

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

---

27th Report of Session 2021–22

# **Elections Bill: Government Response**

---

Ordered to be printed 4 April 2022 and published 4 April 2022

---

Published by the Authority of the House of Lords

HL Paper 192

### *The Delegated Powers and Regulatory Reform Committee*

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
  - (b) section 7(2) or section 19 of the Localism Act 2011, or
  - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) section 85 of the Northern Ireland Act 1998,
  - (b) section 17 of the Local Government Act 1999,
  - (c) section 9 of the Local Government Act 2000,
  - (d) section 98 of the Local Government Act 2003, or
  - (e) section 102 of the Local Transport Act 2008.

### *Membership*

Baroness Browning

Lord Cunningham of Felling

Lord Goddard of Stockport

Lord Haselhurst

Lord Hendy

Lord Janvrin

Lord McLoughlin (Chair)

Baroness Meacher

Lord Rooker

Lord Tope

### *Registered Interests*

Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.parliament.uk/hlregister](http://www.parliament.uk/hlregister). The Register may also be inspected in the Parliamentary Archives.

### *Publications*

The Committee's reports are published by Order of the House in hard copy and on the internet at [www.parliament.uk/hldprcpublications](http://www.parliament.uk/hldprcpublications).

### *General Information*

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

### *Contacts for the Delegated Powers and Regulatory Reform Committee*

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is [hldelegatedpowers@parliament.uk](mailto:hldelegatedpowers@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

# Twenty Seventh Report

## ELECTIONS BILL: GOVERNMENT RESPONSE

---

1. We considered this Bill in our 21st Report of this Session.<sup>1</sup> The Government have responded by way of a letter from Lord True CBE, Minister of State at the Cabinet Office. The response is printed at Appendix 1.

---

<sup>1</sup> 21st Report, Session 2021–22 (HL Paper 168).

## APPENDIX 1: ELECTIONS BILL: GOVERNMENT RESPONSE

---

### Letter from Lord True CBE, Minister of State at the Cabinet Office, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

My letter dated 9 March 2022 acknowledged our gratitude for the Committee's consideration of the Elections Bill. I am providing responses to the issues raised in your Report.

#### *Clause 25—Power to amend list of recognised third parties*

**The House may wish to ask the Minister to explain why the power conferred by clause 25 has been drafted to allow entries in the list in section 88(2) of PPERA to be removed or varied. We consider that, in the absence of a convincing explanation, the powers to remove and vary entries in the list are inappropriate.**

As your report acknowledges, the Government is conscious that legitimate categories of third party campaigners who are not currently on the list of categories of campaigners listed in PPERA s.88(2) may emerge in the future and would, (as a result of the restriction on spending introduced by clause 24), be significantly restricted in their ability to campaign by this provision if they cannot be added to the list quickly. For this reason, clause 25 makes provision for the amendment of the list of eligible categories of third party campaigners in the PPERA.

Powers to update lists in legislation are not unusual and indeed are particularly important where, either due to changes in legal definitions or technical oversight, the government may need to amend the list quickly. It is not possible to know now what amendments may be necessary to ensure that the list continues to capture all legitimate categories of third party campaigners and only those categories. Clause 25 is therefore a technical but important future-proofing mechanism to ensure that the restriction introduced by clause 24 continues to work as intended.

The Government has listened to concerns raised by the Committee's report and has met with representatives from civil society organisations to discuss this. We consider the power to remove and vary entries remains necessary to ensure that the list of categories is maintained accurately. However, today, 30 March, I have tabled an amendment seeking to reassure concerned stakeholders that any order to remove or vary the description of a category of third-party campaigner can only be made where it gives effect to a recommendation of the Electoral Commission. Any order, including one which adds categories, will continue to be subject to full Parliamentary scrutiny by both Houses via the affirmative resolution procedure.

#### *Schedule 1, paragraph 2—Power to determine applications for electoral identity documents*

**Accordingly, the House may wish to seek an explanation from the Minister as to why the powers in this case do not, unlike the precedents referred to in the memorandum, specify the circumstances in which an applicant will be entitled to be issued with the relevant electoral identity document. We consider that, in the absence of a convincing explanation, the powers are inappropriate in leaving it to regulations to determine the circumstances in which electoral identity documents are to be issued.**

We note that in the precedent referred to in section 13C of the Representation of the People Act 1983 relating to Electoral Identity Cards in Northern Ireland, ‘determine’ is used in section 13C(3) and is then defined in section 13C(7) as meaning “determine in accordance with regulations”. We therefore do not believe that we have diverged significantly from this precedent.

The Government believes maintaining a degree of flexibility when implementing these processes is justified in order to ensure they are effective for both the electorate and electoral administrators.

*Schedule 8, paragraph 1(11)—Power to add new EU countries in respect of voting and candidacy rights of EU citizens*

**In the circumstances, we take the view that the power to add countries to the list in Schedule 6A should be subject to the affirmative resolution procedure, particularly as this is a Henry VIII power which affects the franchise and rights to stand as a candidate in local elections.**

Given the significance of changes to the franchise, we are conscious of the need to ensure an appropriate degree of Parliamentary scrutiny before adding or removing a country to or from the list in Schedule 6A, thereby granting (or removing) rights from relevant EU citizens. For this reason, the provisions in the Bill place clear limits on the Secretary of State’s power to add a country to Schedule 6A via regulations. The Secretary of State can only exercise this power when the UK and a ‘qualifying country’ are preparing for ratification of a treaty containing a provision on local election participation and, in accordance with Section 203A(2) (c), Parliamentary scrutiny of that treaty under Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG) has been completed.

As the Committee’s Report points out, the scrutiny under section 20 is akin to a negative procedure, rather than an affirmative procedure as the Department’s memorandum said, and we apologise for this error. However, the section 20 procedure does provide both Houses with an opportunity to scrutinise the contents of a treaty and, potentially, to object to ratification. In addition, since the purpose and consequence of an instrument under new section 203A(2) adding a country (namely the grant of voting and candidacy rights for its citizens) is clearly set out in the primary legislation, there will be no subsequent opportunity to make an instrument with any unforeseen or novel consequences. We also wish to minimise the risk of any undue or undesirable delay in adding a country to the Schedule, thereby giving effect to our treaty obligations in domestic law. We therefore continue to be of the view that a negative resolution procedure is the most appropriate procedure for regulations adding a country to Schedule 6A following the CRAG procedure.

The Committee’s other specific concern is that, in a scenario where either House resolves against the ratification of the treaty, the Government would still be able to ratify the treaty (after the Minister has laid a statement before Parliament indicating their opinion that the treaty should nevertheless be ratified and explaining why, and if there is no further House of Commons resolution against it). This scenario is considered to be unlikely in the context of a voting and candidacy rights treaty, but, in the event that it came to pass, the subsequent instrument under section 203A(2) would still be subject to annulment by either House of Parliament.

In recognition of the fact that the Secretary of State’s discretionary power to remove a country from Schedule 6A is drafted more broadly, and also that the removal process is not subject to preceding Parliamentary scrutiny via the CRAG process,

the power to make regulations removing a country from Schedule 6A is made subject to the affirmative resolution procedure. We consider that this approach provides the appropriate level of debate and approval necessary, in both Houses, for the significant step of removing franchise and candidacy rights from citizens of a particular country, before the regulations can be signed and take effect.

**30 March 2022**

## APPENDIX 2: MEMBERS' INTERESTS

---

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.