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Elections Bill 2021-22

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Summary

The [Elections Bill 2021-22](#) [Bill 138 of 2021-22] was introduced in the House of Commons on 5 July 2021. The second reading has been scheduled for 7 September 2021.

The Bill would make various changes to election law and the [Explanatory Notes](#) confirm these focus on the Government's priorities "that UK elections remain secure, fair, modern, inclusive and transparent".

Critics say this is a missed opportunity for an urgently needed wider reform of electoral law, which is accepted to be complex and fragmented.

Voter ID

The most controversial measure in the Bill is that voters must show photo ID before getting a ballot paper in a polling station. This would affect UK parliamentary elections and local elections in England.

The Government argues this will improve the integrity of elections and prevent someone's vote from being stolen – the electoral offence of personation. It proposes a broad range of photo ID will be allowed, including a free voter card available to those without any other form of ID.

Opponents argue personation is rare and resources would be better directed at improving registration rates. They also point out that certain groups are less likely to have photo ID and this would make it harder for some people to vote.

The Bill also makes other changes to the administration of elections aimed at improving the security of postal and proxy voting and to improve the accessibility of elections for disabled voters.

Franchise changes for overseas voters and EU citizens

The Bill makes two important changes to the eligibility to vote.

The first is for overseas voters – British citizens living overseas that are registered to vote in UK parliamentary elections. Currently, overseas voters can only register to vote for up to 15 years after they leave and if they were

registered to vote before they left. The new rules will remove the time limit, introducing the so-called ‘votes for life’ Conservative manifesto pledge.

The second important change is for EU citizens living in the UK. Now the UK has left the EU, the Government is proposing to alter EU citizens’ right to vote in local elections in England and Northern Ireland.

EU citizens coming to live in the UK after 31 December 2020 will only be able to vote in local elections if the UK has a reciprocal voting agreement with their home country. Currently Spain, Portugal, Poland and Luxembourg have agreed reciprocal voting treaties.

Scotland and Wales have already changed their local voting to allow all legally resident foreigners to vote in local and devolved elections.

A sanction for intimidation

The Bill introduces a new electoral sanction for those guilty of intimidating a candidate or campaigner. This follows concerns about increasing levels of abuse, threats or intimidation.

The sanction will apply if someone is convicted of one of the offences of an intimidatory nature that are listed in the Bill. This is only if the offence is committed because the victim was a candidate or campaigner. Someone convicted may be served a disqualification order that prevents them from standing for, being elected to, or holding certain elective offices for five years.

The Government says [this would act as a deterrent](#) and that those convicted should not be permitted to participate in the democratic process they tried to undermine.

Digital imprints on campaign material

An ‘imprint’ is information added to campaign material during an election or a referendum that tells potential voters about who produced the material.

Currently only printed campaign material requires an imprint, except in Scotland, where the rules have already been changed to include digital material too.

The Bill would extend imprints to digital campaign material. This will help voters know who is paying for what they see. It will also apply to some unpaid material if it is produced by a regulated party or campaigner. The imprint would be on the original material and so people sharing it online would not normally need to do anything.

The Electoral Commission's strategic priorities

The Bill would give the Government power to set the Electoral Commission's strategic priorities. It would also give the Speaker's Committee on the Electoral Commission the power to assess compliance by the Commission.

Critics say this will risk the independence of the Commission.

The Bill also prohibits the Commission from being able to bring prosecutions itself. The Commission had wanted to develop a prosecutions role but the Government says this has never been agreed by Parliament.

Campaign finance and political parties

The Bill makes some changes to the registration requirements for political parties and third-party campaigners. These aim to tighten the rules that prevent foreign money being used in campaigning.

It also amends legislation relating to 'notional expenditure' – that is goods and services received by candidates at a discount. This follows [a 2018 court ruling](#) that led to concerns that candidates and their agents could be liable for spending they were unaware of or not involved in but were seen to have benefitted from.

The Conservative Party called for urgent clarification of notional expenditure in the legislation.¹

In 2019, the Conservative Party said it hoped “there is scope for cross-party agreement on this matter, and a short, technical amendment to legislation in this Parliament.”² Labour said it “would support legislation that would serve to clarify Parliament's intention as to the extent the election agent is responsible for expenditure by third party campaigns to support their candidates” as part of a wider programme of reform.³

¹ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 31, Conservative Party, para 18

² [Written evidence](#) to Public Administration and Constitutional Affairs Committee Electoral Law inquiry, Conservative Party, para 24

³ [Written evidence](#) to Public Administration and Constitutional Affairs Committee Electoral Law inquiry, Labour Party, section 2

1 Introduction

The [Elections Bill 2021-22](#) [Bill 138 of 2021-22] would make various changes to election law and its Explanatory Notes confirm the Government's intention "that UK elections remain secure, fair, modern, inclusive and transparent".⁴

It was introduced in the Commons on 5 July 2021 and Second Reading is scheduled for 7 September.

The Bill has seven parts and eleven schedules. Some elements of the Bill will be subject to [legislative consent motions](#) from the Scottish and Welsh Parliaments and the Northern Ireland Assembly.

This briefing explains the background to the Bill.

1.1 Why has the Bill been introduced?

The Bill introduces the Government's promised changes to electoral law and makes the necessary amendments to the existing legislation.

Manifesto commitments

The Conservative Party committed in its 2019 manifesto to:

- Introduce new rules that voters must show identification before being issued with a ballot paper in a polling station. These are the voter ID measures and would apply to UK parliamentary elections and local elections in England. Voter ID is aimed at preventing the electoral offence of 'personation';
- Prevent postal vote 'harvesting' – a type of electoral fraud where campaigners or party workers handle postal voting packs sent to voters, intending to fraudulently influence the vote;
- End the 15-year limit on British citizens living overseas being able to vote in UK parliamentary elections. These are known as overseas voters and the ending of the limit is known as 'votes for life'; and

⁴ Elections Bill 2021-22 [Explanatory Notes](#), p3

- Create a new electoral offence to prevent the intimidation of candidates. This is to ensure that no one is put off from engaging in politics or standing in an election by threats, harassment or abuse.⁵

Government policy commitments

The Bill fulfils other policy commitments already made by the Government by:

- Introducing ‘imprint’ requirements on digital campaign material. An imprint tells people which campaigner or party has produced the material. Printed campaign material already requires an imprint but digital material does not;
- Clarifying the electoral offence of ‘undue influence’. This is the electoral crime of trying to get someone to vote in a particular way, either by force or coercion; and
- Changing the rule on assistance available to voters with disabilities;

New measures

The Bill also introduces new measures:

- It will alter the voting and candidacy rights of EU citizens resident in the UK. These measures will apply to local and devolved elections in England and Northern Ireland only. The right to vote and stand in elections will depend on when EU citizens took up legal residence in the UK;
- It will make changes to campaign finance laws for political parties, candidates and third-party campaigners.

New measures related to the Electoral Commission are also included in the Bill. They would:

- Grant the Government power to designate a Strategy and Policy Statement for the Electoral Commission. This must follow consultation with the Commission, the Speaker’s Committee on the Electoral Commission, and the Public Administration and Constitutional Affairs Committee. Scottish and Welsh ministers must be consulted on any guidance relating to the Commission’s devolved Scottish and Welsh functions.

⁵ [Get Brexit Done Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019](#), p48

Alter the powers of the Speaker's Committee so it can examine the Commission's compliance with the new Strategy and Policy Statement;

- Alter the membership of the Speaker's Committee to allow the Minister for the Constitution to be a member;

Criticisms of the Bill

One of the criticisms of the Bill is what it does not do, namely to consolidate and rationalise election law. The electoral community is unanimous in its view that electoral law is too complex and needs rationalisation.

The Law Commissions recently undertook a project on electoral law reform and the final report was published in March 2020.⁶ Electoral law is complex, voluminous and fragmented and the report describes “the labyrinthine complexity” of the current legislative framework.

The report recommended that current laws governing elections should be rationalised into a single, consistent legislative framework governing all elections that respected the devolution of competence for elections to Scotland and Wales.

The Association of Electoral Administrators has long argued that election law is no longer fit for purpose. Its 2021 report, [The AEA's Blueprint for a Modern Electoral Landscape](#) argues:

Elections are often delivered in spite of rather than because of the fragmented and outdated legislative framework. The pressure on those running the process is too great. They cannot continue to successfully deliver without serious and sweeping reform.⁷

SOLACE, the Society of Local Authority Chief Executives and Senior Managers, which includes many returning officers, has said:

We support the Law Commission's recommendations for wholesale reform of electoral legislation in the UK and believe this should be the top priority. Unfortunately, this Bill does not do that and instead it has the potential to make matters worse by placing more burdens on to an already creaking electoral system.⁸

The Public Administration and Constitutional Affairs Committee's 2019 report, *Electoral Law: The Urgent Need for Review*, noted that even “the most professional agents” fear falling foul of electoral law. It said the complexity

⁶ Law Commission of England and Wales, Scottish Law Commission, [Electoral Law A joint final report](#), HC 145

⁷ AEA, [The AEA's Blueprint for a Modern Electoral Landscape](#), July 2021, p2

⁸ SOLACE, [Statement on the Elections Bill](#), 9 July 2021

poses serious risks and difficulties for electoral administrators and recommended that the Government:

- Prioritise non-controversial consolidation of electoral law, with cross-party support;
- Base this work on the Law Commission’s [final report on electoral law](#), published in 2020;
- Then evaluate how effective electoral law is more generally, to determine if more substantive reforms are needed.⁹

The Government’s response to the Committee’s report outlined that the Government agreed in principle that electoral law needed consolidation but went on to say:

we are aware of more immediate challenges outside of the structure of electoral legislation, including operations, resilience, fraud and confidence. Our priority is to ensure our elections are secure and updated for the age, maintaining confidence and the integrity of people’s choices.¹⁰

The Committee on Standards in Public Life [published a report in July 2021 on campaign finance laws](#). It commented that “the case for consolidation and simplification of electoral law, as proposed by the Law Commission, is unarguable”.¹¹

The Committee’s report also recommended a package of reforms for election and referendum campaign finance regulation.

The Committee said these would “deliver significant improvements to the current framework for regulating election finance, creating a more transparent, proportionate and effective system”. The report was published the same week as the Elections Bill and as a result, the Bill as published is not a response to those recommendations.

The Government has yet to respond formally to the Committee’s report.

⁹ Public Administration and Constitutional Affairs Committee, [Electoral Law: The Urgent Need for Review](#), HC 244-2019, November 2019

¹⁰ Electoral law: The Urgent Need for Review: [Government Response to the Committee’s First Report of Session 2019](#), HC 327 2019-21, 15 May 2020

¹¹ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p4

2 Voter ID

2.1 Summary

The [Conservative Party manifesto](#) for the 2019 General Election included a commitment to introduce voter ID requirements for elections in England and for UK parliamentary elections.¹² Press reports suggest that the requirement may be in place for local elections in England in May 2023.¹³

The proposed list of approved ID in the Bill is detailed in section 11.1.

The Bill's [impact assessment](#) estimates the cost of implementing the proposals could be between £65 million and £180 million over the next 10 years.¹⁴

Local and devolved elections in Scotland and Wales are a matter for the governments in Holyrood and Cardiff. Voters in Northern Ireland must already produce an approved form of photo ID before receiving a ballot paper in a polling station.

Speaking in April 2019, the Minister for the Constitution, Chloe Smith, said [showing ID for services is an every-day activity](#) and that, “proving who we are before we make a decision of huge importance at the ballot box should be no different.”¹⁵ The Government argue that vote stealing is not a victimless crime and it is a responsible measure to protect people's vote.

Opposition to voter ID

Critics say requiring ID to vote may prevent some electors from being able to vote and the number of allegations of vote stealing – ‘personation’ – are rare. In 2019, 33 cases of polling station irregularities were reported (either personation, voting more than once or voting while disqualified from voting). This led to one conviction and one caution for personation.

The [human rights campaign organisation Liberty](#), said: “If you're young, if you're a person of colour, if you're disabled, trans or you don't have a fixed

¹² [The Conservative and Unionist Party Manifesto 2019](#), p48

¹³ Telegraph, Photo ID will be needed to vote from 2023; New legislation aims to crack down on polling station fraud, but critics brand plan 'dangerous', 18 February 2021

¹⁴ Elections Bill 2021-22 [Impact Assessment](#), p34-5

¹⁵ [HC Deb 10 April 2019 \[Voter ID Pilots\], c332](#)

address, you're much less likely to have valid photo ID and could therefore be shut off from voting.”¹⁶

[Opposition spokesperson, Cat Smith](#), has said: “Voting is safe and secure in Britain. Ministers should be promoting confidence in our elections instead of spreading baseless scare stories which threaten our democracy.”¹⁷

The SNP and the Liberal Democrats have both called the proposals “voter suppression”.¹⁸

Pilot schemes

Pilot schemes for voter ID proposals were held in five local authorities in 2018 and ten in 2019.

The [Government declared](#) them a success, saying an “overwhelming majority” were able to cast their vote, including 100 voters in two areas that showed a free voter ID card provided by the council.¹⁹ In 2019, over 700 voters were unable to produce ID and did not return after being turned away.²⁰

A legal challenge was launched into the legality of the pilot schemes by a voter in Essex with no photo ID. The case was dismissed but in February 2021 the Supreme Court granted permission to hear an appeal.²¹ The case is pending.

In May 2020, the Local Government Information Unit criticised the Cabinet Office evaluation for being “an optimistic interpretation of extremely limited evidence”.²²

The [Electoral Commission also evaluated the pilots](#). It found they were well run and awareness was high but it was not able to draw definitive conclusions about how an ID requirement would work in practice. It warned any roll-out had to be fully resourced and had to make sure voting at polling stations remains accessible to all.

The Commission recommended using the Northern Ireland model, where approved ID includes a free Electoral Identity Card, available to voters

¹⁶ Liberty, [Liberty responds to Electoral Integrity Bill announcement](#), 17 February 2021

¹⁷ Labour Party, [Civil society groups call for ‘dangerous’ Voter ID plans to be dropped – Cat Smith responds](#), 14 May 2021

¹⁸ Times, Resistance to voter ID requirement at Holyrood, 12 May 2021 (log in required) and Independent, [Boris Johnson’s voter ID proposals are nothing more than suppression under a different name](#), 11 May 2021

¹⁹ Cabinet Office, [Another success for the government’s voter ID pilots](#), 22 July 2019

²⁰ [Commons Library Research Briefing CBP-9187, Voter ID, p35](#)

²¹ [Permission to Appeal results – January and February 2021](#)

²² LGiU, Photo voter ID in the UK? Should it be challenged?, May 2020

without any other form of photo ID. Since photo ID was introduced in Northern Ireland ‘personation’ has been eliminated.²³

2.2

The current approach to voting in a polling station

Registering to vote

Before voting, a voter must be on the electoral register. Electors in the UK are responsible for registering themselves. This system is known as IER – individual electoral registration.

When someone applies to register to vote they must provide their National Insurance (NI) number and date of birth. This is checked against data held by the Department for Work and Pensions to verify the person is who they say they are. If someone does not have an NI number, there are ways of verifying their identity to allow them to register to vote.

New registrations are needed when someone moves address or changes their details, such as name or nationality. Most UK-based voters will not need to do anything to remain registered.

Each year, electoral registration officers conduct an annual canvass to check the registration details they hold on voters are correct. Most address details will remain the same and the electors living there will remain registered. The process of renewing voter registration is slightly different for voters living overseas.

At the polling station

Voters in England, Scotland and Wales do not need any form of ID to vote in person at a polling station. There are few checks currently available to polling station staff to prevent someone from claiming to be someone else when voting.²⁴

Under certain circumstances polling station staff can ask prescribed questions to a voter, to confirm they are the person on the electoral register.

The questions that can be asked in a parliamentary election to a voter in a polling station in Great Britain are:

²³ Electoral Commission, [Delivering and costing a proof of identity scheme for polling station voters in Great Britain](#), December 2015, p7

²⁴ Electoral Commission, [Electoral fraud in the UK Final report and recommendations](#), January 2014, p3

(a) Are you the person registered in the register of parliamentary electors for this election as follows (read out the whole entry from the register)?

If the answer is 'no' then the person is to be refused a ballot paper. If the answer is 'yes' then question (b) is asked.

(b) Have you already voted, here or elsewhere, at this election, otherwise than as proxy for some other person?

If the question is 'yes' to question b, that person is refused a ballot paper. If it is 'no' then they must be issued with a ballot paper.

Voting in Northern Ireland with ID

Voters in Northern Ireland must produce an approved form of photo ID, such as a passport, driving licence or government issues travel pass, before receiving a ballot paper in a polling station.

Voters without an approved form, can apply for a free Electoral Identity Card. The current rules were introduced in 2003 and have eliminated personation.

What is personation?

Personation is the legal term used if someone votes pretending to be someone else.

Someone found guilty of personation could be subject to an unlimited fine and/or up to two years in prison. They could also be disqualified from standing for election and banned from being registered and voting at any election for five years.

How much personation is there?

The table below shows the number of allegations of personation at polling station offences for each year since 2014. It also records the number of convictions and cautions these cases have resulted in.

The number of allegations fluctuates and tends to be higher in years with general elections (2015, 2017 and 2019); it was also high in 2016, most likely because of the EU Referendum. The table below shows that most allegations do not result in a conviction or caution.

The caution figure for 2014 and the allegation figures for 2018 and 2019 are for all voting offences, which groups together personation at the polling station and by postal vote, voting more than once and voting while disqualified.

Allegations of personation at polling stations and outcomes

	All voting offences	Personation		
	Allegations	Allegations	Convictions	Cautions
2014	73	21		3 ¹
2015	123	26		2
2016	113	44	1	3
2017	104	28	1	0
2018	57		0	0
2019	142		1	1
2020	0		0	0

Notes: general election years are highlighted. Data on personation allegations is no longer reported separately since 2018. Data as reported in yearly fraud figures: some reported cases await outcomes.

1. Three police cautions were given for voting offences (including personation and other offences).

Source: Electoral Commission electoral fraud data, various years

The Library briefing, [Voter ID \(CBP 9187\)](#), has more information on personation and the background to the introduction of voter ID. The main points are summarised below.

2.3

Why introduce voter ID?

There is some concern that the trust-based nature of elections in Britain means there are opportunities for personation to take place in polling stations.

International observers have also expressed the view that requiring proof of ID in polling stations would improve the integrity of polling.²⁵

The Government's view

Although the numbers of alleged incidents are low, the Government's view is that:

- Asking voters to prove their identities will safeguard against the potential for someone to cast another person's vote at the polling station.

²⁵ Office for Democratic Institutions and Human Rights, [UK General Election 5 May 2005 OSCE/ODIHR Assessment Mission Report](#), p16 and Office for Democratic Institutions and Human Rights, [UK General Election 6 May 2010 OSCE/ODIHR Assessment Mission Report](#), p22

- Showing identification is something people of all backgrounds do every day.²⁶
- The potential for electoral fraud exists and the perception of this undermines public confidence in democracy.
- Although incidence of voter fraud may be low, its impact can be significant and takes away a voter's right.²⁷

The Electoral Commission's view

In 2012, the Electoral Commission began a review to determine whether there were opportunities to improve confidence in the security of the electoral process.

The Commission found the evidence then available did not suggest that electoral fraud was widespread in the UK. There were pockets of concern in a handful of wards and most cases of alleged electoral fraud related to local government elections, rather than elections to the UK Parliament or other legislative bodies.²⁸

The Commission also conducted research on public attitudes to electoral fraud. In two stages of research, the Commission found some people feel concerned but are not clear what their concern is based on, and that electoral fraud was not at the forefront of people's minds. For some, being provided with information on electoral fraud can heighten their concern of it.²⁹

In the second stage of the research, the Commission found that giving specific information on electoral processes helped to reduce voters' concerns.

On the specific policy of requiring some sort of ID at polling stations, the participants felt it would be likely to be effective by:

- Creating a sense that the electoral operators have security in mind;
- Strengthening the idea that 'it is difficult for someone to take my vote' and offering some sense of personal security; and

²⁶ [HCWS10, 12 May 2021, \[Update on Preventing Electoral Fraud\]](#)

²⁷ [Electoral law: The Urgent Need for Review: Government Response to the Committee's First Report of Session 2019](#), 15 May 2020, HC 327/2019-21, pp8-9

²⁸ Electoral Commission, [Electoral fraud in the UK: evidence and issues paper](#), May 2013, p1

²⁹ Electoral Commission, [Perceptions of Electoral Fraud: Qualitative Research Report of Findings for Stage 1](#), May 2013, pp4-5

- Having an additional ‘halo effect’, meaning the public has more trust in other aspects of the system of which they are less aware.³⁰

The Commission’s 2014 report

The Commission’s final report on electoral fraud was published in January 2014.³¹

Although, as noted above, there was no evidence of widespread fraud, the Commission found that perceptions of weaknesses in the electoral system undermined voters’ confidence. The report made three key recommendations on improving the security of voting. One of those was on requiring voters in Great Britain to show photo ID before getting a ballot paper.

It concluded that in Great Britain, voting in polling stations was “vulnerable to personation fraud”, due to the lack of checks on a person turning up to vote:

This part of the system could become more vulnerable to fraud as other processes (including electoral registration and postal or proxy voting) become more secure.

It noted that there was “little evidence” that requiring photo ID before being issued a ballot paper in Northern Ireland created barriers to voting there.

The Commission’s 2015 report

In December 2015, the Commission published a report following further analysis of options for a voter ID scheme.³²

The Commission proposed a scheme modelled on the one operating in Northern Ireland. It was based on balancing the need for security and to minimise any adverse effects on people’s ability to vote. The analysis provided different possible implementation approaches and estimated costs of providing free electoral ID cards.

The Commission recommended that two alternatives should be explored and that the Information Commissioner should be involved in these discussions.

The first alternative was for local registration officers to process applications for the free cards but outsource the printing and distribution to a single national supplier. The second alternative was a new ‘stand-alone’ scheme. A new organisation would assume primary responsibility for the application processing and production of the cards.

The costs of these two options over a ten-year period (2018 to 2029) were estimated at £2.4 to £6.4 million per year for the outsourcing model and £1.8

³⁰ Electoral Commission, [Perceptions of Electoral Fraud: Qualitative Research Report of Findings for Stage 2](#), September 2013, p35

³¹ Electoral Commission, [Electoral fraud in the UK Final report and recommendations](#), January 2014, p16

³² Electoral Commission, [Delivering and costing a proof of identity scheme for polling station voters in Great Britain](#), December 2015

to £2.9 million for a stand-alone scheme. The estimate for a scheme wholly run by local authorities (where election teams in each authority run their own scheme) was £3.0 to £7.2 million per year.³³

The Electoral Commission's position remains that polling stations are open to the possible vulnerability of voter fraud but it has also said that several questions remain about how an ID requirement would work in practice (see section 2.4).

The Pickles Review

In August 2016, the Government's Anti-Corruption Champion, Sir Eric Pickles, now Lord Pickles, published a review into electoral fraud.³⁴

The report also acknowledged the number of allegations of polling station fraud were low and prosecutions were rare but cautioned that:

...there is a concern that the absence of evidence does not mean this practice is not taking place. And even if it is not, there is a precautionary principle that comes into play in terms of the potential for it to happen.³⁵

Pickles recommended that the Government should consider options for voter identification in polling stations and suggested the Government may wish to pilot various options before introducing a system nationwide.

2.4 Voter ID pilots

The Government agreed with Lord Pickles's recommendation that pilot schemes should be held to trial various options.³⁶

In 2018 and 2019 several local authorities volunteered to run pilot schemes in local elections in England. The pilots were run using the powers in the Representation of the People Act 2000.³⁷ Five local authorities took part in 2018 and 10 in 2019.

Three different schemes piloted different ID requirements that voters had to be shown before being issued with a ballot paper:

- Photo ID - where only approved types of photo ID had to be shown,

³³ Ibid, p23-9

³⁴ Cabinet Office, [Securing the ballot: review into electoral fraud](#), 12 August 2016

³⁵ Ibid, p12

³⁶ Cabinet Office, [A democracy that works for everyone: a clear and secure democracy: government response to Sir Eric Pickles' review of electoral fraud](#), December 2016, p7-8 and Annex

³⁷ [Section 10](#) as amended

- A mixed model - voters could use photo and non-photo ID (such as utility bills), and
- The poll card model - where a voter had to bring their poll card but could also use photo ID if they did not have their poll card.

In December 2018, Neil Coughlan, a voter in one of the pilot areas began a legal challenge on the validity of the pilot scheme. The challenge was dismissed. Although the court acknowledged the controversial nature of the pilots, it ruled that they were legal.³⁸

In 2020, following a crowdfunding campaign, Mr Coughlan appealed the decision.³⁹ His case argued the use of the power to hold pilots in the Representation of the People Act 2000 undermined “the fundamental constitutional right to cast a vote in local elections.” The Court of Appeal dismissed the case, with Lord Justice McCombe saying:

the use of the power [used] to test a pilot scheme of this type does not in truth override or abrogate the right to vote at all. The voter remains entitled to vote and must only produce sensible means of demonstrating that entitlement.⁴⁰

In February 2021, the Supreme Court granted leave to appeal to Mr Coughlan.⁴¹ Mr Coughlan’s case will argue that requiring ID “frustrates the facilitation and encouragement to vote”. At the time of writing the case was still to be heard.

Pilot evaluations

The Electoral Commission is required to produce evaluation reports on any electoral pilots. The Cabinet Office also produced its own reports on the pilots.

Electoral Commission

The Commission found the 2018 and 2019 pilots were well run. There were no administrative problems and high levels of public awareness.

However, it found that if voter ID was to be rolled out nationwide, it would need significant resourcing.⁴² The Commission also said that several questions remain about how an ID requirement would work in practice and it identified three areas for further consideration:

³⁸ [\[2019\] EWHC 641 \(Admin\) Case No: CO/150/201](#)

³⁹ [Court of Appeal to hear voter ID pilot scheme legal challenge](#), April 2020

⁴⁰ [\[2020\] EWCA Civ 723 Case No: C1/2019/0675](#)

⁴¹ [Supreme Court, Permission to Appeal results – January and February 2021](#)

⁴² Electoral Commission, May 2019 voter identification pilot schemes, [Impact on administration of the polls](#)

- **Any ID requirement should deliver clear improvements to current security levels.**

A photo ID requirement would provide the greatest level of security, but each of the models that were piloted in 2018 and 2019 would provide some level of improved security compared with the current rules.

Government and Parliament should consider what level of security is proportionate to the risk of personation fraud in polling stations.

- **Any ID requirement should be accessible for all voters.**

To make sure voting at polling stations remains accessible, there would need to be other options for people who do not already have an acceptable form of photo ID. This could involve providing free of charge locally issued photo ID, which are currently given to electors in Northern Ireland, or allowing voters to use their poll card.

- **Any ID requirement should be realistically deliverable, considering the resources required to administer it.**

The relative security benefits of these options would need to be considered alongside the impact on how elections are administered, particularly polling station processes.⁴³

The Commission also evaluated public attitudes to the 2019 pilots. Its public opinion survey asked non-voters why they did not vote. The main reasons given were in line with previous Commission surveys, with 30% too busy, 9% away at the time of the election and 6% forgot. However, 1% of people who didn't vote in the pilots said it was because they didn't have the right ID and less than 1% said it was because they disagreed with the requirement.

As in 2018, voter confidence increased in the 2019 pilot areas. People who voted in polling stations in the pilot scheme, and therefore experienced the process of showing identification, were also more confident in the security of the voting system than non-voters in those areas. However, the changes in attitudes were not uniform across the pilot areas.⁴⁴

The Commission noted that the 10 pilot areas in 2019 were not representative of Great Britain as a whole and it would be difficult to draw conclusions about the impact on confidence across the UK.

The Commission also asked voters whether showing ID would make them more or less likely to vote. Most people in the pilot scheme said it made no

⁴³ Ibid, [Our findings](#)

⁴⁴ Electoral Commission, May 2019 voter identification pilot schemes, [Impact on voters: confidence](#)

difference or made them more likely to vote (90%)⁴⁵ (see section 2.8 for more on voting behaviour).

Cabinet Office

The Cabinet Office also reviewed the voter ID pilots.

As with the Electoral Commission evaluation, perceptions of polling station fraud occurring were low. In the areas holding pilots, only 10% of people thought fraud happened in polling stations where they lived but 24% thought it happened elsewhere. However, the proportions were higher in the pilot local authorities where there had been recent issues with voter fraud.⁴⁶

The perception that voting at polling stations is safe from fraud and abuse increased consistently across all models after polling day.

When voters were asked whether there were sufficient safeguards in place to prevent voter fraud at polling stations, the proportion rose from 63% to 68% in mixed ID pilot areas and from 57% to 63% in photo ID areas. In the poll card areas, the perception rose from 63% to 65%, although this was not statistically significant.

The Cabinet Office said the data collected did not indicate that any one demographic group, of those examined, was adversely affected by the requirements of the pilots.⁴⁷

The survey also asked whether having to provide ID would make people more or less likely to vote. About 85% of voters said presenting photo ID would make no difference to them and the remaining respondents were evenly split between saying it would make them more or less likely to vote. Less than 10% of respondents said it would make it more difficult to vote.⁴⁸

Local Government Information Unit response

In May 2020, the Local Government Information Unit (LGiU) published a briefing which summarised the pilot evaluations. It commented on the Cabinet Office evaluations by saying:

The decision to introduce a requirement for photo ID is based on an optimistic interpretation of extremely limited evidence, of the photo model appearing to have the most pronounced impact on the measures of integrity.

It also criticised the evaluations for not considering the people turned away. The evaluations focused on the small number of people turned away but the LGiU points out:

⁴⁵ Ibid, [Impact on voters: experience](#)

⁴⁶ Cabinet Office [data tables](#) - Evaluation of voter ID pilots 2019, July 2019

⁴⁷ Cabinet Office [Evaluation of Voter ID Pilots 2019](#), July 2019, pp12-15

⁴⁸ Cabinet Office [data tables](#) - Evaluation of voter ID pilots 2019, July 2019

Neither the Cabinet Office nor the Electoral Commission consider the people not returning to vote as a proportion of those refused a ballot, as opposed to a percentage of the total voting. Overall, 37% of those refused a ballot paper did not return. In two areas just under half of those turned away did not come back with ID.⁴⁹

2.5 Reactions to the ID proposals

The Labour Party opposes the introduction of voter ID. Following press coverage that a bill was due in 2021, Cat Smith, Labour's Shadow Minister for Democracy, said:

It doesn't matter how the Government dresses it up, these plans will make it harder for working class, older and black people to vote. Giving people a say at the ballot box helps make our democratic country what it is, and we must not do anything to undermine that.⁵⁰

Mhairi Black, of the SNP, writing in February 2021, pointed to the cost of photo ID, with passport fees £85 and provisional driving licenses £43, and was sceptical the promised free electoral identity card for those without ID would be created. She said: "Elections should be inclusive and voter ID laws are, by their nature, exclusive".⁵¹

Kirsten Oswald, the SNP's deputy leader at Westminster, said:

There is a very real danger that many lower income, ethnic minority, and younger people will be prevented from voting to fix a problem that doesn't exist. These laws are designed to suppress votes among groups that traditionally vote against the Tories. It's a disgrace.⁵²

Writing in the Independent, Alistair Carmichael, the Liberal Democrat spokesperson, also accused the Government of voter suppression and said:

At first sight it looks like a modest proposal. The requirement for most people will be to produce a form of photo ID. For most people that will be a passport or a driving licence. For most people it will not be a barrier and therein lies the rub. To say that for "most people" it will not be a barrier to participation in the democratic process concedes the fact that for some people it will be.⁵³

The Government proposals are also facing criticism from some members of the Conservative Party. David Davis, a former Conservative minister, has

⁴⁹ LGiU, Photo voter ID in the UK? Should it be challenged?, May 2020

⁵⁰ Telegraph, Photo ID will be needed to vote from 2023; New legislation aims to crack down on polling station fraud, but critics brand plan 'dangerous', 18 February 2021

⁵¹ The National, [Mhairi Black: Why Tories' voter ID plans remind me of bedroom tax](#), 20 February 2021

⁵² Times, Resistance to voter ID requirement at Holyrood, 12 May 2021 (log in required)

⁵³ Independent, [Boris Johnson's voter ID proposals are nothing more than suppression under a different name](#), 11 May 2021

described the voter ID policy as an “illiberal solution for a non-existent problem”.⁵⁴ Ruth Davidson, former leader of the Scottish Conservatives, said in an interview with the Times, “I think it’s trying to give a solution to a problem that doesn’t exist, and that makes it politics as performance.”⁵⁵

In March 2018, the Electoral Reform Society sent a letter co-signed by over 40 organisations and charities opposing the voter ID pilots. These included Liberty, Stonewall, Centrepoin, Age UK, the British Youth Council, Operation Black Vote, and the Royal National Institute of Blind People.

The letter highlighted the Electoral Commission estimates that 3.5 million people lacked suitable ID. It also claimed that the small scale of the problem of personation, citing a figure of 44 allegations in 2016, did not warrant an approach that risked disenfranchising people without photo ID.⁵⁶

Shortly before the evaluations of the 2018 pilots were published, Jo Miller, then returning officer and chief executive of Doncaster Council, and president of the Society of Local Authority Chief Executives (SOLACE) questioned the need for voter ID. Like others, Jo Miller highlighted the small number of allegations of personation compared to the number of ballots cast, asking, “That rather begs the question: what problem are we trying to solve?”⁵⁷

The House of Commons Public Administration and Constitutional Affairs Committee recommended in November 2019 that the Government should continue to pilot the proposals, “to provide a greater evidence base on the impacts of voter ID on particular demographics and the likely cost of the national roll-out”⁵⁸

In July 2020, the House of Lords Select Committee on the Electoral Registration and Administration Act 2013 recommended that the Government needed to clarify how local elector cards will be funded and how it will ensure that they are easily accessible for everyone who needs one. In the Committee’s view: “Local elector cards will be crucial to ensuring that voter ID does not deter or prevent any eligible elector from voting”.⁵⁹

The Joint Committee on Human Rights held two evidence sessions after the announcement of the Bill in the Queen’s Speech and before the details of its contents had been published.

⁵⁴ Independent, [Boris Johnson’s voter ID plans ‘illiberal solution for non-existent problem’, says senior Tory](#), 9 May 2021

⁵⁵ Times, [Former Scottish Conservatives leader Ruth Davidson lashes out at voter ID plans](#), 13 May 2021 (log in required)

⁵⁶ ERS, [Letter to Chloe Smith MP on Voter ID](#), 12 March 2018

⁵⁷ Municipal Journal, [Voter ID in perspective](#), 4 July 2018

⁵⁸ Public Administration and Constitutional Affairs Committee, [Electoral Law: The Urgent Need for Review, 1 November 2019](#), HC 244/2019, pp20-1

⁵⁹ Select Committee on the Electoral Registration and Administration Act 2013, [An electoral system fit for today? More to be done](#), 8 July 2020, HL Paper 83, Chapter 5

Witnesses again highlighted that personation was rare. Dr Toby James, Professor of Politics and Public Policy at the University of East Anglia, told the Committee:

From our poll worker studies, one of the most frequent problems is people turning up wanting to vote, and not being able to because their name is not on the electoral register. That is the most common way in which people are not able to vote.⁶⁰

The Electoral Reform Society told the Committee that it was “implausible” that if large scale polling station fraud was taking place it could be going on undetected.⁶¹

Operation Black Vote (OBV) highlighted the impact on voters in Black, Asian and minority ethnic communities. It said some minority groups are already distrustful of public authorities and government institutions. It cited vaccine hesitancy during the Covid-19 vaccine rollout and reluctance to register to vote, as examples. For those who need to apply for ID to vote, OBV said:

if there is another layer of bureaucracy it will be another impediment for a group that is already hesitant about fully engaging in the democratic process.⁶²

The Electoral Commission also gave evidence. The Committee questioned they the Commission had previously recommended voter ID, given the concerns that were now being expressed about access to the right to vote.

The Commission reiterated its view that polling stations were open to the possible vulnerability of voter fraud and “we do not think it is acceptable to ignore the vulnerability at polling stations”.⁶³

However, the Commission also restated its view, expressed after evaluating the 2019 voter ID pilots, that if Parliament decides that voter ID is to be introduced it must be done in a way that answers the Commissions concerns:

Making a change in introducing voter ID has to improve security; it has to maintain complete accessibility to the system; and it has to be a workable, practical system. Those are the three tests. We have not for one moment suggested that those tests have been passed.⁶⁴

The Association of Electoral Administrators (AEA), which believes the introduction of a voter ID scheme is a matter for the Government, warns any scheme needs “careful consideration”. Its Chief Executive has, like others, warned that the introduction should not negatively affect those wishing to

⁶⁰ Joint Committee on Human Rights [Oral evidence: Legislative Scrutiny: Electoral Integrity Bill](#), HC 223, 21 May 2021, Q6

⁶¹ Ibid, Q1

⁶² Ibid, Q2

⁶³ Joint Committee on Human Rights [Oral evidence: Legislative Scrutiny: Electoral Integrity Bill](#), HC 223, 21 May 2021, Q9

⁶⁴ Ibid, Q10

vote and also warns that time is needed to ensure success of the proposals, saying:

Sufficient lead-in time for legislation, administrative planning, delivery, & voter education is vital to ensure any scheme is successful.⁶⁵

The AEA has also previously warned that a voter ID scheme should not be rolled for the first time during a general election as higher turnout and higher levels of last-minute voter registration would cause significant administrative challenges.⁶⁶

Press reports suggest that the requirement will be in place for local elections in England in May 2023.⁶⁷

2.6 Estimated costs

The [impact assessment](#), published with the Bill, includes information on the estimated financial impact of the rollout of the Government's proposed voter ID plans.

The estimates vary considerably as the assessment notes: "there is inherent uncertainty with modelling demand for Voter Cards".⁶⁸

The central estimate for the overall cost is £120 million over ten years, which includes £15 million for the cost of producing free voter ID cards.

Redesigning of polling cards to include information on voter ID requirements at the polling station will be the major cost. The Government envisages the poll card will be increased from A5 to A4 to account for the additional information, and will be posted in envelopes. The central estimate for this is £55 million over ten years.⁶⁹

The Association of Electoral Administrators has said it is "crucial" that full funding is available, with none of the costs falling on councils.⁷⁰

⁶⁵ [@AEA elections](#), 23 June 2021

⁶⁶ [AEA statement on the Electoral Commission report on evaluation of Voter ID pilots](#), July 2019

⁶⁷ Telegraph, Photo ID will be needed to vote from 2023; New legislation aims to crack down on polling station fraud, but critics brand plan 'dangerous', 18 February 2021

⁶⁸ [Impact Assessment](#), p34

⁶⁹ [Impact Assessment](#), pp26-34

⁷⁰ Local Government Chronicle, Electoral administrators in capacity warning as Elections Bill is introduced, 6 July 2021

2.7

Who has access to voter ID?

The Cabinet Office commissioned research to establish [how many people have access to at least one form of photo ID](#) currently being considered. This was a nationally representative survey of 8,500 respondents in England, Wales and Scotland carried out in early 2021, which estimated that:

- 98% of people eligible to vote held some form of photo ID.**
Data on the number of people eligible to vote is not publicly available, but if the same proportion holds across the entire population, this suggests approximately 1.3 million people do not hold any form of photo ID.⁷¹ Alternatively, if this proportion is the same for voters, then around 955,000 voters do not hold any form of photo ID.⁷²
- 96% held a photo ID with a recognisable picture.**
Assuming this proportion is the same for the overall population and voters, this suggests approximately 2.6 million people or 1.9 million voters do not hold a recognisable photo ID;

The [Electoral Commission](#) estimated in 2015 that **92.5%** of voters had at least one form of acceptable photo ID (defined somewhat more stringently as IDs requiring “an adequate level of verification to obtain” and with a photograph of “good enough likeness”), leaving 3.5m voters (7.5% of the electorate) without an acceptable ID;⁷³

- 91% held a photo ID that was in-date and had a recognisable picture.**
Assuming this proportion is the same for the overall population and voters, this suggests that approximately 5.8 million people or 4.3 million voters do not have a photo ID that is in date and recognisable.

The Cabinet Office research found that passports were the most common form of ID (91%), followed by driving licences (81%).

These figures are slightly higher than other sources suggest: [ONS analysis of the 2011 Census](#) found that 83% of people living in England and Wales held a passport. The Department for Transport’s [National Travel Survey](#) for England suggests that 75% of residents aged over 17 held a driving licence in 2019. Note however, that the populations measured in these sources are different,

⁷¹ ONS, [Great Britain population mid-year estimate, 2019](#), June 2021: the GB population was 64.9m in June 2019

⁷² ONS, [Electoral Statistics, UK: December 2020](#), May 2021: there were 47.7m people registered to vote in local government elections in Great Britain in December 2020

⁷³ Electoral Commission, [Delivering and costing a proof of identity scheme for polling station voters in Great Britain](#), December 2015

covering only England or England and Wales, and including all residents rather than only the population eligible to vote.

The Cabinet Office research further found that most people (85%) held more than one form of photo ID, with 13% holding only one form. 2% of respondents only held a travel pass or other ID (i.e. did not hold a passport or driving licence).

The chart below shows the subgroups in different categories that were least likely to hold a form of photo ID. In the age category, for example, those over 85 were less likely to hold a photo ID with a recognisable picture than other age groups.

Groups least likely to have photo ID		
% in group with ID		
	Access to any ID	Access to recognisable ID
Age: 85+		91%
Ethnicity: White	98%	
People with a disability		94%
Unemployed people	92%	
Education: People without qualifications	94%	
Non-voters	96%	
Region:		
West Midlands	96%	
South West	97%	
Yorkshire & Humber	97%	

Source: Cabinet Office, [Photographic ID research: headline findings report](#), 11 May 2021

The Elections Bill, as published, proposes a range of ID types. These include passports, driving licences, PASS scheme cards, Blue Badge scheme ID and approved cards various concessionary travel passes. Section 11.1 shows the complete list.

The Government has pledged to work with civil society organisations to understand potential issues in providing relevant identification. It also says it “will work with local authorities to ensure any new process meets the needs of all voters.”⁷⁴

⁷⁴ Elections Bill [Equality Impact Assessment](#), p9

2.8

Demand for free voter ID cards

The Bill would allow people to apply for a voter ID card to use instead of other forms of photo ID. The Cabinet Office research in May 2021 found that among people without any photo ID, 42% said they were unlikely or very unlikely to apply for such a card. 43% said they were likely or very likely to do so.

Among people with a photo ID that was not recognisable, 50% were likely or very likely to apply for a voter ID card, compared with 30% of those with recognisable IDs.

The Bill's Impact Assessment notes there is a lack of data to estimate of how many people will require a voter ID card but states that more people may apply for one than actually require it.⁷⁵

Demand in Northern Ireland

When photo ID was introduced in Northern Ireland in 2003, over 20% of the electorate indicated that they would need a free electoral identity card. By October 2003 over 81,000 had been issued, or around 7% of the electorate.⁷⁶ By the end of the financial year 2003/04, 90,000 had been issued.⁷⁷

The Chief Electoral Officer of Northern Ireland explained the apparent shortfall in take-up to the Northern Ireland Affairs Select Committee:

...there were 235,000 people who ticked the box on the 2002 registration form, and we simply believe that many of those people ticked the box but when they got the application form which explained they could use a driving licence, passport or translink senior smart pass, they realised they did not perhaps need* it. We believe that there is not a huge demand over and above the 90,000 odd that we have produced.”⁷⁸

The workload

The Bill's impact assessment also notes that the new policy will add to the workloads of local authority (LA) and poll station staff, depending on how many people apply.

It goes on to say that the Cabinet Office will work with local authorities to collect data to plan for and mitigate against problems. It said this data would

⁷⁵ [Impact Assessment](#), p99

⁷⁶ Electoral Commission, [The Electoral Fraud \(Northern Ireland\) Act 2002 Research report. An assessment of its first year in operation](#), December 2003

⁷⁷ Report of the Chief Electoral Officer for Northern Ireland 2003-2004 Annual Report, HC 1029 2003-04, September 2004, p11

⁷⁸ Northern Ireland Affairs Select Committee, Electoral Registration in Northern Ireland, HC 131 2004-05, December 2004, p21

contribute to further analysis to support secondary legislation.⁷⁹ Secondary legislation will be required for detailed provisions about the application process and how electoral registration must process and determine them.

The Association of Electoral Administrators has warned that responsibility for producing the proposed free local voter card must be “carefully considered”.⁸⁰

Registration applications always peak in the run up to an election, many of which are unnecessary as people are already registered. Peter Stanyon, the Chief Executive of the Association warned that elections teams “do not have limitless capacity”. The Association has previously called for any new requirements to respect the Gould Principle – that any changes are introduced at least six months before a major electoral event.⁸¹

2.9 Effect on voting behaviour

There is concern that introducing voter ID requirements may make voting more difficult for people.

In the 2018 and 2019 pilots, between 0.1% and 0.7% of all voters did not return after being turned away for not having a suitable form of identification.⁸² Generalising from these pilots, that translates to between 46,000 and 324,000 voters in Great Britain.⁸³ However, these local authorities may not be representative of local authorities across the country, so these numbers should be treated as a rough guide.

The Cabinet Office research of May 2021 found that most people were equally likely to vote if they had to show ID (89%).

While 5% said they were less likely to vote, another 5% said they were more likely to vote, and this increased to 8% among those who had not voted before. The Cabinet Office research found most people were equally likely to vote in person (89%) and felt that the voter ID requirement would not make voting difficult (94%).⁸⁴

The Electoral Commission evaluation of the 2019 pilot found similar levels, where 90% said it made no difference or made them more likely to vote. A notable minority said it made them less likely to vote (3%), that they didn’t have ID (1%) or that they didn’t know (6%). Non-voters in 2019 were more

⁷⁹ Elections Bill 2021-22 [Impact Assessment](#), p99-100

⁸⁰ Local Government Chronicle, Electoral administrators in capacity warning as Elections Bill is introduced, 6 July 2021

⁸¹ Association of Electoral Administrators, [AEA statement on the Elections Bill and specific measures within it](#), 6 July 2021

⁸² See Library Briefing Paper 9187 [Voter ID](#) for more information

⁸³ Based on a GB electorate of 46.3m as at 2 March 2020, ONS, [Electoral Statistics, UK: March 2020](#), January 2021

⁸⁴ Cabinet Office, [Photographic ID research: headline findings report](#), 11 May 2021, p9

likely than voters to say that they would be negatively affected or that they were unsure.⁸⁵

The Cabinet Office research found negative attitudes towards the ID requirement were higher among people without any photo ID and those without recognisable photo ID, as shown in the table below.

Negative attitudes to voting with voter ID requirement			
	Less likely to vote	Less likely to vote in person	Voting becomes difficult
Total	5%	6%	5%
No photo ID	27%	24%	39%
Unrecognisable ID	19%	19%	25%
Recognisable ID	4%	5%	

Source: Cabinet Office, [Photographic ID research: headline findings report](#), 11 May 2021

People with disabilities were more likely to say presenting photo ID would make them less likely to vote (7%) and vote in person (8%).

The report found there was “a clear link between disability and perceptions of difficulty” in presenting photo ID:

12% of respondents with a severely limiting disability and eight per cent of those with a somewhat limiting difficulty said that having to present photo ID at the polling station would make voting difficult, compared with four per cent of those with no disability.⁸⁶

The Government’s equality impact analysis of the Bill recognises that some groups of electors will find it harder than others to provide photo ID. For these groups it says communication will be important to inform them of the new voter ID requirements and how to get a free voter ID card from their local authority. It says:

The Election Commission will deliver a comprehensive and targeted communications campaign to raise awareness for the changes to the requirements at the polling station.⁸⁷

⁸⁵ Electoral Commission, May 2019 voter identification pilot schemes, [Impact on voters: experience](#)

⁸⁶ Cabinet Office, [Photographic ID research: headline findings report](#), 11 May 2021, p10

⁸⁷ Elections Bill [Equality Impact Assessment](#), p9

3 Absent voting

3.1 Summary

The Bill proposes to make changes to some aspects of postal and proxy voting. Postal voting on demand will remain available. Currently a postal voter can choose to vote by post indefinitely but must update their signature - one of the personal identifiers required to vote by post - every five years.

The Bill proposes to remove the ability to have an indefinite arrangement. Instead of renewing signatures every five years voters must renew their postal vote application every three years.

The provisions in the Bill are also designed to prevent postal vote harvesting. This is the practice of campaigners collecting or handling postal voting packs from electors, for example by handing postal vote packs into a polling station.

The Bill also places a new limit on the number of people you can act as a proxy voter for. The current maximum is two unless you are a close relative. The Bill will limit everyone to four, but only two of which can be UK-based voters. The other two may be an overseas voter or a service voter.

Part 1 of the Bill includes the absent voter provisions and are detailed in section 11.1.

Background

Absent voting is the term given to electors who do not vote in person at a polling station. This can either be done using a postal vote or by appointing a proxy.

In Great Britain electors can apply for a postal ballot for any reason, known as 'postal voting on demand'. This can be for a particular election, a defined period or indefinitely. For a particular election, the deadline for a new application or changes to existing absent voting arrangements is before 5pm 11 working days before polling day.

Electors applying for a proxy vote need to give a reason why they cannot attend a polling station. This may be because of work or illness. The deadline for applications, excluding emergency proxy applications, is 5pm, six working days before polling day.

Emergency proxies can be appointed after the deadline for normal proxy votes has passed and up to 5pm on polling day. An emergency proxy can only be

appointed for a specific reason and must be something that the voter was not aware of before the normal proxy vote deadline. This could be a medical emergency or being called away for work and most cases the application needs supporting evidence.

Additionally, during the May 2021 elections, someone could also appoint a proxy if they were self-isolating due to Covid-19. In this case supporting evidence was not needed.

Voters in Northern Ireland can also vote by proxy or by post but must give a reason for either method. Postal voting on demand is not available in Northern Ireland.

3.2 Postal voting

Postal voting on demand in Great Britain in was introduced in 2001. Before the change the 2001 General Election saw 1.8 million postal votes issued. The 2005 General Election saw that figure increase to 5.4 million or over 12% of the electorate.⁸⁸ Allegations and convictions for postal voting fraud also increased.⁸⁹

A high-profile case in Birmingham in 2004 led to the election of councillors in two wards being declared void after being challenged by elections petitions. Elections can only be challenged by an election petition – a special election court. The Commissioner who heard the petitions cases found “the evidence of fraud was overwhelming” and 3,500 postal ballots were fraudulent. The issues raised included the deadline for postal voting packs being close to the election (6 working days before) and the lack of checks on whether the application was made by the named voter made it difficult to detect fraud.⁹⁰

Following the case, the Electoral Commission made a number of recommendations including the use of personal identifiers for postal votes, the deadline for application should be moved from six to 11 working days before polling day, and that falsely applying for a postal votes should be made an offence.

In 2006, Parliament passed the [Electoral Administration Act 2006](#). The legislation was introduced by the then Labour Government in response to criticisms about the postal vote on demand process. The system of personal identifiers for postal ballots was included in an amendment to the Bill at Report Stage in the Lords that gained cross-party support.⁹¹ The detailed

⁸⁸ Library briefing, [General Election 2005 \(RP05-33\)](#), last updated March 2006

⁸⁹ Library briefing, [Postal voting and electoral fraud 2001-09 \(SN 6337\)](#), last updated in March 2012

⁹⁰ Stuart Wilks-Heeg, [Purity of Elections in the UK Causes for Concern](#), Joseph Rowntree Trust, 2008, p32

⁹¹ [Commons Library Research Briefing SN03877, The Electoral Administration Bill 2005-06 a note on the Bill's progress, 12 July 2006.](#)

provisions were included in secondary legislation.⁹² The provisions were extended to Scotland in 2009.⁹³

Some commentators argue that postal voting on demand should be scrapped. Lord Pickles report on voter fraud noted that postal voting caused the greatest concern and was considered by some to be the ‘best’ opportunity for electoral fraud.⁹⁴

Richard Mawrey QC, the judge in the Birmingham fraud case, told the Pickles review that the changes introduced in 2006 were “a step in the right direction”, the possibilities of undue influence, theft and tampering of postal ballots were still a risk.⁹⁵

Pickles concluded the availability of postal voting encourages many legitimate electors to use their vote effectively. For that reason he considered that abolishing postal voting on demand would be a disproportionate step and that strengthening the system is what is required.⁹⁶

The table below shows allegations of postal vote fraud reported by the Electoral Commission, as well as convictions and cautions.

Voter fraud: postal vote fraud allegations and outcomes				
	All voting offences		Postal	
	Allegations	Allegations	Convictions	Cautions
2014	73	19		3 ¹
2015	123	27		4
2016	113	25		2
2017	104	22		2
2018	57			
2019	142			
2020	0			

Notes: general election years are highlighted. Data on postal vote fraud allegations is no longer reported separately since 2018. Data as reported in yearly fraud figures: some reported cases await outcomes.

1. Three police cautions were given for voting offences (including personation and other offences).

Source: Electoral Commission fraud data, various years

⁹² [Representation of the People \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2006](#)

⁹³ [Representation of the People \(Scotland\) \(Amendment\) Regulations 2008](#)

⁹⁴ Cabinet Office, [Securing the ballot: review into electoral fraud](#), 12 August 2016, p22

⁹⁵ Ibid

⁹⁶ Ibid, p22

What happens with a postal vote?

A postal vote application must be made in writing and be dated and must contain certain information, such as date of birth, a signature and the address where the postal voting pack must be sent. Signatures must be refreshed every five years. Electors unable to provide a signature or a consistent signature, for example because of a disability, may be exempted from the signature requirements.

The date of birth and signature are the ‘personal identifiers’. These are used to verify the correct person is returning the ballot paper. Currently voters must renew these identifiers every five years.

Postal voting packs are sent to all voters who have requested a postal vote. The packs cannot be sent until after the close of nominations for the election concerned. This is because ballot papers cannot be printed until the returning officer knows how many candidates will be standing. The close of nominations for most types of elections is on the nineteenth working day before polling day.

A postal ballot pack will include:

- A ballot paper;
- A postal voting statement – which includes space for the voter’s date of birth and signature – the personal identifiers;
- Two envelopes:
Envelope A – the completed ballot paper is placed in envelope A.
Envelope B – this is the return envelope with the returning officer’s address. Envelope A and the statement containing the personal identifiers are placed in envelope B.

When envelope B is returned to the returning officer it is held securely until a postal opening session. At an opening session Envelope B is opened and the personal identifiers are checked. Returning officers are required to check 100% of returned postal ballots.

If they match the details held by the election team, the ballot is accepted. Envelope A is then opened and placed in a ballot box to be included at the final count. The ballot paper should be held face down to preserve the secrecy of the person’s vote.⁹⁷

⁹⁷ Electoral Commission, UK Parliamentary elections in Great Britain: guidance for (Acting) Returning Officers, [Part D – Absent voting](#)

3.3 Postal vote harvesting

Fraudulently applying, tampering with, or using someone else's vote – postal vote personation – is already a criminal offence in electoral law.⁹⁸ A person convicted of personation or postal voting offences (which are corrupt practices) can be disqualified from standing for and voting in elections for five years.

Currently there is no legal restriction on campaigners or party workers handling the postal ballot of another elector. This may be done with innocent intention, for example to help voters who need assistance to vote or to understand the instructions.

Richard Mawrey QC told the Pickles Review the system was effectively being policed by political parties watching each other without enough rigour in the systems themselves.⁹⁹

The Electoral Commission's [Code of Conduct for Campaigners](#) is non-statutory guidance published in December 2015.

It says campaigners should be free to encourage electors to register to vote and apply for absent ballots. It also says campaigners can produce their own application forms to send to potential voters, as long as they meet the requirements in electoral law for what the application must include.

However, the guidance advises that campaigners should:

- Never handle anyone else's ballot;
- Never observe a voter completing their ballot;
- Never encourage a postal voter to have their ballot pack sent to an alternative address; and
- Never handle a voter's postal ballot pack or completed ballot paper.¹⁰⁰

A previous code, agreed by the main parties in 2006, encouraged campaigners not to handle or help voters. If asked by a voter to post or return the postal ballot, it said campaigners should make sure that the voter has sealed it first.¹⁰¹

Lord Pickles recommended that campaigners and political activists should be banned from handling completed postal votes and postal vote envelopes. He

⁹⁸ Sections 60, 62A and 62B of the Representation of the People Act 1983, as amended.

⁹⁹ Ibid

¹⁰⁰ Electoral Commission, [Code of conduct for campaigners: electoral registration, postal voting, proxy voting and polling stations](#)

¹⁰¹ Library briefing, [Postal voting and electoral fraud 2001-09 \(SN 6337\)](#), last updated in March 2012

also recommended that the provisions should not be extended to family members and carers.¹⁰²

In another recommendation Pickles also said completed postal ballot packs should only be handed at a polling station by the voter or a family member or designated carer acting on their behalf and this should be subject to a limit of 2 packs.¹⁰³

The Government said it would consider the recommendations relating to postal voting pack and the recommendation on restricting the number of postal ballot packs can be handed in at a polling station.¹⁰⁴

The Law Commission [review of electoral law](#), started in 2011, published a final report in March 2020.¹⁰⁵

The Commission had consulted on whether electoral law should be extended to make it an offence for campaigners to involve themselves with the behaviours outlined in the Electoral Commission's guidance. Its Interim Report noted the outcome of the consultation that 38 consultees provided a response to questions about postal vote handling, of whom 23 considered that all seven of the activities highlighted should be prohibited.¹⁰⁶

However, some who supported such regulation acknowledged and those who rejected it emphasised, regulation presents some real challenges. These included that regulation would criminalise helpful and otherwise unavailable assistance for those voters who need it. Also, it would be difficult to enforce and may be an overreaction given the available data on this type of fraud. This led the Commission to conclude that regulation was not appropriate and was best addressed by better and clearer drafting of existing electoral offences, notably undue influence.¹⁰⁷

In its final report the Law Commission commented that it was for Parliament to decide on the balance between access to polls and security from fraud and noted the Government had already committed to legislating to prohibit campaigners from handling postal votes.¹⁰⁸

¹⁰² Cabinet Office, [Securing the ballot: Report of Sir Eric Pickles' review into electoral fraud](#), August 2016, p26

¹⁰³ Ibid, p11

¹⁰⁴ Cabinet Office, [A democracy that works for everyone: a clear and secure democracy: government response to Sir Eric Pickles' review of electoral fraud](#), December 2016, p6-7 and 13

¹⁰⁵ Law Commission of England and Wales, Scottish Law Commission, [Electoral Law A joint final report](#), March 2020, HC 145 2019-21

¹⁰⁶ Law Commission of England and Wales, Scottish Law Commission, Northern Ireland Law Commission, [Electoral Law Interim Report](#), 2016, p71

¹⁰⁷ Ibid, p75

¹⁰⁸ Law Commission of England and Wales, Scottish Law Commission, [Electoral Law A joint final report](#), March 2020, HC 145 2019-21, p66

Postal Voting Bill 2017-19

The Government assisted in the drafting of a Private Member's Bill in the 2017-19 session. The [Postal Voting Bill](#) would have achieved the reforms outlined by the Pickles Review, on postal vote harvesting and limiting the number of postal ballot packs someone was able to hand in to a polling station.¹⁰⁹ The limit on the number of postal ballot packs that could be handed in was to be set by secondary legislation at a later date.

The [Impact Assessment](#) produced alongside the Bill noted that:

Between 2011 and 2017, there have been 186 allegations of postal vote fraud (some of which may include dozens or hundreds of ballot papers). Of these allegations, there have been four cautions and four convictions.¹¹⁰

The Bill made no substantial progress and the provisions did not become law.

3.4 Proxy voting

A proxy is someone who vote on your behalf. This is usually at a polling station, but proxies can also apply for a postal vote for the vote they are casting as a proxy.

Under current arrangements an elector must appoint one person to act as their proxy. The proxy must be entitled to vote in the election they are being appointed as a proxy for.¹¹¹ That means if someone wants a proxy to vote in a UK Parliamentary election, they cannot appoint a registered EU or foreign citizen.¹¹² They do not need to be registered in the same constituency.

As with postal voting, an elector can choose to vote by proxy for a particular election or for a longer period, or indefinitely. Applications for a particular election must give a reason, for example someone going on holiday. Definite or indefinite periods require a specific reason, such as disability, being an overseas voter, or because of employment or education.

At the same election, someone can only be a proxy for their close relatives, plus two other people. There is no limit on the number of close relatives someone can act as a proxy for. A close relative is defined as a spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.¹¹³

The Pickles Review heard concerns about the operation of proxy voting. One of those concerns was that proxy voting was less regulated than postal voting,

¹⁰⁹ [Postal Voting Bill 2017-19](#), 6 June 2018

¹¹⁰ [Postal Voting Bill 2017-19 Impact Assessment](#), 4 June 2018

¹¹¹ [Schedule 4 Paragraph 6\(1\), \(3\) and \(3A\)](#) Representation of the People Act 2000

¹¹² See Library briefing, [Who can vote in UK elections? \(CBP 8985\)](#) for information on voting rights of non-British residents

¹¹³ [Schedule 4 Paragraph 6\(6\)](#) Representation of the People Act 2000

and whether the number of close relatives someone can act as a proxy for should be reduced to two. Pickles agreed and made the recommendation that the limit should be two but also noted consideration was needed where a relative acted for overseas voters, who were more likely to be affected.¹¹⁴

The table below shows voting fraud allegations, convictions and cautions in recent years.

Voter fraud: proxy vote fraud allegations and outcomes				
	All voting offences		Proxy	
	Allegations	Allegations	Convictions	Cautions
2014	73	2		3
2015	123	11		2
2016	113	5		
2017	104	13		
2018	57			2
2019	142			
2020	0			

Notes: general election years are highlighted. Data on postal vote fraud allegations is no longer reported separately since 2018. Data as reported in yearly fraud figures: some reported cases await outcomes.

1. Three police cautions were given for voting offences (including personation and other offences).

Source: Electoral Commission fraud data, various years

¹¹⁴ Cabinet Office, [Securing the ballot: Report of Sir Eric Pickles' review into electoral fraud](#), August 2016, p31

4 Overseas voters

4.1 Summary

Overseas voters are British citizens registered to vote but who have permanently left the UK and reside elsewhere. This category of voter was introduced in 1985.

Overseas voters can only vote in UK Parliamentary elections. They may not vote in local elections nor in devolved elections in Scotland, Wales and Northern Ireland.

There are certain criteria to be able to register as an overseas voter:

- They can only register for up to 15 years after leaving the UK. The limit has changed several times since overseas voting was introduced in 1985. Registration must be renewed annually.
- They must have been on a Parliamentary electoral register in the UK before leaving. The only exception is for those who were children when they left and could not have been registered. They may register using a parent or guardian's last registration address.
- They must register in the local authority of their last registration address. The voter will then be included on the overseas voter list for the relevant constituency.

The Conservative manifesto for 2019 included a commitment to end the 15-year time limit on overseas registration. This is the so-called 'votes for life policy', which has been in the Party's manifestos since 2015.

In 2016, the Government published a policy statement, [A democracy that works for everyone: British citizens overseas](#), which set out how the 15 year rule would be removed.

It also included details of how the eligibility for overseas voter registration would be extended to all British citizens who had previously lived in the UK, not just those who had been registered to vote. It also included proposals to make the renewal process easier.

The Bill proposes to end the 15-year limit on overseas voter registration. It also proposes to remove the provisions that someone needed to be previously registered in order to become an overseas voter. This will allow any British

citizen living abroad to register at the last place where they were resident or registered in the UK.

The Bill's Impact Assessment notes the intention is for the change to be commenced in 2023 if the Bill passes. It estimates that the number of overseas registrations could rise by as much as 3 million voters.¹¹⁵

It estimates the additional electoral registration and electoral costs of delivering the overseas electors policy would range from £8 million to £25 million over the first ten years at current prices.¹¹⁶

The details of the overseas voter provisions in Part 2 of the Bill are set out in section 11.2

4.2

What are overseas voters?

British citizens who have moved abroad can apply to be registered as a special category of elector – an overseas voter. This must be in the last constituency in which they were entered on an electoral register before they moved abroad. Different arrangements are in place for service personnel although they can also choose to register as overseas voters.¹¹⁷

British citizens who have lived overseas for more than 15 years are currently unable to register to become an overseas voter.

Overseas voters may only vote in UK Parliamentary elections or referendums that use the Parliamentary electoral registers. They are not eligible to vote in any local government elections in the UK, nor are they eligible to vote in devolved elections in Scotland, Wales or Northern Ireland.

Overseas voters can vote by post or proxy, or in person at their allotted polling station if they are in the UK at the time of the election.

The Electoral Commission recommends that overseas voters should consider appointing a proxy to vote on their behalf. This is because of the short period available for ballots to be sent and returned from overseas during a general election.¹¹⁸

Background

Before 1985 British citizens resident outside the United Kingdom were unable to register to vote in UK Parliamentary elections. The [Representation of the People Act 1985](#) extended the Parliamentary franchise to British citizens

¹¹⁵ [Impact Assessment](#), p47

¹¹⁶ *Ibid*, p57

¹¹⁷ [Commons Library Research Briefing SN04276, Armed Forces Voting](#)

¹¹⁸ [Commons Library Research Briefing SN05923, Overseas voters](#)

resident overseas and enabled them to register as ‘overseas voters’ in the constituency for which they were last registered.¹¹⁹

In 1982-83 the Home Affairs Select Committee was considering election law. It recommended a new category of overseas voters should be created for British citizens living in what was then the European Economic Community (EEC). On whether local elections should be included, the Committee heard mixed evidence. The Home Office said that there would be little demand for overseas voters and the Committee concluded that “that it is the lack of an opportunity to express a view on government policy at a national level which provides the most legitimate ground for complaint”.¹²⁰

The Government’s view was that all overseas British citizens should be given the right to register, not just those in the EEC. It agreed that local elections should not be included.¹²¹

4.3 Time limits

Originally the time limit on overseas voter registration was five years after leaving the country. This was extended to 20 years in 1989 and then reduced to the current 15-year limit in 2000.

The Home Affairs Committee report of 1982-83 made no recommendation on time limits but noted, “We feel that any time limit would operate in a very arbitrary manner, and would give rise to endless hard cases.”¹²²

The Representation of the People 1984-85, as introduced, proposed a time limit of seven years. When debated in 1985, the then Home Secretary, Leon Brittan, noted:

Any time limit is arbitrary and the length of time that it takes for links with the United Kingdom to be attenuated will vary according to individual circumstances. There is no right and magic period of time.¹²³

The Shadow Home Secretary of the time, Gerald Kaufman, said “the link with this country of a person who is abroad grows weaker as the period of absence extends.”¹²⁴

¹¹⁹ The Library briefing SNo5923, Overseas voters, provides more detail on the background to the introduction and changes in overseas voters

¹²⁰ Ibid, paragraphs 51 and 52

¹²¹ Cmnd 9140 January 1984, p10

¹²² Home Affairs Select Committee: Representation of the People Act 1949. First Report, HC 32 1982-3, paragraph 50

¹²³ [HC Deb 29 January 1985 \[Extension Of Parliamentary Franchise\]. c217](#)

¹²⁴ [HC Deb 29 January 1985 \[Extension Of Parliamentary Franchise\]. c191](#)

During the first session of the Committee of the whole House the proposed limit was amended on division (382 votes to 21) to the 5 years limit.¹²⁵

Initially take up was low despite publicity. The Conservative manifesto for the 1987 general election promised to extend the period of eligibility but was not specific about a new time limit.¹²⁶

A Bill in the 1988-89 session proposed a 25-year period, but this was reduced to 20 years following amendments which were accepted by the Government. Amendments had also been proposed for 10, 15 or 20 years. The Minister, Douglas Hogg, said “I am perfectly willing to concede that, in a sense, we are plucking figures out of the air” but accepted the Labour amendment for 20 years “as a sensible compromise.”¹²⁷

In October 1998, the Home Affairs Select Committee took the view that the 20-year period within which a British citizen living overseas could retain the right to vote was excessive and recommended that the earlier limit of five years should be restored.

In evidence to the Committee, the Labour Party and the Liberal Democrats both argued that twenty years was perhaps too long a period but the Home Office reported that most of the correspondence it had received on the issue was not from people calling for the 20-year period to be lowered but from people resident abroad for more than twenty years arguing for it to be increased.¹²⁸

There was initially a provision in the Political Parties, Elections and Referendums Bill 1999-2000 to reduce the limit to 10 years. An amendment to create a 15-year limit was subsequently passed unopposed.¹²⁹ This provision, in section 141 of the Political Parties, Elections and Referendums Act 2000, took effect from 1 April 2002 and is still in place.

4.4 Votes for Life

The Conservative Party has included commitments to remove the 15-year limit on overseas voter registration in each election since 2015. This is its so-called ‘votes for life’ policy. In delivering the policy the government says:

Most British citizens overseas retain deep ties to the United Kingdom. The current 15 year limit on expats’ voting rights is arbitrary and anachronistic in an increasingly global and connected world. This

¹²⁵ HC Deb 29 January 1985, cc181-243

¹²⁶ The Next Steps Forward 1987

¹²⁷ HC Deb 5 July 1989, c422

¹²⁸ Home Affairs Select Committee, [Electoral law and administration](#), HC 768 1997-98

¹²⁹ HL Deb 22 November 2000 c924

Bill will enable greater participation in our democracy by delivering ‘votes for life’ and making it easier for expats to vote.¹³⁰

The documents accompanying the March 2021 budget included a funding of £2.5 million to end the 15-year limit.¹³¹

On 7 October 2016 the Government published a policy statement, [A democracy that works for everyone: British citizens overseas](#), which set out how the 15 year rule would be removed.¹³² The response to the feedback received following the policy statement was published on 8 February 2018.¹³³

A commitment to introduce a Bill was included in the 2015 Queen’s Speech.¹³⁴ No Government Bill was presented but the Cabinet Office did assist with the drafting of a Private Member’s Bill. The [Overseas Electors Bill 2017-19](#) was introduced by Glyn Davies as a Private Member’s Bill (a ballot bill) on 19 July 2017.

The Bill was given a Second Reading on 23 February 2018 without a division.¹³⁵ There was no cross-party consensus on the Bill with, broadly speaking, Conservative Members supporting the Bill and most Labour Members who spoke opposing the Bill. It failed to complete all its Parliamentary stages so did not become law.

The provisions in the Elections Bill on overseas voters largely replicate the measures included in Glyn Davies’ Private Member’s Bill.¹³⁶

Currently although overseas can register for up to 15 years after leaving the UK, registration has to be renewed annually. The 2017 Bill would have given ministers the power to alter the time period for an overseas registration to be valid.

The Association of Electoral Administrators, the Scottish Assessors Association and SOLACE (the Society of Local Authority Chief Executives) had all opposed this move. They have argued that while a longer duration might be more administratively convenient, there is a risk that the integrity of the register would be jeopardised. It would also create inconsistency in approaches with other ‘special category’ electors.

In response, the Government stated that it did not plan to use this power. In its ‘response to feedback’ document the Government stated that:

In light of the current lack of consensus within the electoral community about whether extending the renewal frequency is

¹³⁰ Elections Bill [Equality Impact Assessment](#), p1

¹³¹ HM Treasury, [Budget Report 2021: Protecting the jobs and livelihoods of the British People](#), p48

¹³² [A democracy that works for everyone: British citizens overseas: policy statement](#), Cabinet Office, October 2016

¹³³ [A democracy that works for everyone: British citizens overseas - response to feedback](#), Cabinet Office, 8 February 2018

¹³⁴ [Queens Speech briefing notes](#), May 2015.

¹³⁵ [HC Deb 23 February 2018, 486-517](#)

¹³⁶ [Commons Library Research Briefing CBP-8223, Overseas Electors Bill 2017-19](#)

desirable, the Government does not propose to make this change. To allow the Government to act more swiftly in the future, should opinion coalesce, we will seek a power to enable the renewal frequency to be changed, up to a maximum of five years, by secondary legislation. The Government would consult with the electoral community before making any such change.¹³⁷

The provisions in the Elections Bill as published will alter the requirement for annual renewal of an overseas voter registration. It will instead allow for overseas registrations to last for a maximum of three years before a renewal is required. This mirrors the proposed requirement to renew postal ballots every three years also included in the Bill.

4.5 How many overseas voters are there?

There were 233,000 overseas voters registered to vote at the December 2019 General Election. This was down from a record 285,000 at the 2017 General Election.¹³⁸ Removing the 15-year rule would enable all British citizens living abroad to vote in UK elections.

There is no official data on the number of British citizens living abroad:

- The Institute for Public Policy Research estimated in 2010 that there were 5.6 million (equivalent to about 10% of the British population);
- the UN estimates that there were about 4.3 million in 2019. Some of this difference may be explained by different ways of counting: the UN counts people who are born abroad and have foreign citizenship as a migrant, whereas the IPPR uses a wider range of sources;
- the [Government](#) estimates in its [Impact Assessment for the Elections Bill 2021](#) that there are roughly 3.2-3.4 million British nationals living overseas who would become eligible to vote if the law was changed as proposed in the Bill. Most of them are not expected to register to vote. Currently, 17.8% of overseas voters register during an election year, while 4.7% register during a non-election year, with 67.3% not renewing their registration and removed from the register. The Government expects these proportions to remain broadly the same. The number of overseas voters expected to register in 2029/30 (the first election year following the proposed transition period to the three-year renewal cycle) is around 302,000.

¹³⁷ [A democracy that works for everyone: British citizens overseas - response to feedback](#), Cabinet Office, 8 February 2018

¹³⁸ See Library Briefing Paper 5923 [Overseas voters](#) for more information

5 EU citizen voting rights

5.1 Summary

Currently EU citizens legally resident in the UK may register for the local government franchise and are able to vote in all elections that use the local government franchise.

The right to vote in local elections stems from the UK's former membership of the EU. The background to EU citizens' voting rights is set out in the Library briefing, [Who can vote in UK elections?](#) (CBP 8985). EU citizens may also stand for local elections

In June 2021 the [UK Government announced](#) it was proposing to amend the legislation covering EU voting and candidacy rights for England and Northern Ireland. It says this is to “reflect our new relationship with the EU.”

The proposals would preserve voting rights of EU citizens in the UK who were resident in the UK before the end of the transition period that followed the UK leaving the EU.

Those EU citizens who legally took up residence in the UK after the end of the transition period (31 December 2020) would only gain voting and candidacy rights for local elections if the UK had a bilateral agreement with their home country. So far bilateral agreements exist with Spain, Portugal, Poland and Luxembourg.

The details of the EU citizens voter provisions in Part 2 the Bill are set out in section 11.2

These provisions would not alter local elections voting rights in Scotland and Wales, where responsibility has been devolved. Both the Scottish and Welsh Parliaments have already changed local election voting rights to allow all foreign citizens legally resident in those countries to vote in local council elections and elections to the Scottish and Welsh Parliaments.

5.2 Background

Before 1995, EU citizens living in the UK had no right to register to vote in local elections. Article 8b.1 of the Treaty establishing the European Community (as amended by Title II of the Treaty on European Union) and the requirements of the directive of the Council of the European Communities No.94/80/EC made

it possible for citizens of Member States of the EU to vote and stand as candidates in another EU Member state if they were resident in that state.

This was originally incorporated into domestic law by the [Local Government Elections \(Changes to the Franchise and Qualification of Members\) Regulations 1995](#) SI 1995/1948. It was subsequently restated by [Section 1](#) of the Representation of the People Act 2000, which amended the principal Act, the Representation of the People Act 1983.

Until domestic law is changed, all resident EU citizens will retain their voting rights in local elections in England and local and devolved elections in Northern Ireland. This includes all elections that use the local government franchise: council, mayoral, police and crime commissioner and parish elections.

Changes already made in Scotland and Wales mean that any foreign national who is legally resident may register to vote for local elections and elections to the Scottish Parliament and Senedd Cymru (as long as they meet the age requirements). The provisions allowing for a qualifying foreign national to register to vote in local elections in Wales take effect for local government elections and local referendums taking place on or after 5 May 2022. By-elections or local referendums taking place before that date will not include qualifying foreign nationals.¹³⁹

The UK Government had wanted to make reciprocal voting rights part of the negotiations for the UK's exit from the EU.¹⁴⁰ However, they did not form part of the negotiations as domestic voting rights are a matter for individual EU member states. Instead the UK Government is negotiating reciprocal voting rights with individual EU countries.

To date, agreements have been reached with Spain, Portugal, Luxembourg and Poland.¹⁴¹ This means citizens of those four countries who legally take up residence in the UK will be allowed to vote and stand in local elections in England and Northern Ireland. Reciprocal arrangements operate for British citizens resident in those countries.

British citizens resident in some EU countries will retain local voting rights without reciprocal arrangements. For example, any foreign national legally resident in Belgium, Denmark, Finland, Netherlands, Lithuania, Sweden, and Estonia may register to vote. This usually is subject to a minimum period of residence, although countries vary, and some countries have additional registration criteria. Voting age also varies.

In other EU countries where no reciprocal arrangement has been reached with the UK, for example France and Germany, British citizens resident in those countries are no longer allowed to vote in local elections.

¹³⁹ Ibid, see section 5

¹⁴⁰ [HCWS1257 21 Jan 2021](#)

¹⁴¹ The agreements were announced in Written Statements: Spain: [HCWS1257 21 Jan 2019](#), Portugal: [HCWS1614 12 June 2020](#), Luxembourg: [HCWS1633 18 June 2019](#), and Poland: [HCWS260 3 June 2020](#)

Citizens of Ireland, Malta and Cyprus, which are EU countries, will not be affected by this policy as their voting rights in all UK elections predate EU membership.¹⁴²

The UK and Ireland already have reciprocal voting arrangements and British citizens resident in Ireland may vote in local and Dáil Éireann elections. All foreign citizens resident in Ireland may register to vote in local elections.¹⁴³

5.3 Proposed changes

Voting rights for EU citizens (except Ireland, Malta and Cyprus) will depend on when they took up legal residence in the UK.

The proposed changes would apply to local elections in England, local and devolved elections in Northern Ireland, and to police and crime commissioner elections, which cover England and Wales.

The Government's view is:

Now that the UK has left the EU, and with the ending of free movement and introduction of the new points-based immigration system in last year's Immigration Act, there should not be a continued, automatic right to vote and stand in local elections solely by virtue of being an EU citizen.¹⁴⁴

EU citizens resident before 1 January 2021

The Government is proposing EU citizens who were living in the UK before the end of the implementation or transition period of the Withdrawal Agreement will retain their voting and candidacy rights for all local elections.

This was the period after the UK left the EU but EU law still applied in the UK. It ended at 11pm on 31 December 2020. These EU citizens will retain their voting and candidacy rights as long as they retain a lawful immigration status. The Government announcement notes this “mirrors the stance taken on the EU Settlement Scheme” which protects the rights of EU citizens who were resident in the UK before the end of the implementation period.¹⁴⁵

EU citizens resident in the UK from 1 January 2021

For those EU citizens that have become resident in the UK since the end of the transition period, their local voting and candidacy rights will depend on whether there is a reciprocal agreement in place.

¹⁴² Section 6 of Library briefing, [Who can vote in UK elections? \(CBP 8985\)](#), outlines the historical background to Irish and Commonwealth voting rights in UK elections.

¹⁴³ [Citizens Information - Right to vote](#)

¹⁴⁴ Elections Bill [Equality Impact Assessment](#), p4

¹⁴⁵ [HCWS99 \[Local elections\], 17 June 2021](#)

The Government's view is:

The local voting and candidacy rights of EU citizens who arrived in the UK after this point will rest on the principle of a mutual grant of rights, through agreements with EU Member States, ensuring we are protecting the rights of British citizens living in EU countries in turn.¹⁴⁶

As noted above this currently covers four countries, Spain, Portugal, Luxembourg and Poland.

The Government has said it will continue to invite EU Member States, who are interested, to negotiate bilateral voting and candidacy rights agreements.

5.4 Possible impacts

The Impact Assessment accompanying the Bill expects the majority of EU citizens currently on the electoral register will retain their voting and candidacy rights.

The Impact Assessment estimates that EU citizens (excluding Ireland, Malta and Cyprus) living in England, Northern Ireland and Wales totalled almost 3 million in 2019-20. Of these 2.3 million were aged 18 or over. If these continue to reside in the UK and maintain a legal immigration status, they will retain their voting and candidacy and voting rights.

Over time the proportion of EU citizens who had been resident in the UK before the end of the Transition Period will reduce. It is difficult to predict how many EU citizens who arrive from 1 January 2021 will be affected.

The Impact Assessment estimates the annual number of EU citizens (excluding Ireland, Malta and Cyprus) entering England, Northern Ireland and Wales was 171,000. These are based on the 2019 figures from the Office of National Statistics long-term international migration statistics. Of these 135,000 were over 18 and 30% were from countries with a reciprocal voting rights agreement and 70% were from countries without an agreement. However, the estimates have assumed the overall age breakdown of EU migrants is the same as that of the UK population. The Impact assessment itself notes residents with EU citizenship are more likely to be younger than the overall resident population in the UK. The estimates also make no assessment of the impact of Brexit on the likely number of migrants from the EU in future years.¹⁴⁷

The Equality Impact Assessment also notes that EU citizens unable to register to vote may impact on their ability to gain credit. Credit reference agencies use the electoral register to confirm to lenders and other service providers the

¹⁴⁶ [Policy paper: Local Voting Rights for EU Citizens Living in the UK](#)

¹⁴⁷ Elections Bill 2021-22, [Impact Assessment](#), p79-82

name and address of an individual. This could slow access to some financial products to those affected.¹⁴⁸

¹⁴⁸ Elections Bill 2021-22, [Equality Impact Assessment](#), p15

6 Assistance for voters with disabilities

6.1 Summary

There are some measures in place that are aimed at allowing voters with disability to vote in polling stations. Critics say that more should be done as many voters with disabilities struggle to vote in secret and require assistance from others in polling stations.

Part 1 of the Bill includes provisions to increase support available to disabled people wanting to vote in polling stations. The Bill makes changes to the existing arrangements for a tactile voting device for voters with sight loss.

It also removes some of the restrictions on who can act as a companion in a polling station. Section 11.1 of this briefing gives more detail.

6.2 What help is currently available?

There are some limited and specific measures in place to assist voters with disabilities in polling stations.

A tactile voting device and large print version of the ballot paper must be made available in polling stations to assist blind and partially sighted voters. The large print ballot paper is for reference and cannot be placed in the ballot box.

The tactile voting device can be placed over and numbered flaps, with the numbers in braille and raised numerals, over each box where the 'X' is written. Using the large print ballot box as reference or by asking someone to read out the candidates on the ballot paper, the voter can then mark their 'X' in the correct box.

The person helping can be a companion or a member of polling station staff. This must be a member of immediate family over 18 years old, or a 'qualified elector' for that election. This means someone not entitled to vote could not enter the polling station to help as a companion.

The person helping you can also vote on your behalf. A companion can also help voters with mobility impairment. They must complete a form providing a signed declaration that they have acted as the companion.

Returning officers also have a duty under the Equality Act 2010 in the same way as any other service provider. They must ensure they make reasonable

adjustments to avoid putting people with disabilities at a substantial disadvantage compared to people who are not disabled. The same consideration applies to local councils when they conduct polling place reviews – the five-yearly review of where polling places and polling stations in each ward are situated.

6.3 Accessibility of elections

Despite the measures in place to assist disabled voters many still experience significant barriers to being able to vote and to vote in secret.

A report by RNIB (Royal National Institute of Blind People), [Turned Out 2019](#), found over one in 10 (13 per cent) of blind voters, and less than half of partially sighted voters (44 per cent), said they could vote independently and in secret. Nearly a quarter had to rely on a member of polling station staff to help them to vote.¹⁴⁹

Cabinet Office guidance issued in 2019 to returning officers suggested allowing people with sight loss to use other devices, such as mobile phones to read documents audibly or visually, was a reasonable adjustment. However, RNIB, while welcoming this, highlighted the decision rests with the individual Returning Officers.¹⁵⁰

Wheelchair users and voters who use other mobility aids often find polling stations inaccessible. Although returning officers are required to make reasonable adjustments, the only suitable building for use as a polling station may not be fully accessible.

In 2015 the charity Revitalise found in a survey of local authorities' websites 88% did not provide accessibility information about polling stations on their website.¹⁵¹

People with learning disabilities also face barriers to voting. Mencap has called for more accessible language and easy read versions of manifestos and a survey of voters with learning disabilities conducted in 2014 indicated 17% were turned away at the polling station because of their learning disability.¹⁵²

In 2017 the Government issued a call for evidence about the experience of disabled people in participating in elections, including registration.¹⁵³

¹⁴⁹ RNIB, Turn Out 2019,

¹⁵⁰ RNIB, [Accessible voting win \(but still a way to go\)](#), December 2019.

¹⁵¹ Revitalise, [Disabled voters are still being overlooked, finds Revitalise study](#), May 2015

¹⁵² Mencap, [People with a learning disability's passion for politics thwarted by system that excludes them](#), Oct 2014

¹⁵³ Cabinet Office, [Call for Evidence: access to elections](#), September 2017

Accessible versions were provided in large print, Easy Read and British Sign Language (BSL) format.

The response was published in August 2018 and the Government received over 250 responses. The responses came from mainly from those in four categories:

- those electors with learning disabilities;
- those affected by mental illness;
- wheelchair users; and
- those affected by sight loss.

The evidence received was analysed by Government in partnership with the Government chaired Accessibility of Elections Working Group (whose membership includes the Royal Mencap Society, Royal National Institute of Blind People, United Response, NHS, the Association of Electoral Administrators, representatives of the devolved administrations, the Electoral Commission and the Scottish Assessors Association).

The Government noted:

A need for more general information to be easily available, together with a change in the perceptions of disabled people and their role in political life, was apparent in the evidence provided.¹⁵⁴

The evidence showed that the tactile voting device was not an effective method of support for a blind or partially sighted person to vote at the polling station and that inclusion of it as a requirement in legislation worked against Returning Officers considering other options.

The Government also recognised the concerns about the restrictions on who could act as a companion and the difficulties it caused some voters.

The response included other recommendations related to better training and guidance. There were also measures that the Accessibility Working Group should consider to improve awareness of disabled voters' right to vote, making information in advance of elections more accessible (including party and candidate information) and improving electoral registration processes.

The Equality Impact Assessment accompanying the Elections Bill says the measures requiring Returning Officers to consider the needs of people with a wider range of disabilities in polling stations will result in improvements in accessibility. It also notes:

¹⁵⁴ Cabinet Office, [Call for Evidence: Access to Elections Government response](#), p7

Our experience from the Call for Evidence on Access to Elections and the Accessibility Working Group shows that whereas some local authorities make considerable effort to address the needs of disabled voters, others provide only the device to support voters with sight loss required in legislation and do not consider further support. The intention of these measures is to move to a system where all local authorities consider the additional needs of disabled voters, supported by guidance from the Electoral Commission and the Government.¹⁵⁵

¹⁵⁵ Elections Bill [Equality Impact Assessment](#), p11-2

7 Intimidation of candidates and voters

7.1 Summary

The Elections Bill creates a new offence of intimidation of candidates. It also clarifies the electoral offence of undue influence, which relates to the intimidation of voters. These are included in part 1 of the Bill. The details are outlined in section 11.1 of this briefing.

Intimidation of candidates

There is no offence in electoral law of intimidating a candidate or campaigner. However, existing criminal law can be used to prosecute intimidatory behaviour, for example, offences in the Protection from Harassment Act 1997.

Following the 2017 General Election the Committee on Standards in Public Life (CSPL) held a review on the intimidation experienced by Parliamentary candidates. This followed abuse during the campaign, especially online. Concerns were expressed that such abuse could prevent people from standing for public office, particularly women.

[In its report](#), the Committee found that existing laws to prevent intimidatory behaviour were sufficient but recommended the government should consult on the introduction of a new offence and sanction in electoral law to deter intimidation during elections.

The Government agreed and [consulted in July 2018](#). The response was [published in May 2019](#) and most respondents agreed with the Government's approach. However, neither the Labour Party nor the SNP agreed with the concept of a new offence. The Labour Party said the proposed new electoral offence would duplicate offences. It favoured replacing the offence of undue influence to incorporate intimidation and undue influence.

The Government committed to introducing the new offence when Parliamentary time allowed.

Undue influence

Undue influence is the electoral offence of trying to get someone to vote in a particular way or persuading someone not to vote.

Following a review by the Law Commission in 2016, it commented that the offence was “poorly expressed in legislation” but that the safeguarding voters from intimidation remained important. It recommended the offence should be redrafted and modernised so it can be understood.

The Government’s [2018 consultation](#) asked for responses on whether the offence should be redrafted and what it should cover. The consultation also included questions on extending the offence of undue influence to protect voters from intimidation outside polling stations. This was an issue that had been raised in the [Pickles Review](#).

All respondents to the 2018 consultation agreed that undue influence should be redrafted so it was easier to understand. 83% of respondents agree that the offence should capture intimidatory behaviour inside or outside polling stations.

The [Government stated](#) its intention to simplify the offence of undue influence and to incorporate intimidation outside polling stations.

7.2 Intimidation of candidates

The Electoral Commission surveyed candidates at the 2019 General Election. It received feedback from over 750 candidates and three quarters had experienced some abuse, threats or intimidation, and a sixth said they experienced significant levels. Some candidates felt there was co-ordinated abuse and intimidation by supporters of other parties or causes.

The most common abuse was online, mentioned by over 80% of those who gave feedback but one in ten had experienced physical abuse.¹⁵⁶

Following the 2017 General Election the then Prime Minister, Theresa May, requested that the Committee on Standards in Public Life (CSPL) should conduct an inquiry into abuse and intimidation experienced by Parliamentary candidates saying:

I have been horrified by stories from colleagues about the scale and nature of the intimidation, bullying and harassment they suffered during the general election campaign.

Robust debate is a vital part of our democracy, but there can be no place for the shocking threats and abuse we have seen in recent months.¹⁵⁷

¹⁵⁶ Electoral Commission, [In depth: campaigning at the 2019 UK Parliamentary general election](#), April 2020

¹⁵⁷ Cabinet Office press release, [Review into abuse and intimidation in elections](#), 12 July 2017

Amnesty International analysed nearly a million tweets from 1 January to 8 June 2017, with a focus on the six weeks prior to the 8 June UK election to find the scale of abuse against MPs. Over 25,000 abusive tweets were sent to women MPs.¹⁵⁸

The Fawcett Society has called for a lifetime ban from standing for elected office for those who promote violence or rape. An open letter to the Government, signed by organisations including the Jo Cox Foundation and by politicians from several parties, said:

Some of those responsible for issuing threats to women have then gone on to stand for election themselves. Surely anyone who issues threats of rape or violence or who incites hatred is not fit to stand for elected office?¹⁵⁹

In 2019 the Joint Committee on Human Rights published a report, [Democracy, freedom of expression and freedom of association: Threats to MPs](#). It drew attention to the ongoing threats to MPs and people standing for office, particularly online, and the prospect that such threats were a threat to democracy. It also examined areas of particular concern to Parliament, such as the policing in Parliament Square. The Committee did not comment on the desirability of a new offence of intimidation of candidates but said it would examine the proposed offence when it was brought forward.

Committee on Standards in Public Life inquiry

The terms of reference for the Committee on Standards in Public Life (CSPL) inquiry were formally set out in the Prime Minister's letter of 17 July 2017. It was tasked with examining the problem and assessing whether existing measures were suitable to deal with the issue or make recommendations to address the problem.¹⁶⁰

The [Committee's final report](#) was published on 13 December 2017. It made a number of recommendations aimed at social media companies, political parties, elected representatives, the media and government.¹⁶¹

The Committee noted that intimidation at elections did not occur in a vacuum, saying:

This can be a result of an unhealthy public discourse of those in public life – including the media – needlessly undermining trust in public institutions, or poor standards of conduct in public life.¹⁶²

¹⁵⁸ Azmina Dhrodia, [Unsocial Media: Tracking Twitter Abuse against Women MPs](#), Amnesty Global Insights, 4 September 2017.

¹⁵⁹ Fawcett Society, [Fawcett open letter calls on Government to impose lifetime ban on candidates who promote violence](#), 22 May 2019

¹⁶⁰ [The Prime Minister's letter to CSPL on the intimidation of Parliamentary candidates](#), 17 July 2017

¹⁶¹ [Intimidation in Public Life: A Review by the Committee on Standards in Public Life](#), 13 December 2017

¹⁶² *Ibid*, p30

The Committee's conclusion was that current range of offences were sufficient to tackle the sorts of intimidatory behaviour experienced by candidates, whether carried out online or elsewhere. However, it did hear of concerns about the "sufficiency of the current law to deal with intimidatory behaviour on social media".

One of its recommendations was that the government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners, saying:

No behaviour which is currently legal should be made illegal. However, we believe that the introduction of a distinct electoral offence will serve to highlight the seriousness of the threat of intimidation of Parliamentary candidates to the integrity of public life and of the electoral process, and will result in more appropriate sanctions.¹⁶³

Other recommendations aimed at social media companies included that they must take responsibility for developing technology and the necessary options for users to tackle the issue of intimidation and abuse on their platforms.

The Committee made several recommendations for political parties. It said that political parties had a responsibility to:

- To show leadership in setting an appropriate tone for public debate around elections for their campaigners and supporters;
- To tackle intimidatory behaviour undertaken by their members;
- To provide support to their candidates who face intimidation during the election.¹⁶⁴

Government response

The Government's response to the CSPL report was published in March 2018.¹⁶⁵ The Government agreed that with the recommendation that it should consult on the introduction of a new offence in electoral law promised a consultation in the summer of 2018.

In May 2018, the Government also asked the Law Commission to review the criminal law to assess the extent to which the current law achieved parity of treatment between online and offline offences. The ongoing work by the Law

¹⁶³ Ibid, pp59-61

¹⁶⁴ [Intimidation in Public Life: A Review by the Committee on Standards in Public Life](#), 13 December 2017, p46

¹⁶⁵ Cabinet Office, [Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life](#), 8 March 2018

Commission is detailed on their website, [Reform of the Communications Offences](#).

Its wider programme for addressing online bullying and safety online is being taken forward with its the [Online Harms White Paper](#),¹⁶⁶ with a draft Online Safety Bill promised in the 2021 Queen's Speech.¹⁶⁷ The Library briefing, [Regulating online harms \(CBP 8743\)](#), looks at Government plans to regulate harmful content online more broadly.

Consultation on a new offence

The Government published its consultation document on 29 July 2018, [Protecting the Debate: Intimidation, Influence, and Information](#).¹⁶⁸ The document focused on specific elements of electoral law. The document set out the Government's proposals for the new offence relating to the intimidation of candidates and campaigners.

The government proposed the new offence should apply to candidates and campaigners during a regulated election period for a UK Parliamentary election or local elections in England. This is the 25-working-day period from the notice of election to polling day for most local elections (for London Assembly and Mayoral elections this is 30 days). It would also apply during referendums. The Government proposed that the end period for the electoral offence would be seven calendar days after polling day.

The Government proposed to create the new offence on the basis of intimidatory behaviours which are already illegal. It would add an electoral sanction by labelling the new offence a 'corrupt' practice.

Certain existing electoral offences carry with them the label 'corrupt' or 'illegal' practices. Corrupt practices attract a more serious sanction. Electoral offences carry sentences in the normal way, maximum penalty on indictment for most corrupt practice is a year's imprisonment or fine or both and for an illegal practice on summary conviction is a level 5 fine.¹⁶⁹ Postal voting and proxy offences and the offence of personation carry a maximum two-year prison sentence.

In addition, electoral offences labelled as corrupt and illegal practices also carry a democratic sanction. People convicted of corrupt and illegal practices are barred from holding elective office for five (corrupt) or three (illegal) years.

Certain voting offences also can also carry the sanction of being disqualified from being registered as an elector or voting for a similar period but the

¹⁶⁶ Department for Digital, Culture, Media & Sport, [Online Harms White Paper: Full government response to the consultation](#), 15 December 2020

¹⁶⁷ [Queen's Speech 2021: background briefing notes](#), p94

¹⁶⁸ Cabinet Office, [Protecting the Debate: Intimidation, Influence, and Information](#), 29 July 2018, p26

¹⁶⁹ CPS, [Election offences](#)

Government's view was that the new offence did not warrant this type of disqualification.

The Government was clear that this new offence would not be a 'catch all' to stifle debate and disagreement. The proposed offence would be compatible with freedom of expression protected by European Convention on Human Rights. The CSPL report had highlighted the Crown Prosecution Service guidance on prosecuting intimidatory online activity must be "more than simply offensive, shocking or disturbing."¹⁷⁰

The electoral sanction being proposed must relate to an alleged incident that took place because the person was a candidate or campaigner. Alleged intimidatory behaviour could still be prosecuted at any time, including during the campaign period, where appropriate.

Responses

A response to the consultation [was published](#) in May 2019.¹⁷¹ A total of 41 responses were received, including responses from six political parties.

75% of respondents broadly agreed with the approach set out in the consultation. Concerns were expressed by some about the interaction of the new offence with the right to freedom of expression.

The Conservative Party and Liberal Democrats agreed with the new offence. Labour Party and the SNP disagreed with the concept of a new offence. The Labour Party said the proposed new electoral offence would duplicate offences. It favoured replacing the offence of undue influence to incorporate intimidation and undue influence. The SNP favoured removing the concept of corrupt and illegal practices in electoral law and instead attaching electoral consequences to sentences for other crimes if there is a proven link to elections.¹⁷²

The Electoral Commission agreed that removing the right to vote would be a disproportionate sanction but suggested stopping someone from standing for election may not be a sufficient deterrent for people who do not want to become a candidate.¹⁷³

The Local Government Association made a similar point in its response. It noted:

¹⁷⁰ CPS, [Social Media - Guidelines on prosecuting cases involving communications sent via social media](#)

¹⁷¹ Cabinet Office, [Protecting the Debate: Intimidation, Influence and Information: Government response](#), May 2019

¹⁷² Ibid, pp17-8

¹⁷³ Electoral Commission, [Response to the UK Government policy consultation: Protecting the Debate](#), 15 October 2018

It is important not to give the impression that, by having a penalty that is only a disincentive to those wishing to stand for office, the majority of intimidation is undertaken by those seeking election.¹⁷⁴

The Government confirmed it would move forward with the proposed new offence as set out in the original consultation document. It made one alteration following the consultation relating to UK Parliamentary elections.

UK Parliamentary elections – the long campaign

The Government agreed that the period where the new offence applies should last longer than the normal 25-day election timetable period for UK Parliamentary general elections. This would apply for the ‘long campaign’ regulated period.¹⁷⁵

The maximum a Parliament can run is five years. If a Parliament goes beyond 55 months, sitting MPs who intend to seek re-election and anyone who declares their intention to stand at the forthcoming election are subject to campaign spending limits from then until Parliament is dissolved. This is known as the ‘long campaign’ and the limit the prospective candidates can spend on campaign activity and literature is set out in the legislation.

The long campaign ends when Parliament is dissolved and the regulated period of the general election starts, sometimes known as the ‘short campaign’. New spending limits apply for the short campaign. In the event of a ‘snap’ early election before the Parliament has reached 55 months in duration only the short campaign applies.

7.3 Intimidation of voters

‘Undue influence’ is one of the classic electoral offences originating in the nineteenth century. The others are ‘bribery’ and ‘treating’. Bribery relates to the exchange of money or an offer of employment in relation to trying to influence a voter or buy a vote. Treating is the attempt to influence a voter or buy a vote using food or drink or similar provisions. All are labelled ‘corrupt practices’ in electoral law and carry an additional electoral sanction (as noted above).

Undue influence is defined in [section 115](#) of the Representation of the People Act 1983, as amended.

The Impact Assessment accompanying the Bill notes that most allegations of undue influence lead to no further action being taken but it is unclear how

¹⁷⁴ LGA Response to Cabinet Office consultation: [‘Protecting the Debate: Intimidation, Influence and Information’](#), p2

¹⁷⁵ Ibid, p24

many cases would have been progressed further if the law had been clear. Only one court case has been initiated in the last eight years.¹⁷⁶

In its review of electoral law the Law Commission noted that the existing offence “is poorly expressed in legislation” but summarised the offence as trying to get someone to vote in a particular way, or persuading someone not to vote as follows:

- pressure and duress - whether it involves physical violence or the threat of it;
- trickery - to cover devices and contrivances such as publishing a document masquerading as a rival campaign’s; and
- abuse of a position of influence: where a special relationship of power and dependence exists between the person exerting the influence and the voter.¹⁷⁷

The Commission said safeguarding voters from intimidation remains important. It recommended the offence should be modernised and be restated as an offence of intimidation, deception and improper pressure on voters.¹⁷⁸

In the Government’s consultation document of 2018, *Protecting the Debate: Intimidation, Influence and Information*, it agreed that the offence should be retained and needed clarifying, saying the offence as currently drafted was complex and “difficult to interpret and use”.¹⁷⁹

It intended to maintain the general purpose of the offence, that it should refer to threats of violence, non-physical threats of harm, duress and should also continue to apply after polling day. For example, a person may be threatened or harmed after the election on account of having voted or refrained from voting.¹⁸⁰

Polling stations

The consultation also included questions on extending the offence of undue influence to protect voters from intimidation outside polling stations. The Pickles Review into electoral fraud raised concerns about this and the uncertainty of whether an offence had been committed in such circumstances.¹⁸¹ Pickles cited the mayoral election in Tower Hamlets in 2014, where the result was overturned as a result of electoral fraud.¹⁸² One of the

¹⁷⁶ Elections Bill 2021-22, Impact Assessment, p69

¹⁷⁷ Law Commission, Scottish Law Commission Northern and Ireland Law Commission [Electoral Law: A Joint Interim Report](#), 2016, p141

¹⁷⁸ Ibid, p150

¹⁷⁹ Cabinet Office, [Protecting the Debate: Intimidation, Influence, and Information](#), 29 July 2018, p35

¹⁸⁰ Ibid, pp36-7

¹⁸¹ Sir Eric Pickles, [Securing the ballot Report of Sir Eric Pickles’ review into electoral fraud](#), August 2016

¹⁸² BBC News, [Tower Hamlets election fraud mayor Lutfur Rahman removed from office](#), 23 April 2015

concerns had been the level of intimidation of voters outside polling stations. Pickles quoted the judge in the Tower Hamlets case:

Despite clear evidence of intimidatory behaviour during the Tower Hamlets election court case, Richard Mawrey QC noted that the bar was just too high to meet the test in criminal law. He noted: "The court appreciates that many in Tower Hamlets will be disappointed, even horrified, that the 1983 Act does not penalise thuggish conduct at polling stations of the sort that occurred in 2014."¹⁸³

The Government consultation asked whether intimidation at a polling station should be included in the offence of undue influence and if so whether it should "include behaviour which falls below the current requirement of physical force, violence or restraint".¹⁸⁴

Responses

The response attracted high levels of agreement on the proposals included in the consultation document. 100% of respondents agreed that the offence needed greater clarity to make it clear and enforceable. There was clear support for maintaining the scope of the threat of harm to a voter as set out by the Government.¹⁸⁵

News Media UK argued that the redrafted offence should target more precisely threats of physical harm and abuse of position. It highlighted that any redrafting of the offence should remove any ambiguity in order to ensure that 'harm' could not extend to causing offence or hurt feelings, nor should it punish political fervour.¹⁸⁶

83% of respondents agree that the offence should capture intimidatory behaviour inside or outside polling stations. 73% of respondents agreed that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint.¹⁸⁷

The Government said it intended to include intimidation inside or outside the polling station but acknowledged drafting the offence will be complex. For example, polling stations, and the grounds they sit in, vary in size, shape and space.¹⁸⁸

The Association of Electoral Administrators' response to the consultation noted that 'at polling stations' could be more clearly defined to include any

¹⁸³ Sir Eric Pickles, [Securing the ballot Report of Sir Eric Pickles' review into electoral fraud](#), August 2016, p9

¹⁸⁴ Cabinet Office, [Protecting the Debate: Intimidation, Influence, and Information](#), 29 July 2018, p39

¹⁸⁵ Cabinet Office, [Protecting the Debate: Intimidation, Influence and Information: Government response](#), May 2019

¹⁸⁶ Ibid, p27

¹⁸⁷ Ibid, p30

¹⁸⁸ Ibid, p30

“clearly defined area/zone immediately surrounding the polling place designated by the Returning Officer as appropriate.”¹⁸⁹

¹⁸⁹ Association of Electoral Administrators, [Response to the Cabinet Office consultation: Protecting the Debate: Intimidation, Influence and Information](#), p5

8 Digital imprints

8.1 Summary

Imprints are added to campaign material during elections or referendums. Imprints are designed to improve public trust and confidence in campaigns by enabling voters to understand who is targeting them.

Currently imprints are only required on printed material. Digital campaign adverts or organic or unpaid material that promotes a candidate or party or referendum campaign are not required except in Scotland. As good practice the Electoral Commission advises digital campaign material to carry an imprint.

The Bill extends the requirements for an imprint to appear on printed campaign material to digital campaign material. As is currently the case for printed election material, digital imprints would be required on political material all year round, and not just in the run up to an election.

The provisions are in part 6 of the Bill and are detailed in section 11.4 of this briefing.

8.2 What is an imprint?

An 'imprint' is a piece of information added to campaign material during an election or a referendum.

The imprint provides information to potential voters about who produced the material. This is aimed at increasing transparency so voters will know who has made the claims contained in the material. They will then make their judgement on whether or not to vote for the party or candidate being promoted. It also makes campaign material traceable to a candidate or campaign, which helps transparency.

Campaign material is any material that can be reasonably regarded as intended to promote a candidate or party or persuade a voter to vote for a particular candidate or party.

By law printed campaign material, such as posters and leaflets, must include the imprint.¹⁹⁰ Failure to include an imprint is an offence by the printer, the promoter and the candidate and their election agent. Similar provisions are made for in printed referendum material.¹⁹¹

The law relating to imprints was drafted before the rise of digital campaigning. The law does not currently require digital campaign material to include an imprint, except in Scotland.

In its guidance to candidates the Electoral Commission highlights the legal requirement for an imprint on printed campaign material. It also advises campaigners outside Scotland to include an imprint on digital material, even though it is not required under the law.

8.3

Calls to include digital material

The rise of digital campaigning has been recent but rapid. Social media and the internet give candidates and parties rapid access to voters, both through direct dialogue with voters, but also with digital advertising.

Electoral Commission figures taken from reported spending in statutory spending returns show that reported spending on digital advertising made up 2% of advertising spending in the 2014 Scottish referendum. This rose to 24% the following year in the UK General Election and 43% in the 2017 election.¹⁹²

It has led to concerns about transparency of campaigning, as well as raising wider issues of ‘fake news’ and the way campaigners use people’s personal data.

In 2018 the Electoral Commission published a report on digital campaigning.¹⁹³ It had been calling for the extension of the imprint regime to online material since 2003. Its guidance to parties and candidates already recommends that digital imprints are used.

The Commission noted that requiring imprints on digital material would help enforce spending rules. To help with this the Commission also called for campaigners to be required to provide more information on spending categories in their spending returns and on invoices. The Government agreed with the proposals.

Others have also called for digital imprints to be made compulsory. The Law Commission made similar calls in its interim (2016) and final (2020) reports on

¹⁹⁰ [Section 110](#) of the Representation of the People Act 1983, as amended. Similar provisions appear in other legislation for different types of election, such as police and crime commissioner elections.

¹⁹¹ [Section 126](#) of the Political Parties, Elections and Referendums Act 2000

¹⁹² Electoral Commission, [Report: Digital campaigning - increasing transparency for voters](#)

¹⁹³ *Ibid*

election law.¹⁹⁴ The Committee on Standards in Public Life report on intimidation of candidates (see section 7) also agreed. In June 2020 the House of Lords Select Committee on Democracy and Digital Technologies was critical of the time taken to bring forward new measures, saying:

This delay is unacceptable; “in due course” provides no clarity and we question how many more election campaigns will be run, and how much further public trust will be eroded, before this proposal is put into law.¹⁹⁵

The Government consulted on the introduction of digital imprints in July 2018,¹⁹⁶ and a technical consultation followed in 2019.¹⁹⁷

The proposal from the Government was for material to satisfy two tests. The first was whether the material can reasonably be regarded as intended to promote or procure electoral success of parties, candidates or whether the material related to a referendum.

The second test would determine whether an imprint was required. It should be dependent on who is posting and whether they are paying for the material to be advertised.

Registered political parties, registered third party campaigners, candidates, holders of elected office and registered referendum campaigners would be covered in respect of both paid and unpaid (or ‘organic’) material. Unregistered third-party campaigners - in respect of paid material only.

People sharing material they like would be unaffected. Generally re-publishing digital election material does not require a new imprint. The Government proposals noted, however, if material was to be substantively altered and republished by a campaigner (who was subject to the new requirements, a new imprint was required. Additionally, if the campaigner is re-publishing unpaid election material from unregistered third parties an imprint may be required.¹⁹⁸

The Government response published in June 2021 noted:

Overall, feedback to the consultation was positive, with respondents saying the regime would improve public confidence in campaigning, help to close a gap in transparency, and aid oversight and enforcement on the part of regulators and civil society. There were solid majorities in favour of most of the proposals.¹⁹⁹

¹⁹⁴ Law Commission, [Electoral Law A joint final report](#), p140-2

¹⁹⁵ House of Lords Select Committee on Democracy and Digital Technologies, [Digital Technology and the Resurrection of Trust](#), June 2020, p91

¹⁹⁶ Cabinet Office, [Protecting the Debate: Intimidation, Influence and Information](#), July 2018

¹⁹⁷ Cabinet Office, [Transparency in digital campaigning: technical consultation on digital imprints](#), November 2020

¹⁹⁸ *Ibid*

¹⁹⁹ Cabinet Office, [Digital imprints - Government consultation response](#), June 2021, p9

The feedback to the Government’s technical consultation provided mixed views about the distinction between paid and unpaid material being within scope. Those in favour agreed that the distinction would strike the right balance between ensuring transparency in online campaigning and protecting free speech.

Almost 80% of respondents agreed or strongly agreed that the regime should be expanded beyond what is considered election material to wider online political advertising.²⁰⁰

The Electoral Commission welcomed the proposals in the Elections Bill but noted, “It will be important for the legislation to give a clear definition of what is meant by ‘political material’”, so those covered could clearly understand and follow the new rules.²⁰¹

Social media platforms and other online platforms will not be responsible for monitoring content and ensuring users follow the rules on digital imprints but they must comply with any court orders to take down material in breach of the new rules.

The Electoral Commission can use its civil sanctioning powers for breaches of imprint offences by parties and campaigners covered by PPERA (section 143). Candidates covered by the Representation of the People Act 1983 are covered by police and prosecution authorities. The Impact Assessment estimates there will be 50 allegations a year in non-election years and 140 in a general election year. It estimates this will lead to one court case a year.²⁰²

8.4 What happens in Scotland?

Digital imprints were first required in Scotland for the referendum on independence held in 2014.

The rules for the conduct of the referendum were set out in the [Scottish Referendum Act 2013](#). Part 4 of schedule 4 to the Act extended the traditional requirements for imprints to include digital campaign material. These rules only covered the referendum and did not apply to local or Scottish Parliament elections.

In the Electoral Commission’s statutory review of the referendum it found that the new rules had caused some confusion amongst campaigners about what did and did not require an imprint. It was criticised for being over-broad, as it caught any material “wholly or mainly relating to the referendum”. In its view only those focussed primarily on campaigning for a particular outcome should be covered. Individuals or organisations that were just expressing their views on an outcome should not be covered. The Commission

²⁰⁰ Cabinet Office, [Digital imprints - Government consultation response](#), June 2021, p16

²⁰¹ Electoral Commission, [Introducing digital imprints](#), 5 July 2021

²⁰² Elections Bill 2021-22, [Impact Assessment](#), p66

recommended future changes to the rules for other elections should not unintentionally capture such broad categories of online activity.²⁰³ The Law Commission took the view that the imprint requirement should instead use the definition of “campaign material” used by the Representation of the People Act 1983.²⁰⁴

The [Referendums \(Scotland\) Act 2020](#) extends the digital imprint regime to referendums held in Scotland for which it has legislative competence.²⁰⁵ The Finance and Constitution Committee report on the Bill as it progressed through the Scottish Parliament examined the imprint requirement.

Dr Alan Renwick of the UCL Constitution Unit told the committee the Bill did “not make it clear that someone who is expressing a personal view and not being paid for it does not have to provide an imprint.” The Institute for Government also made the point, “shared peer to peer on social media” should not be covered by the regime. Scottish Government officials told the Committee they were trying to make sure that they do not capture individuals expressing their personal views and that the Bill “is very much about capturing publications that are intended for campaigning.” The Committee recommended the Scottish Government provided clarification as to the intended scope of the digital imprint requirement.²⁰⁶

The Scottish Government introduced an amendment at stage 2 to clarify the situation. It meant any material that “expresses the individual’s personal opinion, and ... is published on the individual’s own behalf on a non-commercial basis” was exempt from the digital imprint requirement. The amendment was passed on a vote.²⁰⁷

In 2020 the digital imprint requirement was extended to Scottish Parliament elections and local elections by two statutory instruments. The policy notes to both state there was no consultation on the measure because the policy had been subject to parliamentary scrutiny and agreement during the parliamentary process for Referendums (Scotland) Act 2020.²⁰⁸

²⁰³ Electoral Commission, [Scottish Independence Referendum Report on the referendum held on 18 September 2014](#), December 2014, p110-1

²⁰⁴ Law Commission, [Electoral Law A joint final report](#), p141

²⁰⁵ Schedule 3

²⁰⁶ Finance and Constitution Committee, [Stage 1 report on the Referendums \(Scotland\) Bill](#), p21-22

²⁰⁷ [Referendums \(Scotland\) Bill](#), First meeting on amendments, 27 November 2019.

²⁰⁸ [Scottish Elections \(Details to appear on Election Publications\) Regulations 2020](#) and the [Scottish Elections \(Details to appear on Election Material\) Regulations 2020](#)

9 The Electoral Commission

9.1 Summary

The Electoral Commission is the independent body which oversees election and regulates political finance in the United Kingdom. It was established in 2000

It is accountable directly to Parliament via the Speaker's Committee on the Electoral Committee.

The [Government has said](#) that “some across the House have lost confidence in the work of the Commission and have questioned the adequacy of the existing accountability structures.” This has followed some recent high-profile cases where regulatory action by the Commission has resulted in legal battles.

The Elections Bill proposes changes to the way the Electoral Commission interacts with Parliament and the Government. The Government is proposing that it should draft a Strategy and Policy Statement setting the Commission's responsibilities, subject to consultation and Parliamentary approval. The Speaker's Committee will be granted the power to examine the Electoral Commission's compliance with the new Strategy and Policy Statement.

Critics say the new provisions are an attack on the Commission's independence.

The Commission, while welcoming Parliamentary oversight, [has cautioned](#) that the changes may “place a fetter on the Commission which would limit its activity”.

9.2 Background

The Electoral Commission is an independent statutory body. It is responsible for the registration of political parties and the regulation of political finance.

Parties and registered campaigners must submit annual accounts and report donations and loans over a certain amount to the Commission. These are then made publicly available and searchable in a [finance database](#) on the Commission's website..

The Commission also monitors elections and referendums to make sure they are fair and run well. The Commission provides the guidance and advice that enables the delivery of elections as well as setting performance standards for electoral registration officers and returning officers. It also publishes statutory reports on how well each election is run.

The Commission also responsible for public awareness campaigns ahead of elections and referendums to encourage people to register to vote and has responsibilities in running aspects of national referendums.

The Commission may impose financial civil penalties on political parties and campaigners if they fail to submit donation and loans returns, campaign spending returns or statements of account. The Commission also has the power to seek forfeiture of impermissible donations accepted by political parties or other regulated individuals or entities. For the most serious breaches it may refer cases to the police and prosecuting authorities.

Creation of the Electoral Commission

The Commission was established in November 2000 by the [Political Parties, Elections and Referendums Act 2000](#) (PPERA). The Act, as amended, is the principal piece of legislation determining the functions and powers of the Commission.

The Act also determines the Parliamentary oversight of the Commission. The Commission is accountable to the UK Parliament through the Speaker's Committee on the Electoral Commission, a statutory committee established by PERA.

The primary driving force for the establishment of the Electoral Commission was the Fifth Report of the Committee on Standards in Public Life (CSPL), published in 1998.²⁰⁹ The Committee examined the funding of political parties at the request of the Labour Government elected in 1997 and followed party funding controversies in the 1990s. The Labour Party's manifesto pledged to ban foreign donations.²¹⁰ The Conservative Party's manifesto said it would not accept foreign donations.²¹¹

Until PERA was passed, there had been no regulation of national party funding and campaign expenditure. Only local campaigns had been regulated, with the principal legislation being the [Representation of the People Act 1983](#), as amended.

When the Electoral Commission was established by it had limited powers to impose civil sanctions for failure to deliver certain documents with a maximum fine of £2,000.²¹² It could also seek a court order for forfeiture of

²⁰⁹ Fifth Report of the Committee on Standards in Public Life, [The Funding of Political Parties in the United Kingdom](#), Cm 4057, October 1998

²¹⁰ Labour Party, [1997 Manifesto](#)

²¹¹ Fifth Report of the Committee on Standards in Public Life, [The Funding of Political Parties in the United Kingdom](#), Cm 4057, October 1998, Cm 4057, para 5.16

²¹² [Section 147](#) of PERA as enacted

impermissible donations. For most breaches of the new PPERA regulations the only option was referral to prosecuting authorities for prosecution in the courts.

2007 review

The powers and remit of the Commission were amended following a review by the CSPL.²¹³ The Committee considered it timely to review the Electoral Commission as it had been running for just over five years and had regulated two general elections. The 2007 report made recommendations on the regulatory and sanctioning powers of the Commission.

The review took place in the backdrop of the controversy of the Conservative, Labour and Liberal Democrat parties receiving extensive funding in the form of loans rather than donations in the run up to the 2005 election.²¹⁴

The CSPL concluded the Electoral Commission had not fulfilled its role as a regulator of party-political funding and campaign expenditure. This, in their view, was because PPERA had been unclear that the Commission should actively regulate and not just monitor, and that:

a degree of timidity, has led to an administrative rather than a proactive risk-based regulatory approach. This has contributed to what the Committee regards as regulatory failure and has undermined the confidence of the public and political parties in the regulatory framework.²¹⁵

The CSPL recommended PPERA should be amended to say the Electoral Commission had a duty to proactively investigate allegations or suspicions of failures to comply with the regulatory framework. It also recommended a new system of civil sanctions should be introduced with a greater capacity for the Commission to investigate. The Committee had noted the only option in most cases for breaches of PPERA was prosecution:

in virtually all cases the Commission has been reluctant to refer the matter to the CPS because, usually, such a move would be out of all proportion to the offence committed and a prosecution unlikely to be judged as in the public interest.²¹⁶

These recommendations were echoed in the Phillips Review, published in 2007, which noted the “system of criminal penalties is all but unusable in any but the most serious cases”.²¹⁷

²¹³ CSPL, [Eleventh Report: Review of the Electoral Commission](#), January 2007, p3

²¹⁴ Library briefing, [Political party funding: controversies and reform since 1997 \(SN07152\)](#), last updated March 2016

²¹⁵ CSPL, [Eleventh Report: Review of the Electoral Commission](#), January 2007, p3

²¹⁶ *Ibid*, p35

²¹⁷ Sir Hayden Phillips, [Strengthening Democracy: Fair and Sustainable Funding of Political Parties](#), March 2007, p21

The Commission welcomed the report and supported nearly all of the recommendations but said, “we do not accept that there is any basis for the accusation that the Commission has lacked courage and leadership.”²¹⁸ The Commission had already begun to develop capacity to take a more pro-active approach to regulation.²¹⁹

In June 2008 the Government published a white paper, Party Finance and Expenditure in the UK.²²⁰ It took forward many of the recommendations made by the CSPL. This led to the passing of the [Political Parties and Elections Act 2009](#).²²¹

The Act extended the investigatory powers of the Electoral Commission and to introduce the new civil sanctions regime now in place (see section 10 for more information). It also brought loans within the scope of PPERA regulation. The civil sanction regime was based on the [Regulatory Enforcement and Sanctions Act](#), which was designed to give regulators more options and greater flexibility when imposing sanctions.²²² The background to the Bill was examined in the Library briefing, [The Political Parties and Elections Bill \(RPO8-74\)](#), prepared in 2008 for the second reading of the Bill.

Calls for reform

The Electoral Commission has been involved in some high-profile controversies in recent years. It has led to some politicians and campaigners saying the Electoral Commission is not fit for purpose and in need of reform.

Although it has never referred any alleged breaches of PPERA offences for prosecution it has been involved in several legal battles relating to its regulatory activity following the 2016 EU referendum. The Commission issued fines to organisations on both sides of the EU referendum debate, but it was the fines given to ‘leave’ supporting campaigners that attracted the most attention.

Fines were issued to Vote Leave, the lead campaigner for ‘leave’ during the referendum and Darren Grimes of BeLeave. Both Darren Grimes and Alan Halsall, Vote Leave’s responsible person, were referred to the police. Vote Leave denied all wrong-doing and accused the Commission of bias and the Commission’s report on its investigation was ‘wholly inaccurate’.²²³ The Commission said Vote Leave had refused to cooperate with the investigations, “including contesting our right as the statutory regulator to open the

²¹⁸ [Electoral Commission press release](#), 18 January 2077

²¹⁹ Electoral Commission, [Annual Report 2006-7](#), HC 851 2006-07, p7

²²⁰ Ministry of Justice, [Party finance and expenditure in the United Kingdom The Government’s proposals](#), Cm 7329, June 2008

²²¹ The progress of the Bill can be viewed on the [Political Parties and Elections Bill 2008-09](#) pages on the Parliament website

²²² Library briefing, [Political Parties and Elections Bill](#), Bill 141 of 2007-08 [RP 08-74]

²²³ BBC News, [Brexit: Vote Leave broke electoral law, says Electoral Commission](#), July 2018

investigation.”²²⁴ Vote Leave disputed this assertion saying it had followed “the letter of the law and spirit of the law”.²²⁵

Vote Leave eventually paid the fine because it could not afford to launch an appeal in the courts.²²⁶ Mr Grimes appealed against his fine and won. The court ruled that the commission had misinterpreted the law and set a key legal test that was “too high” to decide whether BeLeave had been properly registered. The complexity of the registration forms was criticised and the judge said Mr Grimes had tried to meet his obligations to the commission in filling out the forms, and that his actions were not dishonest or lacking transparency.²²⁷ Grimes was critical the Electoral Commission’s handling of the case, which he said had been based on an “incorrectly ticked box on an application form”.²²⁸

Police investigations were dropped with no further action in May 2020.²²⁹

Mr Grimes’ evidence to the Committee on Standards in Public Life latest review of election and campaign finance criticised the “byzantine” nature of the law and said:

I am firmly of the view that this goes to the very heart of the issue: this is a regulator out of control. The Electoral Commission, in recognising it did not have a case, should have withdrawn it and accepted its failings. It did not. It continued to pursue me.²³⁰

In June 2021 the new Chair of the Electoral Commission, John Pullinger, promised to learn lessons. In an interview with the Sunday Telegraph he said of the Commission:

it is a legal regulatory authority, but you can be robust and be courteous at the same time, and just be human about it and recognise that this process can be very concerning for people, and work with that.²³¹

He went on to say of Mr Grimes,

²²⁴ Electoral Commission, [Vote Leave fined and referred to the police for breaking electoral law](#), 17 July 2018

²²⁵ Guardian, [Vote Leave fined and reported to police by Electoral Commission](#), 17 July 2018

²²⁶ BBC News, [Brexit: Vote Leave drops appeal against referendum spending fine](#), March 2019

²²⁷ BBC News, [Darren Grimes: Brexit campaigner wins appeal against £20,000 fine](#), 19 July 2019.

²²⁸ Guardian, [Pro-Brexit activist wins appeal against £20,000 electoral spending fine](#), 19 July 2019

²²⁹ BBC News, [Met Police end probe into pro-Brexit campaigners](#), 8 May 2020

²³⁰ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 1, Darren Grimes

²³¹ Sunday Telegraph, We were horrible to Brexit activists ... now we've learnt to be more human'; Electoral Commission's boss says the watchdog must do better on the perception of impartiality, 27 June 2021

He had a horrible time. The commission has apologised for what happened to him and I take this opportunity to apologise again. What happened to him should not have happened.²³²

The article, however, goes on to say, “Mr Grimes confirmed this weekend that the commission had not apologised to him directly.”

The Conservative Party’s written submission to the CSPL review of election finance (see below) suggested one option for the Electoral Commission was abolition, although in oral evidence to the Committee the Party said “We were making a point rather than necessarily calling for its abolition”.²³³

The Conservative Party’s written evidence said the Commission had fundamental flaws. On accountability it argued the Speaker’s Committee was ineffectual and has “minimal influence”. It said advice from the Commission was sometimes contradictory and the guidance was inadequate which gave rise to a conflict of interest, “It provides (often unclear) advice to political campaigners, yet wants to prosecute breaches of its own unclear rulebook.”²³⁴ Other senior Conservatives have also been vocal in their criticism of the Commission and called for it to be reformed or abolished.²³⁵

The [Pickles report](#), published in 2016 (after the EU referendum but before the conclusion of the Electoral Commission’s investigations into campaigners at the referendum) had recommended that the Electoral Commission should focus on its core functions of party finance and overseeing national campaign expenditure. The report criticised the Commission for acting as “a commentator and lobbyist on both policy and law.” and stated, “It would be clearer for electoral law and electoral policy to be determined by the Cabinet Office, subject to Parliamentary scrutiny and approval.”²³⁶ The Government welcomed the recommendation.

The Electoral Commission responded to the Pickles recommendations by saying, “This is a significant misunderstanding of the Commission’s role and status.”²³⁷ The Commission noted that its statutory role, agreed by Parliament, included keeping electoral law under review, providing advice and guidance. It said, “We have provided independent advice to legislators on the implications of policy proposals put forward by governments since we were established in 2001.”²³⁸ The Commission intended to review its own remit and consider whether there were changes to the Commission’s activities which could significantly improve its response to electoral fraud.

²³² Ibid

²³³ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p41

²³⁴ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 31, Conservative Party

²³⁵ Times, [Tories could regret picking a fight with the regulator over Downing Street flat](#) [subscription required], 28 April 2021

²³⁶ [Securing the ballot: review into electoral fraud](#), August 2016, p50

²³⁷ Electoral Commission, [Electoral Commission response to Sir Eric Pickles’ review and recommendations on electoral fraud](#), p23

²³⁸ Ibid

2021 CSPL Report

The Committee on Standards in Public Life has recently re-examined the regulation of party and campaign finance. Its latest report was produced just as the Elections Bill was presented to Parliament, in July 2021.

Many of the recommendations will require primary legislation. The Elections Bill does not address the proposed reforms set out in the Bill and the Government will respond to the Committee's report in due course.

The main focus of the report was on party and campaign finance. The recommendations on these are briefly examined in the next section.

The Committee did not make any recommendations on the governance and oversight of the Electoral Commission but it did make some observations. The majority of contributors to the review "were broadly confident in the Commission as an independent, non-partisan regulator." but the Committee also heard criticisms over the Commission's alleged lack of impartiality, it provided unclear and inconsistent advice, and for delaying investigations.²³⁹

The Committee heard evidence from some witnesses that the Commission's dual roles of issuing guidance and then enforce the laws on which it has advised was problematic. The Committee do not believe this was an inherent problem and pointed out that other regulators have a similar role.

The report also noted the difficult position the Electoral Commission finds itself in. It must maintain a relationship with the community it regulates while it must also satisfy, "the legitimate expectations of the public and press that it will be an effective watchdog prepared to bare its teeth and if necessary bite hard".²⁴⁰

The Committee said the Commission should be scrutinised and challenged as well as respected and noted, "and while the Commission has some stern and vocal critics, the large majority of those we talked to felt that it does important work and should be supported".²⁴¹

Professor Alan Renwick, of the UCL's Constitution Unit, said in written evidence:

When individuals or organisations respond to decisions made by the Commission that they disagree with by seeking to undermine the Commission's legitimacy without justification, they do a grave disservice to our body politic.²⁴²

²³⁹ Ibid, p19-20

²⁴⁰ Ibid

²⁴¹ Ibid

²⁴² Ibid, p40

What does the Bill do?

Part 3 of the Bill proposes changes to the oversight of the Commission (see section 11.3). It would give the Government the power to set the Commission's strategic priorities and it changes the powers of the Speaker's Committee on the Electoral Commission to allow it to scrutinise the Commission's compliance with its strategic priorities.

The Government maintains that the proposals in the Elections Bill will not affect the ability of the Commission to operate as an effective regulator but "will ensure greater accountability to Parliament".²⁴³

The Commission responded saying that it had concerns about the proposals in their current form:

Some changes ...place a fetter on the Commission which would limit its activity. We will work with the Government to explore these areas.²⁴⁴

Strategy and Policy Statement

The Government will set the Commission's priorities by introducing a Strategy and Policy Statement. The new Statement will be subject to consultation with key stakeholders and will also be subject to Parliamentary approval. The Commission must have regard to it in the exercise of its functions.

In drafting the statement, the Government must consult the Commission, the Speaker's Committee, the Public Administration and Constitutional Affairs Committee, and Scottish and Welsh ministers on parts of the draft that relate to the Commission's devolved functions.

The Government says it is "It is commonplace for the Government and Parliament to set a policy framework by which independent regulators should work."²⁴⁵ It has indicated the Statement is likely to focus on providing clear and high-quality guidance, policy priorities and setting the principle of the Commission, "such as: impartiality, accountability, value for money, proportionality and consistency".²⁴⁶

Critics point out that other regulators do not regulate parliamentarians and that the proposals "would empower the regulated over the regulator".²⁴⁷ The Independent Parliamentary Standards Authority (IPSA), which sets, administer and regulate MPs' staffing and business costs, pay, and pensions, sets its own strategy. This is subject to the legislative requirement that it must

²⁴³ [HCWS100. \[Increasing Parliamentary Accountability in Electoral Policy\], 17 June 2021.](#)

²⁴⁴ Electoral Commission statement, [Electoral Commission response to government plans to strengthen Parliamentary oversight of the Commission](#), June 2021

²⁴⁵ [HCWS100. \[Increasing Parliamentary Accountability in Electoral Policy\], 17 June 2021.](#)

²⁴⁶ [HCWS100. \[Increasing Parliamentary Accountability in Electoral Policy\], 17 June 2021.](#)

²⁴⁷ UCL, [Constitution Unit Monitor 78](#), July 2021, p7

have regard to the principle that MPs are supported efficiently, cost-effectively and transparently carrying out their Parliamentary functions.²⁴⁸

Cat Smith, Labour's shadow minister for democracy, said: "It is not for any government to dictate the priorities of an independent watchdog."²⁴⁹

Owen Thompson, the SNP member of the Speaker's Committee on the Electoral Commission said it is an attempt to "neuter" the Commission.²⁵⁰

Speaker's Committee on the Electoral Commission

The Bill also proposes changes to the Speaker's Committee. Its powers will be extended to examine the Electoral Commission's compliance to its Strategy and Policy Statement.

The membership of the Speaker's Committee is set out in section 2 of PPERA. There are nine members: the Speaker, Chair of the Public Administration and Constitutional Affairs Committee, the Minister for the Cabinet Office, the Minister with responsibility for local government, and five other MPs appointed by the Speaker. The additional five MPs must not be ministers. Section 2 of PPERA does not require any particular party balance on the committee

The Government minister with responsibility for elections is often not the Minister for the Cabinet Office, but another Cabinet Office minister. Currently this is Chloe Smith, Minister for the Constitution and Devolution. The Elections Bill would allow concurrent membership of the Speaker's Committee for the Minister for the Cabinet Office and another Minister appointed by the Prime Minister, to allow the Minister for the Constitution and Devolution to attend.

The Committee on Standards in Public Life noted that the membership of the Speaker's Committee has, for the first time, a Government majority. The CSPL says, "This is unfortunate and the Committee agrees that "independence can be ensured only if cross-party consensus is maintained"".

Academic Alistair Clark argues that ministerial attendance at such an important regulatory committee should not be part of parliamentary accountability. He also argues that there is little transparency over the Committee's deliberations and it is therefore unclear if the interests of voters are considered. Clark recommends the addition of lay members to the Speaker's Committee to represent interests other than just those of political parties. He points to the precedence of the Committee on Standards in the House of Commons and the Speaker's Committee on IPSA, which both have lay members.²⁵¹

²⁴⁸ Parliamentary Standards Act 2009, as amended

²⁴⁹ Independent, Johnson to curb powers of Electoral Commission, 19 June 2021

²⁵⁰ Open Democracy, [Boris Johnson accused of attack on democracy over plan to 'neuter' watchdog](#), 18 June 2021

²⁵¹ Public Administration and Constitutional Affairs Committee, [Oral evidence: Work of the Electoral Commission](#), 9 March 2021, Q129

Prosecutions

The Bill includes a clause that will explicitly prohibit the Electoral Commission from bringing prosecutions (see section 11.3). Its current sanctioning powers are set out briefly in section 10.

The Electoral Commission has stated that it wants to develop a prosecutions capability. It says that this would act as a deterrent for non-compliance and lessen the burden on police and public prosecutors of the burden of bringing offences to court. In its evidence to the CSPL, the Electoral Commission notes that for the most serious offences it would still refer cases to the police:

Where more significant or complex criminal offences are suspected, prosecutions will rightly continue to be a matter for the police and the prosecution authorities.²⁵²

The CSPL heard mixed evidence from other witnesses. It concluded, it “does not seem from the evidence we have heard that there is broad support for the Electoral Commission developing a criminal investigation aspect to its role.”²⁵³

Police evidence to the inquiry emphasised the value of the independent oversight for criminal investigations provided by a separate prosecutor and the Crown Prosecution Service said it had “vast experience and expertise in important prosecutorial functions.”

The Conservative Party noted the controversy over the referral of a small number of high-profile cases to police following the EU referendum in 2016 and its submission stated:

The Electoral Commission has neither the capacity nor the competence to act as a prosecutor. There are too many conflicts of interest, and would end up ‘marking its own homework’. This should remain a matter for the police and the independent Crown Prosecution Service, overseen by the courts.²⁵⁴

The Labour Party submission to the CSPL review made no mention of prosecution powers, but it supported increased powers to levy higher fines and supported the introduction of a civil sanctions regime to deal with some offences under the Representation of the People Act 1983, particularly in relation to more administrative, technical offences.²⁵⁵

²⁵² [Written evidence](#) to the Committee on Standards in Public Life review of election finance, Electoral Commission, submission 16

²⁵³ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p105

²⁵⁴ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 31, Conservative Party, para 28

²⁵⁵ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 54, Labour Party

10

Election and campaign finance

10.1

Summary

The Electoral Commission is responsible for the registration of political parties and the regulation of political finance by political parties, elected individuals and third-party campaigners. The principal legislation is [Political Parties, Elections and Referendums Act 2000, \(PPERA\) as amended](#).

Candidate finance for local campaigning is regulated under separate rules, principally the [Representation of the People Act 1983](#), as amended.

Financial regulation covers income and expenditure. Income is regulated with the aim of ensuring donations and loans over a certain level must come from permissible sources. These are essentially UK-based sources and are aimed at preventing foreign money entering the system and being used to influence UK elections.

Expenditure is regulated during elections and referendums. Spending limits vary according to the type of elections and the type of spending and are aimed at levelling the playing field between those contesting the election or referendum.

Breaches of finance regulation under PERA can be investigated by the Electoral Commission. It can impose civil sanctions in the form of fines or enforcement notices. Local campaign breaches regulated by the Representation of the People Act 1983 are a matter for the police and prosecuting authorities.

This section gives an overview of the how the system is currently regulated and what measures are included in the Elections Bill. Part 5 of the Bill makes some amendments to the regulation of election and campaign finance. The Government says this is to strengthen of the existing rules outlined in the legislation.

10.2 Party registration

In order to stand candidates at an election, a political party must register with the Electoral Commission. Once registered, the party name, description and emblem can appear on the ballot papers.

Registered parties then must comply with continuous donation and loan controls, spending controls during regulated elections and referendums, annual accounts reporting and annual registration renewal under [Political Parties, Elections and Referendums Act 2000](#) (PPERA). Minor parties, parties that only contest parish council elections (England) and/or community council elections (Wales), are subject to annual registration renewal only. Minor parties are unable to contest elections in Scotland.²⁵⁶

Although regulated registered parties only become regulated at the point at which they register with the Commission. Once registered, the deadline for submitting the first statement of accounts may be up to 18 months after registration. In its 2013 report on election finance the Commission highlighted this potential:

The absence of permissibility controls on money entering the system is also a gap in the current PERA rules, because it enables parties to accept money from impermissible sources prior to registration. The lack of controls also means that a party could de-register, accept impermissible money, and then re-register and use that money while in the system.²⁵⁷

The Electoral Commission's 2018 report, [Digital campaigning Increasing transparency for voters](#) recommended all new parties should submit a declaration of assets and liabilities over £500 upon registration. It also believes this should also registered campaigners at a referendum. The Electoral Commission noted, "Datasets and databases are an increasingly valuable asset for running targeted election campaigns."²⁵⁸

The Commission said the declaration should include an estimate of the costs the campaigner has invested in buying or developing the data they hold when they register. The Electoral Reform Society agreed with the recommendation in its 2020 report.²⁵⁹

²⁵⁶ See Electoral Commission guidance, [Registering and maintaining a party](#)

²⁵⁷ Electoral Commission, [A regulatory review of the UK's party and election finance laws Recommendations for change](#), June 2013, p13

²⁵⁸ Electoral Commission, [Digital campaigning Increasing transparency for voters](#), New campaigners' assets and data, June 2018

²⁵⁹ ERS, Democracy in the Dark: Digital Campaigning in the 2019 General Election and Beyond, September 2020, p

The CSPL's 2021 report also supported the Commission's approach, saying, it is important that voters know the financial position of a new party or referendum campaigner before the election or referendum happens.²⁶⁰

Elections Bill 2021-22

Part 4 of the Bill introduces the requirement that new political party registrations will have to be accompanied by either a statement that the party has no assets over £500 or if it does it will be required to produce a record.

The Bill will also alter the law to prevent political parties also registering as third-party campaigners. Currently the law allows groups to register as both. The Government says that this measure will prevent campaigners attempting to bypass their spending limits by registering as both a party and a campaigner and using both spending limits it would have access too.

10.3

Donations and loans

The system of campaign finance established by the PPERA, as amended, is meant to ensure donations and loans only come from permissible sources (loans were brought within the scheme in 2009 following controversies over political parties accepting loans in advance of the 2005 election).

Donations include non-cash donations (for example a donation of resources or services). Permissibility rules on donations and loans are designed to ensure only UK-based voters (and registered overseas voters) and organisations are able to donate money to political parties and campaigners. In Northern Ireland, a permissible source also includes a voter or organisation based in the Republic of Ireland. This reflects the unique situation on the island of Ireland and is reflected in the Good Friday Agreement.

Regulated national campaigners, national parties and regulated individuals – mainly elected representatives – are required to check the permissibility of all donations and loans over £500. Those accepting donations or loans should monitor for multiple small donations from the same source to ensure the rules are not circumvented.

Donations and loans to political parties and regulated elected representatives are regulated year-round. Third-party campaigners, also known as non-party campaigners, are regulated only during an election campaign. These are individuals and organisations that campaign in the run up to elections but do not stand as political parties or candidates.

²⁶⁰ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p66

Donations and loans over a certain level must be reported to the Electoral Commission, which are then published on the Electoral Commission website.²⁶¹ Donations or loans over £7,500 to national parties or £1,500 to local parties must be reported. Multiple donations from a single source that equal more than the threshold must be reported. Regulated individuals must also report donations over £1,500 to the Commission.

Donations and loans to candidates during an election campaign are regulated under separate rules, principally the [Representation of the People Act 1983](#), as amended. Donations or loans over £50 must be from a permissible source. Regulated donations and loans for candidates must be recorded and submitted in the spending and donation returns after the election.

Candidates are regulated during the election campaign but if they are elected then become regulated under the PPERA rules.

Unincorporated associations

Unincorporated associations are also regulated by PPERA in certain circumstances. An ‘unincorporated association’ is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit.²⁶² They must register with the Electoral Commission when they make political contributions of more than £25,000 in a calendar year. Political contributions include donations and loans made to political parties, campaigners in elections and elected representatives.²⁶³

Gifts received by an unincorporated association over £7,500 must be declared and any unincorporated association that intends to make political contributions of more than £25,000 should keep records of all gifts they receive that are worth more than £500.

In 2020, unincorporated associations made over £2.5 million in donations that had to be declared by the recipient. All three national parties, the Conservatives, Labour and the Liberal Democrats benefited from such arrangements.²⁶⁴ Not all of these donors were required to register as many did not donate more than £25,000.

The Committee on Standards in Public Life (CSPL) identified unincorporated associations as a concern in the current regime of regulation of donations and loans. Its 2021 report on campaign finance, saying they were:

a weak point in the regime for regulating donations, and a potential route through which money from overseas sources can enter (and may already have entered) UK politics.²⁶⁵

²⁶¹ See an overview on the Electoral Commission website, [Financial reporting](#)

²⁶² Gov.uk, [Unincorporated associations](#)

²⁶³ Electoral Commission guidance, [Unincorporates associations](#)

²⁶⁴ Data retrieved from the Electoral Commission [donations and loans database](#)

²⁶⁵ Committee on Standards in Public Life, [Regulating Elections Finance, July 2021](#), p58

Permissibility checks on donations and loans have been criticised by some recently. In July 2021, Lord Hodgson highlighted the concerns to the Public Administration and Constitutional Affairs Committee:

Charities have to carry out anti-money laundering checks, but political parties don't and neither do campaigners. I think a bit more transparency and information being provided by third-party campaigners would not be that onerous and would not dissuade too many campaigners, but it would give us a lot more information, and give voters a lot more information about exactly who these third-party campaigners are²⁶⁶

The CSPL recommends PPERA should be updated to require parties and non-party campaigners to have appropriate procedures in place to determine the true source of donations. The Committee says “this may involve incorporating some aspects of anti-money laundering requirements into electoral law” but also recommends that all donations over £500 to be donated only through the banking system.²⁶⁷

The House of Lords Select Committee on Democracy and Digital Technologies and the APPG on Electoral Campaigning Transparency both heard evidence that expressed concerns about donations made online that might be at risk from evading the permissibility rules.²⁶⁸

10.4 Campaign expenditure

The amount that can be spent on elections and referendums is regulated. Campaign expenditure is defined as expenditure ‘promoting or procuring electoral success’ for the party or for the candidate. For third-party campaigners, campaign expenditure is referred to as ‘controlled expenditure’.

The rules are different for national campaigners and for local campaigners. The rules and processes for reporting election expenditure and donations by candidates are also different from those for parties and non-party campaigners.

National campaigns

National campaigning has only been regulated since the introduction of the PPERA regime in 2000.

²⁶⁶ Public Administration and Constitutional Affairs Committee, [Oral evidence: The work of the Electoral Commission](#), Q177

²⁶⁷ Committee on Standards in Public Life, [Regulating Elections Finance, July 2021](#), p58

²⁶⁸ House of Lords Select Committee on Democracy and Digital Technologies, [Digital Technology and the Resurrection of Trust](#), HL 77 2019-20, June 2020, p97 and APPG on Electoral Campaigning Transparency, [Defending our Democracy in the Digital Age](#), p12

Spending limits for national election campaigns by political parties are based on the number of seats they contest (for UK general elections this is £30,000 per seat). So, the limit in the 2019 UK General Election for parties contesting every seat in Great Britain was just under £19 million (£30,000 multiplied by the 632 seats in Great Britain).

During referendums, campaigners are normally referred to as permitted participants or registered campaigners. PPERA sets out spending limits and reporting time frames for spending and donation returns to be submitted to the Commission.

Anyone can spend up to £10,000 on campaigning during a referendum. Anyone wishing to spend more than £10,000 must register with the Commission. The spending limit for referendums is set by the legislation allowing for a referendum.

In 2016 the spending limit across the UK for permitted participants was £700,000. The two lead campaign groups, Vote Leave and Britain Stronger in Europe were allowed to spend up to £7 million. Political parties had spending limits based on their vote share at the previous general elections. Referendum campaign finance breaches are a matter for the Electoral Commission.

Local campaigns

There is no public regulator for electoral conduct at the local campaign level. Regulation of local spending by candidates and third-party spending on a local campaign is regulated by a separate set of rules included in the Representation of the People Act 1983, as amended. These are largely based on nineteenth century election laws, when most campaigning was local. They were introduced to eradicate corruption and malpractice in nineteenth century parliamentary elections.

Campaign spending limits for local candidates in a UK Parliamentary election are based on the number of electors registered in the constituency. Breaches of spending limits are a matter for the police and prosecuting authorities.

National vs local campaigning

As noted, the regulation of national parties and campaigners was introduced in 2000, while the regulation of candidates was introduced in the nineteenth century.

In 1998 the CSPL first reviewed national political finance, the Committee concluded that a separated system national and local spending would simplest and most straightforward to operate, with constituency limits remaining and new national limits being introduced.

In its 2021 report the CSPL notes, “more than twenty years on, it is unclear whether this remains the right approach.” The Committee highlighted that the blurring of campaign expenditure between national and local was not new but that the distinction between the two was becoming increasingly ‘cosmetic’:

This is a consequence of technologically driven practices such as nationally sent direct mail and targeted social media adverts, and of some more traditional campaigning methods, such as election tours by national party figures to marginal seats and transporting party activists to assist with campaigns in constituencies. Whether the purpose of these activities is to promote a party or candidate is a grey area.²⁶⁹

Campaign material that is intended partly to promote the party and partly to promote the candidate is likely to count towards both the party and the candidate's spending limit. In these cases the party and the candidate must make "a fair and honest assessment" of how the spending should be allocated.

The CSPL report heard evidence from many that the separate regulatory regimes for national and local spending was overly complex and burdensome. It heard that this was damaging engagement with the democratic process as people were afraid of breaking the law inadvertently. Many witnesses emphasised to the Commission that campaigning is predominantly carried out by volunteers.

In an oral evidence session to the Committee, the Electoral Commission gave a flavour of how complicated election finance can be:

In a single constituency, you can have a candidate with a limit; you could also have a non-party campaigner with a different limit plus parties campaigning with a UK nationwide limit; you might have a national non-party campaigner as well and their limit per constituency and an overall national limit. All of that is going on at the same time subject to slightly different rules. It is hard for anyone to keep on top of.²⁷⁰

The CSPL's July 2021 report has made a package of recommendations that are aimed at simplifying the regulatory regime for parties and candidates. Many of the other recommendations of the CSPL will also require primary legislation but the Government has yet to respond to the CSPL report formally. This package of reforms are therefore do not form part of the Elections Bill as published.

Notional spending

Expenditure that contributes to spending limits does not just include cash amounts spent on services. It can also include 'notional spending'. This includes goods and services provided at a discount or use of other facilities provided for free. Notional spending is the difference in value between the commercial rate for an item or service and the price actually paid by the candidate. This is to prevent candidates evading spending limits by obtaining cheap or free services from supporters.

²⁶⁹ Ibid, p34

²⁷⁰ Committee on Standards in Public Life, [Regulating Elections Finance, July 2021](#), p31

Notional spending is also considered a donation. This must be reported as notional spending and a donation. It must also be apportioned between national and local campaigns as appropriate where joint spending occurs.

Two court cases in 2018 added to the complexity of apportioning notional spending between the two types of campaign. The court ruled that notional spending incurred to promote a candidate but not authorised by that candidate could count towards the candidate's local spending if it met the three conditions set out in the legislation. The key condition was that the spending was 'made use of' by the candidate.

The Electoral Commission updated its guidance in the light of the court case. [Its Factsheet](#) says 'made use of' means more than to receive a benefit from, or even to be aware of. The candidate or agent has to have some active engagement in allowing the spending activity. Notional spending must also be declared as a donation, so there will be active receipt and acceptance.

The Conservative Party submission to the CSPL called for urgent clarification:

The Supreme Court's 2018 Mackinlay judgement has since made the law even more complex, and legislative revisions are urgently needed to clarify the law on notional expenditure.²⁷¹

Both main parties submitted written evidence to the Public Administration and Constitutional Affairs Committee inquiry on electoral law in 2019. The Conservative Party said it hoped "there is scope for cross-party agreement on this matter, and a short, technical amendment to legislation in this Parliament."²⁷² Labour said it "would support legislation that would serve to clarify Parliament's intention as to the extent the election agent is responsible for expenditure by third party campaigns to support their candidates" as part of a wider programme of reform.²⁷³

Elections Bill 2021-22

Proposals included in the Election Bill will clarify the wording in the legislation on notional expenditure to make it more certain for candidates and agents that they have control over what expenditure is incurred on their behalf and therefore must be declared.

Explanatory Notes accompanying the Elections Bill explains the issue relating to notional spending and authorisation by a candidate.:

This has led to concerns from across the political spectrum that candidates and their agents could be liable for spending they were

²⁷¹ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 31, Conservative Party, para 18

²⁷² [Written evidence](#) to Public Administration and Constitutional Affairs Committee Electoral Law inquiry, Conservative Party, para 24

²⁷³ [Written evidence](#) to Public Administration and Constitutional Affairs Committee Electoral Law inquiry, Labour Party, section 2

unaware of or not involved in, but were seen to have benefitted from.²⁷⁴

Candidates and agents are only liable to report benefits in kind that they have used themselves or have directed or encouraged others to use on their behalf and will more clearly reflect the court decision in 2018.

This clarification will also be extended to other campaigners who are subject to notional expenditure controls (see section 11.4).

10.5 Sanctions and enforcement

The Electoral Commission can require compliance and can issue sanctions in relation to breaches of PPERA. Its current supervisory, investigatory and enforcement powers are as follow:

- Issue a disclosure notice requiring a regulated organisation or individual to provide the Commission with specific documents and/or information;
- Request a justice of the peace or, in Scotland, a sheriff, to issue an inspection warrant if unreasonably refused access to documents following a request, including during a voluntary inspection of premises;
- Issue an investigation notice requiring a person to produce documents or provide information or explanation that is reasonably required for the purpose of an investigation into a suspected offence or contravention;
- Where an investigation notice is not complied with the Commission can seek to enforce it by way of an application to the High Court or, in Scotland, the Court of Session for a disclosure order;
- Require an individual to attend a statutory interview. It is a criminal offence to fail to comply, without reasonable excuse, with a requirement to attend a statutory interview or answer the questions asked during it;
- Issue stop notice that requires a regulated organisation or individual not to begin or to cease an activity that the Commission reasonably believes either is seriously damaging, or poses a significant risk of seriously damaging, public confidence in the effectiveness of the PPERA controls on the income and expenditure of registered political parties and others;

²⁷⁴ [Explanatory Notes](#) to the Elections Bill 2021-22, p15

- Investigate if there are reasonable grounds to suspect an offence or contravention has occurred and it is in the public interest and justifies the use of resources;

The sanctions available to the Commission are:

- Fixed monetary penalties of £200;
- A variable monetary penalty is a variable fine of between £250 and £20,000. It is calculated according to the nature of the offence. It may be used on its own or in combination with a compliance notice and/or a restoration notice.
- Compliance notices and restoration notices. A compliance notice sets out action that must be taken by a regulated organisation or individual who has breached the law. A restoration notice sets out action that must be taken by a regulated organisation or individual who has breached the law to restore the position, as far as possible, to what it would have been had no breach occurred.

Anyone issued with a fine can appeal to the courts. Once a final notice of a fine has been issued the recipient cannot be convicted of the offence that gave rise to the penalty.²⁷⁵

There have been calls in recent years for the sanctioning powers of the Electoral Commission to be increased, including by the Commission itself. The Commission's written evidence to the CSPL 2021 review said it would welcome greater powers:

- To obtain information outside a formal investigation to resolve regulatory matters more swiftly;
- Explicit powers to share information with the police or other regulators such as the Information Commission;
- Be able to issue fines greater than £20,000, which it sees as unlikely to act as a deterrent for inadequate compliance by campaigners dealing with donations and spending which can involve tens of millions of pounds;
- Expand the Commission's role to regulate candidate campaign finance rules in the Representation of the People Act 1983 in a revised scheme

²⁷⁵ Electoral Commission, [Enforcement policy](#)

where all but the most serious offences in the Act are decriminalised and can be subject to a civil sanctions similar to the existing scheme for most PPERA offences.²⁷⁶

The CSPL's July 2021 report has recommended various changes to the sanctioning and enforcement regime. Many of the recommendations align with what the Electoral Commission and others have called for but the CSPL stopped short of recommending the Commission should be able to develop the capacity to bring prosecution.

Any wider reform of the Commission's sanctioning powers is likely to be the subject of future legislation.

10.6 Third-party campaigning

Third-party campaigners, also known as non-party campaigners, are individuals and organisations that campaign in the run-up to elections but do not stand as political parties or candidates. The Electoral Commission notes that at the 2019 General Election 61 registered third-party campaigners and they spent over £6 million between them.²⁷⁷

In a general election campaign, if a third-party intends to spend more than £20,000 in England or £10,000 in Wales, Scotland or Northern Ireland on controlled expenditure during the regulated election period, they must register. Once registered they can spend up to higher spending limits.

Those who can register as third-party campaigners are set out in PPERA.²⁷⁸ The list effectively restricts registration to UK-based individuals or organisations. The numbers that have registered has grown from 18 at the 2010 General Election to 64 at the 2019 General Election.²⁷⁹

Spending limits during a general election are set at 2% of the maximum campaign expenditure limit for political parties. The limit is set for each nation of the UK rather than UK-wide. The spending limits for a registered third-party campaigner in 2019 were £479,550 in England, £73,400 in Scotland, £55,259 in Wales and £37,550 in Northern Ireland.²⁸⁰

Third parties spending over £250,000 have six months to submit a spending report to the Electoral Commission. Those spending below £250,000 have three months.

²⁷⁶ [Written evidence](#) to the Committee on Standards in Public Life review of election finance, Electoral Commission, submission 16

²⁷⁷ Electoral Commission, [Changes to rules for non-party campaigners](#), 5 July 2021

²⁷⁸ [Section 88](#) of PPERA, as amended

²⁷⁹ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p87

²⁸⁰ Electoral Commission, [Media handbook: The UK Parliamentary general election](#), 2019, p26

Different rules apply to local campaigns in a single constituency where a third-party can spend £700 in the 25 working-day regulated period of the election. This limit is set by the Representation of the People Act 1983, as amended.

In 2014, the rules on third-party campaigning were tightened by the [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act](#).

The legislation was controversial and critics warned of a ‘chilling effect’ on the abilities of charities to campaign and was seen as imposing severe restrictions on their legitimate campaigning activities.

PPERA had regulated what is known as ‘controlled expenditure’ by pressure groups, trades unions, and other organisations which campaign during election periods, establishing national expenditure limits for such ‘third parties’ in Schedule 10. The activity was narrowly defined and used to mean expenses incurred by or on behalf of the third party in connection with the production or publication of election material made available to the public.

The 2014 Act broadened the range of activities to include canvassing material, conferences and public events, and market research and opinion polls as long as they met the ‘purpose’ and ‘public’ tests. The purpose test is met if activity can reasonably be regarded as intended to influence voters to vote for or against particular parties or candidates. The public test is met if activity is aimed at the public or a section of the public, such as canvassing, public events and election material.

The Hodgson Review of the 2014 Act recommended that the test be changed to one of actual intention, using a definition along the lines of that contained in other election legislation, that regulated activity should be that undertaken “with a view to promoting or procuring the election of a candidate”. It heard evidence that the ‘reasonably regarded’ test as inherently uncertain, given its dependence on another person’s judgement.²⁸¹

None of Lord Hodgson’s recommendations were taken forward by the Government.

Some charities are still concerned about falling foul of the law. Friends of the Earth, NCVO, ACEVO and Bond have all worked closely with the Electoral Commission to improve its guidance for non-party campaigners. However, charities still find it frustrating that the Commission is unable to advise with certainty whether an activity is or is not regulated.²⁸²

Friends of the Earth’s submission to the CSPL review of election finance said it had extensive interactions with the Electoral Commission on the purpose test:

²⁸¹ [Third party election campaigning: review](#), Cm 9205, March 2016, p26-8

²⁸² Civil Society News, [Lobbying rules still have ‘chilling effect’ despite better guidance, charities tell MPs](#), 21 July 2021

In 2017, while engagement from the EC was good, there were problems with the quality advice, with advice on the same issue from an EC staff member changing over time and between interactions...In many cases the answer from the staff was that they didn't know, that we would need to use our judgement and we should read the legislation. This was inadequate.²⁸³

The 2014 Act also introduced constituency limits on third-party spending aimed at eliminating the possibility of a national third-party campaign spending up to its overall national spending limits concentrated only in one or a handful of constituencies. The constituency limit is currently £9,750 and applies in the regulated period of 365 days prior to polling day in a UK Parliamentary election. The amount spent on a specific constituency also counts towards a third party's national spending total.

Another new feature of the 2014 Act was the concept of 'targeted spending'. Third parties conduct 'targeted spending' when the activity it is intended to benefit a specific party or any of its candidates during a UK general election. If a party authorises the spending the third party can spend up to the amount authorised by the party as long as the third party does not exceed its national or constituency limits. Authorised spending also counts towards the party's national spending limit. Parties must report what is spent by third parties on their behalf, but there is no requirement to distinguish it from other spending.

Campaign spending incurred by a non-party campaign where a party has not authorised the expenditure is subject to a spending limit. At the 2019 general election, the limit was £39,000.²⁸⁴ Unauthorised spending only counts to the third party's spending limit and is not counted in the party's national spending total.

In 2016, the Hodgson Review consulted on whether there was a case for setting a different threshold for third parties to register with the Electoral Commission and a higher threshold on spending before requiring them to report on what they have spent.

Opinion was divided on this issue, with some respondents believing it would reduce the regulatory burden while others thought it would increase it. Lord Hodgson concluded that the spending limits were at the appropriate level. He did, however, recommend that third parties should be required to register when they spend more than £5,000 in any one constituency.²⁸⁵

The House of Lords Select Committee on Democracy and Digital Technologies was told by the Electoral Commission that lowering the current spending limits would impose a regulatory burden on small campaign groups and would require a large amount of resources from the Electoral Commission.

²⁸³ [Written evidence](#) to Committee on Standards in Public Life review of election finance, submission 55, Friends of the Earth,

²⁸⁴ Committee on Standards in Public Life, [Regulating Election Finance](#), July 2021, p142

²⁸⁵ [Third party election campaigning: review](#), Cm 9205, March 2016, p65-6

The Committee recommended instead that the Government should consider a two-tier system where campaigners that fall below the registration level to access higher spending limits be required to register the campaign's trustees if they are incorporated or legally responsible persons if they are not, and the identity of their five largest funders. No spending return would be required.²⁸⁶

The Government response said that it would keep the registration system under review but that any registration scheme should not act as a barrier for campaigners to participate in the democratic process.²⁸⁷

Joint campaigning

Joint campaigning between involving more than one third-party campaigner is already regulated. This is to stop campaigners combining their spending limits to avoid the rules. The regulated spending by each campaigner counts towards the regulated spending total for both campaigners.

Some concern has been expressed that the Elections Bill will prevent collaboration between third-party campaigners, for example unions and charities.²⁸⁸ Joint spending means spending money on regulated campaign activities where there is a common plan or arrangement between one or more non-party campaigners. Joint spending cannot be incurred if you are not planning on spending money. It means, for example, that informal discussions, speaking at someone else's campaign event, or endorsing another campaign without having any further involvement is unlikely to incur joint spending.²⁸⁹

Where there is a joint campaign, a registered non-party campaigner who is part of that campaign can agree to report the joint campaign spending on behalf of themselves and other non-party campaigners involved in the joint campaign. They become the lead campaigner in this instance. Minor campaigners who spend no more than £20,000 in England and £10,000 in any of Scotland, Wales and Northern Ireland do not have to register. If the minor campaigner spends over these thresholds it must register before incurring the spending and must also report the spending in its returns.

The Hodgson review heard evidence from many respondents that the regulations were unnecessarily complicated and unclear. Some organisations saw taking on the role of lead campaigner as risky and a number of respondents expressed the view that each organisation should be responsible for its own spend and not that of others.²⁹⁰

Joint campaigning between a third-party campaigner and a political party is not covered by the same rules. As noted above, if a national party does not

²⁸⁶ House of Lords Select Committee on Democracy and Digital Technologies, [Digital Technology and the Resurrection of Trust](#), HL 77 2019-20, June 2020, p97-8

²⁸⁷ Government Response to the House of Lords Democracy and Digital Technologies Committee Report on Digital Technology and the Resurrection of Trust, September 2020, p21

²⁸⁸ Best for Britain, [Unholy trinity of Bills is a democratic crisis](#), 13 July 2021

²⁸⁹ Electoral Commission, [Non-party campaigners: Where to start](#)

²⁹⁰ Third Party Campaigning Review, [Summary of evidence](#), p18

authorise the third-party spending, the third party may only spend up to £39,000. The spending counts towards the third party's total spending limit but it does not count to the party's national spending limit.

Foreign money?

Anyone can spend money on an election or referendum campaign up to the appropriate registration threshold level. This has given rise to concerns that foreign interests could be spending on third-party campaigning by campaigning directly or donating money to groups that remain under the registration threshold.

In 2018, the Electoral Commission published a report, [Digital campaigning Increasing transparency for voters](#). It examined tightening rules to prevent foreign money influencing UK election campaigns. The report notes that "Although there is a general principle that funding from abroad is not allowed, the rules do not explicitly ban overseas spending." The report points out that when campaign finance rules were first put in place in 2000, the concern was about foreign donations to political parties and the potential for foreign sources to directly purchase campaign advertising in the UK had not been recognised.²⁹¹

The Commission recommended that:

Each of the UK's governments and legislatures should clarify that spending on election or referendum campaigns by foreign organisations or individuals is not allowed. They would need to consider how it could be enforced and the impact on free speech.²⁹²

Elections Bill 2021-22

The Bill makes several changes related to third-party campaigners.

Registration

The Bill will prevent third-party campaigners from also registering as a political party.

The Government's view is that there is a potential for organisations to utilise separate spending limits for each registration at election time. It believes by preventing dual registration it will prevent campaigners attempting to bypass their spending limits by appearing on both registers.

²⁹¹ Electoral Commission, [Digital campaigning Increasing transparency for voters](#), Preventing spending from outside the UK, June 2018

²⁹² Electoral Commission, [Digital campaigning Increasing transparency for voters](#).

Spending

Currently third parties based overseas are not explicitly prevented from spending on UK elections or referendums until they meet the registration thresholds.

The Elections Bill includes new provisions that will prevent a third-party campaigner spending more than £700 during a regulated period unless it is UK based (see section 11.4).

Third-party campaigners are already defined in PPERA (section 88). They include individuals and organisations that are also already permissible donors to political parties and charitable incorporated organisations.²⁹³

The new provisions in the say that no amount of controlled expenditure may be incurred by or on behalf of a third party during a regulated period unless the third party is listed in section 88 of PPERA or has the “requisite UK connection”.

This will include registered overseas voters and will allow British citizens living overseas and registered as overseas voters to demonstrate a UK connection.

An unincorporated association has “the requisite UK connection” if it consists of two or more persons both or all of whom are registered in a register of parliamentary electors.²⁹⁴

The Government says the Bill will remove the scope for any legal spending by foreign third-party campaigners underneath the registration threshold (the new lower tier threshold will be spending above £10,000 – see below) but above a £700.²⁹⁵

The provisions in the Elections Bill will allow the Government to alter the list of categories of third-party campaigners in PPERA. It could add, remove or vary the description of a category of third parties to list in section 88 of PPERA by passing a statutory instrument. The Government recognises the potential for the power to limit who can be classed as a third-party campaigner as a potential risk to free elections and free speech but states “that if a legitimate category of third parties emerges, it can be added quickly to the list of categories”.²⁹⁶

The provisions of the Election Bill require this change can only be made by use of the [affirmative procedure](#) (or subsequent primary legislation). This means both Houses of Parliament will be required to approve any regulations that attempt to make such a change.

²⁹³ Electoral Commission, [Registering as a non-party campaigner](#)

²⁹⁴ New section 89A of PPERA as proposed by Clause 22 of the Elections Bill 2021-22 as published

²⁹⁵ Elections Bill 2021-22 [Explanatory Notes](#), p15

²⁹⁶ Elections Bill 2021-22, [Delegated Powers Memorandum](#), p25

Lower tier registration

The proposals in the Elections Bill will require third-party campaigners to give a notification to the Electoral Commission at a lower level of spending than is currently required. This would create what the Bill calls a new ‘lower’ tier or secondary registration scheme. This addresses the issues considered by the Hodgson review and the House of Lords Select Committee on Democracy and Digital Technologies.

The new ‘lower’ tier will apply when a third-party campaigner intends to spend in excess of £10,000 on controlled expenditure during a regulated election period across, or in any constituent parts of, the UK, but below the existing country specific thresholds for registration.²⁹⁷ For example, if a campaigner wanted to spend over £10,000, with £6,000 in Scotland and £6,000 in Wales but short of the £10,000 limit in each country it will register at the new lower tier.

The lower tier registration will not be required to submit donations reports during a regulated period.

A lower tier third-party campaigner is excluded from acting as a lead campaigner role in joint campaigns. The Electoral Commission has said:

The government’s proposed changes to the rules for non-party campaigners would bring greater transparency to their election activity. It will be important, however, that changes are proportionate, and do not discourage campaigners from participating.²⁹⁸

Joint campaigning

As noted above, joint campaigning between third-parties are regulated. However, the same rules do not apply if a third-party campaigns jointly with a political party.

The Bill extends reporting requirements for authorised joint campaigns to cover political parties and third-party campaigners who are working together.

The Electoral Commission welcomes the move as it says it will help ensure the effectiveness of the spending limits and will increase the transparency or them. It goes on to say:

For this change to work well, it will need to be clear how this additional rule will sit alongside other spending rules for parties. It is important that they can clearly tell when the joint spending rule

²⁹⁷ Elections Bill 2021-22 [Explanatory Notes](#), p15-6

²⁹⁸ Electoral Commission, [Changes to rules for non-party campaigners](#), July 2021

applies, and when other limits or controls apply, such as the existing targeted spending or notional spending rules.²⁹⁹

²⁹⁹ Electoral Commission, [Changes to rules for non-party campaigners](#), 5 July 2021

11

The Bill

This section describes the [Elections Bill 2021-22](#) as introduced with reference to the [Explanatory Notes](#) published alongside the Bill.

Election and electoral campaign law is spread across many pieces of primary and secondary legislation. Many of the clauses in this Bill insert multiple new sections into other pieces of legislation. Consequential amendments are often needed in numerous pieces of legislation to achieve the desired effect. These are usually listed in one of the schedules to the Bill.

If passed, the provisions in the Act will be commenced by one or more statutory instruments at a later date.³⁰⁰

11.1

Part 1 – Electoral administration

Part 1 of the Bill contains the provisions relating to changes to the administration of elections - how elections are run.

Clause 1 - Voter ID

Clause 1 gives the necessary power in election law to require voters to produce photo ID at a polling station for local elections in England, police and crime commissioner elections in England and Wales, and UK Parliamentary elections in Great Britain.

It does this by giving effect to **Schedule 1**. This will also make some minor changes to the existing voter ID scheme in Northern Ireland.

Schedule 1 does this by amending the [Representation of the People Act 1983](#).

List of required photo ID

The permitted types of photo ID are listed in paragraph 15 of schedule 1. This paragraph amends rule 37 of the Parliamentary election rules, contained in schedule 1 of the 1983 Act. The Explanatory Notes confirm an identification document is still acceptable even if it has formally expired.³⁰¹

The permitted photo documents in the Bill as introduced are:

- A UK, Commonwealth or EEA passport;

³⁰⁰ Clause 61 of the Bill, as introduced

³⁰¹ Explanatory Notes, p31

- A UK (DVLA or DVA Northern Ireland), Channel Islands, Isle of Man or an EEA driving licence;
- A biometric immigration document issued in accordance with regulations under section 5 of the UK Borders Act 2007;
- A PASS card issued by the National Proof of Age Standards Scheme bearing the PASS hologram;
- An MOD Defence Identity Card;
- A concessionary photo travel pass from Oyster 60+, a Freedom Pass, or a concessionary travel pass from a scheme funded by the Government of the United Kingdom, the Scottish Government or the Welsh Government;
- Northern Ireland Concessionary Fares Scheme cards:
 - Senior SmartPass;
 - Registered Blind SmartPass or Blind Person’s 35 SmartPass;
 - War Disablement SmartPass or War Disabled SmartPass;
 - A 60+ SmartPass;
 - A Half Fare SmartPass;
- A Blue Badge scheme card issued in Great Britain or Northern Ireland;
- A free voter ID card issued by a person’s local electoral registration officer (the new card to be introduced by the Bill) or an existing Northern Ireland voter ID card;
- A national identity card issued by an EEA state

The list of documents can be altered by secondary legislation only if the Electoral Commission have recommended this. Any regulations would be subject to the affirmative procedure.³⁰² The [affirmative procedure](#) requires both Houses of Parliament to approve the regulations before they take effect.

Free voter ID cards

Paragraph 2 of the schedule will allow for voters to apply for a free voter ID card by inserting a new section in the 1983 Act. This will allow registered electors without any other form of suitable ID to get an ID card from their

³⁰² [Delegated Powers Memorandum from the Cabinet Office](#), p10

local electoral registration officer. The card must contain the electors full name and a photo. No charge can be made for the card.

Detailed regulations will be made about the application process, including deadlines for applying before elections, required information on an application, determining applications and requiring registration officers to keep records. Regulations will also be made on the requirements for the information to be shown on the card. Any regulations would be subject to the affirmative procedure in Parliament.³⁰³

Paragraph 2 also inserts a separate new section into the 1983 Act to allow for electors registered anonymously to apply for a photocard. These provisions are the same but instead of a person's name appearing on the card, their registration number will appear on the card. This mirrors existing arrangements for people registered anonymously, where only an elector's number appears on the electoral register and not their name and address.³⁰⁴

Paragraph 3 makes minor amendments to the 1983 Act on the existing photo ID requirement in Northern Ireland. This is so they mirror some of the additional requirements introduced in paragraph 2. It also allows Ministers to make regulations about the ID card (form of card and information included), which until now has been exercised by the Chief Electoral Officer of Northern Ireland. These would also be subject to the affirmative procedure.³⁰⁵

Offences

Paragraph 4 extends the offence and sanction of providing false information when applying for a free voter ID card to cover the whole of the UK, not just Northern Ireland. A person is liable on summary conviction in England and Wales to a maximum imprisonment of 51 weeks, a fine, or both. In Scotland summary conviction is liable to imprisonment for a maximum of 12 months, or a fine not exceeding the statutory maximum, or both. In Northern Ireland the penalty remains imprisonment for a maximum of 6 months, or a fine not exceeding level 5 on the standard scale, or both.

Ministers to report on effect of introducing voter ID

Paragraph 5 requires ministers to prepare and publish reports on the effect of the new photo ID requirements. These must be after the first two Parliamentary elections where photo ID is required in Great Britain and the first stand-alone local government elections in England after photo ID is introduced.

Other provisions

The remaining paragraphs, numbered 6 to 36, make required amendments to detailed election law to require voter ID before being issued with a ballot

³⁰³ [Delegated Powers Memorandum from the Cabinet Office](#), p3

³⁰⁴ See Library briefing, [Anonymous electoral registration \[CBP 8202\]](#)

³⁰⁵ [Delegated Powers Memorandum from the Cabinet Office](#), p6

paper. These include a requirement that polling cards must tell voters what photo ID to bring to a polling station.

Polling stations must also display information on photo ID requirements and there should be an area set aside for people to show their ID in private. Polling agents will not be permitted to view a person's ID.

A refusal to issue a ballot paper because someone does not fulfil the ID requirement does not prevent that person returning later with different ID. Polling station staff must record refusals of a ballot paper – with details to be recorded set out in secondary legislation at a future date. The prescribed information must be provided to the returning officer. This information must be forwarded to the registration officer (or in Scotland, retained by the returning officer) who must then collate the anonymized data on the number of ballots refused under the new photo ID requirements. This anonymised data is then sent to a UK minister and (on request) to the Electoral Commission. Registration (or returning) officers must retain the data for 10 years.

The schedule also includes power to make provision about the data to be collected at polling stations about the use of identification documents by voters. This is to enable meaningful evaluation of the effect of the policy. Regulations produced in exercise of this power are subject to the affirmative procedure.³⁰⁶

Clauses 2 to 6 - Absent voting

Postal voting

Clause 2 removes the option of having a postal vote for an indefinite period. It will apply to vote by post at UK Parliamentary elections in England, Wales and Scotland, and local government elections in England. The provisions do not apply to Northern Ireland, where postal voting on demand is not permitted. Clause 2 gives effect to **schedule 2** to make these changes

Schedule 2 amends the Representation of the People Act 2000. **Paragraph 2** amends the 2000 Act so it would be no longer to apply for a postal vote for an indefinite period. Instead there would maximum period of three years for a UK Parliamentary election or local elections in England. The maximum period possible will run until the third 31 January following the date on which the postal vote application is granted. This is designed to give a person time to apply to renew their postal vote in time for any scheduled election in the subsequent May.

Transitional provisions will mean those who currently have indefinite postal voting arrangements to lapse on the third 31 January after a 'specified day'. This will be set out in secondary legislation. The exception is if their five-year signature refresh becomes due earlier than the third 31 January after the 'specified day'. In this case new arrangements will apply from the signature

³⁰⁶ [Ibid](#), p11

refresh. Regulations setting out the transitional arrangements will not be subject to any Parliamentary procedure.³⁰⁷

Overseas voters with existing indefinite postal voting arrangements are not covered by the transitional arrangements. Instead, any grant of a postal vote application by an overseas elector will run until the period ending with the 1 November during which the person is entitled to remain registered to vote as an overseas elector, which will be extended to three years by other provisions in the Bill (see section 4).

Voters must be informed by the registration officer of the date on which their postal vote entitlement is to end, and given information about how to make a fresh application to vote by post.

Consequential amendments preserve the existing position that a person may apply to vote by post (including a proxy for another elector) for an indefinite period or for a particular period at local government elections in Scotland or Wales.

Postal vote ‘harvesting’

Clauses 3 and 4 make changes to the law relating to the handling of postal vote packs and applies to UK Parliamentary elections and English local elections.

Clause 3 introduces a new criminal offence banning political campaigners from handling postal voting documents issued to others by inserting a new section into the Representation of the People Act 1983.

The offence is labelled a ‘corrupt practice’. This is a postal voting offence so carries a maximum penalty of up to two years in prison, a fine, or both; and prohibition from standing for electoral office and from voting for a period of 5 years. Anyone who aids, abets, counsels or procures the commission of the offence in relation to handling postal voting documents is also guilty of a corrupt practice.

It is a defence for a person charged with the offence to show that they did not dishonestly handle the postal voting document for the purpose of promoting a particular outcome at an election. If sufficient evidence of a defence exists the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

The clause defines political campaigners as a candidate, election agent or sub-agent. It also includes a member of a registered party, someone employed or engaged by a party, candidate or agent (including sub-agent) who takes part in an activity designed to promote a particular outcome at the election, and anyone they may employ or engage to promote a particular outcome at the election.

³⁰⁷ [Ibid.](#), p13

Returning officers, election staff, postal staff, or those involved in delivering postal material in an organisation or to the occupants of a communal building are exempt.

The new offence also exempts carers and immediate family (spouse, civil partner, parent, grandparent, brother, sister, child or grandchild).

Clause 4 allows ministers to make regulations setting out requirements for the handing in of postal votes to the Returning Officer and at polling stations for UK Parliament elections and local elections in England. This includes setting a limit on the number of postal voters packs a person may hand in, and for postal votes to be rejected if not handed in in accordance with the requirements. Regulations would be subject to the affirmative procedure.³⁰⁸

The provisions would extend the ability to hand in a postal ballot pack at a UK Parliamentary election to Northern Ireland.

Limits on proxy voters

Clause 5 gives effect to **schedule 3**, which limits a person's entitlement to vote as proxy at UK Parliamentary elections and local government elections in England.

Schedule 3 makes the required amendments to limit the number of proxy votes someone can cast. The limit is four but within the total of four electors, no more than two electors can be domestic electors. Domestic electors are those not based overseas as either service or overseas voters. At local elections, service voters may vote but overseas voters cannot.

It becomes an offence to knowingly appoint a proxy if the person to be appointed is already appointed to the maximum allowable proxy votes. It also makes it an offence for the appointed proxy to vote as a proxy more than the allowed number of times.

The offence is an 'illegal practice' in electoral law and those found guilty will be liable to an unlimited fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

Paragraph 6 of the schedule also brings Northern Ireland in line with the rest of the UK. For an individual to be appointed as, or to vote as, a proxy on behalf of another person in a Northern Ireland parliamentary election, the individual must be registered to vote (currently the requirement is that a person fulfils certain nationality related requirements and is not subject to a legal incapacity to vote). Paragraph allows for regulations to be made by the Secretary of State or the Minister for the Cabinet Office pre-appointment checks for proxies in Northern Ireland as a result of the change. Regulations would be subject to the affirmative procedure.³⁰⁹

³⁰⁸ [Ibid](#), p14

³⁰⁹ [Ibid](#), p16

People currently appointed as a proxy will cease to be a proxy voter on a 'specified day' to be determined by secondary legislation. Electors wanting to continue with a proxy vote arrangement will need to reapply for a proxy vote under the new rules. Regulations relating to the transitional provisions are not subject to Parliamentary procedure.³¹⁰

Secrecy requirements

Clause 6 extends requirements protecting the secrecy of a person's vote in a polling station to postal and proxy voting. It does this by amending section 66 of the Representation of the People Act 1983.

The provisions include a restriction on obtaining or attempting to obtain, or communicating, information about whether or for whom the person has voted when voting by post.

A person voting as proxy for another elector must not communicate at any time to any person (except the person who appointed them as a proxy) any information as to the candidate for whom that person is about to vote or has voted (as proxy).

The Elections Bill extends the number of people who are able to act as companions to assist a voter with disabilities to cast their vote in a polling station. The secrecy requirement is accordingly extended to these companions.

Someone found guilty shall be liable on summary conviction to an unlimited fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland, or to imprisonment for up to 6 months.

Clause 7 - Undue influence

Clause 7 and **schedule 4** amend and clarify the offence of undue influence.

The Government will seek legislative consent motions from the Scottish Parliament and the Senedd Cymru in relation to the application of undue influence for the conduct of local government elections in Scotland and Wales and the incapacities to being elected if found guilty of undue influence.

Undue influence is a 'corrupt practice' in electoral law. Someone found guilty of undue influence, either in court or by an election petition, is disqualified from holding elective office for five years. Undue influence also carries a maximum sentence of one year's imprisonment, a fine, or both if convicted on indictment.

Clause 7 sets out seven behaviours that come under the offence. The explanatory notes set out the behaviours with examples:

³¹⁰ [Ibid](#), p17

- Using or threatening to use violence against a person, but not limited to, physical restraint or abduction;
- Damaging or destroying, or threatening to damage or destroy, a person's property;
- Damaging or threatening to damage a person's reputation, for example, disseminating information about a person;
- Causing or threatening to cause financial loss to a person, for example, boycotting business premises owned or operated by a person;
- Doing any other act designed to intimidate a person. The Bill does not seek to exhaustively define the meaning of "intimidation"; it is ultimately for a court to be satisfied objectively whether or not a specific activity amounts to intimidation;
- Doing any act designed to deceive a person in relation to the administration of an election. The examples give are: deception about the date of an electoral event or location of a polling station; deception as to the requirements and qualifications for voting; deception as to the mechanics of voting, such as the significance of placing a cross on a ballot.³¹¹

The seventh criteria is causing spiritual injury to or placing undue spiritual pressure on a person. The Explanatory Notes expand on this criteria by saying:

This is often, but not always, inflicted or exerted by those in a position of spiritual or religious authority. "Spiritual injury" includes (for example) the act of excluding a person from the membership of an organised belief system or banning them from attending a place of worship. "Undue spiritual pressure" includes (for example) the suggestion that to vote or not vote for a particular candidate or party:

- a. is a duty or obligation arising from the spiritual or religious beliefs that a person holds or purports to hold;
- b. improves or reduces a person's spiritual standing or wellbeing;
- c. has specific spiritual consequences, either positive (e.g. going to "heaven" or similar) or negative (e.g. damnation);

³¹¹ [Explanatory Notes](#), p47-8

d. has other consequences of a spiritual nature, such as exclusion from the membership of an organised belief system.³¹²

The Explanatory Notes also clarify that only when the influencer exerts improper or inappropriate pressure does the influence become ‘undue’. This does not inhibit religious leaders:

legitimate aspects of the enjoyment of the freedoms of thought, belief or expression, for example, a religious leader expressing their opinion on political or other matters that have implications for the principles of that religion, or the behaviour of religious groups for whom not voting is an established doctrinal position.³¹³

Clause 8 - Voters with disabilities

Clause 8 makes various amendments to improve the accessibility of voting to those with disabilities.

The requirement to provide a tactile voting device for voters with visual impairment to allow them to vote independently is removed.³¹⁴ It is replaced by a new requirement for Returning Officers to provide each polling station with such equipment as is reasonable to enable, or make it easier, for voters with disabilities (including, but not limited to, sight loss) to vote.

Returning officers must still fulfil their duty under the Equality Act 2010 to make reasonable adjustments to avoid putting people with disabilities at a substantial disadvantage compared to people who are not disabled.

The requirement for a companion assisting a disabled voter in a polling station to be someone either entitled to vote in the election or a close family member of the voter who has attained the age of 18 is scrapped. Instead anyone of the age of 18 or over can act as a companion. A companion is still required to make a written declaration that they have been requested to assist but the form is altered to reflect the new arrangement.

Clause 9 - Northern Ireland provisions

Clause 9 of the Bill gives effect to **schedule 5**. This makes consequential amendments to Northern Ireland electoral legislation to reflect changes by Part 1 of the Bill to the legislation for UK Parliamentary elections in Northern Ireland. Part 1 of the Schedule makes changes for local elections and Part 2 of the Schedule makes changes for Northern Ireland Assembly elections.

³¹² Ibid, p48

³¹³ Ibid

³¹⁴ Current requirement for UK Parliamentary elections is set out in Schedule 1 of the 1983 Act, rule 29 – Equipment of Polling station - with the requirement applied to other elections

11.2

Part 2 – Registration of voters

Part 2 of the Bill deals voter registration, specifically the registration of overseas voters.

Clause 10 - Overseas voters

Clause 10 of the Bill, as introduced, deletes the existing sections 1 and 2 of the Representation of the People Act 1985, as amended. This is where the current requirements for overseas voter registration are found. Clause 10 inserts a new sections 1, 1A, 1B etc through to 1E into the 1985 Act. **Schedule 6** makes additional transitional and consequential amendments required to introduce ‘votes for life’.

New sections 1 and 1A replace the existing section 1 of the 1985 Act and new sections 1B to 1D replace various subsections of the existing section 2 of the 1985 Act. New section 1E makes new provisions about renewals of an overseas voter registration.

Powers to make additional regulations in relation to applications, declarations, determinations and renewals of overseas voters contained in the current provisions are restated in the new provisions contained in the Bill. These regulations are subject to the affirmative procedure in Parliament.³¹⁵

Parliamentary franchise for overseas voters

New **section 1** sets out the qualification to be able to vote in a Parliamentary election as an overseas elector. A person must qualify as an overseas elector (set out in new section 1A) and be registered.

On the day of making a registration declaration and on the day of the poll the person must be a British citizen and not subject to any legal incapacity to vote. The Bill makes no alterations to the rules about legal incapacity to vote at a Parliamentary election.³¹⁶

Those under the age of 18 are also unable to vote at Parliamentary elections but the provisions contained in the Bill allow for, as now, those approaching the age of 18 to register to vote (known as ‘attainers’).

Conditions to be met

Section 1A sets out the qualification to register as an overseas voter if the requirements in section 1 have been fulfilled. It is existing section 1 that currently includes the 15-year limit. The new requirements in section 1A make no mention of the 15-year limit, therefore fulfilling the Conservative Party’s manifesto commitment to introduce ‘votes for life’.

³¹⁵ [Delegated Powers Memorandum from the Cabinet Office](#), p19-23

³¹⁶ See Library briefing, [Who can vote in UK elections? \(CBP 8985\)](#)

Section 1A states that a person must not be resident in the UK and fulfil one of two new conditions, either the ‘previously registered’ condition or the ‘previously resident’ condition.

The first, the ‘previously registered’ condition, is that they were previously entered on any electoral register (Parliamentary or local) for the constituency they are applying to register for. This mirrors the current arrangements and must relate to the last place the person was registered.

The second, the ‘previously resident’ condition, extends the overseas vote to those British citizens who were previously resident in the UK but who were never registered to vote. As mentioned above, under the existing arrangements, someone not previously registered to vote before leaving the UK was unable to register as an overseas voter. The only exception were children too young to register before they left. Even then, they can only register in respect of a parent or guardian’s previous registration address.

Section 1A (3)(b)(ii) extends the scope of ‘previously resident’ to declarations of local connection, where someone who had no permanent address while living in the UK, could also register as an overseas voter. As well as including homeless people, this would also encompass others who registered by a declaration of local connection, such as occupants of house boats, but who are no longer resident.

In feedback to the Government’s October 2016 policy document,³¹⁷ the Association of Electoral Administrators noted that the ability of electoral administrators to effectively match records is affected by local government reorganisation, polling district reviews, and the demolition or redevelopment of properties.

The Cabinet Office announced that it would allow applications from those previously resident at an address that no longer exists when it published its responses to the feedback received.³¹⁸ This is confirmed by paragraph 308 of the explanatory notes to the Bill.³¹⁹

Section 1B replaces section 2(1) of the 1985 Act and restates the additional conditions for entitlement to be registered on a Parliamentary electoral register: the declared address is within the Parliamentary constituency the registration is responsible for, and that registration officer is satisfied that the applicant qualifies on the given date the declaration is made.

Where a person is applying under the ‘previously resident’ condition they must never have been previously registered. Subsection (4) allows for an electoral registration officer to disapply this requirement if there is insufficient

³¹⁷ [A democracy that works for everyone: British citizens overseas: policy statement](#) Cabinet Office, October 2016

³¹⁸ [A democracy that works for everyone: British citizens overseas Response to feedback to policy proposals](#), Cabinet Office, February 2018

³¹⁹ [Explanatory Notes](#), p63

evidence to confirm whether or not they have been included on a previous electoral register.

Declaration to be made

Section 1C sets out the detailed requirements for the declaration to be made for an overseas voter application.

Subsection (1) lists the essential requirements to be included on the declaration, such as full name, confirmation of British nationality and on which basis someone is registering: ‘previously registered’ or ‘previously resident’.

Subsections (2) and (3) detail specific additional information in respect of ‘previously registered’ or ‘previously resident’ applications respectively.

Subsection (4) requires applicants for an overseas vote who had no fixed address when last resident in the UK, but who registered in respect of a declaration of local connection, to declare the address of local connection rather than a previous residential address.

Subsection (5) relates to British citizens born in Northern Ireland. Under the terms of the [Good Friday Agreement](#), also known as the Belfast Agreement, people born in Northern Ireland can choose to be British citizens, Irish citizens or both. If they choose to be both British and Irish citizens, this means they have a dual citizenship.

Subsection (5) restates the existing provisions of section 2(3A) of the 1985 Act (as amended) that a person born in Northern Ireland may make a declaration for an overseas voter application that they are a British citizen or a qualifying Irish citizen. An ‘eligible Irish citizen’ means an Irish citizen who

- was born in Northern Ireland, and
- qualifies as a British citizen (whether or not they identify as such).

Subsection (9) also relates to Northern Ireland and restates the current position that someone found abandoned in Northern Ireland as a new-born infant is, unless shown to the contrary, deemed for the purposes of electoral registration to be born in Northern Ireland.

Subsection (6) restates the existing provision in the 1985 Act – section 2(4) - that voids any declaration if someone tries to register in respect of more than one address at the same time or includes more than one address on a single declaration.

Subsection (7) allows overseas voters to cancel their declaration and subsection (8) deals with definitions.

Duration of registration and renewals

New section 1D sets out the new registration period for an overseas elector. Instead of being registered for one-year, new registrations will last until the third 1st November after the original application was successful.

As most overseas voters vote by post this provision mirrors the requirement that overseas voters must renew postal vote applications every three years in line with new provisions in clause 2 of the Bill.

Renewals can be made up to six months before a registration lapses but the renewal will run from the relevant November. Applications received more than three months after the application date will not be valid.

Renewal declaration

New section 1E gives the details required when submitting a renewal declaration. These replicate the provisions in new section 1C for initial declarations.

Schedule 6 includes additional provisions for Ministers to make regulations by secondary legislation and to take appropriate steps to promote awareness of 'votes for life'. Regulations to determine a specified day in relation to transitional provisions are not subject to Parliamentary procedure.³²⁰ The power given to ministers in schedule 6 for additional supplementary or incidental provision to be made by regulations in order to facilitate the transition of the registration are subject to the negative procedure.³²¹

Consequential amendments include extending the offence making a false declaration to the renewal declaration. Transitional provisions are included in relation to applications and postal vote applications made after the Bill becomes an Act but before the provisions on overseas voters are commenced.

Clause 11 - EU citizens voting rights

Clause 11 gives effect to **schedule 7**. This makes the required changes to electoral law to alter EU citizens voting and candidacy rights for local elections in England and Northern Ireland and police and crime commissioner (PCC) elections in England and Wales as outlined in the Government's written statement of 17 June 2021.³²²

As noted in section 5, this does not affect the voting rights of citizens of Ireland, Cyprus and Malta. Nor does it affect the voting rights of any EU citizens legally resident in Scotland or Wales (except for PCC elections).

Schedule 7 has four parts. The first part makes the necessary amendments to the Representation of the People Act 1983 to alter the right to register to vote in England and Northern Ireland. It removes the existing references to a

³²⁰ [Delegated Powers Memorandum from the Cabinet Office](#), p24

³²¹ *Ibid*, p25

³²² [HCWS99, 17 June 2021. \[Local elections\]](#)

relevant citizen of the Union and replaces the phrase with a ‘qualifying EU citizen’ or an ‘EU citizen with retained rights’.

EU citizens who meet the eligibility criteria of either of the newly defined groups will be entitled to register to vote for local elections in England and Northern Ireland and Assembly elections in Northern Ireland.

A ‘qualifying EU citizen’ is someone resident in the UK from one of the EU countries that has agreed a bilateral voting and candidacy rights treaty with the UK. These are those listed in new schedule 6A to be inserted into the 1983 Act (currently Luxembourg, Portugal, Poland and Spain).

Additionally, a person must fulfil either of the following:

- They do not require leave under the Immigration Act 1971 to enter or remain in the United Kingdom; or
- They do require leave to remain and have been granted that leave.

New schedule 6A can be added to if a new treaty agreement is entered into by secondary legislation. This would be subject to the negative procedure in Parliament. Countries can also be removed from schedule 6A, but in these circumstances the secondary legislation would be subject to the affirmative procedure.

The delegated powers memo accompanying the Bill explains the discrepancy between the two procedures.

The Government acknowledges adding a country to the schedule using a negative instrument is unusual. It goes on to say:

However the Government considers this to be appropriate as the change flows from a treaty negotiation and Parliament will have had a prior opportunity to scrutinise the terms of the treaty under the procedure set out in the CRAG Act [Constitutional Reform and Governance Act 2010].

On removing a country from the schedule it says:

The choice of affirmative procedure reflects the fact that the effects of exercising this power to remove a country are significant in terms of removing voting and candidacy rights. In contrast with the duty to add a country to the list by a negative resolution instrument (on the basis that parliamentary scrutiny has already taken place under the procedure set out in the CRAG Act), the affirmative resolution procedure for the power to remove a country will enable parliament to scrutinise and approve such removal.³²³

³²³ [Delegated Powers Memorandum from the Cabinet Office](#), p26-8

EU citizens from other countries (other than Ireland, Cyprus and Malta) will only be able to register to vote for local elections if they have retained rights and fulfil the second eligibility.

‘EU citizen with retained rights’ means a person who is from country that was an EU member state at the end of the transition period following the UK’s exit from the EU (31 December 2020) and was resident in the UK. This is referred to in the Explanatory Notes as Implementation Period Completion Day (IPCD).

They must have settled or pre-settled status (forms of ‘leave to enter or remain’) under the UK EU Settlement Scheme, or under one of the EU Settlement Schemes of the Crown Dependencies. The Explanatory Notes state this is except where such leave has been granted to an individual on the basis that they are a ‘joining family member’.³²⁴

They may also qualify if they had leave to remain (other than that granted by the UK EU Settlement Scheme) on or before 30 June 2021, or on the basis of an application made on or before 30 June 2021.

Parts 2 of schedule 7 makes the necessary amendments for ‘qualifying EU citizens’ or ‘EU citizens with retained rights’ to stand for all types of local elections in England (including mayoralities) and for PCC elections in England and Wales.

Part 3 makes the necessary changes to elections in Northern Ireland to allow ‘qualifying EU citizens’ or ‘EU citizens with retained rights’ to stand for local council elections and vote in Assembly elections.

Part 4 makes transitional provisions that preserve the right of those already elected to serve out their full term if they were to become ineligible to stand again under these new arrangements.

Ministers may also make transitional or saving provision in connection with provision made by schedule 7, including amending primary legislation, by statutory instrument. This would be subject to affirmative procedure in Parliament.

11.3

Part 3 – The Electoral Commission

Clauses 12 – Strategy and Policy statement

This part contains four clauses related to the Electoral Commission. The Government will seek legislative consent motions from the Scottish and Welsh Parliaments in relation to the devolved functions of clause 12.

³²⁴ [Explanatory Notes](#), p77

Clause 12 would insert new sections 4A-4E into the principal piece of legislation covering the Electoral Commission and its functions, the [Political Parties, Elections and Referendums Act 2000](#), usually known as PPERA.

These relate to the introduction of a new ‘Strategy and Policy Statement’ to be set by the Government for the Electoral Commission.

The Government will draft the statement setting out the strategic priorities for the Commission (new section 4A) following statutory consultation (new section 4C). The statement must be reviewed every five years (new section 4D) although new section 4E gives the government powers to revise the statement earlier.

The Scottish and Welsh Governments must be consulted on aspects of the strategy that relate to devolved functions. The Government must also consult the Speaker’s Committee on the Electoral Commission and the Public Administration and Constitutional Affairs Committee. The draft statement must be laid before Parliament and approved by a resolution of each House of Parliament within 40 days of being laid. Days when Parliament is dissolved or prorogued or both Houses are adjourned for more than 4 days are to be ignored.

The Electoral Commission must produce a statutory report (either standalone or as part of its annual report) each year on what they have done during the year in relation to the Strategy and Policy Statement.

Clauses 13 to 14 - [Speaker’s Committee on the Electoral Commission](#)

Clause 13 gives the Speaker’s Committee powers to request relevant information from the Commission to examine the performance against the Strategy and Policy Statement. This does not cover information subject to data protection or to ongoing investigations by the Commission.

The evidence given to the Speaker’s Committee by any witness cannot be used in civil, disciplinary or criminal proceedings against the witness, unless the evidence was given in bad faith. This new paragraph also provides that publication by the Speaker’s Committee of any witness evidence is absolutely privileged in relation to defamation claims. This includes evidence from the Commission.

Clause 14 alters the composition of the Speaker’s Committee. Currently the named members of the Committee (section 2 of PPERA) include two ministers – the Minister for the Cabinet Office and another minister with responsibility for local government.

Often the minister with responsibility for the constitution in the Cabinet Office is someone other than the Minister for the Cabinet Office and therefore unable to be a committee member. The clause allows for concurrent membership of the Speaker’s Committee for the Minister for the Cabinet Office and another Minister of the Crown with responsibility for the constitution.

This change had already been made in secondary legislation, but the inclusion in the Bill makes for the provisions in primary legislation. As a result the clause also makes provisions for the Transfer of Functions (Speaker's Committee) Order 2021 to be revoked.

Clause 15 – Prosecution power

Clause 15 inserts a provision in PPERA that explicitly prevents the Commission from developing prosecution capabilities in England, Wales and Northern Ireland. The capability is not available in Scotland as the sole prosecuting service there is the Crown Office and Procurator Fiscal Service.

11.4

Part 4 – Campaign expenditure

Part 4 makes changes in three areas of regulated expenditure. The Government will seek legislative consent from the Scottish and Welsh Parliaments for four clauses (16, 17, 18, and 22).

Clauses 16 to 18 - Notional spending

The first area relates to notional spending, where a benefit in kind (property, goods, services or facilities are made use of on behalf of a candidate) is used by a candidate during in election and a notional value is assigned to their spending return. This therefore counts towards the spending limit by a candidate.

Clause 16 (1) amends section 90C of the Representation of the People Act 1983 to clarify when candidates have to report notional spending. This is in response to the Supreme Court ruling of July 2018 (see section 9).

The clause inserts a new subsection into section 90C clarifying notional spending on behalf of a candidate only occurs if it is authorised by the candidate or their election agent. The remaining subclauses make the same clarification in other areas of controlled and notional spending in electoral law.

The Electoral Commission may prepare guidance on election expenses for candidates. **Clause 17** amends the law that provides for the Electoral Commission may prepare guidance on election expenses for candidates under the Representation of the People Act 1983, as amended. The guidance can cover the application of the rules in relation to expenses incurred. The clause also amends the procedures to bring into force various codes of practice. A draft code must be laid before each House of Parliament, and either House can resolve not to approve the draft within a 40-day period after laying. The code is then brought into force by an order that is not subject to any parliamentary procedure. The clause also brings codes of practice on expenses issued by the Electoral Commission under schedule 8 and 8A of the

Political Parties, Elections and Referendums Act 2000 under the same procedure for consistency.³²⁵

Clause 18 amends various provisions in electoral law to so that expenses incurred by a third-party do not have to be paid by a candidate or their election agent. This is intended to provide clarity to third parties who have been authorised by a candidate or agent to promote them, and ensures that both incur and pay for authorised expenses rather than the expenses being paid through the agent of the candidate they are promoting.

Clauses 19 to 21 - Registration of parties

Clause 19 introduces the requirement that new political party registrations will have to be accompanied by a declaration that the new party does not have assets over £500 on registration. If it does have over £500 of assets it will be required to produce a record of those assets/liabilities.

Clause 20 will prohibit recognised third-party campaigners from registering as a political party if their notification as a third-party campaigner remains in force. The Government says the change will prevent registered political parties from being able to access third party campaign spending limits. Campaigners attempting to bypass their spending limits by appearing on both political party and third-party campaigner registers.

Clause 21 makes transitional provisions if the provisions come into force during an election or referendum.

Clauses 22 to 25 - Controlled Expenditure

The next group of clauses relate mainly to regulated third-party spending.

Clause 22 includes new provisions that will prevent a third-party campaigner spending more than £700 during a regulated period unless it is UK based. Only third-parties that are eligible under section 88 (2) of PPERA will be permitted or an unincorporated association with a UK connection (two or more people who must all be registered voters). PPERA already limits those third-party campaigners who want to spend over £10,000 in a regulated campaign period to UK-based voters and organisations, who must register with the Electoral Commission. This clause will remove the ability of foreign based third-party campaigners from spending over £700.

Clause 23 gives a minister regulation making powers to amend the list of eligible categories of third-party campaigners in section 88 of PPERA. The power to amend the list in PPERA will be exercised by the affirmative procedure.

Those categories of third parties not listed are limited to a maximum spend of £700, as provided for by clause 22. As noted above, PPERA already lists a range of UK-based entities that may register. The government intends this

³²⁵ [Delegated Powers Memorandum from the Cabinet Office](#), p31-4

power to be able to add categories of third-party quickly to the statutory list. This is important that if a legitimate category of third parties emerges that needs to be added in order not to impinge on the right to freedom of expression and free elections under the European Convention on Human Rights.

The Government's delegated powers memo explains the power is "no more extensive than is necessary to meet their aim of preventing campaigning by those with no genuine stake in the UK."³²⁶

Clause 24 makes new provisions for third-party campaigners who intend to spend over £10,000 during a regulated election or referendum period but below the spending threshold when donation and spending reports are necessary. This is the minimum regulation necessary to ensure the third-party campaigner is eligible as a UK-based entity or a registered voter.

Clause 25 extends existing provisions on third-party campaigners working together during a regulated period to third-parties and registered parties working together. Spending must be reported by all the campaigners in the joint campaign to ensure that third parties cannot avoid their spending limits by registering multiple entities.

11.5

Part 5 – Intimidation of candidates

This part of the Bill includes nine clauses and two schedules. These introduce the new electoral sanction for someone found guilty of intimidating a candidate at an election. The Government is to seek consent motions from the Scottish Parliament in relation to the introduction of the disqualification orders and the power to amend schedule 8 (see below)

Clause 26 creates a disqualification order. It is intended to provide additional protection to those who participate in elections and contribute to the political debate and deter individuals from carrying out acts of intimidation.

This order to be applied by a court if an offender aged 18 or over is convicted of one of the offences contained in **schedule 8**, and the court is satisfied beyond reasonable doubt that the offence was aggravated by hostility because the victim was a candidate, holder of elective office or a campaigner, at/in an election referendum.

Clause 28 provides the definition of candidates. **Clause 29** ensures relevant elective offices are captured even when the formal commencement of the office is a few days after polling day and the declaration of the result. Clause 30 defines campaigners.

The list of relevant elective offices is given in **clause 33**. **Clause 31** specifies that if a person who is elected as a member of the House of Commons is

³²⁶ [Ibid.](#), p35

subject to a disqualification order, then that person's election is void. The clause therefore makes a consequential amendment to the House of Commons Disqualification Act 1975.

The effect of the disqualification order is that the offender is disqualified from being nominated for election to, being elected to or holding certain elective offices for a period of 5 years from the date of the order.

The schedule 8 offences include common law and statutory offences in all three legal jurisdictions of the UK. They go beyond violence and threats of violence to a person and include public order, harassment, stalking and electronic communications offences.

Clause 32 allows a minister to amend the list of offences in schedule 8 by regulations. This power must be exercised using the affirmative procedure. The Government's view is that varying the schedule as required by secondary legislation will allow the list of relevant offences to be kept up to date over time as new offences are created or existing offences are amended or repealed.³²⁷

Clause 27 sets out the process of vacating elective office for someone who holds such an office and receives a disqualification order.

Schedule 9 makes minor and consequential amendments to various enactments and is given effect by **clause 34**. This includes the power of a returning officer to reject a nomination based on information provided or otherwise that a candidate is disqualified by virtue of a disqualification order. This is similar to the existing power to reject a nomination by virtue of the [Representation of the People Act 1981](#) (where someone is in prison for more than one year is disqualified from being able to be elected to the House of Commons). This is the only power for a returning officer to reject a nomination based on the information provided on the form. All other details on a nomination form must be taken at face value and the returning officer has no power to investigate.

11.6

Part 6 – Digital imprints

This part of the Bill implements the policy to require imprints on digital campaign material. It requires anyone paying for digital political material to be advertised to explicitly show who they are, and on whose behalf they are promoting the material.

Certain campaigners will also be required to include an imprint on their unpaid material if it constitutes digital election, referendum or recall petition material.

³²⁷ [Ibid](#), p36

Clause 35 set out definitions for ‘electronic material’, ‘promoter’ and ‘publish’ in part 6. It also allows the Secretary of State to make regulations to modify these definitions. This power allows the relevant definitions to be updated to incorporate any technological advances and resulting impact on political campaigning. Any regulations would be subject to the affirmative procedure. **Clause 55** of the Bill, later in Part 6, ensures any regulations to alter definitions can only be modified where the regulations give effect to a recommendation by, or after consultation with the Electoral Commission.³²⁸

Clause 36 defines the political entities covered by this part of the Bill:

- Registered parties;
- Registered third parties;
- Candidates;
- Future candidates;
- Elected office-holder;
- Registered referendum campaigners; and
- Registered recall petition campaigner.

Clause 37 introduces the requirements to include a legible or audible and directly accessible digital imprint on campaign material unless it is not reasonably practical to do so. The imprint must include the name and address of the promoter of the material or any person on behalf of whom the material is being published, for example if the promoter publishes something for a candidate. This is subject to clauses 41 and 42.

The clause also includes regulation-making powers to modify the details within the clause, in order to accommodate technological changes that may affect the digital imprint regime. As with other regulation powers in this section, the Government must first consult with the Electoral Commission and the regulations giving effect to any changes are subject to the affirmative procedure.³²⁹

Clause 41 allows for digital material promoting more than one candidate to be regarded as being published on behalf of the registered party.

Clause 42 sets out the exception to the requirements clause 37. Sharing or republishing something containing an imprint will not require a new imprint unless the material has been materially altered. However, material without

³²⁸ [Ibid.](#), p37

³²⁹ [Ibid.](#), p38

an imprint shared by a candidate or other entity captured by the new digital imprint requirements, will need to include an imprint.

The section provides a regulation making power for ministers to amend the exceptions contained in within the section. The Government must first consult with the Electoral Commission and the regulations giving effect to any changes are subject to the affirmative procedure.³³⁰

Clause 38 defines the conditions to be met for paid material to come under the new requirements. The first condition is that the electronic material can reasonably be regarded as intended to achieve the purpose of influencing the way someone votes or does not vote. The second is that it has been paid for.

Clause 39 applies to unpaid material that meets a condition in clause 40. These are promoting or procuring electoral success at election in relation to registered parties, candidates or future candidate, or promotes the success or failure of a recall petition. The main difference to paid for material relates to a referendum held under the terms of PPERA. Here unpaid material will only require a digital imprint during the regulated period in the run up to a referendum.

Clause 43 sets out the new criminal offence for breaching the new digital imprint requirements under clause 37. A person guilty of an offence is liable: (a) on summary conviction in England and Wales, to a fine; (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale. This clause is subject to **schedule 10**. If the offence is committed by a candidate (or future candidate) or their election agent at a particular relevant election then schedule 10 allows the offence to be treated as an illegal practice for the purposes of electoral law, which carries additional electoral sanctions.

Clause 44 provides for the removal of material following a conviction for the new offence in clause 43 or an illegal practice in schedule 10. It allows a court to issue a notice to take down the material or disable access to the material to “a person by whom the electronic material is published” (for example, the digital platforms hosting the content even if they are not the promoter). It is a criminal offence to fail to comply. Someone found guilty is liable to the same sanction as that for an offence committed under clause 43.³³¹

Clause 45 gives new powers to the Electoral Commission to impose civil sanctions in relation to registered political parties and referendum campaigners. The police and the courts will enforce offences to other entities regulated by the new digital imprint requirement.

Clause 46 and 47 allows the Electoral Commission to issue stop notices to remove the material, or to disable access to it, and sets out the requirements for issuing a notice. **Clause 48** sets out that the Electoral Commission or police (as appropriate depending on the appropriate enforcement route) may

³³⁰ [Ibid](#), p39

³³¹ [Explanatory Notes](#), p102

give notice in writing to any person requiring the person to provide relevant information in relation to enforcement.

Clause 49 requires the Electoral Commission to provide statutory guidance on the new digital imprint regime. Draft guidance must be submitted to ministers. The minister must then lay a copy of the draft guidance before each House of Parliament, with or without amendment. If amendment is made the government must also lay a statement for making amendments. The guidance is then subject to the equivalent of the negative procedure for statutory instruments – the guidance is issued and must be published on the Electoral Commission website. If within 40 days of the draft guidance being laid either House votes to annul (or not approve) the draft guidance it falls. This does not prevent a new version of the guidance being brought forward.

The remaining clauses 50-56 make provisions in relation to digital imprint offences committed by corporate bodies and unincorporated associations.

Any regulations to change to the digital imprint regime may only be made by the government after consultation with the Electoral Commission. Any regulations may only be made if a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

11.7

Part 7 – General provisions

The final part of the Bill makes general provisions relating to regulation making powers, interpretation, territorial extent, commencement and the short title of the Bill.

It also makes the financial provision to allow departmental expenditure for measures included in the Act.

12

Further reading

Cabinet Office, [Securing the ballot: Report of Sir Eric Pickles' review into electoral fraud](#), August 2016

Cabinet Office, [A democracy that works for everyone: a clear and secure democracy: government response to Sir Eric Pickles' review of electoral fraud](#), December 2016

Cabinet Office, [Electoral Integrity Project - Local Elections 2018 - Evaluation](#), July 2018

Cabinet Office, [Evaluation of voter ID pilots 2019](#), July 2019

Cabinet Office, [Photographic ID Research - Headline Findings](#), May 2021

Electoral Commission, [Elections Bill resources](#)

Electoral Commission, [Voter identification pilots](#), online versions of the 2018 and 2019 evaluations

Electoral Reform Society, [A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials](#), September 2018

E-petitions - [Introduce Voter ID in every UK constituency for all Local & General Elections](#) and [Scrap the Voter ID requirement introduced in the Election Integrity Bill](#)

House of Commons debate - [HC Deb 13 July 2021 \[Voter ID\]](#)

Joint Committee on Human Rights, [Electoral Integrity Bill: voter protection or voter suppression?](#), May 2021

Law Commission of England and Wales, Scottish Law Commission, [Electoral Law A joint final report](#), March 2020, HC Paper 145 2019-21

Library briefing, [Intimidation of candidates and voters](#) (CBP 9192),

Library briefing, [Overseas voters](#) (CBP 5923)

Public Administration and Constitutional Affairs Committee, [Inquiry - The Work of the Electoral Commission](#)

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Public Administration and Constitutional Affairs Committee, [Third party election campaigning to be examined by MPs](#), July 2021

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