

Written evidence from Transparency International¹ (TEB 49)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Executive Summary

Electoral Law in the UK is outdated and does not adequately safeguard our democracy from foreign interference or prevent money buying access or potential influence.

Transparency International UK (TI-UK) made a number of recommendations to the recent Committee on Standards in Public Life (CSPL) inquiry on electoral regulation in the UK² that, if implemented, would reduce the risk of corruption in our politics significantly. These included introducing a cap of no more than £10,000 on the amount any individual or organisation can give annually; reducing the UK parliamentary general election spending limit by at least 15 per cent for political parties; bringing the reporting threshold for donations and loans into line with the permissibility thresholds, currently £500; and introducing tighter controls on who can pay for parliamentarians' overseas visits. We are disappointed that none of these concerns are addressed by the Elections Bill.

TI-UK agrees that there is a need for an Elections Bill to improve the integrity of our elections. However the Elections Bill not only fails to address the significant flaws in our electoral law, in some respects it adds additional risk to an already weak system. It is disappointing that there was no consultation on these proposals before the Bill was drafted where these concerns could be raised.

Key areas of concern:

The Electoral Commission

The Electoral Commission is an internationally respected regulator that has a wealth of experience in overseeing the delivery of impartial and fair elections and regulating electoral finance. Preserving the independence of the Electoral Commission is essential to ensuring the integrity of elections in the UK. These proposals would provide governments with scope to unduly interfere in the operational affairs of the Commission, which could damage the quality of our democracy and send the wrong message internationally.

¹ Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption. Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK. We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high-risk areas of Defence & Security and Pharmaceuticals & Healthcare. We are independent, non-political, and base our advocacy on robust research.

² See submission 29 from Transparency International UK here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/914797/CSPL_Regulation_of_election_finance_-_written_submissions_21_-_51_1_.pdf

Third Parties

While it is sensible future-proofing for ministers to be able to add new types of organisations permitted to spend significant sums on campaigning that may influence voters at elections, the power to remove third party campaigners³ by statutory instrument is dangerous and risks barring whole types of organisations from engaging with the electoral process with little parliamentary oversight or challenge.

Overseas Voters

Extending the franchise to British citizens who have lived abroad for more than 15 years is a reasonable and legitimate policy objective. However, it increases the risks of foreign interference in elections and in particular of foreign money being used to fund election campaigns. It is essential that adequate safeguards are put in place and these are currently missing from the Bill.

The importance of the Electoral Commission as an independent regulator

1. The creation of the Electoral Commission was a significant step forward for electoral administration and probity in political finance in the UK. It plays an essential role in mitigating the risks of corruption and ensuring the integrity of our elections, as well as bolstering the UK's international reputation in tackling corruption and advancing democracy globally. The Electoral Commission has 20 years' expertise in political finance regulation, which is a significant and rare resource. Experts responsible for cross-country comparison have described the transparency regime in the UK 'effectively world leading at this point'.⁴ The OECD commended the approach taken by the Electoral Commission in providing support to those it regulates to build understanding of the law and ensure compliance, as this is something that is often neglected internationally.
2. TI-UK believes that the proposals in Part 3 of the Elections Bill are a retrograde step that would critically undermine the Electoral Commission's independence, with implications for the quality of democracy domestically and Global Britain's credibility globally. It would be particularly damaging for the UK's reputation if these changes could be seen as being made in response to either individual decisions taken by the Commission or a general sense of grievance. We note that the Westminster Foundation for Democracy's recent work on the importance of ensuring Electoral Commissions are genuinely independent and developing a framework for assessing independence was funded by FCO and DFID. Part 3 of the Bill gives the impression the UK Government has been advocating for standards internationally that it is now seeking to undermine at home.
3. While imperfect, the UK's current institutional arrangements for overseeing money in politics helps set a global standard. Although most countries have laws and regulations on political financing, if the institutions charged with overseeing and

³ Defined in law as 'third parties' and also known as 'non-party campaigners', these are individuals and organisations who spend money on campaigning that may reasonably be regarded as intended to influence the outcome of an election, but do not stand candidates. This can include a variety of campaigners including companies, individuals, trade unions and charities.

⁴ Quoted in *Power S Party Funding and Corruption* Palgrave Macmillan (2020)p130

enforcing these laws lack the independence or legal authority to impose sanctions for breaches, these cannot be fully enforced. Only 29 per cent of OECD countries have an independent electoral management body,⁵ putting the UK currently in a global leadership role.

4. The independence of a country's Electoral Commission is fundamental to the legitimacy of its elections. As Prof Nic Cheeseman and Prof Jørgen Elklit argue

*“Electoral commission independence – the extent to which electoral commissions can operate independently of political pressures and external interference – is an important driver of public perceptions of electoral integrity. As a result, it directly impacts on the legitimacy of those political parties and individual politicians who are elected to political office. A commission that is seen to be compromised is unlikely to be able to confer credibility on a contested general election.”*⁶

5. It is also important for independent bodies to be accountable. This is ostensibly the policy objective that the Government seeks to achieve in Part 3 of the Elections Bill. The Political Parties, Elections and Referendums Act (PPERA), which created the Electoral Commission, put in place a strong accountability framework. The Commission has been accountable to the Speaker's Committee of the UK Parliament since its creation and is now also becoming accountable to the Scottish Parliament and the Senedd Cymru/Welsh Parliament. This model of accountability to all UK Parliaments whilst maintaining independence of government is a strength.⁷ In addition, political parties have the opportunity to make formal representations to the Commission, both bilaterally and through the statutory Parliamentary Parties Panels,⁸ and since 2009 political parties have nominated up to four commissioners to sit on its board.⁹ The fact that the Electoral Commission is independent of government but also benefits from the experience of Commissioners with direct political experience gives it authority and expertise as a regulator.
6. However, the proposals go far beyond the policy objective of increased accountability. It appears the intention of Part 3 is for the Secretary of State to define the strategy for the Electoral Commission, which is currently set by the Commission's board and reviewed by the Speaker's Committee and other committees with similar oversight functions in the Scottish Parliament and Senedd Cymru/Welsh Parliament.¹⁰ In addition, the Commission would then be held to account for how well it has delivered this strategy by a Speaker's Committee which currently has a majority of member from the governing party. The Bill also makes provision for the Minister for

⁵ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264249455-en>.

⁶ Nic Cheeseman and Jørgen Elklit Understanding and Assessing Electoral Commission Independence: a New Framework Westminster Foundation for Democracy 2020 https://www.wfd.org/wp-content/uploads/2021/03/WFD_A-new-framework-for-understanding-and-assessing-electoral-commission-independence.pdf

⁷ The Northern Ireland Assembly does not have legislative responsibility for political finance regulation.

⁸ <https://www.legislation.gov.uk/ukpga/2000/41/section/4>

⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/who-we-are/commissioners/selecting-our-commissioners>

¹⁰ Schedule 1 PERA <https://www.legislation.gov.uk/ukpga/2000/41/schedule/1>

the Constitution to attend the meetings where the work of the Electoral Commission would be scrutinised. This addition would fatally undermine the operational independence of the Commission and represent a dangerous shift in the relationship between the Commission and the politicians and parties that it regulates. Overall, it is not clear how these additional oversight and accountability functions in Westminster will relate to the Commission's other reporting and accountability obligations to the Scottish Parliament and National Assembly for Wales.

7. An independent regulator that can impose effective sanctions is essential for trust in our political system and reducing the risks of corruption. Regulators must be free to investigate and where necessary sanction political parties that break rules on election spending or party finance. The Electoral Commission has demonstrated an ability to do this within its current powers. For example, the Conservative¹¹, Labour¹² and Liberal Democrat¹³ parties were all fined for breaching rules on spending in the 2015 general election. This is undoubtedly uncomfortable for political parties and makes the Electoral Commission an attractive target for censure.
8. Countries where the regulator is under the auspices of a government department find this much harder and are at greater risk of certain types of corruption. For example, in Denmark sanctions are rarely forthcoming as it is, rightly, argued that it would be politically dangerous to have a government department, directed by a minister, investigating political parties. However, this means that party accounts are not independently audited, investigated or scrutinised.¹⁴ This system of self-regulation within broad rules that are not open to external scrutiny risks the misuse of public funds and perception of corruption, as we saw in the 2009 expenses scandal in the UK.
9. As a body that regulates political parties it is to be expected that the Electoral Commission would, in the course of its work, draw the ire of politicians and political commentators. Perhaps the most realistic measure is not whether there are grievances from political parties, but whether they have an opportunity to raise these grievances, which as mentioned above they do, and whether there is opposition to the Electoral Commission from across the political spectrum.
10. Prof. Justin Fisher argues that the best judges of the strength of the Electoral Commission as a regulator are the electoral agents working on the ground in elections, many of whom are volunteers. Surveys of electoral agents repeatedly report satisfaction with the information and guidance provided by the Commission as well as high levels of satisfaction with electoral administration, and low levels of perception of electoral fraud.¹⁵

¹¹ <https://www.electoralcommission.org.uk/conservative-party-fined-ps70000-following-investigation-election-campaign-expenses>

¹² <https://www.electoralcommission.org.uk/electoral-commission-concludes-investigation-labour-partys-2015-general-election-spending>

¹³ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations/investigation-liberal-democrats-2015-uk-parliamentary-general-election-campaign-spending-return>

¹⁴ Power *S Party Funding and Corruption* Palgrave Macmillan (2020) p177

¹⁵ Fisher, J. & Kumar, J. (2020) *Attitudes of Electoral Agents on the Administration of the 2019 General Election*.

11. The Elections Bill would also remove the ability of the Electoral Commission to prosecute breaches of the rules. The rationale for this is that it would avoid imposing an undue burden on taxpayers' funds and duplicating the work of the Crown Prosecution Service and Public Prosecution Service Northern Ireland.
12. It is essential that where electoral laws are broken there are consequences. This is necessary to ensure the integrity of our elections and to create a deterrent effect. The Electoral Commission is the body with the greatest expertise in electoral law. It seems perverse and certainly not cost effective to remove prosecutorial powers from the regulator with the greatest knowledge of how parties and campaigner operate and may break the rules. Indeed local constabularies often have very little experience of investigating this type of crime, and actual prosecutions by conventional prosecutorial bodies are infrequent. It is noteworthy that under the Bill as drafted, while the Commission may be banned from bringing forward a prosecution, it would still remain open for any other organisation or individual to do so where there is sufficient evidence.
13. While it is correct to acknowledge there is no explicit wording in PPERA concerning its powers to *prosecute* criminal offences, it was clearly Parliament's intent to give it a key role in tackling these breaches under the Act. When endowing the Commission with *investigatory powers* under the Political Parties and Elections Act 2009, the provisions and associated commentary¹⁶ make it clear these could be used for criminal investigations. Additionally, the Commission has a clear duty under PPERA to ensure all reasonable steps are taken to ensure compliance with the financial rules imposed by the Act.¹⁷ Given the above and the fact other financial regulators, such as the FCA and HMRC, conduct criminal prosecutions as part of their enforcement activities, it should not have been a complete surprise that the Commission perceived it had a mandate to pursue prosecutions. That this power was not explicit is not a reason to prohibit such action from taking place in the future. This Bill provides an opportunity to enshrine this function clearly within the law, recognising the Commission's unique suitability to carry out such a role.

Third Parties

14. In a healthy, vibrant, democracy elections involve a range of campaigns and civil society organisations in addition to political parties and candidates. The exact legal form of these campaigns may evolve over time. Some types of organisations may fall out of use, whilst other emerge. Community Interest Companies are just one type of body that have been created since PPERA came into force. It is sensible therefore to be able to *add* new types of organisations to the regulatory framework and that this should be done by statutory instrument.
15. However, TI-UK is concerned about the powers given to ministers in this Bill to not only add or amend but also *remove* types of third parties who can campaign at elections.¹⁸ The effect of the changes in the Bill mean that ministers could decide to

¹⁶ See explanatory notes for Section 2 <https://www.legislation.gov.uk/ukpga/2009/12/notes/division/4>

¹⁷ <https://www.legislation.gov.uk/ukpga/2000/41/section/145>

¹⁸ Section 22(1), "Restriction on which third parties may incur controlled expenditure", Elections Bill, UK Parliament, <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/210138.pdf>

exclude a type of organisation or a category of individuals from spending more than £700 on election campaigning during the 365 days prior to election day.

16. This power seems both dangerous and risks barring whole types of organisations from engaging with the electoral process with little parliamentary oversight or challenge. A future government could, with virtually no scrutiny, prevent trade unions or charities from incurring election expenditure, effectively ending their participation in elections. We think there are insufficient safeguards and parliamentary oversight to prevent the abuse of these powers for electoral expediency, and any change to the list of permissible third party campaigners at elections be changed by primary legislation only. The extent of these powers are more reminiscent of those our colleagues see deployed in countries like Russia and Hungary. Enshrining them in law here will only embolden the abuse of similar provisions abroad by authoritarian regimes.
17. Regulating these non-party actors requires balancing the need for transparency, accountability, and strong defences against foreign interference with not creating unnecessary or undue barriers to participation. It is essential that we know who is seeking to influence our elections, how much they spend and where that money comes from. Clause 22 reduces the maximum amount third parties ineligible to register with the Commission can spend at elections from up to £20,000 in any one part of the UK to £700 anywhere. There are also new reporting requirements for those third parties eligible to register with the Commission and spending over £10,000 but less than the existing registration thresholds. This subjects many more organisations to reporting requirements than is currently the case and could have the effect of seriously dampening participation in the electoral process. This has been the case with the provisions on non-party campaigners in the ‘Lobbying Act’.¹⁹
18. Research by the Sheila McKechnie Foundation found that the overall impact of the Act had been that people’s voices went missing for the debate. This was in part because the administrative burden of the Act limited the ability of organisations to speak out and support their beneficiaries to have their say. 51% of respondents said it had affected their ability to achieve their organisational mission or vision, with this having a significant impact on organisations working on politically sensitive or controversial issues, like welfare, disability, and immigration. In addition, 42% say they have ‘avoided activity where they were uncertain it comes within the scope of Act’.²⁰

Voter ID

19. The introduction of ID for voters at polling stations is outside of the scope of TI-UK’s remit. However, we note that these proposals mean individuals will require more evidence of your ID to vote in a parish council election than to set up a network of shell companies at Companies House for malign purposes.
20. While cases of personation in UK elections are very rare, the same cannot be said for UK based companies involvement in high-end money laundering. Our research to

¹⁹ Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

²⁰ The Chilling Reality: How the Lobbying Act is affecting charity & voluntary sector campaigning in the UK https://smk.org.uk/wp-content/uploads/SMK_The_Chilling_Reality_Lobbying_Act_Research.pdf

date has found at least 929 UK companies involved in 89 cases of corruption and money laundering, amounting to £137 billion in economic damage.²¹ We have strong reason to suspect the number is much larger, potentially involving the abuse of tens of thousands of UK legal entities in a range of serious financial crimes, such as sanctions evasion, mass theft of public resources, and corrupt arms deals. While the Government is committed to reforming Companies House, which would help address this criminal activity, proposals have yet to be brought to Parliament. The juxtaposition between Government inaction in this area of policy, where there is a strong case for action, including on national security grounds, and the ID provisions in this Bill, where there is not, are perplexing.

Overseas Voters

21. Proposals in the Elections Bill would end the 15 year limit on voting rights for British citizens living overseas. Extending the franchise in this way is a reasonable policy objective. However, it has consequences that go beyond participation in elections and which increase the risks of foreign money influencing elections in the UK.
22. In addition to voting in elections, overseas citizens enfranchised by this Bill would be permissible donors to political parties. It is not clear what, if any checks, there will be to ensure that the donation is from the person named on the electoral register.
23. The Intelligence and Security Committee's Russia Report, made clear that there serious concerns about the possibility of Russian interference in UK elections and the role of UK companies in laundering corrupt capital. It is therefore essential that there are proper safeguards in place to prevent our elections being flooded with foreign money.
24. The Bill included provisions²² for overseas voters to have to declare a connection to a particular constituency. However, there is no explanation as to whether or how this declaration should be verified. The overseas citizen is eligible if they have 'at some point in the past' been on the electoral register in that constituency. The nature of this change to the franchise means that the electoral register needed to verify this would be at least 15 years old and potentially considerably older. Eligibility also depends on the individual not having been on the electoral register in another constituency in the time since they were on the electoral register in the constituency they declare a connection to. As there is no central database of electoral registration this would presumably require a returning officer to contact the returning officers of all other UK constituencies to verify this with little more information than the person's name. TI-UK does not believe this to be a feasible or adequate test for what we know is a serious threat of foreign interference in our elections.

²¹ Transparency International UK, *At your service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations* (October 2019) p.20

https://www.transparency.org.uk/sites/default/files/pdf/publications/TIUK_AtYourService_WEB.pdf

²² Part 2 section 1A of the Elections Bill <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/210138.pdf>

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