House of Commons

Public Administration and Constitutional Affairs Committee

The Elections Bill: Government Response to the Committee's Fifth Report

Fourth Special Report of Session 2021–22

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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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Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

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Fourth Special Report

The Public Administration and Constitutional Affairs Committee published its Fifth Report of Session 2021–22, *The Elections Bill* (HC 597) on 13 December 2021. The Government's response was received on 3 February 2022 and is appended below.

Government Response

Introduction

The Elections Bill was introduced on 5th July 2021. This legislation delivers on the Government's manifesto commitments and is the product of a range of consultations, reviews and detailed work with the electoral sector.

Ensuring the ongoing integrity of our elections and delivering this programme in a considered and practical way is a priority for the Government. We are therefore grateful to the Committee for its work in scrutinising the measures in the Elections Bill and the response to the Committee's recommendations are below.

Purpose and scope of the Bill

The Committee urges the Government to set out a timetable for undertaking a wholesale review and consolidation of electoral law.

Electoral law is complex but understood by those who administer elections and referendums. It 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. That is not to say that the legislation cannot be and should not be revised and improved. Undoubtedly the rules that govern our electoral landscape are numerous and have evolved over time, and the Government agrees in principle that electoral law would benefit from consolidation.

We remain 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 Government's immediate priority is to deliver on its manifesto pledges, and to strengthen electoral integrity to stop the real risks of electoral fraud – as seen in Tower Hamlets in 2014–15.

Public and parliamentary consultation and scrutiny

Given the lack of pre-legislative consultation and scrutiny on this constitutionally important Bill and the significant change in scope of the Bill after its introduction and Second Reading, the Government should include a statutory commitment to post-legislative scrutiny of the Bill on the face of the Bill.

The Government should present the draft secondary legislation as early as possible, as committed to by the then responsible Minister, Chloe Smith MP, to enable due consideration by both Houses and stakeholders of the proposed secondary legislation that will provide further detail on the purpose and implementation of the Bill prior to that legislation being laid or made.

The Government does not accept the assertion that there was a 'lack of pre-legislative consultation and scrutiny' in the development of the Elections Bill, which is a product of a wide range of views and engagement with the electoral sector, civil society organisations, parliamentarians and the Parliamentary Parties Panel. Many elements have stemmed directly from reports and reviews conducted by Parliamentarians, such as the 2016 report on electoral fraud by Sir, now Lord, Eric Pickles. Four sets of measures in this legislation - namely, those on accessibility, overseas electors, intimidation and digital imprints - have also been directly subject of Government consultation.

In addition to this, ahead of bringing forward the legislative proposals for voter identification, we undertook a range of voter identification pilots in 2018 and 2019 which were independently reviewed by the Electoral Commission.

Furthermore, we have proactively sought the input and expert eye of those with detailed knowledge of the operation of elections and those who would be impacted by the measures in the Bill. Since the announcement of the Bill, it has received scrutiny from the Joint Committee on Human Rights, the provisions have been debated in two Westminster Hall debates and it has undergone Committee stage in the House of Commons, including four evidence sessions.

As the former Minister of the Constitution and Devolution, Chloe Smith MP highlighted in oral evidence[1] to the Committee, it is standard practice for the Government to conduct post-legislative scrutiny of Acts following Royal Assent, so it would not be necessary for the Bill to be amended to include a specific provision to this effect. Moreover, 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. The Bill already makes provision for an evaluation of the impact of the implementation of voter identification to be completed following the first three sets of elections where the requirements apply. The Electoral Commission also already has a statutory duty under PPERA to undertake reports on the administration of each Parliamentary elections, and has routinely published reports following Local Elections. A specific statutory requirement risks not allowing for the necessary flexibility to report following elections as they happen.

With regards to secondary legislation, a significant amount of the policy intent and function is set out on the face of the Bill, and has been scrutinised in detail in the House of Commons; the House of Lords will shortly be undertaking its own detailed scrutiny of the Bill in the same way. The Government has also published an updated Delegated Powers Memorandum[2] setting out the provisions of the Bill as amended in the House of Commons that confer or amend powers to make delegated legislation, explaining in each case why the power has been taken and the nature of, and the reason for, the procedure selected.

1 https://committees.parliament.uk/oralevidence/2703/pdf/
2 https://bills.parliament.uk/bills/3020/publications

It must be noted that the nature of elections and the lack of room for vagueness or uncertainty in our democratic processes means that electoral law is, as is widely acknowledged, detailed to the point of prescriptive. For this reason it is right that in areas where operational detail is to be determined, and where process updates need to be made with some regularity, primary legislation is not a suitable vehicle. It is therefore entirely appropriate that some elements are expanded upon through secondary legislation and it follows long-held principles that when a procedural or acutely technical change to electoral law is required, that the Government needs to be able to make the changes in an agile fashion, without having to revert to primary legislation each time.

The Government respects the role of Parliament in scrutinising the intent and operation of secondary legislation. We are committed to providing both Houses with transparency and sufficient detail in this area during the passage of the primary legislation to support its work. It is for this reason that on the 6 January, the Minister of State at the Department for Levelling Up, Housing and Communities Kemi Badenoch MP, issued a written ministerial statement[3] updating Parliament on the publication of the voter identification policy statement detailing our proposals for how voter identification will operate in future regulations, a copy of which has been placed in the libraries of both Houses. We have listened carefully to the comments and questions raised during the Bill's passage in the Commons and have sought to ensure these questions are resolved. We will continue to share information on other aspects of our implementation planning for the legislation in due course, and we have recently published two additional policy statements setting out further detail on the changes brought forward by the Bill for overseas electors and on the new absent vote identity verification and online applications service.

The four Governments of the UK should seek to develop a more coordinated approach to electoral policy and law.

The UK Government is committed to working constructively with the devolved administrations to ensure that elections work well in the best interests of voters, the electoral sector and those regulated by electoral law so that people can remain confident in the outcome of electoral events. UK Government Ministers regularly meet with their counterparts in Scotland and Wales both bilaterally and through the Inter Ministerial Group for Elections and Registration, to discuss matters relating to elections, and officials work closely with relevant teams in the devolved administrations in the development of policy.

The measures in the Elections Bill will considerably strengthen the delivery of UK Parliamentary general elections and other reserved polls. For a number of measures contained in the Bill, coherence and consistency across both devolved and reserved polls was considered beneficial to providing electors with clarity and ensuring operability for electoral administrators and those regulated by electoral law. In order to deliver these benefits, we sought legislative consent from the Scottish and Welsh Governments. Given that both the Scottish and Welsh Governments expressed support in principle for a number of areas within the Bill, we are disappointed by their request to remove all aspects which relate to devolved matters. Nevertheless, we are respecting this request by preparing the necessary amendments to the Bill and will bring these changes forward at the earliest opportunity possible.

3 https://questions-statements.parliament.uk/written-statements/detail/2022–01–06/hcws525

The Welsh and Scottish Governments have taken policy decisions to diverge – such as adopting different electoral systems and franchises in devolved elections – this will invariably mean a different approach to electoral policy and law. Whilst divergence is a natural consequence of devolution, where our Governments agree in principle on a policy approach, we believe it is our responsibility to legislate in such a way that provides the best outcomes for voters, the electoral sector and those regulated by electoral law. To this end, the Government welcomes the indication both the Scottish and Welsh Governments have given that they will consider legislating comparably across a number of areas and UK Ministers remain committed to working closely with their counterparts as they develop their legislative proposals.

Voter Identification

There appears to be potential for a contradiction in the drafting of Schedule 1 as the provisions setting out both the Voter Card and the Anonymous Voter Card leave open the possibility of a limited period of validity. However, the rules for the documents which can be accepted as forms of identification at a polling station state that such identification will be accepted "regardless of expiry date".

If this is a drafting error the Bill should be amended. If this is not a drafting error, a clearer explanation needs to be provided as to how a period of validity could work for a Voter Card if an expiry date is not a bar to it being used for its sole purpose at a polling station.

The Government's intention is that 'expired' documents will remain valid for the purpose of voter identification so long as the photograph remains a good likeness, although they have expired for their primary purpose. The Committee is correct that this should also be applicable to the Voter Card itself, as a general principle.

The only exception to the principle that Voter Cards will not have an expiry date, and thus the ability to define a period of validity is necessary in the legislation, is for temporary Voter Cards which may be issued, where necessary, close to an election and will be valid for a particular election day only.

While not expiring on a particular date, Anonymous Electors Documents (which will have different requirements to enable effective verification of identity whilst also protecting the voter's anonymity) will need to have the elector's current electoral number on, and are therefore likely to need replacing more frequently to remain valid. However, where an anonymous elector's electoral number is changed by an Electoral Registration Officer (separate to an application for a new anonymous entry), the onus will be on that Officer to provide an updated document.

In considering the comments made by the Committee, the Government has identified a small number of clarifications around these issues that we consider will aid understanding and certainty. The Bill was therefore amended at Commons Report Stage to ensure that Electoral Registration Officers (EROs) have the flexibility to issue temporary versions of the Voter Card and the Anonymous Elector's Document - which will only be valid for use at a single poll or set of polls on a single day - if the circumstances require it (for instance, if an application is made particularly close to polling day or if there is an issue with the

production process for the 'substantive' versions of these documents at any time). This facility is in line with the Government's ambition that the last possible point electors can apply for a Voter Card will be the day ahead of a poll.

We envision that Voter Cards (other than temporary ones) will have a likely general lifetime of around 10 years – this is the same as passports and driving licences. An elector may apply for a new Voter Card earlier (e.g. if they change their name, they lose their card, the photograph is no longer a good likeness) or retain it for longer if the likeness remains good. The Electoral Commission will also be providing a comprehensive, targeted communications campaign and guidance, which will ensure the public is well informed on this aspect of the policy.

Given the potential for a significant number of people not to vote as a consequence of the voter ID requirement, the Government should not proceed with its proposals for the introduction of ID for voting until at least it has set out the criteria that were used in this proportionality assessment and explained the weight given to each criteria in the assessment. The Committee notes the widely voiced concerns about the potential impact of the introduction of mandatory voter ID on certain societal groups and for some with protected characteristics, including people with disabilities, members of LGBTQ + communities, black and ethnic minority groups and older people and consequently recommends that the Government pauses legislation on this issue until further research and consultation has been undertaken into the impact on these groups and the potential of any mitigation measures with the aim of securing greater agreement for any voter ID proposals.

The Government takes its Public Sector Equality Duty seriously. We have given due regard to it throughout the planning for implementation to date and we have always been clear that we will continue to do so. An Equality Impact Assessment was carried out for this Bill and was published in July 2021.[4]

Under our proposals for introducing voter identification, everyone who is eligible to vote will continue to have the opportunity to do so. As our policy statement makes clear, the list of accepted identification has been drawn up with accessibility specifically in mind, as well as security. Eligible voters who nonetheless do not have one of the wide range of acceptable forms of photographic identification will be able to apply for a free Voter Card from their local authority. They will be able to do so at the same time as when they register to vote, so applying for Voter Cards will be easy and accessible to all voters who may need one.

The Cabinet Office has carried out substantial research into the levels of the electorate's ownership of photographic identification. 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. 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, and within ethnic minority respondents, of whom 99% held an accepted form of photographic 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

4 https://bills.parliament.uk/bills/3020/publications

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.

A significant amount of engagement with charities and civil society organisations across the UK has also taken place to ensure the measures in the Bill work for all voters, and all groups are aware of the new requirements. Engagement to date has included official and Ministerial roundtables and focus groups with 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, such as the homeless and survivors of domestic abuse.

This engagement continues, with further engagement with civil society organisations planned to add to the evidence base on ownership and accessibility of photographic identification by groups with protected characteristics. This will support implementation planning and inform the awareness-raising strategy, ensuring that stakeholders are informed in detail about the new requirements, the Voter Card application process, and the practicalities of showing identification in the polling station.

Additionally, the Electoral Commission will provide a comprehensive, targeted communications campaign and guidance, raising awareness throughout the electorate of the new voter identification requirements.

Finally, it should be noted that photographic identification to vote has been required to vote in Northern Ireland since 2003, operating with ease. Electoral Commission opinion research on the 2019 general election also reported that 83 per cent of voters in Northern Ireland found it 'very easy to participate in the elections' as opposed to 78 per cent in Great Britain elections. And, in their 2021 Public Opinion tracker, the Electoral Commission did not record a single Northern Ireland respondent reporting: 'I don't have any identification / I would not be able to vote'.

We are pleased to see that the Government has included a monitoring and reporting requirement for voter ID in the Bill. We recommend that close attention is given not only to the number of people who arrive without appropriate ID, but also the demographics of these people. In addition to this, the Committee recommends that parallel research is carried out to assess the number of people who are deterred from even attending a polling station due to the voter ID requirement. This will enable the wider impact on voter participation to be understood and assessed.

The Government will carry out thorough research to assess the implementation of the proposed voter identification policy, and analysts will consider how best to assess its impacts. This will not be limited solely to the data collection mandated by the legislation, and the Government will also listen carefully to views of stakeholders such as the Electoral Commission.

Many of the practicalities of the voter ID system are still to be set out and the Committee intends to monitor these closely. We recommend that all regulations establishing the voter ID system are provided in draft to this and other interested Committees for scrutiny with sufficient time for comment, before they are introduced to the House. (Paragraph 102)

The Election Bill's corresponding secondary legislation is being developed in parallel with the primary legislation going through Parliament in order to maximise time available to gain input from others with an interest in the application and delivery of the policy and processes. We are doing that in a number of ways including through sharing documentation and meeting with both Parliamentarians and the delivery sector. We are committed to transparency and welcome the scrutiny and feedback of this committee and any others and, to that end, we have already published a policy statement[5] setting out the Government intention for the voter identification policy, and will be happy to answer any further questions that may arise from this.

Voting for persons with disabilities

We welcome the Government's move to update electoral law to widen the requirement for anyone and everybody who may have a disability or a need for support in casting their vote. We also take on board the concerns expressed by the Royal National Institute for the Blind and Sense about the potential for the legal protection for blind and partially sighted people to vote independently.

We recommend that the Electoral Commission be tasked with creating minimum standards for the equipment to be provided by electoral administrators. These standards should seek to ensure that people are able to vote independently where possible. The Committee recommends that the legal protection for blind and partially sighted people to vote independently is maintained as a requirement.

It is integral to our democracy that everybody is able to make their voice heard and that elections are accessible for all those eligible to vote. As the Government has outlined previously, the Electoral Commission will produce guidance to support Returning Officers in the delivery of the new measures. Whilst the final content of the guidance will be for the Electoral Commission, the Government is working with the Commission to help ensure that the guidance provides clear and thorough details of support that should be provided to disabled voters.

The intent of the accessibility measures in the Elections Bill is to widen the support provided to disabled voters and remove barriers to change and innovation that having limited specified support prescribed in legislation creates. By including support in guidance instead of legislation, it will be easier to update any minimum standard as appropriate whilst allowing Returning Officers to provide additional and tailored support that most appropriately suits their voters' needs. This will strengthen the support for all voters with disabilities and improve the way this is delivered. This guidance will be produced in partnership with the Government's expert Accessibility of Elections Working Group, of which the RNIB is a much valued member, ensuring that the needs of blind and partially sighted voters are carefully considered.

There will inevitably be cost implications associated with widening the support for people with disabilities. The Government should set out how much it expects new equipment to cost and indicate what financial support will be made available to local authorities to meet the new requirements.

5 https://www.gov.uk/government/publications/voter-identification-at-polling-stations-and-the-new-voter-card/protecting-the-integrity-of-our-elections-voter-identification-at-polling-stations-and-the-new-voter-card

The Government recognises that there will be costs associated with delivering additional support for disabled voters. As is usual for programmes of this kind, the Government will meet the cost of the new burdens that flow from the implementation of the Bill's policy measures, in line with longstanding government policy. Roll out of any funding will be timed to ensure that local authorities can meet the costs incurred.

Postal and proxy voting

The Committee recommends that the Government sets out regulations to the effect that local authorities must notify people in advance of the expiry of a postal vote to ensure that they do not accidentally find themselves unable to vote at an election.

The Government welcomes the Committee's comments on the postal voting measures.

The Bill will limit the period a person's application covers to three years. Under the transitional arrangements set out in the Bill, the measure will be phased in for existing long-term postal voters over a period of up to three years so they will have advance notice of the change and to enable them to prepare for the new requirements.

The Electoral Registration Officer (ERO) will be required to send to electors who have an existing long-term postal vote arrangement a notice informing them of the date on which their postal vote arrangement will end and information about how to make a fresh application to vote by post. It is also intended that regulations will make similar provisions in relation to new applicants who apply for a postal vote for the maximum period allowed.

Overseas electors and changes to the franchise for foreign nationals

The Committee recommends that the Government considers further the option of a residency-based approach in future reforms.

The intention behind the proposed changes to EU citizens' voting and candidacy rights is to update the franchise to appropriately reflect that the UK has left the European Union, and that the concept of the UK participating in joint EU citizenship has ended. To this end, the Bill's provisions are focused on the retention of existing rights, rather than the creation of new ones.

With reference to the recommendation that consideration be given to the extension of the franchise to all residents, the Government's position remains unchanged: that is, that the right to reside in the UK should not automatically confer the right to participate in our democratic processes. This approach is not unusual: nationality restrictions on voting are a common feature of most democracies. It may be possible for citizens of other countries who have lived here for more than five years to apply for UK citizenship, should they wish to become a citizen and vote in all UK elections. This provides a well-understood and established route for those who integrate fully into our society to become part of our democratic process.

Within this context, the provisions in the Bill do two key things. Firstly, they recognise our commitment to respecting the established rights of those EU citizens who were already resident in the UK at the time of our departure from the EU. Secondly, by moving towards a future position whereby the grant of rights rests on the principle of mutuality,

as expressed through agreements with individual nation states in the EU, the Government ensures that we are protecting the existing rights of British citizens living in EU countries, as well as the rights of EU citizens.

We are working closely with stakeholders and the electoral community to ensure that the associated new registration processes are as accessible, efficient, and clear as possible - for both electors and administrators.

The Electoral Commission

The Committee considers that the substantive duty of the Electoral Commission to "have regard to the Statement" should be clarified. We recommend 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. This amendment is necessary to give effect to 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.

The Government agrees that it is crucial that Parliament is clear on the effect and implications of proposals relating to the accountability of the Electoral Commission introduced by the Elections Bill. For this reason, the Government has already tabled three written ministerial statements (HCWS100,[6] HCWS269,[7] HCWS290[8]) which provided information about the impact of the Commission's duty to have regard to the Strategy and Policy Statement on its other statutory duties and showed parliamentarians an illustrative example of the kind of guidance the Commission may be required to have regard to in the exercise of its functions.

As explained in previous correspondence[9] with the Committee dated 7 October 2021, new section 4B(2) of the Political Parties, Elections and Referendums Act 2000 (PPERA) introduces a requirement for the Commission to have regard to the Statement in the discharge of its functions. The clause already maintains the operational independence of the Commission as under new section 4B(2) the Commission will only be required to have regard to the Statement (and, under new section 4B(4), to report on consideration given to the Statement in the exercise of its functions). This duty does not replace or undermine the Commission's other statutory duties and the clause does not otherwise provide that the Commission should disregard any of its existing statutory duties as a result of the Statement. This means that the provisions do not give the Government the power to direct the Commission's decision-making.

It is not uncommon for the Government to set a broad policy framework, as approved by Parliament, which independent regulators should consider (e.g. Ofcom, Ofwat). Further, as previously stated, the duty to 'have regard' is not a novel concept in primary legislation and works in similar ways to other existing statutory duties which require public bodies to 'have regard' to specific considerations in the carrying out of their functions. For instance, the requirement for specified authorities to have "due regard to the need to prevent people from being drawn into terrorism" in the exercise of their functions[10] or the public sector

6 https://questions-statements.parliament.uk/written-statements/detail/2021-06-17/hcws100
7 https://questions-statements.parliament.uk/written-statements/detail/2021-09-07/hcws269
8 https://questions-statements.parliament.uk/written-statements/detail/2021-09-15/hcws290
9 https://committees.parliament.uk/publications/7568/documents/79719/default/
10 Section 26 of the Counter-Terrorism and Security Act 2015

equality duty setting out equality-related matters to which public authorities must have due regard when exercising their functions.[11] In this instance, it simply means that when carrying out its functions the Commission will be required to consider the Statement and weigh it up against any other relevant considerations. This is because whilst the clause provides that the Commission must have regard to the Strategy and Policy Statement in new section 4B(2) of PPERA, it does not otherwise provide that the Commission should disregard any other considerations. As such, it is already implicit in the clause that, rightly, the Statement will be one amongst a range of other considerations for the Commission to take into account in the exercise of their functions. The Government does not consider this needs clarifying further on the face of the Bill.

The Committee urges the Government to provide guidance, as a matter of urgency, on the proposed consultation mechanisms, which should be agreed with the list of statutory consultees in advance of publication. We recommend that the guidance:

a) ***sets out who will be consulted and when:***

b) ***provides minimum timeframes for the statutory consultees to respond;***

c) ***clarifies, through the use of examples, "necessary" in new section 4C(3) (Secretary of State's power to amend following consultation) so that consultees have some certainty regarding their submissions and the Secretary of State is prevented from refusing to make amendments that would encroach on the Electoral Commission's independence; and***

d) ***clarifies when new section 4(E)4 consultation requirements are likely to be disapplied.*** (Paragraph 161)

The consultation mechanism for the designation of the Strategy and Policy Statement is already outlined in detail in new sections 4C, 4D and 4E of PPERA. The provisions state clearly that the Secretary of State must review and consult all statutory consultees before submitting a new Strategy and Policy Statement to parliamentary approval at least once every five years. Those statutory consultees are: the Electoral Commission, the Speaker's Committee on the Electoral Commission, and the Public Administration and Constitutional Affairs Committee. Parliamentary consequences of the recent machinery of government changes, whereby ministerial responsibilities for elections now sit with the Department for Levelling Up, Housing and Communities will mean that the Public Administration and Constitutional Affairs Committee may need to be replaced with the Levelling Up, Housing and Communities Committee as a statutory consultee on the Statement. This would align the consultation requirements with the recent change to the membership of the Speaker's Committee.

In addition, the provisions as introduced in the House of Commons contain a requirement on the Secretary of State to consult Welsh and Scottish ministers (as relevant) so far as the guidance relates to the Commission's devolved Welsh and Scottish functions. Since the Government requested legislative consent for this measure, the Welsh and Scottish Governments have recommended that the Senedd and Scottish Parliament do not grant legislative consent to this measure. In line with this, the Government is preparing amendments such that the Statement must not contain provisions that relate

11 Section 149 of the Equality Act 2010

to the devolved functions of the Commission. Amendments to remove the requirement to consult Welsh and Scottish ministers on the guidance will also be considered as this requirement will be made redundant by restricting the Statement to the Commission's reserved functions. The Government welcomes continued engagement with counterparts in the Welsh and Scottish Governments to support consistency and coherence in electoral law across the United Kingdom.

The Government notes the Committee's suggestion to set minimum timeframes for consultation but considers it would be disproportionate and unnecessarily burdensome. Under these provisions, 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) that this obligation does not apply. This means that under the Committee's proposal, the Secretary of State may in the future need to consult on minor or urgent changes to the Statement that would not require the same amount of time for consideration. For this reason, the Government considers it is preferable to keep consultation times flexible so they can be adapted depending on the scale and urgency of the changes being considered. Further, the Government is clear that in exercising their duty to consult on a draft Statement, the Secretary of State will operate within the framework of Government guidance on 'Consultation principles'.[12] As such, the Government considers that no further guidance is required.

Consideration of 'necessary' changes to be made to the draft Statement following a statutory consultation will be left to the appreciation of the Secretary of State as part of the exercise of their power to draft and designate the Statement (before seeking parliamentary approval). The Strategy and Policy Statement will set out guidance for the Electoral Commission with regards to government priorities. It is therefore important that the Secretary of State is given the power to make any changes they consider necessary to the draft under new section 4C of PPERA. As previously stated in correspondence to the Committee, the Government feels the wording used in the Bill is sufficiently clear. It describes the use of ministerial powers in the ordinary meaning of the word 'necessary' and as such does not need defining further in guidance.

The provisions also give the Secretary of State powers to make more frequent changes to the Statement to ensure it remains up-to-date and agile. When doing so, the Secretary of State will still be required to consider the Speaker's Committee's view on whether any revision to the Statement requires a full statutory consultation. If they disagree with the Speaker's Committee's view, the Secretary of State will need to justify this determination in a ministerial statement. The Government must also notify the statutory consultees of the revisions to the Statement. The Government expects the consultation requirements outlined in new section 4C(2) will typically be disapplied (under new section 4E(4)) for any uncontroversial or minor changes to the Statement (e.g. to reflect a minor update in the description of a government priority in the Statement).

Any change to the Statement (other than corrections of clerical or typographical errors), whether following a statutory consultation under new section 4C or under the power to revise the Statement set out in new section 4E, will be subject to parliamentary approval. The UK Parliament will be able to reject in full any draft Statement it disagrees with.

12 Consultation principles: guidance - https://www.gov.uk/government/publications/consultation-principles-guidance

Given the Government's stated objective of improving parliamentary scrutiny of the Electoral Commission, we recommend the application of 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). We consider this additional scrutiny step is necessary and proportionate given the novelty and importance of the Statement.

At a minimum, under the affirmative procedure, the Government should set a precedent for any future governments by committing to find time for a debate on the Floor of the House of the Statement once laid in draft for approval.

As outlined by the then Minister for the Constitution and Devolution in evidence to the Committee on 14 September 2021, the Government considers that the affirmative resolution procedure will provide both Houses of Parliament with appropriate and meaningful opportunities to debate and scrutinise the Strategy and Policy Statement before determining whether to approve or reject the resolution in full. The Government remains firmly committed to ensuring that parliamentary time is made available for these debates. The length of the debates in each House will be determined closer to the time following the procedural conventions in each House and will reflect the importance of giving parliamentarians a meaningful chance to air their views about the Government's proposal before it is submitted to their approval. Further, to support parliamentary scrutiny during those debates, the Government also provided an illustrative example of the Strategy and Policy Statement which parliamentarians will be able to use to supplement their views.

The Speaker's Committee may wish to develop the use of SMART objectives in monitoring and assessing the Electoral Commission's compliance with the Statement. Furthermore, reports should clarify the consequences of any disagreement(s) between the Electoral Commission and the Speaker's Committee.

The Government notes that this recommendation is addressed to the Speaker's Committee which, under paragraph 3 of Schedule 2 to PPERA, can set out its own procedure.

We recommend that—notwithstanding the proposed recommendations set out above in paragraphs 150, 161, 167, 168 and 178—Clauses 13 to 15 of the Bill are removed (Clauses 14–16 in the Bill as brought forward by the Commons), pending a formal public consultation on the proposed measures and to take into account any recommendations put forward by this Committee in its final report on the work of the Electoral Commission.

The Government should set out how it will "support the police as necessary to enforce electoral regulation proactively and effectively", as committed by the Government in its letter to the Committee of 7 October 2021, including what resources it will make available to the police to investigate and bring forward criminal prosecutions under PPERA.

We urge the Government to commit to review, monitor and report on potential criminal breaches under PPERA and their enforcement, which would assist in bringing forward any further legislative changes to either the civil and/or criminal sanctioning regimes. The Government should publish its findings and lay a Statement in Parliament every year.

The Government should also commit to undertaking a review of the civil sanctioning regime for electoral law offences and its interplay with criminal prosecutions under PPERA and the RPA, providing a timetable for consultation and review of the CSPL's recommendations in this regard.

The Government disagrees with the Committee's recommendation in paragraph 193. The public rightly expects effective and independent regulation of the electoral system. The Electoral Commission has a vital role to play in upholding the integrity of free and fair elections and public confidence in that integrity. As the independent regulatory body charged with such pivotal responsibilities, the Commission should be fully accountable to Parliament for the way it discharges its functions. In recent years, some across the House have lost confidence in the work of the Commission and have questioned the adequacy of the existing accountability structures. We must reflect on the current structures charged with this important responsibility, enhance good practice and, where there is a need for change, be prepared to make it. The Government's proposals are necessary and represent a proportionate approach to reforming the accountability of the Electoral Commission whilst respecting its independence.

In response to the Committee's recommendations in paragraphs 200, 201 and 202, the Government is committed to making sure that elections are secure and fit for the modern age. As part of this, we keep the Electoral Commission's role and powers, and those of the police and prosecution authorities, under review to ensure they are able to discharge their responsibilities effectively.

The Government is grateful for the Committee's report on the Elections Bill and its upcoming report on the Work of the Electoral Commission. The report was published after the Bill was introduced. Political parties have not been consulted on the proposals issued by the Committee, and many of their proposals may not be proportionate or practical. Further work must be done to consider the implications and practicalities of any further changes to complex electoral law.

Regulation of Expenditure

The Government's response to the CSPL report on electoral finance regulation provides no indication of which of its recommendations (not already included in the Bill) the Government is likely to adopt (via amendment), prioritise for consultation or when or how the Government proposes to give legislative effect to recommendations that will not be included in the Bill. The Government should give clarity on its next steps in this regard.

The UK has a comprehensive regulatory framework and political finance measures in the Elections Bill will strengthen three important components of this framework: fairness, transparency and controls against foreign spending.

The Elections Bill is bringing forward the key changes to the regulation of expenditure we need to make now, and it already delivers on several of the recommendations made by the CSPL report. The CSPL report puts forward many recommendations that deserve full

consideration and as stated in the Government's response,[13] further work must be done to consider the implications and practicalities of any further changes to complex electoral law.

Digital imprints on campaign material

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.

As with any primary legislation initiated by the Government, we are committed to monitoring the impact of the measures relating to digital imprints against the key policy objectives on a number of relevant indicators. This is to ensure that digital imprints, as a brand new regime, operates as intended and delivers the Government's policy objectives. This is reflected in the Impact Assessment published alongside the Bill.

These indicators may include, but are not limited to, 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. In addition to monitoring data, digital imprints will be assessed via a formal evaluation as part of the wider Bill evaluation process once policy changes are introduced.

Under clause 53 (referring to the Bill as brought from the Commons) of the Elections Bill, as part of its reporting requirements, the Electoral Commission will also be required to report on monitoring 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 under Schedule 12.

The Government agrees with the Committee's view that it will be important to ensure that the digital imprint regime can keep pace with technological changes. To accommodate technological advances and any required changes as a result of the implementation of the regime, the regime includes regulation-making powers for the Secretary of State to, if needed, modify key definitions (Clause 37, subsection 6), add, modify or remove the details to be included in the imprint (Clause 39, subsection 4), as well as the exceptions to section 39 (Clause 45, subsection 7).

More generally, the statutory guidance, to be drafted by the Electoral Commission and approved by Parliament, will provide campaigners with practical direction on what constitutes digital campaigning material, to ensure those captured by the imprint rules understand how to follow the rules of the regime.

13 https://www.gov.uk/government/publications/government-response-to-regulating-election-finance/government-response-to-regulating-election-finance