

Written evidence from Dr Alistair Clark and Professor Toby S. James¹ (TEC 13)

Public Administration and Constitutional Affairs Committee The Work of the Electoral Commission

Summary

With lengthy experience in the study of electoral administration, we have recently been funded by the UK Economic and Social Research Council to research the impact of COVID-19 on electoral processes. In this submission, we firstly review issues around the postponement of the May 2020 local elections, before moving on to discuss practicalities that electoral administrators will have to address in May 2021. We then address issues around emergency proxies, early voting and party campaigns, before concluding with several recommendations for the Committee's consideration.

Introduction

1. Alistair Clark's expertise is in electoral integrity and administration, with several published research articles and reports on these themes, including an evaluation of electoral administration in the 2016 EU Referendum (<http://www.ncl.ac.uk/gps/staff/profile/alistairclark.html#background>). Toby James is the co-convenor of the Electoral Management Network and has published widely on the management of elections, including most recently on election postponement. We have been funded by the UK's Economic and Social Research Council to undertake research into the effect of COVID-19 on electoral processes.² Case studies and analysis from around the world are being published at: <http://www.electoralmanagement.com/covid-19-and-elections/>. We write in a personal capacity.

Postponement

2. Clark argued in March that local elections in England needed to be postponed in light of the Coronavirus outbreak.³ The UK government legislated for this in clauses 59-70 of the Coronavirus Act 2020. We naturally acknowledge the considerable uncertainty at the time the Act was passed which meant there were no easy options.

3. The Coronavirus Act postponed a range of sub-national elections until 6th May 2021. These included the local elections due to be held on 7th May 2020, the London Mayoral and Assembly elections, elected mayors for local authorities, combined authorities, and also Police and Crime Commissioners. These will be held concurrently with those local authority elections which were already scheduled for May 2021, leading to a bumper round of elections. With Scottish and Welsh parliamentary elections also scheduled, all of mainland

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² National Recovery and Resilience: Learning from Elections During a Pandemic, ES/V015443/1. See: <http://www.electoralmanagement.com/covid-19-and-elections/>

³ <https://www.democraticaudit.com/2020/03/16/it-was-right-to-delay-englands-local-elections-but-we-must-consider-the-wider-impact-of-covid-19-on-elections/>

Britain will be at the polls in May 2021, albeit for different, and sometimes multiple, institutions.

4. There has been no clear explanation from the UK government or Cabinet Office why these English sub-national elections were postponed for a full year, until May 2021. A year's postponement of any elections or democratic processes is a serious matter because it denies citizens of their right to vote and an opportunity to hold their representatives accountable.⁴ The Electoral Commission's original call was for postponement until the Autumn.⁵ This would have been preferable, with the UK government coming back to parliament to make the case should a further postponement have been necessary.

5. Other countries postponed elections for a short time, with a view to seeing how the virus developed. Even within the UK, there is variation due to devolved competences. The Scottish Electoral Management Board's website shows that several local council by-elections have been scheduled from October onwards.⁶ Several of these have already been held, and the remainder will be held, with a range of COVID-19 safeguards. The Cabinet Office has, following PACAC's previous discussion of elections in its Coronavirus Act report, indicated that there would be no council by-elections held before May 2021 in England.⁷ This suggested it would be disruptive to do so, without any clear explanation of what disruption this might cause. The *Municipal Journal* reported on 4th November that the Cabinet Office has ruled out further delay to the May 2021 local elections, something which had not explicitly been stated prior to this.⁸ This has not been widely reported outside the specialist press.

6. There should be no further cancellation of the currently scheduled sub-national elections in Britain. The Cabinet Office needs to state this clearly and publicly beyond the specialist press.

7. The Committee should also request an explanation from the Cabinet Office for not following the Electoral Commission's recommendation of postponement until early Autumn. This would have been infinitely preferable to the situation currently faced by electoral administrators for May 2021, as outlined below. The suspicion is that the current UK government's continued preference for avoiding scrutiny has led to an unnecessarily long postponement, entirely out of step with practice in other democracies where postponed elections have been rescheduled and held relatively quickly, our analysis shows.⁹

8. That the UK government has not permitted council by-elections under the Coronavirus Act 2020 is highly regrettable. This has prevented election administrators in England from gaining some experience in running elections under COVID-19 in advance of major elections

⁴ James, T.S. and Alihodzic, S. (2020) 'When is it democratic to postpone an election? Elections during natural disasters, COVID-19 and emergency situations', *Election Law Journal*, 19(3), pp. 344-362.

⁵ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-letters/letter-coronavirus-and-its-impact-may-polls>

⁶ <https://www.electionsscotland.info/elections/log-council-elections?documentId=56&categoryId=3>

⁷ Letter from Chloe Smith MP to Returning Officers & Electoral Registration Officers, 15th Sept 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918239/Chloe_Smith_letter-to-ROs-and-EROs.pdf

⁸ <https://www.themj.co.uk/EXCLUSIVE-Cabinet-Office-rules-out-elections-delay/219026#>

⁹ James, T.S. & Asplund, E. (2020) 'What happens after elections are postponed? Responses to postponing elections during COVID-19 vary by regime type', *International IDEA*, <https://www.idea.int/news-media/news/what-happens-after-elections-are-postponed-responses-postponing-elections-during>

next year (see below). The explanation that this would be ‘disruptive’ is insufficient. Why it would be disruptive is not explained. It may be because many elections staff have been redeployed during the crisis. However, the idea that elections, a core aspect of democracy, is disruptive requires further explanation and it is recommended that the Committee seek such explanation from the Cabinet Office.

Practicalities

9. Holding elections concurrently has been shown by research to lead to lower quality electoral events, with potential difficulties in delivering elections.¹⁰ Running the myriad of elections currently scheduled in England for May 2021 concurrently, as legislated for by the Coronavirus Act 2020, will potentially see local authorities running elections with non-contiguous boundaries, different electoral systems and ballot papers, at the same time. There is clearly scope for voter confusion and logistical difficulties, even before any COVID-19 mitigations which will add another level of difficulty for election administrators.

10. Further key difficulties could, for example, include problems in recruiting sufficient staff to populate polling stations and counts. Research we have done into poll workers in the 2018 and 2019 English local elections has shown that: 24–25% are retired; two-thirds are female; and their average age will be mid-50s. These poll workers are all volunteers. They are paid, but not a large amount. From their age profile and the number who are retired, many will be in high-risk categories.¹¹

11. Whether people would continue to volunteer to do so under these circumstances is questionable. Councils already find it hard to recruit for a 16-hour, low-pay day. The risk is that many fewer will volunteer to work, making the polls undeliverable. This is before getting to the problem of putting hundreds of people in close proximity overnight for counts. Moreover, the fact that two-thirds of poll workers are female means there is potentially a gendered aspect to this as well.

12. Numerous elections conducted under the pandemic have had difficulties with poll workers not turning up on election day, in addition to broader pre-existing problems of recruitment.¹² We suggest that such difficulties point to a need to over-recruit for the available positions to work in polling stations, or at counts. Our research has suggested that some potential poll workers may be volunteering to work at elections because of social and civic duty motivations.¹³ Electoral services teams likely to face pressure on poll worker recruitment because of the pandemic may therefore want to consider messages emphasising such themes in their recruitment activities for the 2021 elections (and beyond).

13. Research into poll worker motivations has also indicated that many are encouraged to do so by the chance to earn some extra money. 89.5% give this as an important motivation in our 2015 study, 85.3% in the 2018 and 2019 local elections.¹⁴ Typically, polling clerks are paid

¹⁰ Clark, A. (2017) ‘Identifying the Determinants of Electoral Integrity and Administration in Advanced Democracies: The Case of Britain’, *European Political Science Review*, 9, (3), pp. 471-492.

¹¹ James, T. S. and Clark, A. (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections. *Policy Studies*, 41(2-3), 190-209.

¹² James, T.S. and Alihodzic, S. (2020) ‘When is it democratic to postpone an election? Elections during natural disasters, COVID-19 and emergency situations’, *Election Law Journal*, 19(3), pp. 355-6.

¹³ Clark, A. and James, T.S. (2020) ‘Electoral Administration and the Problem of Poll Worker Recruitment: Who Volunteers, and Why?’, Working Paper.

¹⁴ Clark A, James TS. Poll Workers. In: Norris, P; Nai, A, ed. *Election Watchdogs: Transparency*,

around minimum wage for their 16-hour day, Presiding Officers more due to their additional responsibilities. We have argued elsewhere that it may be necessary for local authorities to increase the amount paid to poll workers to ensure sufficient recruitment and reward for working under difficult pandemic circumstances with higher risk.¹⁵ Some evidence is beginning to emerge that paying more was a strategy some local governments used to recruit sufficient poll workers in the 2020 US elections.¹⁶ Investment in advertising campaigns to recruit younger poll workers is also advised. The Electoral Commission could lead on this.

14. Potentially many polling stations based in schools, churches and community centres may not be able to be used because of the pandemic and dangers of COVID-19's spread. At minimum, they will have to be well-ventilated, but additional work will be needed on layout of polling stations, much of which will require additional space. This will include, where possible: one-way systems to access and exit polling stations, which are also accessible for those with mobility problems, and additional and clearer signage.

15. Additional issues that administrators will have to contend with include:

- the need for extra staff to regularly sanitise polling stations and ballot boxes,
- provision of sufficient PPE for administrators, polling and count staff,
- the provision of sufficient hand sanitiser and cleaning material in polling stations,
- single-use pencils, or communicating the ability for voters to use their own pens/pencils,
- questions over mask compulsion, and powers of presiding officers to enforce this,
- social distancing in polling stations leading to queues,
- changes to nomination procedures,
- and an increase in postal voting.¹⁷

16. Scottish councils have in the council by-elections they have been running, for example, have requested that voters wear masks, created pathways for voters through polling stations, and implemented social distancing. They have also developed accessible infographics highlighting changes to polling places.¹⁸

17. The need for further local lockdowns could see further disruption to local elections. It is possible to see some areas, in higher tiers, require more stringent mitigation measures while others in lower tiers may not require the same level of mitigations. There is no reason from the point of view of electoral integrity why differential mitigations are necessarily problematic. In either case, electoral administrators would be doing what is necessary in that

Accountability and Integrity. New York, NY, USA: Oxford University Press, 2017, pp.144-166.

¹⁵ Birch S, Buril F, Cheeseman N, Clark A, Darnolf S, Dodsworth S, Garber L, Gutierrez-Romero R, Hollstein T, James TS, Mohan V, Sawyer K. *How to Hold Elections Safely and Democratically During the COVID-19 Pandemic*. London: British Academy, 2020. Shape the Future.

¹⁶ https://www.postandcourier.com/politics/charleston-gets-nearly-700-000-grant-to-pay-poll-workers-more-amid-coronavirus-pandemic/article_164474e2-f1f7-11ea-9bfa-eff0657e67e1.html See also <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/15/wanted-poll-workers-able-to-brave-the-pandemic>

¹⁷ For a detailed discussion, see Atherton and Clark's account of the numerous challenges for electoral administration in running Scottish parliament elections in 2021 at: <https://spice-spotlight.scot/2020/06/30/coronavirus-covid-19-what-could-the-impact-be-on-the-ordinary-general-election-to-the-scottish-parliament-scheduled-for-may-2021/> See also: <https://www.democraticaudit.com/2020/03/16/it-was-right-to-delay-englands-local-elections-but-we-must-consider-the-wider-impact-of-covid-19-on-elections/>

¹⁸ For example: <https://twitter.com/PerthandKinross/status/1326096006832906247>

locality to provide a safe electoral process. The choice for administrators in lower tier localities would be whether or not to conduct the election with a higher level of mitigations to provide additional reassurance.

18. A key risk factor that returning officers will have to consider is the potential for key administrators to become COVID-19 positive during the electoral process. Returning officers, their deputies and other senior electoral administrators have a central role in delivering the election, meeting many temporary staff, candidates and others crucial to the election process. Contagion to election teams and senior administrators during the electoral process, and particularly close to polling day, could present considerable difficulties, and, conceivably in the worst-case scenario, local postponement of elections being administered by that local authority. Councils therefore need contingency plans for such a scenario, which can be implemented quickly to ensure minimum disruption.

19. The process of counting will also take longer because of the need to social distance and sanitise surfaces. It is important to note that results will be unlikely to be delivered overnight, as they are under normal circumstances, and may take days to become known in some cases. This issue will be compounded by running various electoral events concurrently in parts of England. There will be nothing improper about this. Instead it will allow electoral administrators to provide accurate results in safe circumstances.

20. These will be significant challenges for already pressed local authorities. They will need additional resourcing to ensure that they can be delivered. Our research has shown a considerable increase in the levels of investment needed to ensure safety when conducting elections under COVID-19 circumstances. For example, the provision of PPE in South Korea was estimated to add \$16 million to the cost of running their election in March, whereas hand sanitiser and other health measures added \$32-37 million to Sri Lankan elections.¹⁹

21. Various governments and legislatures have committed additional funds for COVID-19 mitigations in their electoral processes. For example, the stimulus package passed by the US Congress in March included \$400 million to help adapt election processes to pandemic circumstances.²⁰ Minister for the Constitution Chloe Smith MP's letter to Returning Officers and Electoral Registration Officers was less than helpful in this regard. This clearly envisaged no additional funding being made available to local authorities to conduct the 2021 elections, stating only that local authorities had been given £3.7 billion of un-ringfenced funding to deal with Coronavirus in general, and that it continued to be local authorities' responsibility to fund local elections.²¹

22. This is wholly unacceptable. Local government budgets have suffered considerably under COVID-19, the lack of additional government support for mitigation measures and a decade of austerity. Election funding has already been squeezed, with it being entirely unappreciated just how small and under-resourced electoral services teams are.²² Many electoral services

¹⁹ <https://www.democraticaudit.com/2020/07/14/electoral-officials-need-more-money-to-run-elections-during-covid-19/>

²⁰ <https://edition.cnn.com/2020/03/25/politics/elections-money-stimulus-package/index.html>

²¹ Letter from Chloe Smith MP to Returning Officers & Electoral Registration Officers, 15th Sept 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918239/Chloe_Smith_letter-to-ROs-and-EROs.pdf

²² Clark A. The Cost of Democracy: The Determinants of Spending on the Public Administration of Elections. *International Political Science Review* 2019, **40**(3), 354-369.

officers have been redeployed because of COVID-19, hindering efforts to prepare their core functions. This squeeze on resources was already seen to be having a negative effect on electoral services even prior to COVID-19.²³

23. The Cabinet Office has a reputation among election administrators of being parsimonious on funding election administration. This is not the time to be so. It should immediately make sufficient funds available for the necessary COVID-19 mitigations and the safe conduct of all elections that it is responsible for overseeing. The devolved administrations should do likewise for the Scottish and Welsh elections. Each government should make public not only the costs of running the elections, but the additional COVID-19 mitigations necessary.

24. Running elections under COVID-19 will also need careful consideration of the various deadlines involved in the electoral process. For example, were there any large increases in postal voting applications, these are likely to happen very close to the deadline. A large increase could see the postal vote system experience very significant problems and place undue pressure on small teams of electoral administrators. An extension of postal vote deadlines, coupled with a public education campaign, could well be necessary. This equally applies to proxy votes and the deadlines around those, given that some vulnerable people may seek proxy votes close to the deadline.

Emergency proxies

25. COVID-19 means that there is a danger that those positive and / or isolating close to deadlines or polling day may be unable to vote. It is vital that people in this situation are not denied the vote. There have been instances where they have been denied the vote because of various local laws (for example: Spain, Taiwan, Singapore). Elsewhere, polling authorities have supported their participation by various means, including: the provision of medically supported polling stations (Israel); drive through polling centres (Czech Republic); special polling hours & places (Jamaica; Sri Lanka); and mobile ballot boxes allowing voting from home (Lithuania). Elsewhere, postal voting and proxy voting has served as the means by which this problem is addressed.²⁴

26. In the UK, proposals for dealing with this circumstance revolve around emergency proxy voting. There is merit in adapting a pre-existing procedure, but there are several issues here. Firstly, electoral administrators have already voiced concern pre-pandemic about increased incidence of emergency proxies and the pressures these put on the system.²⁵ This is only likely to increase those pressures somewhat.

27. Emergency proxy applications can only be accepted until 5pm on polling day. This leaves the potential for someone who is confirmed positive during polling day to potentially be unable to vote if they have had a late test result. This may be a minority of cases, but it would still remove the ability to vote due to no fault of the voter. This is undesirable. Deadlines and

²³ Clark, A. (2017) 'Identifying the Determinants of Electoral Integrity and Administration in Advanced Democracies: The Case of Britain', *European Political Science Review*, 9, (3), pp471-492, also see: James, T.S. and Jervier, T., 2017. The cost of elections: the effects of public sector austerity on electoral integrity and voter engagement. *Public Money & Management*, 37(7), pp.461-468.

²⁴ <https://blogs.lse.ac.uk/covid19/2020/10/23/people-with-covid-19-and-those-self-isolating-must-not-be-denied-the-vote/>

²⁵ James, T. S. & Clark, A. (2020) Delivering electoral integrity under pressure: local government, electoral administration, & the 2016 Brexit referendum, *Local Government Studies*, DOI: [10.1080/03003930.2020.1719075](https://doi.org/10.1080/03003930.2020.1719075)

law around emergency proxies need considered urgently given that there is little time between the current inquiry reporting and the commencement of the election process.

28. Thirdly, further consideration should urgently be given to alternative means of providing the vote for COVID-19 positive voters.

Early voting

29. The provision of early voting sites was exceptionally popular in the US election as an attempt to avoid unnecessary crowding in polling stations, thereby enabling social distancing to be adhered to. It has also delivered a record turnout, under extremely unfavourable conditions.

30. To help address the potential for lengthy queues developing given the need for social distancing and the inevitable delays that running multiple elections concurrently could bring, we recommend that early voting procedures are urgently examined and, if possible, resourced. While this may need primary legislation, as the passage of the Coronavirus Act 2020 has shown, this can be achieved quickly with cross party support.

Other Issues

31. Campaign events will likely be circumscribed because of the need for social distancing. Such events seem to have played a role in spreading COVID-19 during the American elections for example.²⁶ High attendance rallies and public meetings are unlikely to be possible. Parties will need to give consideration to what may be effective substitutes to ensure that voters are adequately informed of party positions in advance of polling day.

32. Political parties and candidates will need to be aware of the implications of the likely increase of postal voting in the forthcoming May elections. This means that many people will vote well in advance of polling day. Parties' campaigning, contacting and leafleting efforts will therefore need to be adjusted to take account of this, taking place earlier and further away from election day than might normally be the case.

Recommendations

R1. There should be no further cancellation of the currently scheduled sub-national elections in Britain. The Cabinet Office needs to state this clearly and publicly.

R2. The Committee should seek clarity from the Cabinet Office over the reasons for: 1) postponement for a year, and beyond the recommendations made by the Electoral Commission; and 2) the decision not to permit council by-elections in England to allow experience of COVID-19 mitigations to be built up by electoral services teams.

R3. Steps are taken to diversify the poll worker and count workforce, focusing on potentially recruiting younger poll workers, consideration of overstaffing to counter difficulties of people not turning up under pandemic circumstances, additional pay to compensate for working at the elections, and emphasising social and civic motivations in recruitment efforts.

R4. Provision of sufficient hand sanitisers, cleaning equipment and other PPE needed to keep poll workers, and count staff, safe while conducting their duties. Resourcing fully the

²⁶ <https://www.businessinsider.com/donald-trump-coronavirus-rallies-spread-infections-death-study-2020-10?r=US&IR=T>

COVID-19 mitigations necessary should be provided for by national funds from the Cabinet Office, or where appropriate, the devolved administrations.

R5. Further resources are made available to electoral registration and returning officers to cover the additional pressures and costs likely to result from a sizeable increase in postal voting, proxy voting and the administration of emergency proxies. The provision of emergency proxy votes should be extended until close of poll, instead of 5pm on polling day.

R6. There should be careful and urgent consideration of the appropriateness of the deadlines involved in postal and proxy voting, both of which are expected to increase considerably in May 2021. This applies equally to the UK government for English sub-national elections, and the devolved governments for their parliamentary elections.

R7. The provision of early voting should be debated as a means to help mitigate COVID-19's effects on forthcoming elections, and in the longer term, with a view to making elections more accessible to all. Because there is limited time to act, draft legislation should be prepared to allow for early voting in case this is deemed necessary.

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