

## Written evidence from British in Europe<sup>1</sup> (TEB 28)

### Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

#### 1. Overseas Electors

##### a. General

1. We believe that the extension makes complete sense in reflecting the realities of the digital age and the demographics of UK overseas citizens. It has never been easier to maintain ties with the UK, in person (allowing for Covid-19 driven restrictions) and remotely, offering unprecedented on-going understanding, interest in and familiarity with UK society. Through social media and interactive platforms, this remote interaction is not purely passive. UK overseas citizens are able to maintain stronger ties than ever with their country of citizenship for business and cultural reasons and, importantly, with family and friends; many immediate family units straddle international frontiers.
2. UK overseas citizens are directly impacted by UK policy e.g. social security, social care, education, immigration, defence etc. It is a fundamental right that all UK citizens should have a role in determining those policies by electing representatives answerable to them.
3. The British government recognises the role UK citizens abroad can play in extending the reach and depth of British influence or ‘soft power’ abroad. This is explicitly acknowledged in “Global Britain in a Competitive Age” (CP403 March 2021). Extending the franchise to these citizens can only act as a highly positive way of embracing them in this common enterprise.
4. We see no link between re-enfranchisement of overseas voters and the provisions of the Bill aimed at controlling election expenditure and thus consider that they should be considered entirely separately.

##### b. Detail

5. We welcome the government’s intention to increase the period of voter registration from one year to three years.
6. It is our understanding that, in accordance with the Conservative Manifesto 2019 and the Explanatory Note 138 EN 2021-2022, it is the government’s intention not only to grant overseas’ citizens voting rights beyond 15 years but to ensure improvements to the registration process and to facilitate continuing registration, including the processes by which applicants have their identity and connection to a UK address verified, and thereby to encourage further take up of voting rights by removing barriers to the casting of votes by overseas citizens.
7. The percentage of registrants amongst those overseas citizens entitled to vote under the current 15-year rule was around 20% or 285,000 at the 2017 General Election equating to a potential electorate under the 15-year rule of 1.4 million (House of Commons Library Research Briefing – Overseas Voters 12 May 2021). The percentage has increased

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<sup>1</sup> **British in Europe** (“BiE”) is the coalition of groups representing UK citizens living and working in EU countries. We attach at Annex 1 a brief account giving more details about us. Our primary interest in the Bill is the welcome extension of voting rights to UK citizens living outside the UK and removal of the current fifteen-year limit, and on which we comment in detail. However, we would also like to comment more generally on other aspects of this wide-ranging Bill.

exponentially since 2015, before which there were never more than 35,000 overseas citizens registered. On 28 February 2017, in answer to a parliamentary question from Cat Smith MP, Chris Skidmore MP, then Parliamentary Under-Secretary (Cabinet Office), said that the Government estimated that the repeal of the 15-year rule would re-enfranchise a further 3 million British overseas citizens. Improvements to the registration process and to facilitate continuing registration could thus increase numbers to at least 880,000 or more. It is therefore critical that existing barriers to voting by overseas citizens are removed.

8. We note the absence of detail in the Bill in several areas related to such barriers and we also note the intention to clarify matters in secondary legislation. We feel that the following are the main areas that should be addressed in either the Bill or secondary legislation adopted under the Bill.
9. **Registration.** The Bill is silent on how evidence of connection with a constituency may be attested. It will be many years since some now eligible to vote were last included in an electoral register; documentation either held by the authorities or the individual may no longer exist. Younger people born in the UK may have never possessed address specific documents. We recommend attestation by any UK resident voter of an individual's connection to a constituency by reason of holding an address in that constituency subject, of course, to the penalty for provision of false information prescribed in the Bill.
10. **The mechanics of voter registration, particularly renewal.** Again, the Bill does not specify how overseas voters should register. The extension of the renewal period to three years is welcome, nevertheless it is easy for registration to lapse. Some local authorities currently remind overseas registrants of the need to renew, others do not. We recommend that all local authorities should issue reminders at least three months before the end of the three-year period.
11. **Means of voting.** At the same time as registration, we recommend that the current forms for the application of postal and proxy votes for overseas electors be combined with the application form for registration. This can be regarded as the default and will remove the automatic need to request a form of voting when an election is called. It would also bring overseas voters' provision into line with current practice for domestic voters as well as reducing official pressure when an election is called. It would reduce the risk of delays that may invalidate votes.
12. **Ballot issuing and vote casting.** We recommend that the government explore means of electronic voting by overseas voters. This can be used as a pilot for longer term possibilities in this respect. Postal services cannot be relied upon for delivery and return of ballot papers within the often tight timetable of an election campaign. At a very minimum, in the short term, provision should be made for electronic dispatch of the ballot paper to the voter. This can initially be done by secure e-mail. We recognise that electronic return (particularly on a secure basis) is more complicated. We suggest that British Embassies could act as a "post box" in the short term to counteract issues with international post. Indeed, Embassies could act as de-facto polling stations for those electors who wish to cast a vote in person. A number of other democracies maintain this practice. This could have a secondary benefit of strengthening community ties by making election day a social occasion!
13. We would point out that e.g. HMRC (social security contribution records) already employ a secure identity verification process. It is difficult to detect any additional layer of

security that would be required for electoral purposes. In addition, electronic dispatch will, as in the case of registration, reduce the work load on hard pressed local authorities.

14. We recommend that local authorities develop platforms to enable overseas voters not only to register every three years but also to modify details of e.g. preferred way of voting and addresses. This will save much administrative work on the part of local authorities. Such platforms could be used as the de-facto means of dispatching ballot papers and, in time, be used for electronic voting. The technology (including that based on irrefutable blockchain systems) exists to do this both securely and anonymously.

## **2. Voter Identification**

15. Given that voter identification has often proved a barrier to overseas voters exercising their rights, our general concern as regards the voter identification provisions in the bill is that they should be as simple, and accessible to all groups of voters as possible, especially given the numbers of voters in the UK who may not currently have access to ID.
16. For overseas voters' registrations, we recommend that a scanned copy of appropriate voter identification (e.g. passport) should suffice as proof of identity, for registration purposes, to be accompanied by appropriate attestation or other proof of original residence such as the legislation demands. This can be confirmed by a suitably qualified person (possibly the attestor) if original documents physical and not electronic documents are required.
17. The current requirement that, where an overseas voter is unable to be identified through their NI number online, their identity must be attested by another *registered overseas* voter, as opposed to any UK registered voter, should be scrapped as onerous and unnecessary.
18. Clearly, if an overseas registrant opts for voting in person then they will be subject to the requirements for ballot issuance at a polling station.

## **3. Regulation of Expenditure**

19. We have concerns with the introduction by section 22 of the Bill of the new section 89A(7) of PPERA in that there appears to be no requirement for unincorporated associations of overseas voters to notify the Electoral Commission of party or candidate contributions even if over the election spending threshold, as this seems to be a separate category not covered by section 88 PPERA. This could be interpreted as direct linkage of overseas voting to party contributions and thus act as a disincentive to support and exercise the voting rights of overseas citizens. It appears illogical that the Bill treats overseas voters differently to their UK based equivalents unless, of course, there is an explicit intention to elicit overseas contributions and influence! It appears to us unjustified that, potentially, organisations like ours outside the UK, or two or more individual overseas voters entering into an unincorporated association, would not be regulated in this way in relation to election spending over £700, while our partner organisation in the UK, the 3million, would.
20. We are concerned in any event by the changes to the thresholds for campaigning and electoral regulation. Regulation of third-party campaigners would start at £700 as set out in section 22 of the Bill introducing new section 89A PPERA and the spending threshold for registering with the Electoral Commission and reporting spending and donations during an election would reduce from £20000 to £10000 (section 24 of the Bill). If our understanding is correct, this could have a chilling effect on civil society organisations based in the UK, in relation to election spending, in light of the wide definition of

controlled spending in section 85 PPERA. The consequence of that may be to reduce civil society's ability to highlight issues and start or take part in public debate

21. We are also concerned by how section 23 of the Bill might affect civil society organisations in the UK as it appears to give Ministers the power to change by statutory instrument the list of those organisations recognised as third parties capable of giving notification under PPERA in elections.

#### **4. Voting Rights of EU citizens**

22. We welcome the decision to continue to grant all EU citizens with UK-EU Withdrawal Agreement (WA) rights to vote and of candidacy in local elections. We think that this is the right way forward and we commend the decision to do this without taking the principle of reciprocity into account.
23. We note with disappointment the limitation of the provisions of the Bill on the voting rights of EU citizens who arrived in the UK after December 2020 to specific EU national groups. As a result, there will now be at least four classes of EU citizens as regards political rights: Irish citizens, those from ex-Commonwealth countries (Maltese and Cypriot citizens), EU citizens with WA rights as well as all EU citizens from Spain, Portugal, Luxembourg and Poland, and EU citizens without WA rights from the other 20 EU member states. We would support all EU citizens being granted rights to vote and of candidacy in local elections to avoid this four-tier system.

#### **5. Electoral Commission**

24. We are concerned to note that the Bill appears to give Ministers the ability to set the priorities of the Electoral Commission through a strategy and policy statement (section 12 of the Bill). This raises the general concern that this could lead to actual or perceived involvement of the government of the day in the operation or decisions of the Commission and of its priorities and thus undermine its independence. More specifically, if the government of the day were to conclude that overseas voters were not a priority in future elections, it would be within that government's power to implement that approach through such a strategy and policy statement going forward.

*August 2021*

## **ANNEX 1 - BRITISH IN EUROPE**

### **Who we are:**

**British in Europe** is a coalition of grassroots citizens' organisations and the largest grouping of UK citizens in the EU. It was founded in early 2017 to give UK citizens living, working and studying across the EU a voice in the Brexit negotiations: <https://www.britishineurope.org>.

We are the organisation of reference on citizens' rights for UK nationals in the EU. Since 2017 we have been recognised by the British government, the European Commission, the Council and the European Parliament as trusted interlocutors, meeting secretaries of state, ministers in member states and key EU and British officials. Our seven-person Steering Team has campaigned jointly with the3million, which represents EU27 citizens in the UK. Together, we have pressed to keep our existing rights and to prevent Brexit from destroying the lives and families we have created whilst exercising those rights.

For our advocacy, we have produced dossiers highlighting the human and legal cost of Brexit for the 1.2 million UK citizens in the EU. We have given evidence at the European Parliament, both Houses of the UK Parliament (written and oral evidence) and national and regional parliaments around the EU. With the3million, we have explained our plight to senior politicians such as Michel Barnier, Stephen Barclay, Guy Verhofstadt, Katarina Barley and Nathalie Loiseau. We have provided expert analysis across the media and built up a strong social media presence to show how losing our rights will affect our everyday lives.

### **What we have achieved so far:**

#### *The Withdrawal Agreement:*

Working with the3million, British in Europe ensured that citizens' rights was the top priority in negotiations. We had a major impact on the citizens' rights chapter, feeding into each round of negotiations. We persuaded both sides to extend the right of absence for permanent residents from two to five years. We widened the initial focus of negotiators to ensure that issues affecting UK nationals of working age and particularly young people were prioritised.

The advocacy of BiE country groups has also affected EU member states' decisions to choose between declaratory and constitutive systems to secure our rights.

#### *UK Government Issues:*

We obtained a commitment that UK nationals in the EU27 wishing to study in Britain will be entitled to pay home university fees instead of expensive international fees for seven years from the end of the transition period. We also obtained a grace period until 2022 for British citizens returning to the UK with non-British family members without having to meet the requirements of normally applicable UK immigration law. However, we are still lobbying the government on the detail of the grace periods, and subsequent arrangements, in the light of a number of unfortunate administrative rulings.

#### *Information:*

BiE has provided clear and accurate information on citizens' rights for the UK nationals we represent. To governments and the media, we have supplied expert analysis with a strong legal basis on complex issues such as working rights, professional qualifications, pensions, healthcare and mobile citizens.