

Written evidence from Unlock Democracy (TEB 39)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Introduction

1. Unlock Democracy (previously Charter 88) campaigns on a range of democracy-related matters including; electoral reform, transparency, accountability, devolution, participative democracy, human rights and for a written constitution. We are a grassroots movement, owned and run by our members.

2. Unlock Democracy is submitting this evidence because we believe that there are a number of measures in the Elections Bill which could have a significant impact on the ability of some UK voters to participate in elections and the integrity of our elections. Unlock Democracy also considers that this Bill could be an opportunity to strengthen the integrity of our electoral system and that this opportunity should be grasped.

3. This submission is made by Tom Brake, Director of Unlock Democracy for Unlock Democracy.

The Elections Bill

4. There are elements of the Elections Bill that Unlock Democracy supports, such as overseas voting, digital imprints and assistance with voting for people with disabilities.

5. However, in our response we focus on the aspects of the Elections Bill that we oppose. They relate to:

- provisions on voter ID
- the Electoral Commission
- membership of the Speaker's Committee on the Electoral Commission

6. Additionally, we will draw attention to a number of tangential matters on which the Bill is silent.

Provisions on voter ID

7. Unlock Democracy opposes the introduction of photographic voter ID for three reasons.

- Firstly because it is likely to depress voter participation over the medium term and possibly permanently.
- Secondly because it will have a disproportionate impact on certain categories of voters.
- Thirdly because it is not a cost effective way of improving electoral integrity.

Depressing voter participation

8. The Minister for the Constitution has consistently argued that requiring people to provide photographic Voter ID has no impact on turnout.

9. On the 7th March 2021 the Minister was quoted as follows "*Photo identification has been required in Northern Ireland (NI) since 2003, when introduced by the last Labour*

government. There has been no adverse effect on turnout or participation by such groups since then.” The link to this article containing this quote follows:

<https://www.mirror.co.uk/news/politics/older-voters-could-miss-out-23623220>

10. This claim is disputed by her own department. In a letter dated 24th May 2021 to Tom Brake, Director of Unlock Democracy, regarding the impact of photographic Voter ID on voting in Northern Ireland elections, the Cabinet Office official who works on this policy area said, *‘Across the three main elections in Northern Ireland (General, Assembly, Local), turnout appeared to be lower after the introduction of photographic identification as part of the Electoral Fraud Act in 2002. This is not the case for all elections, and turnout has appeared to increase since 2015.’*

11. The Impact Assessment (IA) for the Elections Bill did not consider the impact of photographic Voter ID on turnout, stating, *‘The analysis does not assess the impact of the policy on voter turnout. Year-on-year turnout comparisons are difficult due to the volatility of the electoral cycle.’* The IA also highlighted that *‘there is a risk that the true impact of the policy on turnout and on electoral fraud cases is misunderstood’*.

12. The evidence from NI, the Cabinet Office and the IA reinforces concerns that there is no certainty about the likely impact on turnout. However, it is hard to see any circumstances in which the new requirements, which some voters will not be able to comply with, or which they will run out of time to comply with on election day, will lead to a higher turnout. They are much more likely to lead in the short term at least to a lower turnout.

Disproportionate impact on certain categories of voters

13. On the subject of the take-up of photo identification, the IA says *‘There is some evidence which states the proportion of the electorate who do not have photo identification, and this is estimated to be between 1% and 4% - this is somewhat uncertain.’*

14. The IA refers to a Cabinet Office survey that suggests that people with disabilities are less likely to hold the accepted forms of photo identification. The IA states, *‘Individuals with a severely limiting disability were less likely to hold photo identification than people overall (with 5% not holding accepted forms of photo identification). Furthermore, individuals with severely (12%) or somewhat (8%) limiting disabilities were more likely than those with no disabilities (4%) to report that the identification requirement would make it difficult or very difficult to vote’*.

15. Therefore the introduction of photographic Voter ID will make it harder for the Government to meet one of the Elections Bill’s stated objectives which is to *‘Make it easier for people with disabilities to engage and take part in the democratic process.’*

16. The survey also identified older people as being more likely not to have access to photographic Voter ID.

17. These two groups will find it the most difficult to access the ‘free’ photographic Voter ID either online or by going to their local authority (which in rural areas could be some considerable distance away).

Lack of cost effectiveness

18. The IA identified that in 2019, of the allegations of electoral fraud made that year, one led to a conviction for personation at a polling station. Another led to the acceptance of a police caution for personation at a polling station.

19. To address this issue, the Government is willing to invest the following over a ten year period: a possible high end cost of £180 million, mid range cost of £120 million, or lower range cost of £65 million.

20. Notwithstanding the range of costs provided in the IA, the total costs associated with this policy are still unknown. For instance the cost (financially and time-wise), to the voter who does not have a photographic Voter ID, of travel to their Local Authority office has not been included. Equally estimates about how many people might require photographic Voter ID are uncertain.

21. It is for the three reasons stated above that **Unlock Democracy calls on the Government to abandon the photographic Voter ID clauses.**

The Electoral Commission

22. The International Institute for Democracy and Electoral Assistance (International IDEA) in the Independent Regulatory and Oversight (Fourth-Branch) Institutions Constitution-Building Primer No. 19 argues that *'Neutral guardians safeguard the procedural fairness and integrity of the political system. They separate the executive branch, which is partisan and seeks to pursue particular policy agendas, from the permanent institutions of the state, which are supposed to be neutral and non-partisan. Neutral guardians protect the democratic state from partisan manipulation and from the corruption of those in high office. Examples of neutral guardians include institutions responsible for ensuring the free and fair conduct of elections.'*

23. In New Zealand, the Electoral Commission is an independent Crown entity. The responsible Minister may not direct the commission to give effect to, or have regard to, government policy.

24. In contrast Clause 12 of the Elections Bill will provide the Secretary of State with powers to prepare a statement that sets out— (a) strategic and policy priorities of Her Majesty's government relating to elections, referendums and other matters in respect of which the Commission have functions, and (b) the role and responsibilities of the Commission in enabling Her Majesty's government to meet those priorities.

25. There is a risk that the practice of government setting the strategy and policies for the Electoral Commission (EC) will impact on another of the Government's objectives for the Elections Bill, notably that the electoral system should *'continue to command the trust and confidence of the voter'*. Voters risk losing trust in the voting system because of the perception or actual loss of independence of the EC.

26. There is also a risk, identified by the IA, of an indirect cost to the EC. The indirect cost derives from the Speaker's Committee on the Electoral Commission (SCEC) having powers to commission evidence from the EC to support its scrutiny function and the EC's additional reporting obligations. This cost has not been quantified in the IA as there is no data relating to how much evidence the SCEC will request from the EC, or how much resource this will involve. This could have significant implications for the EC's ability to perform its role of scrutinising the activities of the political parties if it receives a high level of requests for evidence from the SCEC.

27. Unlock Democracy believes **the Government must confirm additional resources will be provided to the EC if demand for evidence from the SCEC is high and affects the EC's other functions.**

Committee on Standards in Public Life

28. In its report entitled *Regulating Election Finance* published on the 7th July 2021, the Committee on Standards in Public Life (CSPL) made a number of recommendations regarding the integrity of UK elections. Some of these recommendations, if adopted by the Government, would strengthen the powers of the Electoral Commission. For instance Recommendation 37 called for the maximum fine the EC can impose to be raised to £500,000.

29. The timing of the publication of the Elections Bill and the CSPL report mean that the Elections Bill reflects few, if any, of the recommendations made by the CSPL.

30. Unlock Democracy recommends a pause between the Commons and the Lords stages of the Elections Bill. This pause will enable the CSPL's recommendations to be considered and a government response, addressing each recommendation in turn, to be published explaining which will be included in a re-drafted Elections Bill and which will not (and why).

31. A failure on the part of the Government to respond to the CSPL recommendations in a timely manner, by amending the Elections Bill to reflect the CSPL's priorities before it completes its passage in both Houses, could damage one of the Government's stated objectives for the Bill mentioned previously; that the electoral system should '*continue to command the trust and confidence of the voter*'.

Membership of the Speaker's Committee on the Electoral Commission

32. Unlock Democracy notes that successive Governments have not had a majority on the Speaker's Committee since the Speaker's Committee was established (including the period of the Blair Government when Labour had a majority of 200 MPs).

33. This understanding of the balance of political representation on the Speaker's Committee was broken by the present government.

34. Unlock Democracy also notes that the Government MPs on the Speaker's Committee include a number of MPs who have been vocal in their criticism of the Electoral Commission.

Craig Mackinlay MP views are set out here:

<https://www.politicshome.com/thehouse/article/as-i-found-out-to-my-cost-the-electoral-commission-is-unfit-for-purpose>

Karl McCartney MP has been quoted as follows, saying he was "exasperated by the partisan and inconsistent actions and announcements by the Electoral Commission who should be politically neutral but are clearly and obviously far from that".

The other Government MPs on the Committee have been the subject of investigations into election spending, either in relation to a General Election campaign or, in the case of Michael Gove MP, in relation to the Vote Leave campaign.

35. A government majority (with a number of MPs known to be hostile to the EC) on the Speaker's Committee that will hold the EC to account on its implementation of the Government's strategy and policy for elections will not help the Government meet its stated

objective that the electoral system should *'continue to command the trust and confidence of the voter'*.

36. To restore a degree of independence to the Speaker's Committee, **Unlock Democracy calls on the government to respect the precedent set by past Governments that Government MPs do not command a majority on the Speaker's Committee.**

37. Additionally the Government should consider a proposal made by Dr Alistair Clark, Reader in Politics at Newcastle University, that lay members should be appointed to the Committee so that voters' voices can be heard too. A committee which includes unaffiliated lay people will help the Government meet its stated objective that the electoral system should *'command the trust and confidence of the voter'*.

Tangential matters

38. Unlock Democracy makes the following points in relation to matters tangential to the Bill. The list below is not an exhaustive list of omissions from the Elections Bill.

39. The Elections Bill contains no proposals to:

- ensure that the 9 million people who are eligible to vote, but are currently unregistered, are added to the electoral roll
- secure the automatic registration of young people
- introduce new ways of voting to address the main reason for not voting: a lack of time
- provide voting rights in local elections for all local residents irrespective of nationality

40. These are all measures that should have been central to an Elections Bill or indeed an Electoral Integrity Bill, as the Bill was originally going to be named.

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