



House of Commons

House of Lords

Joint Committee on Human
Rights

**Legislative Scrutiny:
Elections Bill:
Government Response
to the Committee's
Fifth Report**

**Seventh Special Report of
Session 2021–22**

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Seventh Special Report

The Joint Committee on Human Rights published its Fifth Report of Session 2021–22, *Legislative Scrutiny: Elections Bill* (HC 233 / HL Paper 58) on 2 September 2021. The Government response was received on 5 November 2021 and is appended below.

Appendix: Government Response

Introduction

As the Minister for Equalities and now the Minister responsible for the Elections Bill, I noted with interest the Joint Committee on Human Rights' report '*Legislative Scrutiny: Elections Bill*'.

This Government is clear that all citizens must be able to participate in our elections and feel confident that their vote is theirs and theirs alone. This is why the Government committed to protecting our democracy in its manifesto, and why we have introduced the Elections Bill to deliver on this promise.

We have considered the recommendations and conclusions in the Committee's report and have responded to each of these in turn. Where action is already underway, or has already taken place to address the issues raised, an update has been provided in our response.

The report acknowledges that elections must be both secure and accessible. This is an aim that the Government entirely shares. Taking steps to tackle electoral fraud is integral to achieving this. The measures set out in the Elections Bill, including the introduction of voter identification at polling stations discussed by the Committee in this report, are proportionate and sensible measures and remedy vulnerabilities in our system that experts and leading international election observers all agree are a security risk.

The report notes concerns on the impacts that voter identification requirements may have on voters from ethnic minority groups. In 2021, the Government commissioned a nationally representative survey which found that ethnic minority respondents were overall more likely to already own a form of photographic identification that would be accepted under our proposals (99% owned such identification) than white respondents (98%). The research also found mixed attitudes towards voter identification requirements were present across different ethnic minority groups, with some groups being more positive and some less positive than others.

The Committee's report also focuses on the voter registration system and advocates for automatic registration. I understand concerns about lower rates of registration in some groups, including voters from ethnic minority groups and younger voters, but I am proud to say that the Government implemented a variety of measures to address this in recent years, which have proved very successful in increasing registration. Following the introduction of online registration in 2014, registering to vote online now takes as little as five minutes, and in March 2020 there were 47.6 million entries on the Parliamentary registers in the UK—the highest number ever recorded. We encourage everyone who is eligible to register to vote, and will continue to do so.

I want to thank the Committee for their work on this report and their interest in, and engagement on, the Elections Bill. I want to reassure the Committee that this Bill is part of a long programme of work in which we have always demonstrated a willingness to listen and collaborate with a range of stakeholders, and this will continue to be the case.

Kemi Badenoch,

Minister of State for Equalities and Levelling Up Communities

Voter Identification

Recommendation 1: The introduction of a voter ID requirement may have a discriminatory impact on certain groups with protected characteristics who are less likely to hold any form of photo ID, including older people and people with disabilities. The Government must make clear how it plans to mitigate any discriminatory impact on those groups. (Paragraph 24)

The Government takes its Public Sector Equality Duty seriously and has given it due regard throughout the planning for implementation of voter identification, along with the wider Bill.

In 2021, the Government commissioned a nationally representative survey, which drew from the most comprehensive evidence base to date and showed that 98% of electors already own a photographic document that would be accepted under the new requirements. This is the case across age groups, with the survey showing that 98% of older people (aged 70+) and 99% of younger people (aged 18–29) had appropriate identification.

We recognise the slightly lower rate of identification ownership amongst people with disabilities (97% of those with a somewhat limiting disability, and 95% of those with a severely limiting disability) and further work is being done with these groups to ensure that appropriate support is provided. One key example of this is the Government's expert Accessibility of Elections Working Group, which ensures close working between the Government, the electoral sector and leading disability charities.

As set out in the Equality Impact Assessment for the Elections Bill, published on introduction of the Bill to Parliament, the Government considered whether the provisions in the legislation could constitute either direct or indirect discrimination. Where there is potential for adverse impact on certain protected groups, mitigations, which are described in the assessment, will be put in place. Prime among these is the free Voter Card for anyone not in possession of relevant identification.

Additionally, the Government has and will continue to engage with charities and civil society organisations across the UK to ensure that voter identification works for all voters, and all groups are aware of the new requirements. Engagement to date has included a wide range of groups, including organisations representing individuals and communities with protected characteristics—age, disability, gender reassignment, race, and religion or belief—as well as organisations representing other groups that the policy may impact, such as the homeless and survivors of domestic abuse. We will continue to work with these organisations to ensure that the new requirements work for all voters, and their input will inform our detailed planning for the Voter Card application process and the practicalities of showing identification in the polling station.

Finally, there will also be comprehensive, targeted communications with voters and guidance for electoral administrators by the Electoral Commission to raise awareness of voter identification requirements at the appropriate time.

Recommendation 2: It is crucial that the Government understand the scale of hesitancy to engage with the democratic process that may exist in some communities if a requirement to show photo ID at polling stations is introduced. It is regrettable that neither the Cabinet Office research nor the Government's Equality Impact Assessment consider whether a voter ID requirement would disproportionately dissuade members of certain communities from voting.

The Government should produce clear research to ascertain whether introducing a voter ID requirement would lead to hesitancy to vote amongst Black, Asian and minority ethnic communities, and if so, how they plan to tackle that hesitancy. (Paragraph 25)

The Government agrees that understanding the scale and causes of hesitancy that may exist, including within ethnic minority groups, around showing identification is important in order to support implementation of and communications around the new requirements. That is why the Cabinet Office's Photographic Identification Ownership survey included questions concerning the attitudes of different communities towards showing identification in polling stations.

Research found that 98% of white respondents and 99% of ethnic minority respondents held an accepted form of photographic identification. Attitudes towards voter identification requirements were mixed among ethnic minority groups, with some respondents being more positive about the photographic identification requirements than the white respondents, and some being less positive than the white respondents. The survey asked whether having to present photographic identification at polling stations would make respondents more or less likely to vote. The evidence suggests that there is no uniform perspective on the basis of race. Those respondents from ethnic minority groups were both more and less likely to vote because of the photographic identification requirements.

The Government notes that some stakeholders raised concerns that within some communities the introduction of voter identification and the Voter Card may be seen as a step towards the introduction of national identity cards. We have been very clear that this is not at all the case, and I wish to reassure the Committee that careful engagement with communities and expert stakeholders such as charities and civil society organisations, will further aim to make this clear to electors and encourage them to participate in the democratic process.

Electoral Registration Officers (EROs) have statutory responsibility for maintaining complete and accurate electoral registers for their areas, and to take steps to encourage the registration of electors in their local area. In fact, throughout the year, EROs work to identify people in their area who are not registered and invite them to register.

The Electoral Commission has powers to set standards and monitor the performance of EROs in this respect through its performance standards framework. This includes EROs' duties to take all necessary steps to comply with their duty to maintain the electoral register, and to ensure, as far as is reasonably practicable, that all those eligible (and no others) are registered in it.

Finally, while understanding and tackling hesitancy is important, it is also worth noting that with respect to tackling electoral fraud, the Electoral Commission's own research in the past has warned that residents in ethnically diverse areas can be at greater risk of being victims of electoral fraud. This shows how tougher checks against electoral fraud will protect the democratic rights of ethnic minorities from having their vote stolen.

The 2015 report 'Understanding electoral fraud vulnerability in Pakistani and Bangladeshi origin communities in England' found that 'Pakistani and Bangladeshi-origin communities in England share a wide range of vulnerabilities, which may make them susceptible to becoming victims of electoral fraud' and that 'in a couple of locations the risk of personation at the polling station was thought to be significant'. In particular, the two main vulnerabilities which were identified within communities were: 'the habit of asking people to cast a vote on their behalf; and the complex system of names given as opposed to names used by individuals.'

Ethnicity minorities in areas like Tower Hamlets and Birmingham have been amongst the biggest victims of electoral fraud. As Richard Mawrey QC, the election judge, warned in his 2015 judgement of the Tower Hamlets case: 'The real losers in this case are the citizens of Tower Hamlets and, in particular, the Bangladeshi community... Even in the multicultural society which is 21st century Britain, the law must be applied fairly and equally to everyone. Otherwise we are lost.'

Recommendation 3: It is concerning that the Government do not appear to fully understand the potential discriminatory impact of requiring voter ID on individuals who identify as White Gypsy or Irish Traveller. Efforts must be made to obtain this information and to provide it to Parliament by Committee stage to allow for effective scrutiny of the provisions in the Bill. (Paragraph 26)

Regarding the Committee's concerns around individuals who identify as White Gypsy or Irish Traveller, in addition to the research outlined, official-level and Ministerial engagement has taken place with civil society organisations representing these individuals to understand the impact of requiring voter identification on current voting patterns, and open lines of communication continue to be maintained with those groups.

Recommendation 4: It is imperative to ensure elections are secure against fraud and protect public confidence in the electoral process. However, any measure seeking to increase the security of elections must not make voting inaccessible or have a discriminatory impact. Any measure that has the potential to disproportionately impact certain groups of voters requires strong justification.

The Government must explain why they have concluded that a voter ID requirement at polling stations is necessary and proportionate given (i) the low number of reported cases of fraud at polling stations, (ii) the even lower number of convictions and cautions; (iii) the potential for the requirement to discriminate against certain groups; and (iv) the lack of any clear measures to combat potential discrimination faced by those groups, including disabled people and older people. (Paragraph 31)

An independent review of electoral fraud conducted by Lord Pickles highlighted the events of cases such as Tower Hamlets, in which the 2014 Mayoral election was declared void by corrupt and illegal practices (including personation), as evidence of vulnerabilities in our system which must be addressed. In addition to the recommendation in the Pickles report

to introduce voter identification, the policy is supported by the independent Electoral Commission and is backed by international election observers such as the Organisation for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights, which have repeatedly called for the introduction of identification in polling stations in Great Britain, saying its absence is a security risk.

The current system already includes a process for checking the identity of electors but it no longer works effectively—calling out a person's name is supposed to provide an opportunity for others present to challenge if they know the person not to be the elector they are claiming to be and prevent personation. That system, which dates from the 19th century, is no longer a viable approach for today's society.

The Government recognises the concerns set out by the Committee but notes that, despite low numbers of reported cases, convictions and cautions, electoral fraud is not a victimless crime. The Electoral Commission stated in its review of electoral fraud in 2013 that: "the majority of people in communities affected by electoral fraud are victims rather than offenders and that the people who are likely to be the victims of electoral fraud can be described as "vulnerable". By its very nature, personation is a crime of deception and is very difficult to identify and prove. Voter identification is used across the world, including in most European countries, and, indeed, it is not even a new concept within the UK: in Northern Ireland, people have had to show identification to vote since 1985, and photo identification since 2003.

There, photographic identification has been operating with ease for decades. In fact, in their Public Opinion tracker 2021 the Electoral Commission recorded not a single Northern Ireland respondent reporting '*I don't have any identification / I would not be able to vote*'.

The Electoral Commission's recent survey found that the majority of the public (66%) say a requirement to show identification at polling stations would make them more confident in the security of the voting system. When evaluating the security strengths and weaknesses of each model used in the 2018 and 2019 pilots for voter identification, the Electoral Commission found "the photo identification only model has the greatest security strengths compared with the other models". The photo identification model also had the most pronounced impact on the measures of public perceptions of integrity.

The Government has therefore concluded that, given the importance of protecting the integrity of voting at a polling station, it is a reasonable and proportionate approach to extend a requirement to show identification to voting. Importantly, we consider that this will increase public confidence in the voting process.

To ensure everyone who wants to vote is able to do so, the free local Voter Card will be available. Implementation plans, including the process for applying for a Voter Card, will take account of the specific needs of any protected group and will be supported by a communications campaign.

Recommendation 5: It is difficult to assess at this stage whether the Voter Card scheme will mitigate the potentially discriminatory impacts of the requirement that voters show photo ID at polling stations. To enable effective scrutiny, the Government should produce the regulations containing the details of the Voter Card scheme before the Elections Bill reaches the Committee Stage in the House of Commons. (Paragraph 34)

As noted by Chloe Smith MP in her evidence to the Public Administration and Constitutional Affairs Committee in September, it is normal for legislation of this kind to be a blend of primary and secondary legislation. This reflects, in part, the complexity of electoral law, and also the need for flexibility in certain detailed and procedural aspects, which are therefore better placed in secondary legislation, such as with the detail of the Voter Card process.

The Government acknowledges the importance of getting these details right and is working with the electoral sector and wider stakeholders to put in place the regulations which make sure that voter identification works for all voters. Those regulations will be subject to the affirmative resolution procedure. The detailed plans for the Voter Card will be shared with Parliament at the earliest opportunity to enable effective scrutiny.

Recommendation 6: The Government must ensure that the Voter Card scheme is easily accessible for individuals who want one. The scheme should not entail prohibitive incidental costs or requirements that may affect take-up, such as a requirement to attend at the issuing office. The scheme needs to actually mitigate rather than exacerbate the potentially discriminatory impacts on groups with protected characteristics.
(Paragraph 35)

The list of acceptable identification set out in the Bill is designed to reflect a wide range of commonly-held and robust forms of identification in order to minimise the number of people who need to apply for a Voter Card—as noted above, 98% of electors already hold a relevant form of identification.

For those electors who may require a Voter Card, we entirely agree that accessibility will be vital. No charge can or will be made for a Voter Card—that is why we have set out this important point on the face of the primary legislation. A number of avenues to apply for a Card will be made available, for example: by post, in person, and we are also looking at options for online applications.

We will continue to work with civil society groups throughout the delivery of the policies to ensure that the application process is also as accessible as possible, and if any adverse impacts come to light in the detailed rollout of the new system, those impacts are identified and mitigated as far as possible.

Recommendation 7: High take-up of the Voter Card is essential to ensure those individuals who do not have photographic ID are not effectively disenfranchised. The Government and Electoral Commission must produce detailed plans setting-out how they plan to encourage individuals who do not have photo ID to apply for a Voter Card. Data should be collected to analyse how successful those plans are at increasing take-up, and should be disaggregated to show any difference in take-up across certain groups.
(Paragraph 39)

The Government agrees that high take-up of the Voter Card amongst those who do not already have an acceptable form of photographic identification is essential.

As set out above, research has clearly shown that there are very high levels of photographic identification ownership amongst the electorate, and where there is lower or no identification ownership a Voter Card will be available free of charge, and further work is underway to understand how these groups can be supported to participate.

The Government understands that reaching the many different groups in our democracy requires a coalition of partners. To that end we are working collaboratively with a range of experts and delivery partners across the UK—including local and national governments, civil society, the Electoral Commission and the wider electoral community—to ensure the process is understood and accessible for all. Each will have a role to play in ensuring the introduction of the new policy is a success.

The Electoral Commission will provide a comprehensive, targeted communications campaign and guidance, raising awareness throughout the electorate of the new voter identification requirements and eligible documents, and providing a call to action at the appropriate time for electors who need to apply for a Voter Card.

The rollout of voter identification was successfully trialled in pilots in 2018 and 2019 in a variety of local authorities and the overwhelming majority of people cast their vote without a problem. Our voter identification pilots also demonstrated our ability to collaborate very successfully with local authorities and support them in delivering voter identification that works for all voters. We are building on that knowledge as we work with the electoral sector and wider organisations on national plans.

Moreover, the photographic voter identification system has been in place in Northern Ireland for almost 20 years since it was introduced by the last Labour Government in 2003 and has been operating with ease. As part of their routine post-election questionnaire in 2019 the Electoral Commission reported that 83% of voters in Northern Ireland found it 'very easy to participate in the elections' as opposed to 78% in Great Britain elections. In their 2021 Public Opinion tracker, the Electoral Commission recorded not a single Northern Ireland respondent reporting 'I don't have any identification/ I would not be able to vote'.

The Bill contains provisions which require at least three evaluations of the effect of the implementation of voter identification on electors (at two parliamentary elections and one set of local elections). Our plans for these evaluations will be developed in due course as electoral events approach, and I can reassure the Committee that they will assess whether the rollout of voter identification has satisfied the objectives of the policy, including making sure that it works for voters from diverse backgrounds and demographics. The Electoral Commission also has a statutory duty to report on national elections.

Voter Registration

Recommendation 8: The Government should reconsider the introduction of automatic registration and run pilot schemes to evaluate how it would operate. A significant number of people who are entitled to vote are either not registered to vote or are incorrectly registered. Efforts must also be taken to reduce the registration gap between Black, Asian and minority ethnic voters and White voters, younger and older voters, and any other groups where a registration gap exists. (Paragraph 47)

Recommendation 9: To mitigate any potential discriminatory impacts of a voter ID requirement, it is necessary to take a joined-up approach that both promotes and facilitates registration and ensures the highest possible take-up of the Voter Card amongst individuals who otherwise may not have photo ID. The Government should consider amending the Elections Bill to make provision for automatic voter registration. (Paragraph 48)

The Government is opposed to automatic registration, both in principle and practice. Automatic registration contradicts the principle that individuals are properly responsible for registering themselves and should not have it done for them, perhaps even without their knowledge. That was one of the reasons that we introduced Individual Electoral Registration in 2014. The evidence shows that an individual system drives up registration figures and enhances the accuracy of the registers. The Government is concerned that a system of automatic registration would be both costly and potentially flawed, for the reasons set out below, and we remain instead committed to building on the success of Individual Electoral Registration.

The introduction of online registration in 2014 has made registering to vote easier and more convenient than ever before. Submitting an application to register to vote online now takes as little as five minutes. In March 2020 there were 47.6 million entries on the Parliamentary registers in the UK, the highest number ever recorded. Meanwhile, any system which facilitates the automatic registration of electors would be very difficult to implement and face significant technical barriers which could fatally undermine it. There is currently no public service which, as part of its application procedures, captures all the data which is required to determine eligibility to vote—such as name, address, age, nationality and immigration status.