

Written evidence from Full Fact (TEB 46)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Summary

- As at least one Select Committee has said, our election laws in the UK are dangerously out of date and have left previous votes vulnerable to misleading tactics and interference.
- We welcome the new digital imprint rules, which have been too long coming. We ask the Committee and the government to commit to post-legislative review after the next election so they can be updated if necessary.
- These rules would not stop some egregious forms of misleading campaigning seen in recent years, including campaign leaflets masquerading as polling cards, and campaign leaflets masquerading as independent newspapers.
- The Elections Bill omits one important protection that has been successful in Canada: a Critical Election Incident Public Protocol. This provides a depoliticised mechanism for warning the public about incidents that threaten the country's ability to have a free and fair election during the period when the government is in caretaker mode while running for re-election. We ask the Committee to recommend that the UK should create its own similar Protocol.

About Full Fact

1. Full Fact fights bad information. We're a team of independent fact checkers, technologists, researchers, and policy specialists who find, expose and counter the harm it does.
2. Bad information damages public debate, risks public health, and erodes public trust. So, we tackle it in four ways. We check claims made by politicians, public institutions, in the media and online and we ask people to correct the record where possible to reduce the spread of specific claims. We campaign for systems changes to help make bad information rarer and less harmful, and we advocate for higher standards.
3. Full Fact is a registered charity. We're funded by individual donations, charitable trusts, and by other funders. We receive funding from both Facebook and Google. Details of our funding can be found on our website.¹
4. Over the last decade Full Fact has fact checked four general elections and three referendums².

¹ <https://fullfact.org/about/funding/>

² See for example, 2019 General Election <https://fullfact.org/election-2019/all/>

5. Full Fact has also undertaken research around elections and advocated for the UK electoral law, regulation and practice to be urgently updated including on transparency on electoral finance, digital imprints and other issues around how elections are conducted. The organisation has also situated its work on elections within the wider landscape of misinformation and proportionate responses to it for a healthy society³.
6. This work on elections has explored the problem of bad information and its consequences ⁴ alongside increasing work on information incidents and a common framework for addressing them including events such as elections that can affect the information environment in ways that make it harder to tackle misinformation and disinformation effectively.
7. Full Fact is a member organisation of the Counter-Disinformation Policy Forum which is convened by The Department for Digital, Culture, Media & Sport (DCMS) and brings together stakeholders from internet platforms, civil society academia and government to limit the spread and harmful effects of misinformation and disinformation.

Implementation of digital imprints on online campaign advertising

8. Full Fact, along with the Electoral Commission and the Committee on Standards in Public Life and many others, has been pressing for the introduction of digital imprints for a long time, giving evidence to parliamentary committees and previous government consultations, and writing to MPs about the issue.
9. Full Fact therefore welcomes that The Elections Bill (Part 6) introduces a new long-needed requirement for digital campaigning material to display a digital imprint, with the name and address of the promoter of the material or any person on behalf of whom the material is being published (and who is not the promoter).
10. As the Electoral Commission has underlined, the definitions of what is covered by the requirements are highly sensitive and there is a risk of both unintended consequences and unintended loopholes.
11. We urge the Committee and the government to commit to post-legislative scrutiny of this legislation after the next general election.
12. Full Fact continues to see instances of egregious misleading campaign material offline as well as online. For example, voters have been targeted with campaign leaflets masquerading as polling cards, and campaign leaflets masquerading as independent newspapers. Both of these examples risk undermining trust in important institutions in our democracy, the local press, and the electoral system itself. We believe that there is a strong case for targeted legislation against campaign material masquerading as something else, or for stronger requirements about the visibility and legibility of imprints both offline and online.

³ https://fullfact.org/media/uploads/full_fact_tackling_misinformation_in_an_open_society.pdf

⁴ For example, see General Election 2019 research here: <https://fullfact.org/blog/2020/apr/half-of-uk-dont-listen-to-politicians-trust/>

The need for a UK Critical Election Incident Public Protocol

13. Our election laws in the UK are dangerously out of date and have left previous votes vulnerable to misleading tactics and interference.
14. As the Committee points out, ‘when introducing the proposals to Parliament on 5 July, the Government has set out the proposals to Parliament claiming that they were necessary to protect the integrity of elections’.
15. As the Government itself has said, the integrity of UK elections does come under attack, including sophisticated campaigns by hostile state actors.
16. There may come a time during an election when the public needs to be warned about a specific threat identified by the security services, but at the moment the decision would be up to the government of the day, which would be put in a difficult position and is likely to be seen as conflicted.
17. In Canada, this problem has been solved by setting out a public protocol for handling such situations and to depoliticise a key area where a general election may be vulnerable to interference and requires a solution to protect and defend electoral systems and processes.
18. The Government of Canada has established the Critical Election Incident Public Protocol (CEIPP)⁵ in order to ensure coherence and consistency in the country’s approach to publicly informing Canadians during what it terms ‘the caretaker period’⁶ about incidents that threaten Canada’s ability to have a free and fair election.
19. The UK Government should develop and publish a protocol, as successfully used in Canada during election periods, for alerting the public to incidents or campaigns that threaten the UK’s ability to have a free and fair election that is independent of elected politicians.
20. The Elections Bill is about the administration and conduct of elections, including provisions designed to strengthen the integrity of the electoral process. The Bill should include a provision requiring such a protocol to be agreed, and set out requirements for consulting the political parties and the Electoral Commission before doing so.
21. Placing such a provision in The Elections Bill will help to build resilience into the UK’s electoral system in an area with rapidly changing and emerging threats (including disinformation, hacking, and threats not yet known). It is a precaution, but an important one and one that has already proven successful in Canada.
22. The Government has said, in the context of its wider in the government’s wider Defending Democracy programme, that the changes The Elections Bill will deliver ‘will work alongside measures in the Online Safety Bill and Counter-State Threats Bill .. to protect our globally respected UK democracy from evolving threats and

⁵ Government of Canada Cabinet Directive on the Critical Election Incident Public Protocol (CEIPP) <https://www.canada.ca/en/democratic-institutions/services/protecting-democracy/critical-election-incident-public-protocol/cabinet.html>

⁶ The caretaker period in Canada begins when either the Government loses a vote of non-confidence or Parliament has been dissolved (either as a result of the Prime Minister asking for dissolution, or because of an election date set by legislation). It ends when a new government is sworn-in, or when an election result returning an incumbent government is clear. <https://www.canada.ca/en/privy-council/services/publications/guidelines-conduct-ministers-state-exempt-staff-public-servants-election.htm> 1

ensure the systems that underpin it are fit for purpose in society today.’ Coherence is required across different regulations and associated practices, including on known and foreseeable risks. Neither of those bills legislate for such a measure, at least in their present form and intent, and we believe the Elections Bill is the right place to address this concern.

23. The Counter-State Threats Bill is concerned with providing UK security services and law enforcement agencies with tools for them to tackle threats from hostile activity by states and actors. The Counter-State Threats Bill is about security forces and law enforcement and what they may or may not do. These bodies would have an important intelligence contribution to make to any protocol, but in Canada it was not felt that there were the appropriate bodies to make a decision on communicating risk to the public on their own, and we believe that holds true for the UK too.
24. The present draft Online Safety Bill⁷ contains a provision (under Clause 112 Secretary of State directions in special circumstances) enabling the Secretary of State to give OFCOM directions when they consider there is a threat to the health or safety of the public, or to national security. It is worth noting that this clause, which is likely to receive significant attention in parliamentary scrutiny and wider debate on the Online Safety Bill, does not explicitly mention elections, and the government has to date resisted calls that the Online Safety Bill addresses so-called democratic harms.
25. The present draft Online Safety Bill clause 112 is largely focused on directing OFCOM to prioritise action to respond to such a specific threat through its media literacy functions and requiring certain internet companies to publicly report on what they are doing to respond to such a threat.
26. Given the Online Safety Bill is about Ofcom and regulation to prevent harm emerging from internet companies in its scope, even if democratic harms were folded into the Bill, this would be just one regulator and regulated entity relating to elections, albeit key ones in the modern digital era. Whilst this could interlock with other regulators and actors, the Online Safety Bill alone would not be the only piece of legislation and regulation that should address harmful misinformation and disinformation or other incidents threatening free and fair elections.
27. If The Elections Bill is to place ‘British citizens’ participation at the heart of our democracy, supporting voters to make their choices freely, securely and in an informed way.’, as the government has promised, then it should make this sensible precautionary provision to ensure that the public can be informed through a predictable and trusted process of any threats which can be effectively mitigated through public information.
28. We stress that these are real and practical concerns. The UK Counter-Disinformation Policy Forum, of which Full Fact is a member, does have elections in its terms of reference recognising that false information has the potential to cause harm to large numbers of the UK public if left unchecked or without adequate responses including the threat to integrity of democratic processes such as elections. Yet any such

⁷ Draft Online Harms Bill

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf

mechanism can only be one part of a needed whole of society set of responses and the Policy Forum is a voluntary arrangement of DCMS-selected entities not reflected in any formal basis in law or regulation (it was established first for the Covid-19 pandemic information environment and can be stood up for future crises and periods of heightened vulnerability).

29. The Full Fact Framework for Information Incidents⁸ is the framework the UK Counter-Disinformation Policy Forum uses for judging the severity of a mis/disinformation incident. Members and stakeholders take their own view on any incident and, if they concur on severity, take action to address it. The Framework and its application in the UK and internationally, acknowledges that in many instances, the government unilaterally declaring a level of severity (or not concurring with a serious level of severity as assessed by other actors) can be deeply problematic. The reality at the moment is that the decision about whether to warn the UK public of a threat to our elections is as likely to be taken in California as Westminster.
30. An election is possible at any moment. If conducted under current rules or indeed, as the present Elections Bill envisages, it will be vulnerable to a serious incident with no protocol in place.

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⁸ Full Fact Framework for Information Incidents
<https://fullfact.org/about/policy/consultations/incidentframework/>