

Written Evidence to the Standards, Procedures and Public Appointments Committee Inquiry on the Elections Bill

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1. I am the Co-Director of the Electoral Integrity Project. The Electoral Integrity Project collects and publishes data on the quality of national elections held around the world and evidence-based policy solutions.¹ My individual/co-authored research also focuses on the management and administration of elections. The Elections Bill, introduced to the House of Commons on 5th July 2021, stands to be one of the most significant pieces of legislation on electoral law for decades which will have major consequences for both reserved and devolved elections. I am writing to provide evidence based on academic research – although this submission does not cover all aspects of the Bill.
2. This submission recommends that the committee:
 - a. Encourages the UK government to pause the Election Bill to undertake a more collaborative, inclusive and cross-party approach to developing electoral law. The Bill is currently rushed and it should provide further opportunities for discussion with the Scottish Parliament about solutions that improve rather than undermine democracy in Scotland. The single-party, single-nation approach taken so far risks damaging public confidence in democratic institutions.
 - b. Gives legal consent to some aspects of the bill, such as changes to the meaning of ‘undue influence’ and the information included on electronic campaign material.
 - c. Does *not* give legal consent to some aspects such as the proposal to give the government greater control over the Electoral Commission.
 - d. Explores whether the UK government could amend the bill in collaboration with the Scottish Parliament to address problems such as low levels of voter registration and the absence of a complaints procedure.

The problem of dual systems

3. The UK parliament retains legal power to alter law relating to UK parliamentary elections. However, elections for the Scottish Parliament and Scottish local elections are devolved to the Scottish Parliament. Although the Elections Bill is aimed at changing the law for UK parliamentary elections, there will be consequences for other elections in Scotland. The Election Bill’s proposals to make major changes to some elections in which Scottish voters can

¹ The Perceptions of Electoral Integrity Index dataset is based on a survey of academic experts and provides a useful overview of the areas of the electoral cycle where there are strengths and weaknesses. For data, please see: <https://www.electoralintegrityproject.com/data-1>.

participate, but not others, is likely to lead to considerable confusion amongst the public which could affect their confidence in the process, or the probability that they will cast their vote. It will also mean that administrators will be faced with the burden of running dual systems, which will lead to additional training costs and greater propensity for error. These in turn, could affect the public confidence further.

4. Where possible, it therefore makes sense that there is some continuity in the technicality of laws and practices for running elections across the UK. Although devolution enables important variations on issue such as whether citizens should be allowed to vote at 16 or the electoral system, *technical* continuity will benefit voters, administrators, parties, judicial cases and therefore democracy.

The importance of consultation and consensus

5. It vitally important that major pieces of legislation such as the Election Bill are developed on the basis of close consultation between the governments across the UK to ensure that all nations are considered. It should also be developed on a cross-party basis and include all stakeholders with the aim of forging consensus and confidence. This will enable some commonality in practices on technical aspects of electoral law. A cross-party approach also helps to prevent electoral laws becoming a 'political football' in which one party accuse the other of trying to change the rules for partisan advantage, and one party is tempted to do so. Broad consultation also enables many voices to be heard, such as those from civil society groups, who are representing vulnerable individuals.
6. A cross-party approach therefore has traditionally been adopted in reforming electoral laws in the UK. During the twentieth century, the Prime Minister of the day would ask the Speaker of the House of Commons to initiate a Speakers Commission in order to invite opinions from civil society and broker compromises between parties.² Sadly, the government has not taken this approach and there is no cross-party consensus and no widespread consultation. A Speaker's Conference or a similar form of would be an important opportunity to help to build consensus and reduce partisan rhetoric with a more evidence-based form of decision making.

Recommendation #1: The Scottish Parliament could encourage the UK Government to undertake wider consultations on the Elections Bill before proceeding further, with the aim of reaching consensus between stakeholders, across parties, governments and civil society.

7. There are, however, areas of the Elections Bill which could undermine the quality of democracy and elections. It would not make sense to introduce these areas to Scottish parliamentary and local elections and the Committee should raise concerns where Scottish citizens' democratic rights and voting experience could be negatively affected. These areas are outlined in more detail below.

k) to make it clearer in law what constitutes 'undue influence' of a voter (section 7)

8. Cases of undue influence are thought to be uncommon in the UK. However, there have been some high profile cases and a study that I undertook with Dr. Alistair Clark found that 7.3 per cent of poll workers reported at least one case of members of political parties intimidating the

² Toby S. James (2021). 'Who decides how to run elections? The electoral governance theory approach', *Paper presented at the Political Studies Association Conference*, April 2021

public at polling stations at elections in 2018 and 2019.³ Measures to modernise the terminology and forms of intimidation therefore seem proportionate and necessary. It would be advantageous to have the same definitions across the UK.

9. It would be advantageous, however, to ensure that the changes have no unexpected effects on campaigning. The Committee may wish to consider requiring the UK government to evaluate the effects of the changes.

Recommendation #2: It is recommended that legal consent is granted

l) for the designation of a strategy and policy statement in respect of the Electoral Commission (sections 12 and 13)

10. Independent electoral authorities are essential components of democracy and this is widely established in international best practices and by academic research. Independence from the government of the day is important because it prevents an incumbent changing laws or practices to suit their political interests. It can also strengthen public trust in the political process. Just as the judiciary should be independent, electoral officials should be non-partisan.⁴
11. The Bill, in contrast, proposes to weaken the Commission's independence. It proposes to give the government greater power by allowing it to designate a Strategy and Policy Statement. It gives the UK Parliament (but in practice government, assuming that it has a majority) the power to examine the Electoral Commission's compliance with this.
12. This is therefore a direct violation of international best practices and would constitute democratic backsliding because it is giving the government and future governments greater control over the conduct of elections - the process through which citizens are enabled to hold government to account.
13. It should be noted that democratic backsliding is an important theme in many other countries as governments have sought to exert control over the electoral process, even countries which were once beacons for democracy.⁵
14. It is therefore recommended that the proposed changes to the Electoral Commission are not granted in the strongest possible terms. The Electoral Commission and conduct of elections is highly regarded and the Bill would only jeopardise this needlessly.

Recommendation #3: It is recommended that legal consent is not be granted

p) about information to be included in electronic campaigning material

15. The rapid transformation in the development of technology has meant that electoral laws are often in need of updating. The regulation of political advertising is one such area, where there are insufficient safeguards for i) misinformation and ii) some political parties to be able to outspend their opponents.⁶ The introduction of digital imprints is well overdue and it is essential that it is included in the Bill. It is recommended that this is taken forward for other elections in Scotland too.

³ Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209, <https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

⁴ Toby S. James (2020) *Comparative Electoral Management* (London and New York: Routledge)

⁵ VDEM (2021) *Autocratization Turns Viral: Democracy Report 2021*.

⁶ Holly Ann Garnett and Toby S. James (2020) 'Cyber elections: the threats and opportunities of using technology for electoral integrity', *Election Law Journal*, 19(2), p.111-126.

Recommendation #4: it is recommended that legal consent is granted.

Provisions on voter ID

16. The Bill will introduce a new requirement for voters across the whole of the UK to provide photographic identification at polling stations when voting at UK Parliamentary elections. The government has frequently advocated this on the basis that it wishes to reduce personation in polling stations.
17. Research has consistently shown that personation is not a widespread problem at polling stations, however. Research shows that only 0.7 per cent of poll workers were concerned that electoral fraud might have happened in their polling stations.⁷ Where concerns about 'fraud' were raised by poll workers, these were often the result of misunderstandings about the electoral process by voters. For example, some citizens were confused about the differences in eligibility between parliamentary and local registers and had in advertently registered on a register where they might not be eligible.⁸
18. The Electoral Integrity Project has produced an index of electoral integrity worldwide based on expert perceptions 2012-8. This also finds that problems with the completeness and accuracy of the electoral register are much more common than those with electoral fraud. There is therefore no need for voter identification requirements either across the UK or in Scotland.
19. Voter identification requirements will also lead to a decline in citizens exercising their right to vote. A study of the voter identification pilots in 2018 and 2019 demonstrated that many citizens were unable to vote because of the requirements. Table 1 shows that over half of poll workers experienced an issue with a voter who was unable to vote because they did not have the appropriate identification. However, many citizens also declined to provide identification because they did not want to. This represents a major problem with the voter identification requirements.
20. There are no plans to introduce voter identification requirements in Scotland and Wales. The different identification requirements for different elections is likely to lead to considerable confusion amongst the public, which may also affect turnout and confidence in the process.

Recommendation #5: Voter identification requirements should not be introduced in Scotland

Potential problem	Percentage of poll workers reporting at least one problem in their polling station
People being turned away because they did not have the appropriate identification	52.4
People coming to the polling station but deciding not to vote as they did not want to comply with the ID verification requirements	23.3

⁷ Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209, <https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

⁸ Alistair Clark and Toby S. James (2017) 'Poll Workers' in Pippa Norris and Alesandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

Table 2: Source: author, based on research by James and Clark.⁹

Options for amending voter identification requirements

21. Despite this, there is still a case for a UK-wide solution to the voter identification issue which could be reached through a compromise with the UK government so that citizens have a uniform experience. If this was undertaken, then there are three options for a model of voter identification which would be less likely to influence turnout. These are as follows:
- a. Vouching. Elections in Canada have commonly used a ‘vouching system.’ Voter identification is required, but if a citizen does not have their identification available then they can still vote if they declare their identity and address in writing and have someone who knows them (and who is assigned to their polling station) vouch for them. The person who vouches for the citizen is required to provide their identity and address and can only vouch for one other person.¹⁰ This was previously repealed in Canada but reinstated. This would be a simple and effective way of preventing citizens who do not have voter identification on the day still being able to vote but retains security measures.
 - b. Provisional ballots. Citizens could be allowed to cast ‘provisional ballots’ if they do not have suitable identification at hand at polling stations. These ballots could then be put aside and not included in the provisional count. Citizens could then be provided with the opportunity to present identification at a later point for their vote to still be included. This process is used in many states within the US to ensure that citizens are still able to have their vote cast.¹¹ Given that a large volume of citizens do not vote because their name is not on the electoral register, as noted above, the Bill could also be revised to enable citizens who are not registered to cast a provisional ballot. Electoral registration officers could then be given a short period of time to verify their registration status before including the vote into the final vote tally. The downside of introducing provisional ballots is that there would be an additional administrative investment needed. It may also mean that final results would be slower, as has been the experience in the USA. However, it would ensure that the election is more inclusive and more citizens would have their vote included.
 - c. Poll cards. One way to reduce the number of citizens who are unable to vote is to increase the range of forms of identification that could be presented. Given that all registered electors are provided with poll cards, electors could be allowed to present these as an acceptable form of identification. Alternatively, a longer list of acceptable forms of identification could be required.
22. On balance, the ‘vouching’ system would be easiest to administer, is likely to be the least costly and the most inclusive.

Recommendation #6: if the Scottish Parliament decides to introduce a form of voter identification in order to ensure a uniform experience for Scottish voters, although this is not advised, then a Canadian system of vouching would be the most inclusive way of doing this. Under this system, citizens who do

⁹ Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209,

<https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

¹⁰ <https://www.elections.ca/content2.aspx?section=id&document=index&lang=e>. Also See: Toby S. James (2020) *Comparative Electoral Management* (London and New York: Routledge).

¹¹ <https://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx>

not have identification should be able to vote if another registered elector can verify their identity in a polling station.

Removing the 15 year threshold for being allowed a vote in UK elections.

23. The Bill proposes abolishing the 15-year limitation on eligible British citizens living overseas to be registered to vote in UK parliamentary elections.
24. It should be noted that the existing practice for overseas electors casting their vote is already problematic. This relies on overseas electors being sent their vote via the international post, and the elector being able to return it in time for the count. An evaluation of the EU Referendum showed that this was not possible within the narrow electoral timetable. Electoral officials reported many instances of voters receiving their ballot too late to be returned.¹² The Bill will substantially increase the number of electors living overseas who are eligible. The case for a mix of telephone/internet voting should therefore be considered in the long term.
25. These changes would also expand the number of people who could contribute towards political parties in the UK, despite not being physically present. This may raise concerns about whether they would have a disproportionate political interference in a country in which they are not resident.
26. There are equally many people resident in Scotland without voting rights in some elections. A residency-based approach to voting rights is therefore the more democratic approach.

Changes to Postal and Proxy Voting

27. The Bill proposes abolishing permanent postal and proxy votes, requiring them to be re-applied for every three years. Postal voting and proxy voting are important measures for ensuring inclusive elections. They particularly help citizens with disabilities which means that attending polling stations are difficult.¹³ Many citizens who request them are likely to permanently need them and asking them to reapply frequently may cause them to not take part in the electoral process.
28. They have been vitally important during the covid pandemic and it has been recommended that all countries ensure that they have postal/proxy facilities place as a risk management solution should an election take place during an emergency situation.¹⁴
29. If citizens are required to reapply for the postal and proxy vote then this needs to be clearly communicated to the elector ahead of the expiry of their postal/proxy vote. There is a high risk that they would otherwise assume that they still had this in place and might miss a later postal vote deadline. A requirement to notify electors that their postal/proxy vote has expired should be set out in law.
30. Given that so many citizens will need them on a permanent basis it is recommended that postal and proxy votes are in place for a period of five years rather than three. Five years is the length of a full parliamentary cycle and would still mean that they would be reapplying

¹² Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016.

¹³ Toby S. James and Holly Ann Garnett (eds) (2020) *Building Inclusive Elections* (Routledge: London and New York).

¹⁴ Toby S. James and Sead Alihodzic (2020) 'When is it democratic to postpone an election? Elections during natural disasters, COVID-19 and emergency situations', *Election Law Journal*, 19(3), pp. 344-362. Also see: <https://www.electoralintegrityproject.com/elections-and-covid19>

sufficiently regularly, but would lessen the administrative burden on the voter and Electoral Registration Officers.

31. It should be noted that indefinite postal and proxy votes will be possible in Wales and Scotland for elections other than UK parliamentary elections. A citizen may therefore be registered for a postal vote for a Scottish Parliament election, but need to reapply for a UK election. This will lead to considerable confusion for the voter and a headache for the administrator. On balance, a UK wide solution should be found.

Recommendation #7: A UK-wide approach for postal/proxy votes should be encouraged.

Recommendation #8: Postal and proxy votes should remain valid for five years.

Further amendments

32. The Bill does not cover all areas where problems have been identified in the electoral process. Some of these have been identified by previous committees in the Scottish Parliament, but it has not been feasible for the Scottish government to resolve these without collaboration with the UK government. It may therefore be an opportunity for the Scottish Parliament to explore solutions in this Bill.

Funding elections

33. There has been an increasing strain on the funding of the electoral process in recent years, with many Electoral Registration Officers ('EROs') and Returning Officers ('Ros') reporting a lack of funding to run elections or compile the electoral register effectively.¹⁵ This has led to some compromises in service. For example, voter outreach work has been reduced because of limited funds.¹⁶
34. The transparent and timely reporting of the expenditure of elections could help to ensure cost efficiency and enable best practices to be identified. There is currently no obligation, however, for EROs and ROs to publish their accounts. There have also been (not necessarily justified) concerns raised that ROs have received excessively high fees for running elections.¹⁷ In addition, there has been concern that EROs and ROs may not be covered by Freedom of Information requests like many public bodies are. Concerns were therefore raised and discussed by the Scottish Parliament's Local Government and Communities Committee.¹⁸ To ensure greater transparency it is therefore recommended that:

Recommendation #9: The Bill is amended to clarify that EROs and ROs should be subject to Freedom of Information Requests.

Recommendation #10: EROs and ROs should be required to publish annual accounts and expenditure in a standard reporting format specified by the Electoral Commission.

¹⁵ See: Toby S. James and Tyrone Jervier (2017) *The Cost of Elections: Funding Electoral Services in England and Wales*, ClearView Research: London. Toby S. James and Alistair Clark (2020) 'Delivering Electoral Integrity Under Pressure: Local Government, Electoral Administration and the 2016 EU Referendum in the UK', *Local Government Studies*, 47(2), 186-207.

¹⁶ Toby S. James and Tyrone Jervier (2017) 'The cost of elections: The effects of public sector austerity on electoral integrity and voter engagement,' *Public Money and Management*, volume 37(7), pp. 461-468

¹⁷ Scottish Parliament Local Government and Communities Committee (2017) [Payments to Returning Officers in Scotland](#).

¹⁸ Scottish Parliament (2017) *Payments to Returning Officers in Scotland*, SP Paper 65

Consolidating electoral law

35. Complex electoral law makes elections difficult to administer and adds to the risk that errors might be made.¹⁹ There has been a growing concern about the need for legal consolidation.²⁰ The Elections Bill would be another layer of legislation which would add to the complexity of electoral law. The long-overdue consolidation of electoral law should therefore be a priority for the UK government.

Recommendation #11: The government should therefore pursue the long-overdue consolidation of electoral law.

Voter registration

36. The electoral register has seen a long-term decline in levels of completeness in the UK. My research has shown that this was accelerated by the introduction of individual electoral registration. This had a particularly negative effect on the completeness of the register of young people and students who would have previously had their parents or university register them on their behalf.²¹ The latest estimates from the Electoral Commission were that there was between 8.3 and 9.4 million people in Great Britain who were eligible to be on the local government registers were not correctly registered on the December 2018 registers.²² In Scotland, 630,000 and 890,000 people who were eligible to be on the local government registers were estimated to not be registered.²³
37. A recent report commissioned by the Joseph Rowntree Reform Trust set out measures that could introduce this long-term accuracy.²⁴ These include:
- The automatic registration of citizens when they receive their National Insurance Number ahead of their 16th birthday
 - Providing citizens opportunities to register to vote when they access other government services – such as the DVLA, Universal Credit or the Student Loan Company.
38. More recent research shows that automatic voter registration increases the completeness of electoral registers and does not compromise completeness.²⁵
39. The JRRT report also recommended that the open/edited electoral register (which can be bought by anyone) should be abolished. This register is not used for electoral purposes, but by commercial organisations.

¹⁹ 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).

²⁰ House of Commons Public Administration and Constitutional Affairs Committee. *Electoral law: The Urgent Need for Review*.

²¹ Toby S. James (2020), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York)

²² <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-2018-electoral-registers-great-britain/completeness-great-britain>

²³ <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-2018-electoral-registers-great-britain/national-estimates-accuracy-and-completeness>

²⁴ https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf

²⁵ Toby S. James and Holly Ann Garnett (2021) 'The Determinants of Electoral Register Quality', *Political Studies Association Annual Conference*, April 2021.

Recommendation #12: The Scottish Parliament could explore the automatic registration of citizens when they receive their National Insurance Number ahead of their 16th birthday.

Recommendation #13 The Scottish Parliament could explore providing citizens opportunities to register to vote when they access other government service – such as the DVLA, Universal Credit or the Student Loan Company.

Recommendation #14: The Scottish Parliament could explore abolishing the open/edited electoral register.

The need for a complaints procedure

40. If a citizen experiences a problem at an election, such as a wheelchair user not being able to access a polling station, then there is currently no effective way of them making a complaint. Elections are run by Returning Officers who are statutorily responsible for the election. Citizens could raise an elections petition to overturn an election, but this is an extremely expensive option and few would be inclined or would require this. They could instead write to their Returning Officer, but they are exempt from Freedom of Information requests so it is impossible to know how many complaints are made and what the outcome of these complaints are. Many citizens will not know who their Returning Officer is.
41. At recent electoral contests across the UK, there has been some suggestions of problems on election day. Many EU citizens were reported to have not been able to vote at the 2019 European elections.²⁶ There has been disagreement between campaign groups such as the3million and electoral officials about how widespread these problems were, however.
42. It is therefore proposed that the Bill is amended to include a single, central complaints process. The presence of a simple, centralised complaints process would provide citizens with a straight-forward method of redress which is available in many other countries.²⁷ It would allow problems to be identified and resolved ahead of future elections. The Electoral Commission could be statutorily required to publish a report on the volume and nature of complaints following an election.
43. An additional measure could include a requirement for poll workers to complete 'incident reports' when they experience problems.

Recommendation #15: The Scottish Parliament explores establishing a complaints procedure for in the Bill with the UK government.

²⁶ Toby S. James (2019) [‘#DeniedMyVote – why many EU citizens were unable to vote in the European Parliament elections’](#) *Democratic Audit*, 30th May 2019.

²⁷ Toby S. James (2020), [Comparative Electoral Management: Performance, Networks and Instruments](#) (Routledge: London and New York).