

Electoral Law Inquiry

Submission of Evidence to the

Public Administration and Constitutional Affairs Committee

Executive Summary

- The consolidation of electoral law should be an urgent priority for Parliament and is becoming *more* urgent as a result of continued devolution and the diversification in electoral practices across the UK.
- The government's plans to modernise the annual canvass is much needed, but the introduction of voter identification is not an urgent reform and might have negative effects on the electoral process.
- There are other reforms that are more urgent such as the provision of a 'am I registered?' website, automatic registration for under-registered groups and greater financial support for local authorities running elections.

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How urgent is a systematic simplification, updating and consolidation of electoral law?

1. UK electoral law is fragmented and convoluted and this is causing problems for the functioning of elections.¹ Although the text of the law may not appear to be a major problem from the perspective of the citizen or politician - the high volume and complexity of laws that electoral officials have to run elections in line with have a significant unseen effect on elections on the ground.
2. Research shows that the complex laws make administrative errors more likely.² Consolidating electoral law is therefore overdue and urgently needed. There has been a consensus about this in the electoral community for some time.³
3. The need for consolidation is becoming *more urgent* because further devolution to Scotland and Wales is increasingly expanding the volume of legislation and more frequent referendums.
4. There have also been attempts in the devolved nations to implement the recommendations of the Law Commission. For example, the *Senedd and Elections (Wales) Bill* proposed allowing ministers to make changes to law in line with the Law Commission proposals.⁴ However, it is difficult for devolved bodies to realise these aims because they are dependent on legislation from Westminster.

What are the risks, costs or benefits of continuing a piecemeal approach to reform?

5. The **risks** of maintaining the current piecemeal system are that:
 - a. Electoral officials will be more likely to make *unnecessary mistakes*. These errors might be small in nature but have considerable consequences in tight contests. These mistakes are more likely given that research shows that officials are working in an environment where levels of stress are high. A recent study found that levels of stress amongst UK officials are amongst the highest in the world.⁵ Errors are also more likely given that financial resources are stretched. A recent report showed that electoral services were increasingly over-budget during the period 2010-16.⁶

¹ Toby S. James (2012) '[UK electoral law is fragmented, convoluted and causing errors in the running of elections. It needs to be consolidated](#)', *The London School of Economics and Politics British Politics and Policy Blog*, 20th September 2012.

² Toby S. James (2014) '[Electoral Management in Britain](#)' in Pippa Norris, Richard Frank and Ferran Martinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press).

³ Toby S. James (2019) [Comparative Electoral Management: Performance, Networks Instruments](#). New York: Routledge.

⁴ <http://www.assembly.wales/laid%20documents/pri-ld12142-em/pri-ld12142-em-e.pdf> p.168-172.

⁵ Toby S. James (2019) 'Better Workers, Better Elections? Electoral Management Body Workforces and Electoral Integrity Worldwide,' *International Political Science Review*, 40 (3) 370-390

⁶ Toby S. James and Tyrone Jervier (2017) [The Cost of Elections: Funding Electoral Services in England and Wales](#), ClearView Research: London.

6. The consequences of errors might include:
 - a. Citizens not receiving postal votes or registration materials at the right time, citizens unable to vote because of registration problems or miscounts.
 - b. Citizen confidence in the electoral process being undermined
 - c. Some election results could be affected by errors

7. The **costs** of maintaining the status quo include:
 - a. Financial costs resulting from the training and professional development undertaken by electoral officials.
 - b. Legal costs arising from electoral petitions should there be maladministration with the poll.
 - c. The opportunity cost of not reforming. Significant financial investment and time was invested in the preparation of the Law Commission's report.

8. The **benefits** of the piecemeal system are that:
 - a. Legislative time could be spent considering other problems with the electoral process.
 - b. Devolution could be continued and furthered across the UK without consideration of the consequences of legal complexity.

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?

9. Consecutive acts of devolution give some autonomy to Scotland, Wales and Northern Ireland over their respective elections. Different electoral systems and franchises are increasingly used in these jurisdictions. There will therefore obviously always be differences in law and practice. The Law Commission's proposals set out, however, how simplification and standardisation could be achieved across many areas. The Law Commission provides considerable detail on how this can be achieved. A working group of returning officers, government officials and other stakeholders could be drawn together to help develop consensual reforms. There has always been a high interest in doing so.

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?

10. The government appears to have three stated areas of reform.

Voter ID

11. The government has undertaken voter ID pilots at local elections in 2018 and 2019, with view to rolling this out across Britain on a permanent basis. The stated case for the reform is to reduce levels of personation in polling stations.

12. There is no evidence that this form of electoral fraud is a serious problem in British elections, proportionate to other issues. Research on the 2018 local elections showed that this was not the main problem experienced by polling officials in polling station since less than one percent

reported suspected cases of electoral fraud (Table 1). In contrast, over half of electoral officials encountered a problem with citizens asking to vote but not appearing on the electoral register. This figure was even higher at the 2015 general election where two-thirds of poll workers reported turning voter(s) away.⁷

13. Introducing voter identification should not therefore be a priority for any government.

Potential Problem	Percentage of respondents reporting at least one problem
People asking to vote but not on register	52
Disabled voters having problems competing ballot papers	14
Members of parties being where they shouldn't be	9
Disabled voters having problems with access to the polling station	9
People taking photos of ballot/polling stations	8
Members of parties intimidating public	8
People ask to vote whose identity I was unsure of	5
Suspected cases of electoral fraud	1

Table 1: Problems reported at the Polls in the English local elections 2018.⁸

Canvass modernisation

14. The government has announced plans to reform the way that the annual canvass is compiled⁹ which could introduce a form of automatic re-registration. This should be a priority reform. In 2014 the government introduced individual electoral registration which has had the effects of improving the accuracy of the register, but substantially increasing the costs that are faced by local authorities and negatively affecting the completeness of the electoral register amongst some groups.¹⁰

Extending the franchise

15. The government seeks to abolish the 15-year limit for British citizens that live outside of the UK and qualify to participate in parliamentary elections. The electoral franchise is the result of historical circumstances and not a well-defined set of principles, however. Citizens from the Commonwealth can move to the UK and have voting rights almost immediately. Citizens from the EU can live in the UK all their life but still be unable to vote in Parliamentary elections.

⁷ Alistair Clark and Toby S. James (2017) 'Poll Workers' in Pippa Norris and Alessandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

⁸ Alistair Clark and Toby S. James (2018) 'Voter ID: our first results suggest local election pilot was unnecessary and ineffective', *The Conversation*, 1st August 2018 <https://theconversation.com/voter-id-our-first-results-suggest-local-election-pilot-was-unnecessary-and-ineffective-100859>.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744501/Canvass_Reform_Policy_Statement.pdf

¹⁰ Toby S. James (2019) *Comparative Electoral Management: Performance, Networks Instruments*. New York: Routledge

There is therefore a need for a wider review of the franchise in light of Brexit, changing notions of citizenship and the UK's changing role in the world.

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?

16. The Law Commission sought not to make major changes in how elections are run so that it could provide consensual cross-party reforms. Introducing other reforms at the same point as consolidation would therefore risk the chances of the bill not passing parliament.
17. Passing legislation to consolidate electoral law would, however, present a rare opportunity to modernise other aspects of electoral law. The All-Party Parliamentary Group on Democratic Participation made a series of recommendations in 2016 in the *Missing Millions* report which continue to provide the basis for possible reform.¹¹ Meanwhile, a report on Funding Elections from the University of East Anglia and ClearView research set out further measures.¹² In combination, these could include:
 - a. Automatic registration of 16-year olds when they receive their national insurance numbers
 - b. Providing the opportunity for citizens to register when interacting with other public services- and registering them automatically
 - c. Strengthening the long-term funding of elections
 - d. Increasing transparency in the electoral process by removing the exemption that Returning Officers and Electoral Registration Officers have from Freedom of Information requests.
 - e. Introduce a website so that citizens can check their own registration status.
 - f. Trialling election-day registration
 - g. Using electronic poll books so that citizens can vote at any polling station
 - h. Move towards a single UK-wide electoral register
 - i. Simplify the registration for EU citizens at European elections

¹¹ Toby S. James and Bite the Ballot (2016) [‘Getting the missing millions back on the electoral register,’](#) the All Party Parliamentary Group on Voter Registration, April 2016.

¹² Toby S. James and Tyrone Jervier (2017) [The Cost of Elections: Funding Electoral Services in England and Wales](#), ClearView Research: London.