

# PACAC Electoral Law Inquiry

## Written evidence submitted by the Electoral Reform Society

3 June 2019

### Executive Summary

- Simplifying, updating and consolidating electoral law is long overdue and will assist with improving voters' experience. It is essential that we have robust, clear and coherent electoral laws that are understood by all those participating in our electoral contests but we also have to ensure that these rules are upheld.
- Increased use of social media platforms and online channels for political campaigning has complicated the campaigning landscape making updating electoral law more urgent.
- Changes to electoral law at the UK level should both respect and assist with policy divergence across our nations.
- Concerns about the integrity of our elections and referendums have been increasingly prominent in public, particularly related to online campaigning and donations. Public confidence in elections is unlikely to be restored unless issues around donations and spending at the national level are also addressed.
- Regulating national and local campaign spending has become increasingly difficult due to the increase in online campaigning which allows for a blurring of these separate categories. This undermines spending limits and has a direct impact on citizens' engagement in democracy.
- Regulated periods and the timeframe for reporting donations should also be reviewed in light of changes in political campaigning.
- With regards to the government's current priorities for reducing fraud and increasing public confidence in elections, we believe that voter ID should not be prioritised. There is no evidence that personation is a widespread problem and it does not appear to affect voter confidence compared to wider issues.
- We welcome proposals to deal with intimidatory behaviour of candidates and campaigners.
- The Law Commissions' recommendations on voter registration would allow for much needed modernisation of our electoral arrangements.

### About the Electoral Reform Society

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

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

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## **1. How urgent is a systematic simplification, updating and consolidation of electoral law?**

1. It has been clear for some time that the UK's current electoral legislation is out-of-date. It is essential that voters feel confident in the systems, candidates and campaigners are clear about the rules, and electoral administrators are able to deliver elections with the appropriate resources and support. Streamlining current law could assist with this, as the Law Commissions' report makes clear. It is important that our electoral laws are made with a view to the overall functioning of our democracy, not simply with an eye on the next contest.
2. The increased use of social media platforms and online channels for political campaigning has complicated the campaigning landscape making updating the legal framework more urgent. Grey areas are more easily exploited and many of the existing problems have been exacerbated by these developments. A comprehensive updating of electoral law is needed, however it would be a mistake to ignore the related issues of national campaigning rules, campaign finance and referendums (areas which are outside the scope of this inquiry) in that systemic change. There are linkages between these issues and potential for overlap, in particular the relationship between local and national campaign regulation.
3. Moreover, these wider issues are those that are most visible to voters and do the most harm to confidence in elections. Last year our polling found that, of a range of twelve electoral integrity concerns, voters were most concerned about large financial donations in election campaigns (17%), the accuracy of the voting register (16%) and balanced media coverage (13%).<sup>1</sup> Since we conducted that poll, concerns about the integrity of our elections and referendums have been increasingly prominent in public, particularly related to online campaigning and donations. Public confidence in elections is unlikely to be restored unless these issues are also addressed.
4. An additional positive outcome from simplification of electoral law is to allow for greater modernisation of electoral administration. With rules spread across individual pieces of legislation, making changes to how elections are run is unnecessarily complex. As the Electoral Commission have noted, this makes innovations to improve voters' experience harder to introduce. However, there are further recommendations in the Law Commissions' report that could enhance this which we set out under question 5 (paragraphs 16 and 17).

1. Polling for ERS by BMG. Representative survey of 1,500 GB adults aged 18 and over, fieldwork conducted online 1-4 May 2018

## **2. How could systematic simplification and standardisation of electoral law across the UK be achieved in a way that respects devolution in Scotland, Wales and Northern Ireland?**

5. Changes to electoral law at the UK level should both respect and assist with policy divergence across our nations. Both the Scottish and Welsh governments have developed new approaches to electoral arrangements such as on franchise and voting systems in recent years. These modernisations should be encouraged and supported by the underlying framework of Westminster legislation. If a simplification and consolidation of electoral law in UK-wide legislation aids national governments in this policy innovation then that is to be welcomed.

## **3. How far will the Government's current priorities for reform of electoral law achieve its stated goals of reducing fraud and increasing public confidence in elections?**

6. The main issues that voters are concerned about relate to the very visible

2. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/asledgehammer-to-crack-a-nut-the-2018-voter-id-trials/>

- issues of financial donations at the national level, voter registration and the role of media (see paragraph 3). The regulation of online campaigning techniques and how breaches in the rules are dealt with are also highly pressing issues. Previously we have set out why we believe that voter ID should not be prioritised both because there is no evidence that personation is a widespread problem and because it does not appear to affect voter confidence compared to wider issues.<sup>2</sup>
7. In our research, voter ID came at the bottom of the list of electoral integrity concerns. Only four percent viewed voter ID at polling stations as their top priority. The need for voter ID ranks the second lowest democratic priority for voters – with only “constituency boundaries are free from political influence” ranking lower among people’s concerns about electoral integrity in Britain.
  8. The Electoral Commission’s tracker survey in 2018 found only eight percent of voters saying that voting in a polling station was unsafe, against 88 percent who said it was safe. In that survey, respondents placed electoral fraud below media bias (66%), low turnout (66%), inadequate regulation of party spending (51%), inadequate regulation of social media activity (43%), and foreign influence in UK elections (38%) in a list of concerns about the integrity of elections in Britain.

**4. Are there issues that the Law Commission did not make recommendations on that should be addressed in any systematic reform of electoral law? If so what are they?**

**6. How does the electoral law need to adapt to reflect the impact of the internet and digital tools on local campaigns?**

9. The issue of regulating both national and local campaign spending is an area that has become increasingly difficult due to the increase in online campaign spending. One outcome of the increased use of social media ads is that national spend can be very effectively targeted at local constituencies and there are little to no transparency mechanisms for differentiating that spend. This not only undermines spending limits but has a direct impact on citizens. Highly precise targeting can lead to voters being ignored, either because of where they live or because they are not ‘persuadable’ voters – effectively creating two classes of voters. This can have consequences for citizens’ access to information, the quality of political debate, and equality of democratic participation.
10. There are also issues relating to donations at the national level. The Electoral Commission has made several recommendations to tighten controls to ensure that funding from outside the UK is not being spent on UK elections and it is welcome that the government has recently launched a consultation on strengthening laws on foreign donations. At present however, there are significant loopholes which allow money into our politics and confusion around the requirements on parties to monitor the source of their donations. Concerns raised recently about the Brexit Party’s use of PayPal to receive donations under £500 from abroad suggests that there is a gap between the letter and spirit of our laws in this area.
11. The timing of reporting on spending and donations at the national level is also an area that deserves attention (particularly the possibility of making information available during the course of the campaign) as do the regulated periods. Third-party campaigners and external agencies are often involved in collecting, organising and analysing campaign data but there is little information on what activities take place before the regulated

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election period – data can be gathered and databases built before the start of an official campaign and therefore outside of the regulated period. In this context, spending caps that apply to printed material and a limited campaign period appear increasingly meaningless.

12. We welcome the government’s announcement on imprints for online material but there are many other issues to be resolved such as improving transparency on spending and ad content more broadly.<sup>3</sup> Some of which would require a more comprehensive review of our electoral rules.

3. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/reining-in-the-political-wild-west-campaign-rules-for-the-21st-century/>

**5. What reforms are needed to the regulation of local campaigns, local campaign expenditure and electoral offences beyond the simplification, clarification and updating of the current law? In particular (but not exclusively):**

**a) Should the intimidation of a candidate or campaigner be an electoral (as well as a criminal) offence as recommended by the Committee on Standards in Public Life?**

13. As we set out in our response to the government’s consultation ‘Protecting the debate’ last year, our research has uncovered shocking levels of abuse of those in public life.<sup>4</sup> As such we welcome proposals to deal with intimidatory behaviour, however, we would also emphasise other important measures that could be taken in an effort to tackling the abuse candidates, elected politicians and their support staff face.
14. Other proposals that should be considered as part of protecting democratic debate include ensuring a stronger response from social media companies when people in political life are abused on their platforms. We also recommend that political parties come together to tackle this abuse and establish a joint code of conduct and processes for dealing with abuse and harassment.

4. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politics-can-begin-to-reflect-wales/#sub-section-12>

**b.) Additional**

15. It is essential that we have robust, clear and coherent electoral laws that are understood by all those participating in our electoral contests. However it is equally important that those laws are enforced. We must ensure that the regulators have sufficient powers and resources to investigate and take action, and that the penalties for breaking the rules work as a deterrent – not simply part of the costs of doing business. We will not improve public confidence in our elections if the laws are simplified but not upheld.
16. The Law Commissions’ recommendations on voter registration (chapter 4) are also particularly important. Voter registration is in need of modernisation and these recommendations would enable future developments in voting, such as allowing citizens to vote in their choice of polling station (recommendation 4-13).
17. The Law Commissions’ report also recommends extending the time limit of EU citizens’ declaration of intent (chapter 4-14). As we saw during the EU elections this year, the problems many EU citizens experienced were due to this additional requirement.<sup>5</sup> Though it is not anticipated that there will be further EU elections in the UK, this recommendation would be an important consideration to ensure legitimate voters are not disenfranchised in future.

5. <http://www.democraticaudit.com/2019/05/30/deniedmyvote-why-many-eu-citizens-were-unable-to-vote-in-the-european-parliament-elections/>