

Briefing on the Elections Bill – Report stage

January 2022

Introduction

The Elections Bill is a significant piece of legislation which, in some areas, will make considerable controversial changes to the conduct and administration of our elections. Despite its stated ambitions, however, the bill does not tackle the fundamental issues with our electoral law.

Most of this bill received no pre-legislative scrutiny and there has been no formal public consultation on the bill. Significant changes to electoral systems in England and Wales, which have widened the scope of the bill, were made after second reading and after the bill committee took evidence.

The House of Commons Public Administration and Constitutional Affairs Committee (PACAC) concluded its inquiry on the bill in December, finding that the proposals ‘lack a sufficient evidence base, timely consultation, and transparency’ and raising concerns about the government’s reliance on delegated powers in this bill.¹ The Committee has called for the bill to be paused.²

Rather than rushing the Elections Bill through parliament, we are calling on the government to pause and rethink this legislation and take heed of the many recommendations that have been made to ensure electoral law is fit for the 21st century.

Amendment 1 – Voter ID (Part 1 of the Bill)

Possession of ID is not universal and is particularly low among certain groups of voters, such as the unemployed, people with disabilities, and those without qualifications.³ According to research commissioned by the government, around four percent of voters do not have *recognisable* photographic ID (whether in date or expired).⁴ This means roughly 2.1 million people risk not being able to vote in a general election due to not having recognisable photo ID.⁵

If mandatory ID were to be rolled out nationally, it could potentially result in significant numbers of voters being disenfranchised – as well as making it harder for everyone to vote.

Parliament’s Joint Committee on Human Rights (JCHR) raised concerns about voter ID in September last year, concluding in their report that the impact of these proposals may fall ‘disproportionately on some groups with protected characteristics under human rights law’,⁶ whilst also noting that the Cabinet Office have failed to produce evidence of how they will mitigate this risk.

Disproportionate response

There is no evidence of widespread personation fraud. Out of all alleged cases of electoral fraud in 2019, only 33 related to personation fraud at the polling

1 <https://committees.parliament.uk/work/1411/the-elections-bill/news/159702/election-reform-proposals-lack-evidence-base-consultation-and-transparency/>

2 House of Commons Public Administration and Constitutional Affairs Committee (PACAC) (2021). The Elections Bill. Fifth Report of Session 2021–22. <https://committees.parliament.uk/publications/8194/documents/83775/default/>

3 Electoral Commission (2021). Public Opinion Tracker 2021. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>

IFF Research (2021). Photographic ID Research – Headline Findings. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf

4 IFF Research (2021).

5 Walker, P., Stewart, H. and Siddique, H. (2021). More than 2m voters may lack photo ID required under new UK bill. The Guardian, 11 May. <https://www.theguardian.com/politics/2021/may/11/more-than-2m-voters-may-lack-photo-id-required-under-new-uk-bill>

IFF Research (2021).

6 <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/157247/jchr-legislative-scrutiny-elections-bill-report-published/>

station⁷ – this comprises 0.000057% of the over 58 million votes cast in all the elections that took place that year. There was only one conviction for personation and one caution, both of which related to the European Parliament elections.

Much of the impetus for tackling electoral fraud, and the main example adduced as evidence of a problem, stemmed from the highly publicised case of fraud which took place in 2014 in Tower Hamlets.⁸ However, this case was atypical and one which the current laws were able to address – indeed the 2014 election was declared void. It is also not a case in which personation fraud was the primary type of fraudulent activity.⁹

This is unlike the situation in Northern Ireland, which introduced mandatory ID in 1985 in response to extremely high levels of documented in-person electoral fraud,¹⁰ taking place on a ‘planned and well organised basis’.¹¹ At the 1983 general election, nearly 1,000 people arrived at polling stations in Northern Ireland only to be told a vote had already been cast in their name. Police made 149 arrests for personation, resulting in 104 prosecutions.¹² In Northern Ireland, mandatory ID was thus a proportionate response to the significant problem of personation.

Northern Ireland did not move immediately to a requirement for photographic ID – elections took place for almost 20 years with a less stringent ID requirement.¹³ The first election to require photo ID was the 2003 Northern Ireland Assembly election, with estimates showing that around 25,000 voters did not vote because they did not have the required ID. Further, almost 3,500 people (2.3% of the electorate) were initially turned away for not presenting the required ID.¹⁴

The PACAC inquiry concluded: ‘*Introducing a compulsory voter ID requirement risks upsetting the balance of our current electoral system, making it more difficult to vote and removing an element of the trust inherent in the current system*’¹⁵

An expensive distraction

The Elections Bill impact assessment states that implementation of voter ID could cost up to £180 million over 10 years.¹⁶ Of this total, up to £80 million could be spent on updated poll cards to notify voters of the new requirements (moving to an A4 poll card to be posted in an envelope) and up to £25 million on the free elector cards the government has committed to ensuring local authorities offer to those without ID.

Free or low-cost ID cards are not available in the UK, unlike most countries which require ID to vote. Possession of some form of ID is mandatory in 21 EU states, which means that everyone has them and no groups are discriminated against.¹⁷

The government has committed to ensuring voters can apply for free elector card in order to be able to vote. But when asked about whether they would apply for a free elector card in the government’s commissioned research, 42 percent of those with no photo ID said they would be unlikely or very unlikely to apply for this – suggesting that ‘close to half of those without photo ID would not seek to apply for the Voter Card, and therefore be at risk of ending up without photo ID.’¹⁸

The pilots

The government piloted voter ID during English council elections in 2018 and 2019 (15 local council areas across both pilots). Compared to allegations and verified cases of personation, the number of people turned away in both pilot years were extremely high. In total, across both sets of pilots, around 1,000 people did not return to vote after being refused a ballot for not having voter ID according to the Electoral Commissions post-pilots research.¹⁹

7 Uberoi, E. and Johnston, N. (2021). Voter ID. House of Commons Library Briefing Paper, number 9187. <https://commonslibrary.parliament.uk/research-briefings/cbp-9187/>

8 White, I. and Johnston, N. (2017). Electoral fraud since 2010. House of Commons Library Briefing Paper, number 6255. <http://researchbriefings.files.parliament.uk/documents/SN06255/SN06255.pdf>

9 <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/judgment.pdf>

10 Wilks-Heeg, S. (2018). Voter ID at British Polling Stations – Learning the Right Lessons from Northern Ireland. Policy @ Manchester Blog, 1 March. <http://blog.policy.manchester.ac.uk/posts/2018/03/voter-id-at-british-polling-stations-learning-the-right-lessons-from-northern-ireland/>

11 Uberoi, E. and Johnston, N. (2021). Voter ID. House of Commons Library Briefing Paper, number 9187. <https://commonslibrary.parliament.uk/research-briefings/cbp-9187/>

12 Wilks-Heeg (2018).

13 James, T., Wilks-Heeg, S. and Clark, A. (2021). The UK Electoral Integrity Bill. <https://static1.squarespace.com/static/58533f31beafbe99c85dc9b/t/609d4a88bd37ac77240b91b1/1620920970763/UK+Electoral+Integrity+Bill+1.00.pdf>

14 Ibid.

15 PACAC (2021).

16 Cabinet Office (2021). Elections Bill Impact Assessment. <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

17 <https://www.statwatch.org/media/documents/news/2010/jun/eu-council-ID-cards-9949-10.pdf>

18 IFF Research (2021).

19 <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2018-voter-identification-pilot-schemes/impact-voters>

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/impact-voters-experience>

Already more people have been prevented from voting by voter ID pilots than have been accused of personation in the last decade.

Demographic data on who was unable to return with ID – essential in understanding how these measures affect different groups in society – was not required to be collected as part of the pilot evaluations. It is thus impossible to evaluate the full impact of the scheme on different groups of voters.

Amendments 9 and 10 – The Electoral Commission’s ‘Strategy and Policy Statement’ (Part 3 of the Bill)

Clauses 13 and 14 of the bill seek to introduce a ‘Strategy and Policy Statement’ for the Electoral Commission, which would set out the government’s priorities on electoral matters and the principles under which the Commission would be expected to operate, to be prepared by the Secretary of State and approved by parliament. The Speaker’s Committee would evaluate the Commission’s performance against this statement and hold it accountable.

The independence of our elections watchdog is vital to electoral integrity. These proposals would restrict the Electoral Commission’s ability to properly fulfil its role²⁰ and would hinder its independence.²¹ Ministerial involvement in setting the Electoral Commission’s strategy as part of the proposed ‘Strategy and Policy Statement’ risks seriously undermining the independence of the Commission and its accountability to parliament.

Oversight of the Electoral Commission should be non-partisan. Other independent regulators are not under the direction of ministers, and it is particularly important that the Electoral Commission, charged with ensuring fair play in politics, should not be. The Charities Act 2011 explicitly puts the Charity Commission beyond government control (section 13 (4) ‘In the exercise of its functions the Commission is not subject to the direction or control of any Minister of the Crown or of another government department’).²²

This significant change to oversight of the Electoral Commission – unlike consultations that preceded PPERA²³ and the more recent CSPL report into political finance – has had no wider consultation or scrutiny. The recent CSPL report on political finance followed a public consultation, stakeholder meetings, focus group research and roundtable discussions with smaller parties, academics and returning officers.²⁴ **It is disappointing that the Elections Bill was published two days before the CSPL report and does not include the important recommendations it makes.**

Voting system for elections for certain offices (Part 1 (10) of the Bill)

A major change to the voting system for mayors and Police and Crime Commissioners (PCCs) was slipped into the Elections Bill at committee stage, after MPs and the Public Administration and Constitutional Affairs Committee had started scrutinising the bill. As PACAC concluded in its report, ‘the manner in which this change was introduced after the Bill had been debated by the House at Second Reading was unsatisfactory and disrespectful towards the House of Commons’.²⁵

20 Electoral Commission statement (2021) <https://www.electoralcommission.org.uk/media-centre/electoral-commission-response-government-plans-strengthen-parliamentary-oversight-commission>

21 Geoghegan, P. and Williams, M. (2021). Boris Johnson accused of attack on democracy over plan to ‘neuter’ watchdog. OpenDemocracy, 18 June. <https://www.opendemocracy.net/en/dark-money-investigations/boris-johnson-accused-of-attack-on-democracy-over-plan-to-neuter-watchdog/>

22 Charities Act 2011. <https://www.legislation.gov.uk/ukpga/2011/25/section/13>

23 Committee on Standards in Public Life (1998). The Funding of Political Parties in the United Kingdom. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf

24 Committee on Standards in Public Life (2021). Regulating Election Finance A Review by the Committee on Standards in Public Life. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999636/CSPL_Regulating_Election_Finance_Review_Final_Web.pdf

25 PACAC (2021).

These plans would remove the current preference-based Supplementary Vote (SV) method used to elect mayors and PCCs and impose First Past the Post (FPTP).

Scrapping the Supplementary Vote in favour of FPTP would be a step back for voters. Unlike First Past the Post, the Supplementary Vote does not force voters to vote tactically or prevent them from expressing a second preference.

Offering voters a second preference using the Supplementary Vote ensures those in significant positions of power command the support of a broad backing of voters rather than scraping in on low levels of support. This is vital for executive roles, such as PCCs and mayors, with large budgets and wide-ranging powers that include policing and crime.

Regulation of expenditure (Part 4 of the Bill) (NC16 and NC18)

Part four of the bill seeks to further regulate third-party campaigning in elections. While greater transparency on political finance is desirable, the bill for genuinely updating our election finance rules and closing the many loopholes present in our current system.

Much more needs to be done to prevent foreign interference in UK elections and to close the many election finance loopholes remaining.

The report by the Committee on Standards in Public Life on regulating election finance offers a series of measures to prevent foreign interference in UK elections. These include: ensuring that company donations should not exceed net profits after tax generated in the UK within the preceding two years; and that the government should legislate to ban foreign organisations or individuals from buying campaign advertising in the UK. With regards to enhancing transparency, particularly around UAs, the CSPL recommends that parties and campaigners should have appropriate procedures in place to check the true source of donations. Unincorporated associations that meet the threshold for registering with the Electoral Commission, should conduct permissibility checks on relevant donations (i.e. money intended for political activity), and there should be greater transparency around political gifts made to UAs.

It is disappointing that the government has sought to introduce this bill to parliament shortly before the Committee on Standards in Public Life published its report on campaign finance and has missed the opportunity to include measures recommended by the Committee.

The government should pause and rethink this legislation, and engage with the CSPL's recommendations on the regulation of political finance.

NC1 – Voting from age 16 in parliamentary elections

There is a widening gulf between people and politics – giving 16- and 17-year olds a vote is a vital opportunity to addressing this gap. Lowering the voting age has been called for over many years and from across the political spectrum.²⁶ Votes at 16 would enable many young people to have their first experience of voting while in school and would allow a seamless transition from learning about voting, elections and democracy to putting such knowledge into practice.

26 Electoral Reform Society (2018). Civic Duty: The Conservative Case for Votes at 16. <https://www.electoral-reform.org.uk/wp-content/uploads/2018/07/Civic-Duty-The-Conservative-Case-for-Votes-at-16-and-17.pdf>

The experience of the 2014 Scottish independence referendum showed that young people are willing and more than capable of having their say on constitutional issues. Over 89 percent of 16- and 17-year-olds registered to vote for the referendum; 75 percent of those in this age group turned out on the day and 97 percent said they would vote in future elections (the remaining 3% said they did not know).²⁷ They also accessed more information from a wider variety of sources than any other age group.²⁸

Levelling up access to the ballot box

Young people already hold many responsibilities in society,²⁹ so it is only fair that they should be allowed to have a say over who represents them to ensure their voices are heard.

Many countries have already given young people the right to vote, including Argentina, Austria, Brazil, Germany (in some state and municipal elections) and Malta.³⁰ Closer to home, 16- and 17-year olds living in Scotland and Wales are now able to vote in parliamentary and local elections (in Wales from the 2022 local elections). In 2012, the Northern Ireland Assembly passed a motion supporting votes at 16, but it does not have the power to legislate to lower the voting age.³¹ Westminster now looks increasingly isolated for barring the UK's nearly 1.5 million 16- and 17-year olds from choosing their MP.

Denying young people living in the rest of the UK a say over who represents them is a constitutional injustice. The right to vote should not depend on where one lives – Westminster should ‘level up’ access to the ballot box and extend the right to vote.

NC3 – Citizens’ assembly on electoral systems

From Ireland’s Citizens’ Assembly on the Constitution to the UK parliament-commissioned citizens’ assemblies on social care and climate change, citizens’ assemblies are increasingly being used to help shape policy, particularly on constitutional issues, in a way that engages all perspectives and is based on learning, debate and deliberation.

Citizens’ assemblies are ideally suited to addressing issues that should be made from a non-partisan perspective and are therefore well suited to addressing electoral issues such as voting systems, as the citizens of British Columbia did in 2004.

27 Electoral Commission (2014). Scottish Independence Referendum: Report on the referendum held on 18 September 2014. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Scottish-independence-referendum-report.pdf

28 Eichhorn, J. (2017). Beyond anecdotes on lowering the voting age: new evidence from Scotland. LSE British Politics and Policy Blog, 11 December. <https://blogs.lse.ac.uk/politicsandpolicy/votes-at-16-new-evidence-from-scotland/>

29 www.votesat16.org/about

30 Ibid.

31 BBC News (2012). NI Assembly calls for reducing voting age to 16. BBC News, 6 November. <https://www.bbc.co.uk/news/uk-northern-ireland-20227808>

32 Elections BC (2005). Report of the Chief Electoral Officer: 38th Provincial General Election and 2005 Referendum on Electoral Reform. <https://elections.bc.ca/docs/rpt/2005-CEOreportRefOnElectoralReform.pdf>

In 2004, British Columbia engaged in a citizens’ assembly on electoral reform. One hundred and sixty people were drawn at random from each of the province’s 79 ridings, along with two members representing the country’s First Nations. Over a year, the assembly met at weekends to learn about the issues, hear from experts and the public, debate and discuss the issues before reporting their conclusions. Their decision was then put to a referendum.³²

The citizens in British Columbia established their own framework of values – informed by their needs as voters and citizens – for delivering both effective governance and effective representation. Deliberative democratic mechanisms like citizens’ assemblies not only remove conflicts of interest, but also build solutions based on citizens’ needs and experiences.

As well as helping to resolve and move forward on issues, citizens’ assemblies help to build civic engagement giving people the tools for active participation beyond the assembly itself.

Citizens’ assemblies can be given complete control over a decision, but it is more common for them to present their conclusions to the government or

parliament for further action – be it a referendum or policy change or other steps. What is important, however, is that the outcomes of the assembly are given status and due consideration.

NC4 – Automatic voter registration

Voter registration is an integral part of our democracy – if you are not registered, you cannot vote. Voter registration is also central to electoral boundaries, with under-registration potentially leading to underrepresentation and distortions in the boundaries.

The Electoral Commission's 2019 report on the accuracy and completeness of the electoral registers in Great Britain and Northern Ireland shows that electoral registers in Great Britain – as of December 2018 – are only between 83 percent (for local government registers) and 85 percent (for parliamentary registers) complete, and 89 percent accurate (for both types).³³ Individual Electoral Registration, introduced in 2014/15, has improved accuracy but not completeness.³⁴

Indeed, academic studies find that voters turning up and not being registered is the most common problem in polling stations and the main reason why people are turned away at the ballot box.³⁵

The Electoral Commission conducted research into how existing public data could be used to improve the electoral registration system, including automatic or more automated forms of registration. It found that possible reforms were feasible from a technical and operational perspective, and could be implemented without radically altering the structure of the electoral registration system in the UK.³⁶ The technology already used for IER Digital Service could form the building blocks for further reform. The proposals outlined in this study do not require a new centralised database.

Other official data sources are already being used to populate the electoral registers following changes made in the introduction of Individual Electoral registration (IER). Automatic registration thus presents a continuation of using existing data to make the registration process more effective.

Whilst allowing voters to register online was a welcome improvement, this has led to an increase in duplicate registrations close to elections, putting EROs under strain. **Modernising electoral registration further would reduce the administrative burden.**

Arguments against automatic registration sometimes claim that registering to vote should be an individual's responsibility. Yet registering to vote is already a requirement, which carries a fine of £1,000. Electoral registers are also used to select people to serve on a jury.

Rather than taking away responsibility, automatic registration simply makes an existing requirement more effective.

NC13 – Proportional representation for elections to the House of Commons

The First Past the Post (FPTP) system used for elections to the House of Commons has a detrimental impact on our democracy. FPTP means that how people vote is not properly reflected via representation in the House of Commons and vast swathes of the population live in 'safe' seats, which are unlikely to change hands.

At the 2019 general election, over half the constituencies in Great Britain were so safe that the outcome in these seats could be predicted before a single vote was cast.³⁷ A staggering number of voters saw their vote count for nothing

33 Electoral Commission (2019). 2019 report: Accuracy and completeness of the 2018 electoral registers in Great Britain. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-accuracy-and-completeness-2018-electoral-registers-great-britain>

34 Ibid.

35 James, T., Wilks-Heeg, S. and Clark, A. (2021). The UK Electoral Integrity Bill. <https://static1.squarespace.com/static/58533f31bebafe99c85dc9b/t/609d4a88bd37ac77240b91b1/1620920970763/UK+Electoral+Integrity+Bill+1.00.pdf>

36 Electoral Commission (2019). Modernising electoral registration: feasibility studies. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/a-modern-electoral-register/modernising-electoral-registration-feasibility-studies>

37 <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/electoral-reform-society-predict-the-election-result-in-half-of-seats-in-britain/>

at the last general election. Of the 32 million votes cast, only 9.4 million votes (29.2% of the total) were ‘decisive’ in securing a candidate’s election (i.e. were needed to elect the winning candidate). Across the UK, 14.5 million people (45.3% of all voters) cast their vote for a non-elected candidate, while 8.1 million votes (25.2%) were ‘surplus’, i.e. they were cast for the elected candidate but did nothing to contribute to their election. Over 22.6 million votes (70.8%) did not contribute to electing an MP:³⁸

We are one of very few democratic countries still using First Past The Post – but FPTP is no longer just an anomaly in the wider world, it has become one in the UK itself. Every devolved parliament and assembly that has been created in the UK in the last 20 years uses a system of proportional representation to elect its representatives.

There is substantial public support for changing to a PR system for the Commons³⁹ and support has been growing over the last decade since the AV referendum.⁴⁰

Systems of proportional representation are used to elect representatives to the Northern Ireland Assembly, the Scottish Parliament, the Welsh Senedd and the London Assembly.⁴¹ Scottish local authorities are also elected via a system of proportional representation, the Single Transferable Vote (STV), and Welsh local authorities will soon have the option to choose STV for their elections.

Any serious exploration of the state of democracy in the UK must include the question of whether FPTP is the right system to elect representatives to the House of Commons.

Resources

Voter ID Briefing

<https://www.electoral-reform.org.uk/latest-news-and-research/parliamentary-briefings/briefing-on-mandatory-voter-id-at-the-polling-station/>

Voter ID Pilots Analysis

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

ERS Response to the Public Administration and Constitutional Affairs Committee inquiry on the Elections Bill

<https://www.electoral-reform.org.uk/response-to-the-public-administration-and-constitutional-affairs-committee-inquiry-on-the-elections-bill/>

Public Administration and Constitutional Affairs Committee Report on The Elections Bill

<https://committees.parliament.uk/publications/8194/documents/83775/default/>

38 Electoral Reform Society (2020). Voters Left Voiceless: The 2019 General Election. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/the-2019-general-election-voters-left-voiceless/>

39 YouGov (n.d.). Should we change our current British voting system?. <https://yougov.co.uk/topics/politics/trackers/should-we-change-our-current-british-voting-system>

40 Curtice, J. (2016). Politics. British Social Attitudes Survey 33. https://www.bsa.natcen.ac.uk/media/39060/bsa33_politics.pdf

41 Electoral Reform Society (2021). Here to Stay: Two Decades of PR in Britain. <https://www.electoral-reform.org.uk/latest-news-and-research/publications/here-to-stay-two-decades-of-pr-in-britain/>