced to this Bill, the Committee expects a comprehensive response to the points set out above by 30th September.

I am copying this letter to Rt Hon Stephen Barclay, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. A copy of this letter and your response will be placed in the public domain.

Yours sincerely,
William Wragg.

William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee