

Written evidence from The Committee on Standards in Public Life (TEB 11)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Introduction

1. The Elections Bill is broad in scope. This submission from the Committee on Standards in Public Life (CSPL) covers the aspects of the Bill (and tangential matters) which relate to the topics on which the CSPL took evidence for our report, [Regulating Election Finance](#), published on 7 July 2021.¹
2. Our report was a comprehensive review of the current system for regulating the money spent to influence the outcome of elections and referendums in the UK. We were guided by the principles that contributors to our review told us should underpin the regulation of election finance. We proposed a package of practical reforms to address modern campaign practices, meet emerging threats around the source of donations, deliver greater transparency and enhance compliance with election finance law. The Elections Bill presents an immediate opportunity to incorporate our recommendations.
3. The CSPL welcomes a number of aspects of the Bill. We were pleased to see provisions included that will extend the requirement for printed election material to contain an ‘imprint’ to electronic material. We say more about this in paragraph 19 of this submission. We supported the case for digital imprints in our 2017 report, [Intimidation in Public Life](#). Our recommendation in the same report that consideration should be given to a new electoral offence of intimidating Parliamentary candidates and party campaigners has been given effect in the new electoral sanction of a five year ban on standing for and holding electoral office (in addition to the criminal punishment for that crime) if someone is convicted of an existing criminal offence of an intimidatory nature. This is an important provision that will bolster the capability for dealing appropriately with the pervasive impact of intimidatory behaviour which has become a serious threat to democracy in recent years.
4. We express concern below about the risk to the independence of the Electoral Commission presented by the provision for the Commission to adhere to a strategy and policy statement. An independent regulator is essential to confidence in the democratic process.
5. There are a number of provisions in the Bill that relate to the regulation of expenditure at elections. The written ministerial statement announcing these measures explained that their purpose is to support public confidence in the integrity of our electoral system and ensure that our electoral law continues to be fair and transparent.² We welcome these proposals and consider that they are a step in the right direction. However, as we set out below, we think more needs to be done: there are areas where

¹ The Committee on Standards in Public Life (CSPL) is an independent non-departmental body that advises the Prime Minister on standards issues across public life. CSPL’s remit and membership is set out at Annex A for information.

² <https://questions-statements.parliament.uk/written-statements/detail/2021-06-15/hcws92>

the proposals should go further and other areas critical to confidence in the integrity of our electoral system that are not addressed at all.

Strategy and policy statement

6. We have concerns about the provision for the government to prepare a strategy and policy statement for the Electoral Commission, subject to Parliamentary approval, and to which the Commission must have regard when carrying out its functions.³
7. We note the strategy and policy statement, which will be prepared, designated and published by the Secretary of State, will set out the government's strategic and policy priorities relating to elections, referendums and other matters in respect of which the Commission has functions, and the role and responsibilities of the Commission in enabling the government to meet those priorities. The statement may also set out guidance relating to particular matters in respect of which the Commission has functions and any other information the Secretary of State considers appropriate. There must be a statutory consultation with key stakeholders, including the Electoral Commission.
8. The Speaker's Committee on the Electoral Commission may examine the performance by the Commission of the Commission's duty and the Speaker's Committee may require the Commission to provide the Committee with information it holds that the Committee requires for this purpose.⁴ The requirement to provide information is qualified to the extent that the Commission is not required to provide information that, in its opinion, might adversely affect any current investigation or proceedings or that would contravene data protection legislation.
9. We consider that the legislation should focus on refining the effectiveness and independence of the electoral system rather than supporting the wider policy priorities of the government. There is a risk that the actual or perceived operational independence of the Commission could be compromised by a duty to comply with a strategy and policy statement which sets out the policy priorities of the government of the day.
10. *Regulating Election Finance* was clear that a strong and independent Electoral Commission, at arms length from the government, is a critical component of our democracy. It would be extremely undesirable if there was scope for the government to use a strategy and policy statement as a way to exert undue influence on the Commission. The Commission has been given functions by Parliament. In our view it is for the Commission, as an independent regulator, to determine how best to perform these functions. It is important that independence remains at the core of the way the Commission operates.
11. The nature and scope of the strategy and policy statement as described in the Bill is unclear. The government has said that an illustrative example of a strategy and policy statement for the Electoral Commission will be published during the passage of the

³ Clause 12, Elections Bill

⁴ Clause 13, Elections Bill

Bill to aid parliamentarians.⁵ This will be extremely helpful in understanding further the nature of the statement.

12. We note the explanatory notes state, “The regulator will remain independent and will be able to depart from this guidance if it felt that was justified or if it had a statutory duty to fulfil.” We consider that this important safeguard should be included within the Bill. There must be sufficient clarity as to the scope of the Commission’s duty to comply with the statement in the legislation itself.

Membership of the Speaker’s Committee on the Electoral Commission

13. The Bill makes amendments to the membership of the Speaker’s Committee to allow concurrent membership for the Minister for the Cabinet Office and the Minister with responsibilities in relation to the constitution.
14. Consideration of the membership of the Speaker’s Committee in the Bill provides an opportunity to rectify a matter that was brought to our attention in evidence to our review. We noted with concern in our report that a majority of the members of the Speaker’s Committee are now from the governing party and we suggested that this should be addressed. This is needed to provide confidence among parliamentarians and the general public that the system is fair. This is even more important in view of the increased powers for the Speaker’s Committee to scrutinise the Commission, as set out in the Elections Bill (our paragraph 8 above).

Campaign finance measures

15. We welcome a number of measures in the Bill that relate to the regulation of expenditure at elections.

Assets and liabilities of new political parties

16. A new requirement will be brought in for new political parties to declare if they have assets and liabilities of over £500 when registering with the Electoral Commission and, if so, to provide details of these. This is similar to recommendation 12 in *Regulating Election Finance*. However we recommended in our report that this requirement should also apply to referendum campaigners and that the declaration should include an estimate of the costs invested in buying or developing the data held when they register.

Third-party campaigning

17. We note that all third-party campaigning exceeding £700 will be restricted to UK-based (or otherwise eligible, including overseas electors) campaigners during a regulated period before an election. In *Regulating Election Finance* we proposed banning foreign expenditure on digital campaigning. The clause in the Bill appears to go some way to meeting the same objective as our recommendation 17 that, “In line with the principle of no foreign interference in UK elections, the government should

⁵ <https://questions-statements.parliament.uk/written-statements/detail/2021-06-17/hcws100>

legislate to ban foreign organisations or individuals from buying campaign advertising in the UK.”

18. We made a number of additional recommendations intended to increase transparency around campaigning that is carried out on behalf of political parties and increase the information available about non-party campaigners in advance of an election. These recommendations are set out in Chapter 8 of our report and should be incorporated within the Bill.⁶

Digital campaigning

19. The Elections Bill will extend the ‘imprint’ regime to electronic material. While this is welcome, we believe that more needs to be done to increase transparency around the use of digital campaigning methods. Parties and non-party campaigners should be required to provide more detailed invoices from their digital suppliers and they should be required to subdivide spending returns to record what medium was used for each activity. The current inconsistencies and gaps in the information provided by social media companies in voluntary advert libraries should be addressed by a legal requirement to declare specific information: precise figures for amounts spent, who paid for the advert and – for targeted adverts – information about the target audience.⁷

Donations

20. The Elections Bill contains no reforms to the regulation of donations.
21. In *Regulating Election Finance*, we heard evidence about the shortcomings in the current system for regulating donations and loans, specifically the scope for the current rules on permissible donations to be circumvented and provide a route for foreign money to influence UK elections. We make a package of recommendations in chapter 4 of our report to address the vulnerabilities in the current regime, which should be incorporated within the Elections Bill. We recommended:
 - a. company donations should not exceed net profits after tax generated in the UK within the preceding two years (recommendation 3);
 - b. tighter rules on unincorporated associations to close loopholes and increase transparency (recommendations 4 - 6);
 - c. measures that will place a greater onus on parties and campaigners to develop stronger processes to ensure that they can determine the true source of donations (recommendations 7 - 9); and
 - d. all donations over £500 should be donated only through the banking system (recommendation 10).

Compliance

22. The Elections Bill will insert provisions in PPERA which expressly remove the potential for the Electoral Commission to bring criminal prosecutions in England, Wales and Northern Ireland. The Bill does not take the opportunity to address shortcomings in the current system for enforcing compliance with election finance laws, which we regret.

⁶ Committee on Standards in Public Life (2021), *Regulating Election Finance*, recommendations 21 - 26

⁷ Committee on Standards in Public Life (2021), *Regulating Election Finance*, recommendations 13 - 16

23. *Regulating Election Finance* did not propose that the Electoral Commission should develop a prosecutions capability. Instead, our report focused on developing and enhancing the civil sanctions regime. Our recommendations are set out in chapters 9 and 10 of our report and were driven by the principle that those involved in raising and spending money in elections should be accountable for their actions and this accountability must be delivered by a system that is simple to understand and facilitates a proportionate response to breaches of the law. There must be transparency so that the public can see how money is being spent to secure their vote and have confidence that failure to comply with the rules is addressed appropriately. Our report concluded that the current system requires improvement.
24. We made a number of specific recommendations intended to strengthen the enforcement of compliance with the law. The most important of those that would appear to require legislation are:
- a. decriminalising offences which relate to essentially administrative requirements (recommendation 27);
 - b. extending powers for the Commission to compel the provision of information outside an investigation to include any person who may hold relevant material (recommendation 33);
 - c. timeframes for Commission investigations that govern the period during which an investigation may be opened and the duration of an investigation (recommendation 35 and 36);
 - d. an increase in the maximum fine the Commission may impose to 4% of a campaign's total spend or £500,000, whichever is higher (recommendation 37);
 - e. reducing bureaucracy to make the system easier for those who must comply with it (recommendations 39 - 44);
 - f. extending the civil sanctions regime administered by the Commission to include candidate finance laws, ending the current 'cliff edge' where candidates could face either criminal prosecution or nothing (recommendation 45); and
 - g. the development of a secure online facility for the submission, certification and publication of candidates' election expenses returns (recommendation 46).
25. Our report also concluded that the current timeframes for reporting campaign expenditure are too long and recommended measures designed to ensure more timely availability of the full details of the money spent by parties and non-party campaigners for public scrutiny (recommendations 18 - 20). We recommend that the Bill should address timeframes for reporting campaign expenditure.

August 2021

Annex A

Committee on Standards in Public Life: Background

The Committee on Standards in Public Life (CSPL, the Committee) advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on issues relating to the standards of conduct of all public office-holders. The Committee is an advisory non-departmental public body sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister.

The Committee is a standing committee. It conducts inquiries into areas of current concern about standards in public life; revisits those areas to monitor whether and how well its recommendations have been put into effect; and can look to issues of the future.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee “should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the Government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office.”

Committee membership as at August 2021:

- Lord Evans of Weardale KCB DL, Chair
- The Rt Hon Dame Margaret Beckett DBE MP (Labour)
- Ewen Fergusson
- Dr Jane Martin CBE
- Dame Shirley Pearce DBE
- Professor Gillian Peele
- The Rt Hon Lord Stunell OBE (Liberal Democrat)
- The Rt Hon Jeremy Wright QC MP (Conservative)

The Committee's work is supported by a Research Advisory Board, chaired by Professor Mark Philp.