

Written evidence from The Electoral Commission (TEB 06)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Overview

The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity. A key part of our role is to provide advice to government and parliament on legislation relating to elections and the regulation of campaigners.

We welcome this inquiry given the scale and significance of the Elections Bill. Our submission highlights key considerations ahead of parliamentary consideration and scrutiny of the Bill, and outlines the Commission's position on its key measures. We provide independent advice based on published evidence and our expertise and will continue to provide advice on individual clauses during the Bill's passage through Parliament.

Once the Bill has been passed into law we will work with voters, local electoral administrators, political parties, campaigners and representative bodies, to ensure everyone involved in elections understands and is prepared in good time for the new rules.

Key considerations on the Bill's measures collectively

- The Elections Bill proposes significant changes, and will affect voters, campaigners and electoral administrators. It would introduce a number of important changes that the Commission and others have previously argued will bring benefits for voters, including: extending imprint rules to digital campaign material; allowing more flexible support for disabled voters; reforming the offence of undue influence; and improving transparency about new parties' assets.
- Implementation of the changes will need to be carefully planned and managed so that they can be delivered as intended. Ineffective delivery of such major change – for example, if there is not sufficient time to plan or the required resources are not available – could lead to errors or an inadequate experience for voters or campaigners. This could in turn damage confidence in the integrity of future elections.
- In considering how and when each of the measures should be commenced, the Government will need to take a holistic view of the capacity of voters, campaigners and electoral administrators to respond to and deliver change. The Association of Electoral Administrators has recently highlighted concerns about existing capacity within the local infrastructure for delivering elections.
- All those involved in delivering or participating in elections will need time to understand and prepare for changes to their roles and responsibilities. The Government's planning

for implementing the Bill should take account of the range of elections that are already scheduled or expected to take place during the next three to four years.

- The Government's implementation plans will also need to be appropriately funded to ensure the collective package of measures is realistically deliverable. Changes for UK Parliament and Police and Crime Commissioner elections will be funded directly by government, but costs to deliver changes to electoral registration and for local elections will need to be met by local authorities in the longer-term. Resources will also be required for the Commission's work, including significant activity to support public awareness, from Parliament through the Speaker's Committee.
- The Bill covers the whole of the UK, but some provisions would apply differently to elections in England, Scotland, Wales and Northern Ireland. The Government has indicated that it will seek approval from other legislatures to allow these provisions to apply more consistently. It should set out progress with this approval process as early as possible, so that there can be clarity about the likely impact of the Bill for voters, campaigners and electoral administrators in different parts of the UK.
- It should also consider any risks for voters, campaigners or electoral administrators if there were to be significant differences in the rules that would apply for elections in future, particularly where different types of elections could be held on the same day.
- This Bill, and the secondary legislation that will be needed to implement it, will substantially increase the size of the UK's body of electoral law. The laws around elections are already complex and fragmented, and the Government should confirm how it will address any additional risks from adding new legislation.

Part 1 Administration and conduct of elections

It is important that the UK's electoral system is both secure and accessible. Part 1 of the Bill includes significant changes to the way people will cast their votes at future elections.

Voter identification

The UK has low levels of proven electoral fraud, and voters should feel confident about their vote. However, our research has highlighted that it is an issue that concerns some voters. Two-thirds of people in our recent public opinion tracking research said they would feel more confident in the security of the voting system if there was a requirement to show identification.

There are already checks in place to confirm a voter's identity when they register to vote and vote by post. However, there are no similar checks in place at polling stations in Great Britain to prevent someone claiming to be someone else and voting in their name. This means that polling station voting in Great Britain is vulnerable to fraud. In Northern Ireland, there has been a requirement to show ID when voting since 1985, updated to a photo ID requirement since 2003.

At the 2018 and 2019 local elections, the UK Government trialled voter ID in a number of areas in England. We undertook independent, statutory evaluations in both years. Based on the evidence collected, we identified three key areas that need careful consideration if a voter ID requirement is introduced:

- A voter ID requirement should deliver clear improvements to current security levels. It should improve public confidence in the voting system by protecting voters from the risk of personation.
- Any new requirement should ensure accessibility for all voters. This must be considered for all voters, particularly those who are less likely to already have an accepted form of photo ID. The introduction of an ID requirement must not prevent these people from voting.
- The introduction of any ID requirement should be realistically deliverable for local electoral administrators, with manageable timescales and proper funding.

The Bill sets out proposals for a photo-based identification requirement for polling station voters at UK Parliament elections in Great Britain, Police and Crime Commissioner elections in England and Wales, and local elections in England. Of the approaches tested at the pilots, this provided the greatest improvement in security.

To make sure voting at polling stations remains accessible, this security measure must be balanced with other options for people who do not already have an accepted form of photo ID. The Bill makes clear that a proposed Voter Card must be issued free of charge.

Our recent public opinion tracking research found that 4% of people who were eligible to vote said they do not currently have any of the identification documents that would be required under these proposals. This was higher among some more disadvantaged groups including unemployed people, people who rent from a local authority or housing association, and people with disabilities.

Key considerations

- The application and issuing process for the proposed Voter Card will be key to ensuring the accessibility of a voter identification requirement, particularly for those people that don't have the required identification.
- Ensuring there is no charge for a Voter Card will be important, but significant further details about the application process will be set out in secondary legislation. The Government should set out during the passage of the Bill how it will make sure that applying for the new Voter Card is easy for people who need it.

Postal and proxy voting

Postal voting is a useful and popular voting method, used by around 20% of voters in Great Britain. Proxy voting is also an important option for people who can't vote in person. Just under 250,000 people appointed a proxy at the 2019 UK general election.

The Bill proposes banning campaigners from handling postal votes, which would formalise the current approach encouraged by a voluntary Code of Conduct for Campaigners.

The Bill also proposes extending ballot secrecy rules to include postal votes. These changes should improve trust and confidence in the system without reducing access to voting. Our recent public opinion research has shown that while 90% of people say they feel voting in a polling station is secure, this compares to 68% of people who believe postal voting is secure and 11% who don't know.

The Bill would also require voters to reapply for a postal vote after three years. This will help to ensure that postal voting personal identifiers (date of birth and signature) are up-to-date and accurate, and should reduce the risk of postal votes being rejected because these identifiers don't match when voters return postal ballot packs at elections.

It is not clear how new limits on handing in postal votes at polling stations, and on the number of voters for whom a person may act as a proxy, would offer significant additional protection for voters. Campaigners handing in postal votes would commit an offence under the proposed ban on handling postal ballot packs, and the reformed offence of undue influence would also apply if voters were forced against their will to hand over their postal votes to someone else or to appoint someone as a proxy.

Key considerations

- Changes to limit who can hand in postal votes at polling stations, and the number they can hand in, could create barriers for some voters who genuinely need assistance. They would also add complex new procedures for polling station staff.
- Security would be improved by the Bill's proposal to record who has handed in postal votes, without risking an impact on accessibility by placing new limits on the ability to hand them in.
- Limiting the number of voters for whom a person may act as a proxy could disadvantage some people who rely on someone else to vote on their behalf, including overseas voters.

Undue influence

Undue influence is a complex electoral offence that is not easy for voters to understand. Simplifying and defining this offence more clearly would help to protect voters against exploitation and would make clear what is and is not acceptable behaviour.

It would also make it easier for the police and prosecutors to enforce the law where appropriate. There is widespread support for reforming this offence among campaigners, electoral administrators, police and prosecutors.

Assistance with voting for people with disabilities

These changes would give voters with disabilities more flexibility in how they are supported at polling stations. Providing a wider range of equipment at polling stations should make it easier for people with disabilities to access appropriate support to be able to cast their vote on their own and in secret.

Replacing the current specific requirements set out in law with a broader duty for electoral administrators to provide reasonable equipment would allow voters with disabilities to use new equipment or technology to support them. This could support innovation and speed up the process of providing different types of support when new ways to meet voters' needs are identified.

People with disabilities have also highlighted that it can be difficult to find someone who is eligible to help them cast their vote at their polling station. Removing restrictions on who can act as a companion would give voters with disabilities more flexibility and choice in how they are supported.

Key considerations

- The Bill would give electoral administrators a broader responsibility to identify what equipment would be reasonable to provide to support voters with disabilities. It will be important for the Government to make sure there is appropriate funding for local administrators so that this support has the right impact for voters with disabilities.
- Our guidance will help electoral administrators to consider how best to identify and provide the right kind of support to voters with disabilities under this new responsibility, ensuring that voters are able to receive a consistent level of service wherever they live.

Part 2 Overseas voters and EU citizens

Part 2 of the Bill includes proposals to significantly change the franchise, both for British citizens living abroad and for citizens of EU member states living in the UK. Proposals to change which groups of people have the right to vote or stand as a candidate in elections are important constitutional matters for Parliament to consider and decide on. The Commission does not normally take a policy view on changes to the franchise, but we will provide advice to Parliament about their potential impact and practical implications.

Overseas voters

Our research following UK general elections since 2015 has consistently found that some overseas voters have experienced significant difficulties voting from outside the UK. Many did not have enough time to receive and return their postal vote before the close of the poll, which meant their votes could not be counted.

Just over 230,000 people were registered as overseas voters at the 2019 general election. A large number of new voters could be added to the electoral register as a result of the proposal to remove the current 15-year limit for British citizens overseas to register to vote in the UK, and so more people could be affected by these issues at future elections.

Key considerations

- To help support overseas voters to have their say at UK Parliamentary elections, we continue to recommend that the Government should explore new approaches to improve access to voting, drawing on evidence from other countries.
- We have previously highlighted that this could include options such as allowing people outside the UK to vote at embassies and consulates, or to download and print postal ballot packs from home in order to return them more quickly.

EU citizens

In the year to December 2020, there were 2.1 million (non-UK) EU citizens on the electoral registers for local government elections in England and Wales. Implementing the proposed changes to the eligibility of EU citizens to vote and stand as candidates in some elections will involve a significant programme of activity by electoral administrators. This is likely to include communicating the new franchise rules and requirements to affected people, and reviewing their status to determine whether they remain eligible to vote in future elections.

Key consideration

- Implementing changes to the franchise and voting rights for EU citizens must be well-planned and appropriately funded to ensure all those eligible to be registered to vote have the opportunity to do so, and that registers are as accurate and complete as possible. The Government's planning and timing for delivering these changes must take account of the other significant changes proposed in this Bill.

Part 3 The Electoral Commission

Oversight of Electoral Commission

To ensure confidence in the impartiality of its approach, the Electoral Commission must be able to decide on its priorities and work independent of government influence or controls. Equally, parliamentary oversight and scrutiny of the Commission's work is essential to ensure that we command broad trust and confidence as an organisation. It is vital for public confidence that the Commission continues to be properly accountable to the UK Parliament, and also to the Scottish Parliament and Senedd.

Part 3 of the Bill includes significant changes to current accountability arrangements, including changes to the role and powers of Ministers, the Speaker's Committee and Parliament. The proposed Strategy and Policy Statement would give current and future Ministers new and broad scope to align the Commission's activities with the Government's strategic objectives, and to shape the exercise of our regulatory functions in relation to future elections and referendums.

Criminal prosecutions

Effective enforcement when the law is broken gives voters and campaigners confidence in the electoral system. They have the right to expect that any political party or campaigner which deliberately or recklessly breaks electoral law will face prosecution.

We are only aware of one case that has been prosecuted under the Political Parties Elections and Referendum Act 2000 (PPERA) since it was passed by Parliament 20 years ago. We have focused on using the civil sanctions regime introduced 10 years ago, and the police and prosecutors have remained responsible for considering prosecutions. As the apparent risk of being prosecuted for a PERA offence is negligible, there are important implications for deterrence.

Although the Commission's current powers to establish a prosecution function are consistent with those available to many other regulators, the Bill proposes to remove these powers. This would reduce the scope for political finance offences to be prosecuted, relying solely on the police and prosecutors having the resources and will to take action.

Key considerations

- It is important that the Electoral Commission can continue to work independently to deliver the duties that the UK's legislatures have given us as the regulator of electoral law and political financing.
- There should be no actual or perceived involvement from government in our operational functions or decision-making. Our independence must be clear for voters and campaigners to see and preserved in electoral law, as this underpins fairness and trust in the electoral system.

- The Commission is funded by and formally accountable to the Scottish Parliament and the Senedd as well as the UK Parliament. The Government should make clear that the proposed Strategy and Policy Statement, and the related development and approval processes, will reflect and not undermine these important shared accountability relationships.
- If the Electoral Commission is prohibited from undertaking criminal prosecutions, the capacity needs to exist within the police and Crown Prosecution Service for them to take forward prosecutions where appropriate, and without undue delay. The Government would need to work with them to ensure this was the case, and the Commission would continue to support them as well. This would include the full range of offences, from the lower order criminal offences that are often brought to light through our civil investigatory work, through to more significant offences such as deliberately breaching legal spending limits.

Part 4 Regulation of expenditure

Part 4 of the Bill amends some of the existing rules that provide transparency and place limits on election campaign spending and funding. Our [recent public attitudes research](#) showed that there is an appetite for improvements for transparency, with only 14% of people agreeing that the spending and funding of political parties, candidates and other campaigning organisations at elections is open and transparent.

Notional expenditure of candidates and others

Rules about notional spending ensure that campaigners properly account for and report all goods, services and materials that are donated to them, and which they use to help them in any way with their campaign activities. [Data on spending](#) shows the total amount of notional spending reported by the 3,320 candidates who stood at the 2019 UK general election was £7 million. This was nearly 40% of the total amount of reported candidate spending.

Candidates, agents and party or campaigner staff need a clear understanding of when something is “notional spending” or “election expenses” because it counts towards their total campaign spend, which must not exceed the specified spending limit. The current law on notional spending is long established and has operated in practice for elections for many years.

The Government wants to change the legal test for when a candidate or agent authorises someone else to use benefits in kind on their behalf. The Bill would amend the rules so that candidates only need to report benefits in kind which they have “made use of” themselves or have authorised, directed or encouraged someone else to “make use of” on their behalf.

These changes would operate alongside existing rules for campaigners which allow them to spend a permitted sum on promoting a candidate in a constituency separately from the agent (e.g. up to £700 at a UK general election).

Key considerations

- There should be a clear understanding of how expenses or support for a candidate should be treated under the law. Candidates and other campaigners need to be clear how any expenses for campaigning in a constituency should be treated under the proposed changes and the existing legislation.
- The Government should set out how it has tested the proposed changes with campaigners, to help ensure that there is a common view about how support for a candidate should be authorised and accounted for, whether it is paid for by the agent or someone else.
- If these changes are passed into law, we will need to build on this common view to provide guidance for campaigners and update the draft statutory Code of Practice that we have prepared on candidate election expenses. The Electoral Commission already has a power to prepare a statutory Code for approval by the Minister and Parliament, and the scope of this power would be increased to cover notional spending.

Registration of political parties and non-party campaigners

Requiring new political parties to set out any assets or liabilities they hold over £500 when they apply to register would address a gap in the current rules for party accounts. It should give voters greater transparency by allowing them to see from the outset the level of funds or debts that a new party has.

The Bill will also introduce a prohibition on entities being registered as political parties and registered non-party campaigners at the same time. While there have been past instances of individuals being involved in some capacity in a party and a non-party campaigner simultaneously, there has only been one example in the past ten years of the same entity being registered as both a political party and non-party campaigner at the same time.

Key considerations

- The proposed ban on entities being registered as political parties and registered non-party campaigners at the same time is likely to reduce some types of campaign activity at future elections. It would reduce the amount that political parties can choose to spend on supporting or opposing another party or its candidates, including at elections where a party is not fielding any candidates itself. It could have an impact on parties and other campaigners considering electoral pacts and alliances in future.
- When accepting notifications from non-party campaigners as part of our role as the statutory registrar of political parties and non-party campaigners, we will need to check if the notifying entity is eligible. It will be important to ensure the law provides clarity and certainty about how to determine when a political party and a non-party campaigner are “the same” entity, so that those applying to register and the Commission can understand and apply the new requirement consistently.

Controlled expenditure by non-party campaigners

Non-party campaigners are a vital part of a healthy democracy and play an important role in sharing information with voters. It is important that these groups can easily participate in the UK's elections. Controls in election law help voters to see and understand how these groups receive and spend money when they are intending to influence an election outcome.

Over recent years, there has been an increase in the number of non-party campaigners. Spending by these groups has risen too. At the 2019 UK general election, there were 61 registered non-party campaigners, and those who were required to report their spending recorded a total spend of more than £6m. Our [recent public attitudes research](#) showed some concerns about the risks of foreign interference. When we asked people to prioritise their concerns from a list of issues, two fifths (40%) said “foreign interference on UK elections results” was a problem.

The Bill proposes several changes to the rules on non-party campaigning. A new lower tier for non-party campaigner registration should provide greater transparency about who is planning to spend more than £10,000 in England or across the whole of the UK in the period before a UK general election. Currently campaigners are only required to register with the Commission and report spending if they intend to spend £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland.

Changes to the limits on unregistered campaigning would make it clear that foreign interference in UK elections is not acceptable. During the regulated period before an election, only specific categories of individuals and organisations would be allowed to spend more than £700 on activities that are intended to influence the election outcome.

This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered.

Extending the rules on joint spending so they apply to political parties who spend jointly with a non-party campaigner would increase transparency and help ensure the effectiveness of the spending limits. It would need to be clear in practice how this additional rule will sit alongside other spending rules for parties. Parties must be able to clearly tell when the joint spending rule applies, and when other limits or controls apply, such as the existing targeted spending or notional spending rules.

Key considerations

- It is important for voter confidence to require transparency and to set limits on campaign spending that is intended to influence election outcomes, including where it is done by actors that are not candidates or political parties.
- The changes would provide greater transparency about who intends to campaign, but will not require any additional amounts of non-party campaigner spending to be reported compared to the current rules.

- The proposals mean there would be three separate levels of rules for non-party campaigners that apply to unregistered campaigning, registration of campaigners, and registration and reporting of campaigner spending. These tiers could be seen as proportionate layers of rules, but could also add to perceptions of complexity. The rules were last amended by legislation in 2014 and campaigners have highlighted that the changes were complex and deterred some from participating.
- The Government should set out how it intends the restrictions on overseas spending would be enforced. We are not able to take any enforcement action against organisations or individuals outside the UK that don't follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas.
- It will be important to ensure that the proposed changes to these rules are proportionate and do not discourage campaigners from participating and informing voters.

Part 5 Disqualification of offenders for holding elective office etc

Following [the 2019 UK general election](#), more than half of the candidates who took part in our post-election research said they were concerned about standing for election because of the risk of intimidation, threats and abuse. Three quarters of respondents said that they had experienced this type of behaviour.

It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners. Proposals in Part 5 of the Bill would enable the courts to impose a ban on standing for elected office. This would be a further sanction in addition to a prison sentence or fine, for example, that a court could apply when finding offences under existing criminal law. While this would strengthen the range of sanctions available against those who carry out this type of behaviour, its practical effect as a deterrent will need to be monitored.

Part 6 Information to be included with electronic material

Digital campaigning accounts for an increasingly large proportion of spending reported by campaigners after elections. Following the 2019 UK general election and European Parliament election, political parties reported that spending on digital advertising represented 53% of their total advertising spending.

New technologies offer significant opportunities to engage voters, but they must provide the same level of transparency that voters currently have with printed material. Our recent public opinion tracking research found that only 21% of people thought they could find out who has produced the political content they see online, and 37% disagreed. Over 70% of people agreed that it should be clear how much has been spent promoting an advert, by whom and also know why it has been targeted at them.

Applying new imprint transparency rules to digital election materials will help UK voters understand who is paying to target them online, and should help improve public trust and confidence in digital campaigns at future elections and referendums.

The Bill would also require campaigners to include imprints on digital ‘political’ campaign material, not just election material. This will further increase transparency for voters by providing important information about who has produced and funded material at all times, and not just in the run up to an election.

To ensure voter confidence in digital campaign regulation, swift action should be taken to deal with any campaign material that does not comply with the new imprint requirements. The Bill would create a new duty for social media and digital advertising providers to provide information to the Commission and the police about who has supplied and paid for material, which would help us to secure compliance with the law. It also sets out duties for social media and digital advertising providers, including to remove material without an imprint once a court has found a conviction or the Commission has imposed a sanction on a campaigner.

Key considerations

- Transparency could be further improved for voters if the imprint requirements were extended to cover all digital material from campaigners including those not registered with us, even if they had not paid to promote it. The proposed rules would only require imprints to be placed on digital material from unregistered campaigners if it was a paid-for advert.
- The government’s proposals to extend imprint rules to digital election material will need to be supported by further detailed explanation and examples for campaigners and others. It will be important to ensure that the legislation and guidance provide a clear definition of what is meant by ‘political material’, so that anyone publishing material that could be covered can understand and follow the new rules.
- The Bill proposes a new duty for the Electoral Commission to prepare statutory guidance on digital imprints, which it is proposed in the Bill would be approved by Ministers and by Parliament. The Government should set out its assumptions about when the digital imprint rules should start to apply to campaign material. The Government will need to allow reasonable time for us to consult with campaigners and draw up the statutory guidance if it is to be in place prior to the requirement coming into force.
- The rules will include takedown provisions for material without an imprint, but they are unlikely to apply swiftly. They could only be used after a court or the Commission has formally determined an offence and a campaigner has had an opportunity to state their case.

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Annex: Background note on prosecutions

Framework for election finance offences

- The Political Parties, Elections and Referendums Act (PPERA) sets out enforcement routes for contraventions and offences by political parties and campaigners. Contraventions are not offences but can be subject to a civil sanction. All offences in PERA are criminal offences that can be prosecuted by the Commission (except in Scotland) or Crown Prosecution Service, Crown Office and Procurator Fiscal Service or the Public Prosecution Service of Northern Ireland ('UK prosecutor authorities'). Many offences are also subject to civil sanctions but the more serious offences can only be pursued through criminal proceedings.
- In 2014 Parliament decided to give the Commission a duty to take all reasonable steps to secure compliance with the restrictions and requirements in PERA and related Acts. This duty is set out in section 145 of PERA. Paragraph 2 of Schedule 1 in PERA grants the Commission power to do anything that is conducive to carrying out our functions which is not specifically prohibited. PERA does not limit who can criminally prosecute the offences it sets out. In the absence of a specific prohibition, these provisions permit us to prosecute criminal offences under PERA, except in Scotland which has a single prosecutor authority.
- To date, the Commission has not used our power to prosecute and has instead asked the police to investigate offences that are not also subject to civil sanctions. The police could also decide to investigate any PERA offence following an allegation made direct to them. To our knowledge, there has been one prosecution under PERA since it was passed by Parliament 20 years ago, which has implications for deterrence.
- Criminal prosecution by a UK prosecutor authority is the only enforcement route for breaches of the Representation of the People Act (RPA). There is no civil sanctions regime. In 2019, the police investigated 595 cases under RPA, which led to four convictions and two cautions.

The Election Bill proposals

- The proposals in the Elections Bill would change the enforcement routes available to the Commission, prohibiting it from undertaking criminal prosecutions.
- While to date the Commission has not brought a prosecution, in order to ensure there was no gap in the enforcement of the PERA offences we had proposed to start using our existing powers to prosecute. Any cases brought by the Commission would have been decided by the courts, in the same way as cases brought by other prosecutors, with the normal right of appeal. We planned to consult on this in 2020. However, in 2019 following media reports on the proposals, it became clear that there were stakeholder concerns and we took no further steps.
- If the Commission is prohibited from undertaking criminal prosecutions, the capacity needs to exist within the police and UK prosecutor authorities for them to take forward prosecutions where appropriate, and without undue delay. The UK Government would need to work with them to ensure this was the case, and the Commission would continue to support them as well. This would include the full range of offences, from the lower order criminal offences that are often brought to light through our civil

investigatory work, through to more significant offences such as deliberately breaching legal spending limits.