

Written evidence from the Electoral Reform Society (TEB 36)

Public Administration and Constitutional Affairs Committee

The Elections Bill inquiry

The Electoral Reform Society welcomes the committee's inquiry into the Elections Bill, a significant piece of legislation with far-reaching repercussions for the way our elections are held, which requires thorough scrutiny.

We have long campaigned on many of the issues contained within the bill, including opposing the introduction of mandatory photo ID at polling stations, which has the potential to fundamentally stifle participation in our democratic processes.

There is a clear need for an elections bill which addresses the many long-standing problems with our elections, as highlighted by the Law Commission and the Committee on Standards in Public Life, but the Elections Bill fails to achieve this. We believe that the government should pause and rethink this bill.

About the Electoral Reform Society

The Electoral Reform Society is the UK's leading voice for democratic reform. We work with everyone – from political parties, civil society groups and academics to our own members and supporters and the wider public – to campaign for a better democracy in the UK.

Our vision is of a democracy fit for the 21st century, where every voice is heard, every vote is valued equally, and every citizen is empowered to take part. We make the case for lasting political reforms, we seek to embed democracy into the heart of public debate, and we foster the democratic spaces which encourage active citizenship.

Executive summary

Provisions on voter ID

- The ERS is opposed to the introduction of mandatory voter ID, a policy which represents a significant risk to democratic access and equality, and which could lead to significant numbers of voters being denied a say, as well as making it harder for everyone to vote. At a cost of up to £180 million over 10 years, voter ID is a costly policy which has the potential to put people off voting altogether. Schedule 1 of the bill should be scrapped in its entirety.

- Possession of ID is not universal in the UK. Around 2.1 million people risk not being able to vote in a general election due to not having recognisable photo ID. Possession of ID is particularly low among certain groups of voters and this policy would unfairly discriminate against marginalised groups. Those with severely limiting disabilities, the unemployed, people without qualifications, and those who have never voted before are all less likely to hold *any* form of photo ID.
- Proposals for a free elector card fail to address this policy's potential to disenfranchise. Polling suggests that many of those without ID are unlikely to apply for an elector card.
- Voting in the UK is robust and trusted by the public. Indeed, public confidence in the running of elections is the highest since 2012, according to the Electoral Commission's latest tracker of public opinion. Perceptions of electoral fraud almost halved between 2020 and 2021, and data provided by the Electoral Commission each year consistently show that there is no evidence of large-scale electoral fraud in the UK.

The Electoral Commission and membership of the Speaker's Committee

- We are disappointed that the Elections Bill contains proposals which seek to restrict the Electoral Commission's ability to properly fulfil its role and to hinder its independence and accountability to parliament. The role of our democracy watchdog should be valued, and its powers and resources should be enhanced, in line with the recent recommendations by the Committee on Standards in Public Life.
- The Electoral Commission should retain its power to bring prosecutions under PPERA 2000 against parties and third party campaigners that breach electoral law. We also believe that the Commission should be given the power to regulate candidate finance and ensure compliance with breaches of electoral law under the RPA 1983.
- The Electoral Reform Society is strongly opposed to ministerial involvement in setting the Electoral Commission's strategy as part of the proposed 'Strategy and Policy Statement', and for this to be initially determined by the Secretary of State, which risks seriously undermining the independence of the Commission.

The regulation of expenditure for political purposes

- The Electoral Reform Society believes that the Elections Bill is a missed opportunity for genuinely updating our election finance rules and closing the many loopholes present in our current system. We welcome some of the proposals included in the bill, such as the requirement for new parties to declare assets and liabilities over £500 upon registration with the Electoral Commission, and the clarification that third party campaigning should be restricted to UK-based entities and eligible overseas electors, and should be subject to basic transparency requirements.

- However, we believe that much more needs to be done to shine a light on opaque third party campaigning practices, to prevent foreign interference in UK elections, and to close the many election finance loopholes remaining, particularly with regards to unincorporated associations. Rather than pushing ahead with current proposals, the government should engage with the recommendations made by the Committee on Standards in Public Life, other parliamentary committees, academics and civil society organisations, so as to ensure the safety and transparency of our elections.

Information to be included in digital election material

- The Electoral Reform Society welcomes the extension of imprint disclosures to online election material, a recommendation we have long called for and which the Electoral Commission first made in 2003. Digital imprints, stating who has paid for and promoted content, will enhance transparency about who is behind election material for voters, regulators, researchers, and journalists.
- We believe, however, that certain proposals of the imprints regime should be kept under review, while others should be amended so as to prevent the potential for loopholes to be exploited, as we set out in more detail in this submission.
- While an important and necessary first step, digital imprints alone are not sufficient to enhance the transparency of election material and their impact on transparency and public confidence in our elections should not be overestimated. We believe further action should be taken to address these digital shortcomings and set out some recommendations in our submission.

1. Provisions on voter ID

1.1. The Electoral Reform Society (ERS) is opposed to the introduction of mandatory photographic identification in order to vote at the polling station. This policy represents a significant risk to democratic access and equality, which could lead to significant numbers of voters being denied a say, as well as making it harder for everyone to vote. The Elections Bill should address the challenges that undermine our democracy, not prevent legitimate voters from exercising their democratic rights. The Electoral Reform Society believes that Schedule 1 of the bill should be scrapped in its entirety.

1.2. The government piloted mandatory voter ID in a handful of local authorities during the 2018 and 2019 local elections in England.¹ Across both sets of pilots, more than 1,000 people

¹ Palese, M. (2019). Five things we have learnt about England's voter ID trials in the 2019 local elections. *LSE British Politics and Policy Blog*, 24 August. <https://blogs.lse.ac.uk/politicsandpolicy/five-things-we-have-learnt-about-englands-voter-id-trials-in-the-2019-local-elections/>

Palese, M. and Terry, C. (2018). *A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials*. London: Electoral Reform Society. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/a-sledgehammer-to-crack-a-nut-the-2018-voter-id-trials/>

were effectively denied a vote due to lack of ID – spread over a general election, this could lead to hundreds of thousands of voters being turned away. The 2018 voter ID pilots saw more than 1,000 voters being turned away for not having the correct form of ID – of these, an average of 338 voters did not return to vote (32.6% of those turned away).² In 2019, around 2,000 people were initially refused a ballot paper, of which roughly 750 did not return with ID and did not therefore take part in the election (around 37% of those turned away).³ This does not take into account those who did not turn up at the polling station at all because they did not have acceptable ID. In 2019, both the Electoral Commission’s and the Cabinet Office’s evaluations of the trials found that around two percent of people said they did not vote in the pilots because they did not have the right ID.⁴

A barrier to participation

1.3. Unlike most other countries with voter ID requirements, possession of ID is not universal in the UK and obtaining a form of identification costs time and money, which some citizens may not be able to invest. Research by the Electoral Commission in 2015 found that around 3.5 million citizens (7.5% of the electorate) do not have access to photo ID.⁵ More recently, the government’s own commissioned research on possession of photo ID found that two percent of people do not have any form of ID (including expired/unrecognisable) and four percent do not have recognisable ID (whether in-date or expired).⁶ Almost one in 10 respondents did not have in-date, recognisable photo ID. Around 2.1 million people risk not being able to vote in a general election due to not having recognisable photo ID.⁷ In its latest winter tracker of public opinion, the Electoral Commission also asked about possession of photo ID and found that four percent of people currently eligible to vote said they did not have any of the existing forms of ID which may be required under the government’s proposals.⁸ The first election to require photo ID was the 2003 Northern Ireland Assembly election, with estimates showing that around 25,000 voters did not vote because they did not

² Electoral Commission (2018). *May 2018 voter identification pilot schemes: Findings and recommendations*. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/May-2018-voter-identification-pilots-evaluation-report.pdf

³ Electoral Commission (2019a). Impact on voters: experience. *May 2019 voter identification pilot schemes*. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/impact-voters-experience>

⁴ Electoral Commission (2019a).

Cabinet Office (2019). *Evaluation of Voter ID Pilots 2019*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819404/2019_Voter_ID_Pilots_Evaluation.pdf

⁵ Electoral Commission (2015). *Delivering and costing a proof of identity scheme for polling station voters in Great Britain*. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Proof-of-identity-scheme-updated-March-2016.pdf

⁶ IFF Research (2021). *Photographic ID Research – Headline Findings*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf

⁷ Walker, P., Stewart, H. and Siddique, H. (2021). More than 2m voters may lack photo ID required under new UK bill. *The Guardian*, 11 May. <https://www.theguardian.com/politics/2021/may/11/more-than-2m-voters-may-lack-photo-id-required-under-new-uk-bill>

⁸ Electoral Commission (2021). Public Opinion Tracker 2021. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>

have the required ID, and almost 3,500 people (2.3% of the electorate) were initially turned away for not presenting the required ID.⁹

1.4. Possession of ID is particularly low among certain groups of voters and this policy would unfairly discriminate against marginalised groups. The Electoral Commission's 2021 winter tracker found that the proportion of people without existing ID is 'higher among certain, more disadvantaged groups', including the unemployed (11% without existing ID), those renting from a local authority (13%) or housing association (12%), as well as disabled people (8%).¹⁰ The government's own commissioned research finds that older voters (aged 85+) were less likely to have ID that was recognisable (91% compared to 95%–98% for those in younger age groups).¹¹ Those with severely limiting disabilities, the unemployed, people without qualifications, and those who had never voted before were all less likely to hold *any* form of photo ID.¹² Further, research by the Traveller Movement found that implementing mandatory voter ID could 'permanently lock many GRT people out of a system they already struggle to participate in',¹³ while Silver Voices estimate that up to 2 million pensioners do not possess photo ID.¹⁴ A survey by the Department for Transport found that 76 percent of the white population hold a driving licence compared with just 53 percent of black people,¹⁵ and the number of young people with a driving licence has fallen to a record low.¹⁶

1.5. In addition to unfairly discriminating against certain groups' participation in elections, voter ID has the potential to further erode trust in these very same processes. As the Electoral Commission stated in its evaluation of the 2019 voter ID pilots: "If there were to be a disproportionate impact on particular groups of voters, this could also have a negative impact on public confidence; we know that problems at elections can affect voters' and non-voters' overall perceptions of the poll."¹⁷

The cost of voter ID

1.6. Research by the Cabinet Office following the 2018 voter ID pilots showed that implementing mandatory voter ID across Great Britain could cost up to £20m per general

⁹ James, T., Wilks-Heeg, S. and Clark, A. (2021). *The UK Electoral Integrity Bill*. <https://static1.squarespace.com/static/58533f31bebafe99c85dc9b/t/609d4a88bd37ac77240b91b1/1620920970763/UK+Electoral+Integrity+Bill+1.00.pdf>

¹⁰ Electoral Commission (2021).

¹¹ IFF Research (2021).

¹² Ibid.

¹³ Traveller Movement (forthcoming). *Access Denied?: The introduction of voter ID laws and the potential impact on Gypsy, Roma and Irish Traveller people*.

¹⁴ ERS (2020). Has the Government misled Parliament over voter ID?. 28 July. <https://www.electoral-reform.org.uk/has-the-government-misled-parliament-over-voter-id/>

¹⁵ <https://www.ethnicity-facts-figures.service.gov.uk/culture-and-community/transport/driving-licences/latest#by-ethnicity-over-time>

¹⁶ Davies, C. (2021). Number of young people with driving licence in Great Britain at lowest on record. *The Guardian*, 5 April. <https://www.theguardian.com/money/2021/apr/05/number-of-young-people-with-driving-licence-in-great-britain-at-lowest-on-record>

¹⁷ Electoral Commission (2019a).

election, depending on the model used, with the main drivers being additional staff costs.¹⁸ The Elections Bill impact assessment states that implementation of voter ID could cost up to £180 million over 10 years.¹⁹ Of this total, up to £80 million could be spent on updated poll cards to notify voters of the new requirements (moving to an A4 poll card to be posted in an envelope) and up to £25 million on the free elector cards the government has committed to ensuring local authorities offer to those without ID.²⁰

The free elector card

1.7. The government has affirmed that those without the required photo ID will be able to apply for a free elector card from their local council to support the roll-out of voter ID. But it is unlikely that all those without ID will apply for one – some might find it difficult or costly to go to a council office and request an elector card during opening hours. As the government’s own impact assessment states: “Whilst Voter Cards are free, there may be a cost associated with completing an application or travelling to an LA office to collect the card, if it cannot be posted (for example, if an elector applies for a Voter Card close to polling day, and there is not enough time to post it). This may be particularly true for those who live in large, rural LAs and have to take public transport.”²¹ Further, the length of time taken for the free ID to arrive might mean that some voters may not receive their free elector card prior to polling day. If people are unable to apply for free ID online, there will be additional barriers that may render the scheme far less effective. Those without ID living in rural areas and without easy access to the internet may therefore face two barriers when attempting to obtain a free voter card so as to be able to exercise their right to vote.

1.8. When asked about whether they would apply for a free elector card, 56 percent of respondents to the government-commissioned survey said they would be unlikely or very unlikely to apply for a free elector card.²² More significantly, 42 percent of those with no photo ID said they would be unlikely or very unlikely to apply for this – leading the authors of the report to claim that ‘close to half of those without photo ID would not seek to apply for the Voter Card, and therefore be at risk of ending up without photo ID.’²³ Similarly, the Electoral Commission’s 2021 winter tracker found that 23 percent of respondents with no existing photo ID said they were not sure whether they would apply for local ID and 17 percent said they would probably/definitely not apply for this.²⁴

¹⁸ Cabinet Office (2018). *Electoral Integrity Project – Local Elections 2018 – Evaluation*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733128/Electoral_Integrity_Project_-_Local_Elections_2018_-_Evaluation.pdf

¹⁹ Cabinet Office (2021). *Elections Bill Impact Assessment*. <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

²⁰ Ibid.

²¹ Ibid.

²² IFF Research (2021).

²³ Ibid.

²⁴ Electoral Commission (2021).

1.9. In addition to leading on the local awareness raising campaign for voter ID, already heavily under pressure local authorities will be responsible for producing and distributing the local elector cards.²⁵ In its impact assessment of the Elections Bill, the government noted that this may require additional equipment,²⁶ but as of yet there have been little concrete details as to how the scheme will operate in practice and what level of funding will be provided by central government to aid local authorities. The localised nature of the planned free elector cards risks leading to a ‘postcode lottery’ in how difficult they are to obtain, with over 300, often financially-constrained councils, potentially implementing the scheme in different ways.

Voting is safe and secure in Britain

1.10. Voting in the UK is robust and trusted by the public, as the government itself recognises.²⁷ Indeed, public confidence in the running of elections is the highest since 2012. According to the Electoral Commission’s latest tracker of public opinion, 80 percent of people are confident that elections are well run, 87 percent said voting in general is safe from fraud and abuse, and 90 percent that voting at the polling station is safe.²⁸ Conversely, perceptions of electoral fraud almost halved between 2020 and 2021, with only 20 percent saying this is a problem.

1.11. Data provided by the Electoral Commission each year consistently show that there is no evidence of large-scale electoral fraud.²⁹ For elections conducted in 2019, 595 alleged cases of electoral fraud were investigated by the police – campaigning offences comprised a majority of alleged cases of fraud in 2019 (54%), followed by alleged voting offences (24%).³⁰ Almost all offences (97.6%) either involved no further action being taken (64% of the total) or were locally resolved (33.6%). Four offences resulted in a conviction, including one for personation at the polling station in the European Parliament elections, and two individuals were given police cautions (one for personation in the same election).³¹ Out of all alleged cases of electoral fraud in the 2019 elections, only 33 related to personation fraud at the polling station³² – this comprises 0.000057% of the over 58 million votes cast in all the elections that took place that year.

²⁵ Hill, J. (2021). Electoral administrators in capacity warning as Elections Bill is introduced. *Local Government Chronicle*, 6 July. <https://www.lgcplus.com/politics/governance-and-structure/electoral-administrators-in-capacity-warning-as-elections-bill-is-introduced-06-07-2021/>

²⁶ Cabinet Office (2021).

²⁷ Cabinet Office (2021). May 2021 Elections – Joint statement from the UK Government, Scottish Government and Welsh Government. 9 March. <https://www.gov.uk/government/publications/may-2021-elections-joint-statement-from-the-uk-government-scottish-government-and-welsh-government/may-2021-elections-joint-statement-from-the-uk-government-scottish-government-and-welsh-government>

²⁸ Electoral Commission (2021).

²⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data>

³⁰ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data/2019-electoral-fraud-data>

³¹ Ibid.

³² Uberoi, E. and Johnston, N. (2021). Voter ID. *House of Commons Library Briefing Paper*, number 9187.

1.12. This contrasts with previous experience in Northern Ireland, which introduced mandatory ID in 1985 in response to extremely high-levels of documented in-person electoral fraud. At the 1983 general election, nearly 1,000 people arrived at polling stations in Northern Ireland only to be told a vote had already been cast in their name.³³ Police made 149 arrests for personation, resulting in 104 prosecutions. In Northern Ireland, mandatory ID was thus a proportionate response to the significant problem of personation. It is important to note that Northern Ireland did not move immediately to a requirement for photographic ID – elections took place for almost 20 years with a less stringent ID requirement. It is only since 2003 that voters in Northern Ireland have had to show photo ID at the polling station in order to vote.³⁴

1.13. Requiring photo ID at the polling station might put people off voting altogether. The research commissioned by the government asked respondents about their likelihood to vote and ease of voting if ID were to be introduced.³⁵ It found that over a quarter (27%) of those without any photo ID and a fifth (19%) of those without recognisable photo ID said they would be less likely to vote if they had to present photo ID. This compares to four percent of those holding recognisable photo ID. Almost four in 10 of those without any photo ID (39%) said they believed the requirement for photo ID would make voting difficult, with a quarter of those with unrecognisable ID stating the same.³⁶ Recent studies in the US have found that talking up claims of voter fraud reduces confidence in electoral integrity and has a ‘corrosive effect’ on trust in the system.³⁷

2. The Electoral Commission and membership of the Speaker’s Committee on the Electoral Commission

2.1. As noted in our response to the Public Administration and Constitutional Affairs select committee’s inquiry into the work of the Electoral Commission,³⁸ the ERS believes that, as the independent regulator of our democracy, the role of the Electoral Commission should be valued and its powers and resources should be enhanced.³⁹ The report by the Committee on Standards in Public Life (CSPL) into the regulation of election finance contains a series of

<https://commonslibrary.parliament.uk/research-briefings/cbp-9187/>

³³ Wilks-Heeg, S. (2018). Voter ID at British Polling Stations – Learning the Right Lessons from Northern Ireland. *Policy@Manchester Blog*, 1 March. <http://blog.policy.manchester.ac.uk/posts/2018/03/voter-id-at-british-polling-stations-learning-the-right-lessons-from-northern-ireland/>

³⁴ James, Wilks-Heeg and Clark (2021).

³⁵ IFF Research (2021).

³⁶ Ibid.

³⁷ Berlinski, N. et al. (2021). The Effects of Unsubstantiated Claims of Voter Fraud on Confidence in Elections. *Journal of Experimental Political Science*, pp. 1-16. <https://www.cambridge.org/core/journals/journal-of-experimental-political-science/article/effects-of-unsubstantiated-claims-of-voter-fraud-on-confidence-in-elections/9B4CE6DF2F573955071948B9F649DF7A>

³⁸ <https://committees.parliament.uk/writtenevidence/15138/html/>

³⁹ As stated in our evidence to your committee, we believe that the Electoral Commission’s powers should be enhanced, including by: increasing the maximum fine it can impose; being given the role of monitoring and enforcing candidate finance laws; and having the power to obtain information outside of a formal investigation and share information with the police and other regulators.

recommendations, most of which we agree with, on how to ensure the Electoral Commission has sufficient powers and resources to be an effective regulator in the 21st century.⁴⁰ We are therefore disappointed that the Elections Bill contains proposals which seek to restrict the Electoral Commission's ability to properly fulfil its role and to hinder its independence and accountability to parliament. We believe part 3 of the bill should be scrapped.

2.2. The Electoral Reform Society believes that the Electoral Commission should retain its power to bring prosecutions under the Political Parties, Elections and Referendums Act (PPERA) 2000 against parties and third party campaigners that breach electoral law. We have also called for the Electoral Commission to be allowed to regulate candidate finance and ensure compliance with breaches of electoral law under the Representation of the People Act (RPA) 1983, so as to prevent the gaps in enforcement to which the current disjointed approach may lead, with only the most serious cases being taken forward by the police or prosecution authorities. This recommendation has also been put forward by the CSPL in its recent report.⁴¹ The Electoral Commission's expertise and credibility with regards to electoral law can help ensure effective enforcement when rules are broken and thus contribute to enhancing voter confidence in our electoral processes.

2.3. The Elections Bill seeks to introduce a 'Strategy and Policy Statement' for the Electoral Commission, which would set out the government's priorities on electoral matters and principles under which the Commission would be expected to operate, to be prepared by the Secretary of State and approved by parliament. The Speaker's Committee would evaluate the Commission's performance against this statement and hold it accountable. These controversial proposals have been criticised as an attempt to impinge upon the Commission's independence,⁴² and the Electoral Commission itself has stated that the proposals would 'place a fetter on the Commission which would limit its activity'.⁴³

2.4. The Electoral Reform Society is strongly opposed to ministerial involvement in setting the Electoral Commission's strategy and for this to be initially determined by the Secretary of State which risks seriously undermining the independence of the Commission. We believe that the existing mechanisms through which the Commission is accountable to parliament for its work, including the Speaker's Committee, the parliamentary parties panel and the governance of the Electoral Commission as set out in PERA 2000, are effective.

⁴⁰ Committee on Standards in Public Life (2021). *Regulating Election Finance A Review by the Committee on Standards in Public Life*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999636/CSPL_Regulating_Election_Finance_Review_Final_Web.pdf

⁴¹ Committee on Standards in Public Life (2021).

⁴² Geoghegan, P. and Williams, M. (2021). Boris Johnson accused of attack on democracy over plan to 'neuter' watchdog. *OpenDemocracy*, 18 June. <https://www.opendemocracy.net/en/dark-money-investigations/boris-johnson-accused-of-attack-on-democracy-over-plan-to-neuter-watchdog/>

⁴³ <https://www.electoralcommission.org.uk/media-centre/electoral-commission-response-government-plans-strengthen-parliamentary-oversight-commission>

2.5. As the primary mechanism through which the Electoral Commission is accountable to parliament, we are concerned that, for the first time ever, the Speaker's Committee on the Electoral Commission (SCEC) is now composed of a majority of MPs from the governing party. Given the threats posed to the Electoral Commission's powers, independence and even existence over the past year,⁴⁴ we urge your committee to consider whether a majority of MPs from the governing or any single party should be allowed to sit on the Speaker's Committee.

3. The regulation of expenditure for political purposes

3.1. The Electoral Reform Society believes that, with regards to the regulation of expenditure and political finance more broadly, the Elections Bill is a missed opportunity for genuinely updating our election finance rules and closing the many loopholes present in our current system. This is compounded by the fact that the Elections Bill was published in advance of the final report by the Committee on Standards in Public Life on the regulation of election finance and thus failed to engage with and include many of the sensible recommendations contained therein. We believe the government must pause and rethink this legislation, and engage with the CSPL's recommendations on the regulation of political finance.

3.2. The ERS welcomes the Elections Bill provision requiring new parties to declare assets and liabilities over £500 upon registration with the Electoral Commission. However, this proposal could be further strengthened. First, consideration should be given as to whether pre-existing data assets (such as databases with voter details built in the run-up to the regulated period/prior to registration with the Commission) should be disclosed with the Electoral Commission, given the crucial role data now play in political campaigning. Second, parties and third party campaigners could be required to complete an 'exit' audit after an election or referendum period for election spending.⁴⁵

3.3. With regards to third party campaigning, the ERS welcomes the Elections Bill's clarification that this should be restricted to UK-based entities and eligible overseas electors, and that third party campaigners should be subject to basic transparency requirements. As highlighted in our Democracy in the Dark report, third party campaigning has increased significantly in recent years, especially during the 2019 general election.⁴⁶ As recommended by the CSPL, we believe that third party campaigning should be better regulated and transparency around what can be opaque campaigns should be enhanced, for example by requiring third parties to disclose additional information when registering with the Electoral Commission, such as a summary of the campaign's purpose, its geographical location, and its web address.⁴⁷

⁴⁴ Malnick, E. (2020). Chairman of election watchdog is forced out. *The Telegraph*, 3 October.

<https://www.telegraph.co.uk/politics/2020/10/03/chairman-election-watchdog-forced/>

⁴⁵ Dommett, K. and Power, S. (2020). *Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond*. London: Electoral Reform Society. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-in-the-dark-digital-campaigning-in-the-2019-general-election-and-beyond/>

⁴⁶ Ibid.

3.4. However, much more remains to be done to prevent foreign interference in UK elections and to close the loopholes surrounding unincorporated associations (UAs) in particular. In this regard, we wish to refer your committee to the CSPL's recent report on the regulation of election finance, which offers a series of measures to prevent foreign interference in UK elections by ensuring donors are based in the UK.⁴⁸ These include: clarifying that, to be a permissible donor, an individual must be on a UK electoral register; ensuring that company donations should not exceed net profits after tax generated in the UK within the preceding two years; and that the government should legislate to ban foreign organisations or individuals from buying campaign advertising in the UK. With regards to enhancing transparency, particularly around UAs, the CSPL recommends that parties and campaigners should have appropriate procedures in place to check the true source of donations. Unincorporated associations that meet the threshold for registering with the Electoral Commission, should conduct permissibility checks on relevant donations (i.e. money intended for political activity), and there should be greater transparency around political gifts made to UAs.

3.5. With regards to permissibility checks, the rise in online campaigning means that current thresholds are woefully out of date and can be easily exploited by breaking up donations into smaller sums, raising the risk of foreign or unscrupulous interference. Consideration should thus be given to ensuring that all donations are regulated by reducing permissibility check requirements from £500 to 1p for all non-cash donations, and £500 to £20 for cash donations.⁴⁹

4. Information to be included in digital election material

4.1. The Electoral Reform Society welcomes the extension of imprint disclosures to online election material, a recommendation we have long called for and which the Electoral Commission first made in 2003. Digital imprints, stating who has paid for and promoted content, will enhance transparency about who is behind election material for voters, regulators, researchers, and journalists. Voters will be able to find out more easily who is trying to influence their vote, which will enable them to make a more informed decision at the ballot box and to hold those seeking to persuade them to account after the election. The Electoral Commission will be able to rely on digital imprints as part of its regulatory monitoring and enforcement work.

4.2. We believe, however, that certain proposals of the imprints regime should be kept under review, while others should be amended so as to prevent the potential for loopholes to be exploited. First, the imprints regime would currently apply to paid content only for unregistered third party campaigners, which would seem to strike the right balance between ensuring transparency and being proportionate in its application, so as to promote open

⁴⁷ Committee on Standards in Public Life (2021).

⁴⁸ Ibid.

⁴⁹ Dommett and Power (2020).

democratic debate without stifling free speech by being an overburdensome requirement for private individuals. The ERS believes, however, that the government should keep under review to whom the imprint requirement should apply, given the potential for unscrupulous actors to circumvent the requirements by posing as private individuals/unregistered campaigners.

4.3. Second, the ERS disagrees with the government's proposal for the Electoral Commission to only be responsible for enforcing digital imprints for parties and third party campaigners as opposed to candidates as well. This only serves to duplicate the disjointed and outdated approach to candidate and party/registered campaigner finance law. Under the current proposal, the only recourse for breaches relating to candidates would be for the police or prosecuting bodies to take the matter to the courts, which would then be able to impose unlimited fines. Such an escalation might not always be proportionate to the offence and, when the options for enforcement lie largely at the extremes (prosecution versus no action), there is the potential for offences to fall through the gaps and not be effectively and proportionately dealt with. By contrast, the Electoral Commission would only be able to enforce a maximum penalty of £20,000 for breaches by parties/third party campaigners. For this reason, we believe that the Electoral Commission should be in charge of enforcing the imprints regime – and, where necessary, impose penalties – for all breaches, whether these are committed by candidates or parties/third party campaigners.

4.4. Third, the government should keep under review the effectiveness of the imprints regime and in particular whether it is sufficient to find out who is behind election content. A range of new organisations and campaign groups are active in election campaigns. While campaign material from political parties and candidates is often easy to recognise, it can be difficult for voters to recognise these groups, work out who is behind their campaign material and what their intentions are. Such opacity makes it hard to know what agenda they are pushing and whether to trust the information they provide. If one of the aims of the regime is to ensure the public knows who is paying for and promoting election material, then the ultimate source of the advert, or the party or candidate on behalf of whom the material is ultimately being promoted, must be clear.

4.5. Fourth, while a necessary and important first step in tackling the unregulated realm of online campaigning, digital imprints alone are not sufficient to enhance the transparency of election material and their impact on transparency and public confidence in our elections should not be overestimated. Digital imprints can provide information on an individual advert run by a single campaigner and targeting a specific set of voters. They would allow voters to know who they are receiving information from and provide the Electoral Commission with information on who is running adverts. But imprints do not offer voters a comprehensive overview of all political adverts running on tech platforms through a dedicated ads library, meaning that – even with imprint disclosures – voters would be unable to know if campaigners are targeting different voters with different and potentially contradictory messages. Nor would imprints provide details on how those adverts were targeted, such as

targeting criteria. Opacity in online campaigning would therefore persist and campaigners would still be able to push different messages to different people, undermining the collective public debate at election time, with little opportunity for accountability.

4.6. For these reasons, the ERS is calling for further action to be taken to address these digital shortcomings, including:

- requiring campaigners to provide more detailed and meaningful invoices to the Electoral Commission on their digital spend, and to do so in near real-time, to assist the Commission in its monitoring and enforcement work, and to allow for public scrutiny during the course of a campaign;
- setting up a single, online database for all political adverts, which would be publicly available and easily searchable, and would provide voters with information on who has produced a piece of content, on groups targeted and the criteria used, and on reach/impressions (including by demographics, geography and other characteristics);
- establishing a statutory code of practice for political parties and campaigners with regards to how they use personal sensitive data for political purposes and targeted advertising.

Conclusion

The Elections Bill is a significant piece of legislation which, in some areas, will make considerable controversial changes to the conduct and administration of our elections, including forcing voters to have to prove who they are in order to vote by presenting photo ID at the polling station.

Despite its stated ambitions, however, the bill does not tackle the fundamental issues with our electoral law, leaving open the possibility for loopholes to be exploited. Repeated calls have been made over the years, not just by the ERS and other civil society organisations and academics, but by the Law Commission and, most recently, the Committee on Standards in Public Life – to name but a few – to consolidate, simplify and modernise electoral law.⁵⁰

The Elections Bill represented an opportunity for the government to tackle some of the most pressing concerns in relation to our elections and referendums. Trust in our democratic processes is being slowly eroded by outdated campaign rules, scandals around the misuse of personal data, and the millions missing from our electoral registers. Polling has consistently shown that the public views the need for voter ID as far down its list of priorities for cleaning up politics in the UK.⁵¹ For voters, the real concern is not the potential for personation, but

⁵⁰ Law Commission (2020). *Electoral Law: A Final Report*. <https://www.lawcom.gov.uk/document/electoral-law-a-final-report/>

⁵¹ <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/poll-need-for-voter-id-should-be-least-of-our-worries-say-voters/>

the problems of political finance. Trust in party and campaigner spending and funding is at rock bottom, according to the Electoral Commission, having been in decline since the watchdog's research began.⁵² In 2021, only 14 percent of respondents said they believed political finance was transparent, down from 37 percent in 2011.

Our democracy remains deeply unequal, something which the Elections Bill does nothing to address. Around 17 percent of eligible voters in Great Britain are missing from the electoral register,⁵³ due to the lack of automatic registration. Indeed, a 2018 study of poll workers found that one of the most common problems they faced was citizens missing from the electoral register.⁵⁴ Groups most likely to be adversely affected by voter ID are also the least likely to be registered to vote.⁵⁵ For these reasons, groups as wide ranging as the LGBT Foundation, Age UK, Shelter and the National Union of Students have spoken out against these proposals.

We are disappointed that, rather than engaging with the many recommendations that have already been made, the government decided to push ahead with its Elections Bill and indeed publish it before the Committee on Standards in Public Life reported the findings of its inquiry into the regulation of election finance and before the conclusion of the Public Administration and Constitutional Affairs select committee's inquiry into the work of the Electoral Commission.

Rather than rushing the Elections Bill through parliament, the ERS believes that the government must take heed of the many recommendations that have been made with regards to how we can genuinely improve and strengthen our electoral system, and ensure it is fit for the 21st century.

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<https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/buried-official-figures-demolish-government-case-for-mandatory-voter-id/>

⁵² Electoral Commission (2021).

⁵³ Electoral Commission (2019b). *2019 report: Accuracy and completeness of the 2018 electoral registers in Great Britain*. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-accuracy-and-completeness-2018-electoral-registers-great-britain>

⁵⁴ James, Wilks-Heeg and Clark (2021).

⁵⁵ Electoral Commission (2019b).