

Agenda – Llywydd's Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Huw Gapper
Meeting date: 11 October 2021	Committee Clerk
Meeting time: 10.30	0300 200 6568
	SeneddLLC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

- 1 Introductions, apologies, substitutions and declarations of interest**
(10.30)
- 2 Committee procedures and ways of working**
(10.35 – 10.40)
- 3 The Finance Committee's Statement of Principles for directly funded bodies**
(10.40 – 10.45) (Pages 1 – 4)
- 4 Papers to note**
(Pages 5 – 61)
- 5 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the remainder of the meeting**
- 6 Technical briefing: Llywydd's Committee functions and legislative background**
(10.45 – 11.45) (Pages 62 – 74)



**7 Consideration of correspondence relating to the UK Government's
Elections Bill**

(11.45 – 12.30)

(Pages 75 – 85)

Statement of Principles that the Finance Committee of the Senedd Cymru expects Directly Funded Bodies to have regard to when making budget proposals¹

May 2019

Introduction

1. This paper comprises a series of principles that Directly Funded Bodies ('DFBs') should consider when preparing their annual budget proposals.
2. The Finance Committee believes budget estimates should be transparent, prudent and reflect the financial constraints in the public sector.

Principles approach

3. Budget requests should be set in the context of the long term financial funding situation in Wales and funding pressures in the wider public sector.
4. Requests should show how annual and multi-annual objectives will be prioritised, monitored and achieved.
5. DFBs should not assume an increase in funding, regardless of the block grant change as any increase to their funding reduces resources available to other devolved public bodies.
6. DFBs should continually seek to improve processes and accrue efficiencies.
7. Where any increases in funding are requested, these should be backed by evidence both of the need, benefit and attempts that have been made to reduce such costs. Also, the consequences of not obtaining the requested increase in resource should be made clear and quantified.

¹ Senedd Commission; Wales Audit Office; Public Services Ombudsman for Wales



Available information to drawn upon

8. The Minister for Finance and Trefnydd will provide information to the Finance Committee prior to summer recess on various factors which can be drawn upon to inform future budget plans such as the latest guidance on public sector pay remits, GDP deflator forecasts, forecasts of devolved taxes and the Welsh Government's best possible assessment of the overall level of funding available in future years. This information will be forwarded on to DFBs by the Finance Committee for consideration.

Review of the Statement of Principles

9. This document will be reviewed by the Finance Committee the year of implementation and periodically thereafter and updated as necessary.





Peredur Owen Griffiths MS
Chair of Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

2 August 2021

Dear Peredur,

In order to support the forward financial planning for directly funded bodies, I have previously agreed to write at this time of year setting out various factors to inform future budget planning, including the Government's best assessment of the level of funding available in future years. As was the case this time last year, the future prospects for the Welsh Government's budget are highly uncertain.

The overall deficit in the UK public finances remains at a very high level by historical standards, driven by the impact of the pandemic and the response to it. The Office for Budget Responsibility's (OBR) latest forecast for the UK public finances, published alongside the UK Government's March Budget, puts the deficit in 2021-22 at £234 billion, falling to £107 billion in 2022-23 but still over £70 billion by the middle of the decade. It is however worth noting that the latest monthly information on the public finances suggests that the overall position this financial year might be somewhat better than forecast in March.

The Welsh Government's own plans for 2021-22 have already seen considerable change since the final Budget in early March, as a result of additional COVID-related funding. The first Supplementary Budget, published in June, includes additional funding of over £1bn. It is unclear whether there will be further substantial changes this year.

The UK Government will conduct a spending review later this year to establish expenditure plans beyond the current financial year. In advance of that, we have no firm basis for the Welsh Government's budget for future years. The UK Government's March budget included overall spending figures for future years. With no COVID funding beyond the current year, they suggest that we will see a substantial cash reduction in our budget in 2022-23. The OBR has noted that the UK Government has also cut around £15 billion a year from core departmental spending in the years beyond 2021-22. In this context, it is worth noting that

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

HM Treasury has asked UK Government departments to make plans which set out where they might achieve substantial efficiency savings by 2024-25.

We do not know if the March spending totals will form the basis for the forthcoming spending review, but if they do we are likely to see a very tight funding situation, particularly in 2022-23. The Wales Governance Centre has estimated that we may see an increase of just 2% in cash terms next year in core day-to-day funding. In addition to this, the Welsh Government will also have to manage the loss of EU funding.

Turning to prices and pay, the Office for Budget Responsibility's March forecast shows the GDP deflator falling by 1.6% in the current financial year and by 0.1% in 2022-23, before returning to growth of around 2% a year beyond that. UK average earnings are expected to increase by 2.4% in the current financial year and 2.5% next year. It is not clear whether the UK Government will continue its policy to freeze pay across much of the public sector beyond the current year. If so, this will have implications for Welsh Government finances.

With no firm plans beyond 2021-22 at this stage and considerable uncertainties regarding the future path of the pandemic and the pace of economic recovery, there is a very challenging backdrop to the preparations for the Welsh Government's next budget. I will provide the Committee with updated information if it becomes available before the spending review outcome is published.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Agenda Item 4

Chloe Smith MP
Minister of State for the Constitution and Devolution
Cabinet Office 70 Whitehall London SW1A 2AS

Elin Jones MS
Welsh Parliament
Cardiff Bay
Cardiff
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Our reference: MC2021/14148

elin.jones@senedd.wales

5 July 2021

Dear Elin,

I am writing to inform you about the UK Government's legislative proposals to improve the accountability of the Electoral Commission as part of the Elections Bill which is being introduced in the UK Parliament today. The Llwywydd's Committee plays a central role in holding the Electoral Commission to account effectively in relation to its finances and its Five Year Plan Plan where it relates to devolved Welsh functions. For this reason, I am keen to seek your views about our proposals to ensure that they complement the work of your Committee.

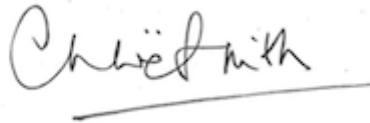
With the Elections Bill, the UK Government will deliver its manifesto commitments to strengthen the integrity of our elections and ensure that our democracy remains secure, fair, modern and transparent. The public rightly expects effective and independent regulation of the electoral system and the Electoral Commission has a vital role to play in upholding the integrity of free and fair elections and public confidence in that integrity. As the independent regulatory body charged with such pivotal responsibilities, the Commission should be fully accountable to the UK Parliament for the way it discharges its reserved functions. Consequently, as part of the Elections Bill, the UK Government will introduce a number of proposals relating to the parliamentary accountability of the Electoral Commission:

- To improve the Electoral Commission's accountability arrangements, we will make provision for the introduction of a Strategy and Policy Statement that will provide the Electoral Commission guidance on the exercise of its functions.
- To ensure that the UK Parliament is able to hold the Electoral Commission to account more effectively, we will amend the role and powers of the Speaker's Committee on the Electoral Commission to give it the power to examine the Electoral Commission's compliance with its duty to give regard to the Strategy and Policy Statement. We will also maintain the status quo by providing clarity in law that the Electoral Commission should not bring criminal prosecutions in England, Wales and Northern Ireland.

These proposals were also outlined in a written ministerial statement that was laid before the House of Commons and the House of Lords on 17 June on 'Increasing parliamentary accountability in electoral policy' and are further detailed in the information pack attached to this letter. In this pack, you will find a summary of the Government's policy, the clauses for the measures (with a note providing explanations on the clauses) and an illustrative example of a Strategy and Policy Statement.

It is my hope that these measures will help to renew confidence in the performance of the Electoral Commission across the political spectrum. I look forward to hearing your views about our proposals. My officials and I remain at your disposal to provide you with any further information you may require.

Yours ever,

A handwritten signature in black ink, appearing to read 'Chloe Smith', is written over a horizontal line. The signature is cursive and somewhat stylized.

Chloe Smith MP
Minister of State for the Constitution and Devolution

Elections Bill - Electoral Commission measures
Information pack

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Policy summary

Parliamentary accountability on electoral policy

- The public rightly expects efficient and independent regulation of the electoral system. We must reflect on the current structures charged with this important responsibility, and where there is a need for change, be prepared to make it. To this end, the Government will make provisions in the Elections Bill for the introduction of a Strategy and Policy Statement that will empower Parliament to hold the Electoral Commission (EC) to account with respect to its broader work and performance. The Statement will contain statutory guidance for the Commission to have regard to in the discharge of its functions.
- The Statement will be drafted by the Secretary of State before being subject to parliamentary approval, thus providing an opportunity for Parliament to approve (or reject) the Government's guidance and communicate its expectations of the Commission, enabling greater visibility and scrutiny of its work. This is in line with other examples of statutory guidance for other independent regulators (e.g. Ofcom and the Office for Students) and provides a straight-forward process for the Government to articulate its vision of the Commission's priorities before seeking Parliament's approval on this vision.
- The Secretary of State will be required to consult the EC, the Speaker's Committee on the Electoral Commission (SCEC) (to which the Commission is accountable) and the Public Administration and Constitutional Affairs Committee (PACAC) on the draft Statement. The Secretary of State will also be required to consult the Scottish and Welsh Ministers with regards to any guidance relating to the EC's devolved Scottish and Welsh functions. The Secretary of State will have powers to make any necessary changes to the draft, or to decide to make no changes, before laying the draft before Parliament.
- The draft Statement will then be submitted to parliamentary approval via the affirmative resolution procedure on a non-amendable motion, which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period. This approval mechanism is in keeping with other statutory guidance in electoral law (such as the codes of practice on party and candidate spending) and in keeping with other statutory guidance for other regulators (such as the Ofcom Statement of Strategic Priorities).
- The Secretary of State will be required from time to time (at least once every five years since a Statement was last designated and subject to consultation) to review, consult on and then designate the Statement. The revised Statement, even if it had not been amended, would then be subject to parliamentary approval again. The Secretary of State will also be able to make smaller revisions to the Statement, at the Government's initiative, or at the request of the EC, and to consider requests from any of the other statutory consultees. For those smaller revisions (within the five-year review period),

the Secretary of State is able to decide whether consultation of the usual statutory consultees is needed, but must seek the SCEC's views on this point first. In the event that the Secretary of State disagrees with the SCEC's opinion on the need for a statutory consultation, the Secretary of State may proceed with laying the draft Statement before Parliament for approval without consultation, alongside a statement of the Secretary of State's reasons for the determination.

- An indicative example of a Strategy and Policy Statement is included in this pack¹. It contains example guidance on priorities for the EC, UK Government priorities in relation to elections, and overarching principles that the regulator would be required to have regard to in the exercise of its functions. The EC will be able to depart from the guidance set out in the Statement where it has statutory duties to fulfil or, if having had regard to the statement and to other relevant factors, it reasonably considers that other considerations justify departing from the guidance.
- The EC will continue to report to Parliament via the SCEC on its Five Year Plan, yearly Estimates and Accounts which will remain key tools in the Committee's ability to scrutinise the EC's finances. In addition, the EC will now be required to report yearly to the SCEC on the consideration given to the guidance set out in the Statement in the exercise of their functions. This can either be done separately or as part of its existing aforementioned annual reporting requirements.

Enhancing the remit of the Speaker's Committee

- Alongside this measure, the Government will make provisions in the Elections Bill to broaden the role and powers of the Speaker's Committee on the Electoral Commission (SCEC) to ensure that Parliament is able to hold the EC to account more effectively. The SCEC's remit is currently narrow and limited to examining the EC's estimates, accounts and Five Year Plan (where related to the Commission's reserved functions) and overseeing the appointment of the EC Commissioners and Chair. The SCEC's functions will be expanded to give it the power to examine the EC's compliance with its duty to have regard to the Strategy and Policy Statement in the exercise of its functions.
- With this additional role, the SCEC will be able to retrospectively examine the extent to which the EC had regard to the Statement in the exercise of their functions, in addition to its existing duties to examine the EC's finances and the appointment of Commissioners. This measure will not grant the Committee powers to interfere with the EC's governance or to direct its decision-making. The EC will remain independent of Government and Parliament and continue to be governed by its Chair and Electoral Commissioners. To support this expanded scrutiny function, the Committee will also be able to request information from the EC that the SCEC may require to examine the Commission's compliance with its duty to have regard to the Strategy and Policy Statement (e.g. via a public evidence session).

¹ The Elections Bill will make provision for the Statement to be introduced at a later date. The example Statement enclosed in this pack is intended for illustrative purposes only. The Government will produce a draft Statement proper and submit that draft to the statutory consultation process in due course, subject to the Bill receiving the approval of Parliament.

Clarity on criminal prosecutions

- The Government is clear that the proper place for criminal investigations and prosecutions relating to electoral law is with the police and the Crown Prosecution Service (and the Public Prosecution Service in Northern Ireland) who are experts in this domain. In recent years, the Electoral Commission has sought to develop the capability to bring criminal offences before the courts. This has never been agreed by the Government or Parliament. Having the EC step into this space would risk wasting public money as well as present potential conflicts of interest for a body responsible for providing advice and guidance on electoral law to initiate proceedings which might depend on the very advice that was given. We will therefore maintain the status quo by providing clarity in law that the Electoral Commission should not bring criminal prosecutions in England, Wales and Northern Ireland. This measure does not apply in Scotland where there is already a single prosecutorial body.
- Such reforms do not seek to interfere or inappropriately influence the investigative, operational or enforcement decisions of the Electoral Commission. These planned reforms predate any current inquiries, and stem from work initiated following the Pickles review into electoral fraud. The reforms would not in any way affect the ability of the Commission to undertake enforcement activity as it sees fit, but they will ensure greater accountability to Parliament on how the Electoral Commission discharges its wider functions.

Draft clauses

Elections Bill 1 [PRE-INTRODUCTION]

PART 3 THE ELECTORAL COMMISSION

Strategy and policy statement

12 Strategy and policy statement

After section 4 of PPERA insert –

“Strategy and policy statement

4A Strategy and policy statement

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 4C (consultation and procedural requirements) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out –
 - (a) strategic and policy priorities of Her Majesty’s government relating to elections, referendums and other matters in respect of which the Commission have functions, and
 - (b) the role and responsibilities of the Commission in enabling Her Majesty’s government to meet those priorities.
- (3) The statement may also set out –
 - (a) guidance relating to particular matters in respect of which the Commission have functions;
 - (b) any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate.
- (4) A statement designated under this section must be published in whatever manner the Secretary of State considers appropriate.

4B Duties in relation to statement

- (1) This section applies where a statement has been designated under section 4A.
- (2) The Commission must have regard to the statement when carrying out their functions.
- (3) Subsection (2) does not apply to information contained in the statement by virtue of section 4A(3)(b).
- (4) The Commission must publish a report, as soon as practicable after the end of –

- (a) the period of 12 months beginning with the day on which the statement was first designated under section 4A, and
 - (b) every subsequent 12-month period, on what they have done during the period in question in consequence of the statement.
- (5) Where, before the end of a reporting period, the statement is designated by virtue of section 4D (5-yearly review) or section 4E (power to revise statement) –
- (a) the Commission are not required to publish a report under subsection (4) in relation to the reporting period, and
 - (b) subsection (4) has effect as if the reference in paragraph (a) to the day on which the statement was first designated under section 4A were to the day on which the statement was last designated under that section by virtue of section 4D or 4E.
- (6) “Reporting period” means a period in relation to which a report is required to be published under subsection (4).
- (7) The duty under subsection (4) does not apply in relation to a 12-month period if before the end of that period the statement’s designation is withdrawn under section 4D(4)(c) or treated as withdrawn under section 4D(5)(b).
- (8) The Commission must provide a copy of each report published under subsection (4) to the Speaker’s Committee.

4C Consultation and procedural requirements

- (1) This section sets out the requirements that must be satisfied before the Secretary of State may designate a statement under section 4A.
- (2) The Secretary of State must consult the following on a draft of the statement –
- (a) the Commission,
 - (b) the Speaker’s Committee,
 - (c) the Public Administration and Constitutional Affairs Committee,
 - (d) the Scottish Ministers, so far as the draft relates to the Commission’s devolved Scottish functions, and
 - (e) the Welsh Ministers, so far as the draft relates to the Commission’s devolved Welsh functions.
- (3) After the Secretary of State has carried out the consultation required by subsection (2), the Secretary of State –
- (a) must make whatever changes to the draft the Secretary of State considers necessary in light of responses to the consultation, and
 - (b) must then lay the draft before Parliament.
- (4) The draft as laid under subsection (3)(b) must, before the end of the 40-day period, have been approved by a resolution of each House of Parliament before the Secretary of State may designate the statement under section 4A.
- (5) In this section –
- (a) “the 40-day period” means the period of 40 days beginning on the day on which the draft is laid before Parliament (or, if it is not laid before

- each House of Parliament on the same day, the later of the days on which it is laid);
- (b) the Commission's "devolved Scottish functions" are the Commission's functions in relation to –
 - (i) Scottish Parliamentary general elections, elections held under section 9 of the Scotland Act 1998 (constituency vacancies), and local government elections in Scotland, so far as those functions do not relate to reserved matters within the meaning of the Scotland Act 1998, and
 - (ii) referendums held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament;
 - (c) the Commission's "devolved Welsh functions" are the Commission's functions in relation to –
 - (i) general elections of members of Senedd Cymru,
 - (ii) elections held under section 10 of the Government of Wales Act 2006 (elections for Senedd constituency vacancies),
 - (iii) local government elections in Wales, and
 - (iv) referendums held under Part 2 of the Local Government Act 2000 or Part 4 of the Local Government (Wales) Measure 2011 (referendums relating to local authority executive arrangements),so far as those functions do not relate to reserved matters within the meaning of the Government of Wales Act 2006.
- (6) When calculating the 40-day period for the purposes of subsection (5)(a), ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
 - (7) If the name of the Public Administration and Constitutional Affairs Committee is changed, the reference in subsection (2)(c) to that Committee is to be read (subject to subsection (8)) as a reference to the Committee by its new name.
 - (8) If the functions of the Public Administration and Constitutional Affairs Committee at the passing of this Act with respect to electoral matters (or functions corresponding substantially to such matters) become functions of a different committee of the House of Commons, the reference in subsection (2)(c) to that Committee is to be read as a reference to the committee which for the time being has those functions.

4D 5-yearly review and designation of statement

- (1) The Secretary of State must review a statement designated under section 4A if a period of 5 years has elapsed since –
 - (a) the time when the statement was first designated under section 4A, or
 - (b) if later, the time when the statement was last designated under that section by virtue of this section or section 4E.
- (2) But where –
 - (a) the statement was last designated by virtue of section 4E, and
 - (b) the case was one in which the Secretary of State made a determination under section 4E(4) (disapplication of consultation requirements on revision of statement),

the designation of the statement in that case is to be ignored in determining for the purposes of subsection (1)(b) when the statement was last designated.

- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5-year period referred to in that subsection.
- (4) After reviewing the statement, the Secretary of State may –
 - (a) revise the statement,
 - (b) leave the statement as it is, or
 - (c) withdraw the statement’s designation under section 4A.
- (5) Where the Secretary of State proceeds under subsection (4)(a) or (b) –
 - (a) the Secretary of State must designate the statement (whether or not revised) under section 4A(1);
 - (b) if the statement is not designated before the end of the review period, the designation of the statement (in the form reviewed under subsection (1)) is treated as withdrawn at the end of that period.
- (6) “The review period” means the 9 months beginning with the end of the 5-year period referred to in subsection (1).
- (7) Sections 4A(2) to (4) and 4C apply in relation to the statement and its designation in accordance with subsection (5)(a) as they apply in relation to the original statement.

4E Power to revise statement

- (1) The Secretary of State may revise a statement designated under section 4A otherwise than in consequence of a review under section 4D.
- (2) The power under subsection (1) may be exercised –
 - (a) on the Secretary of State’s own initiative, or
 - (b) at the request of the Commission, where the request –
 - (i) is made by notice given to the Secretary of State and the Speaker’s Committee, and
 - (ii) gives details of the changes to the statement that the Commission propose should be made.
- (3) Where the Secretary of State revises the statement under subsection (1) –
 - (a) the Secretary of State must designate the revised statement under section 4A(1), and
 - (b) subject to subsection (4), sections 4A(2) to (4) and 4C apply to the revised statement and its designation in accordance with paragraph (a) as they apply to the original statement.
- (4) The Secretary of State may determine in a particular case that section 4C(2) and (3) (consultation requirements) do not apply in relation to the revised statement.
- (5) Before making a determination under subsection (4), the Secretary of State –
 - (a) must give notice to the Speaker’s Committee of the proposed determination (giving details of the revisions to the statement), and
 - (b) must consider any representations made by the Speaker’s Committee in response to the notice.

- (6) Where the Secretary of State makes a determination under subsection (4), the Secretary of State must notify the following of the revisions to the statement –
 - (a) the Commission,
 - (b) the Speaker’s Committee,
 - (c) the Public Administration and Constitutional Affairs Committee,
 - (d) the Scottish Ministers, if the draft relates to any extent to the Commission’s devolved Scottish functions (within the meaning of section 4C), and
 - (e) the Welsh Ministers, if the draft relates to any extent to the Commission’s devolved Welsh functions (within the meaning of section 4C),and section 4C(7) and (8) apply for the purposes of paragraph (c) as they apply for the purposes of section 4C(2)(c).
- (7) Subsection (8) applies where the Secretary of State makes a determination under subsection (4) despite the Speaker’s Committee objecting to the proposed determination.
- (8) When laying the revised statement before Parliament in accordance with section 4C(3)(b), the Secretary of State must also lay before Parliament a statement of the Secretary of State’s reasons for the determination.
- (9) For the purposes of this section, corrections of clerical or typographical errors do not count as a revision of the statement.”

13 Examination of duty to have regard to strategy and policy statement

- (1) After section 13 of PPERA insert –

“Examination of Commission’s duty to have regard to strategy and policy statement

13ZA Examination of duty to have regard to strategy and policy statement

- (1) The Speaker’s Committee may examine the performance by the Commission of the Commission’s duty under section 4B(2) (duty to have regard to strategy and policy statement).
- (2) The Speaker’s Committee may require the Commission to provide the Committee with information that –
 - (a) the Committee require for the purposes of enabling them to exercise their power under subsection (1), and (b) is held by the Commission.
- (3) The Commission –
 - (a) must as soon as is reasonably practicable provide the Speaker’s Committee with information required under subsection (2), and
 - (b) must provide the information in such form as the Committee may reasonably require.
- (4) A requirement imposed on the Commission under subsection (2) does not require the Commission to provide information that, in their opinion, might adversely affect any current investigation or proceedings.
- (5) Except as provided by subsection (6), the disclosure of information pursuant to a requirement imposed under subsection (2) does not breach –
 - (a) any obligation of confidence owed by the Commission, or

- (b) any other restriction on the disclosure of information (however imposed).
- (6) A requirement imposed on the Commission under subsection (2) does not require them to disclose information if to do so would contravene the data protection legislation (but, in determining whether a disclosure would do so, the requirement imposed on the Commission is to be taken into account).
- (7) In subsection (6), “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).”
- (2) In Schedule 2 to PPERA (Speaker’s Committee), after paragraph 3 insert –
“Protection for witnesses etc
 - 4 (1) Evidence given by a person who is a witness before the Speaker’s Committee may not be used against the person in any civil or disciplinary proceedings, or in any criminal proceedings, unless the evidence was given in bad faith.
 - (2) For the purposes of the law of defamation the publication by the Speaker’s Committee of any evidence given by a person who is a witness before the Speaker’s Committee is absolutely privileged.”

Membership of the Speaker’s Committee

14 Membership of the Speaker’s Committee

- (1) In section 2 of PPERA (Speaker’s Committee), after subsection (2) insert –
“(2A) The functions of the Minister for the Cabinet Office under subsection (2)(b) are exercisable concurrently with any Member of the House of Commons who –
 - (a) is a Minister of the Crown with responsibilities in relation to the constitution, and
 - (b) is appointed to membership of the Committee by the Prime Minister in order to carry out those functions concurrently with the Minister for the Cabinet Office.”
- (2) In paragraph 2 of Schedule 2 to PPERA (the Speaker’s Committee: term of office), after sub-paragraph (1) insert –
“(1A) The reference in sub-paragraph (1)(c) to the member who is the Minister for the Cabinet Office does not include any member appointed under section 2(2A).”
- (3) The Transfer of Functions (Speaker’s Committee) Order 2021 (S.I. 2021/310) is revoked.

Criminal proceedings

15 Criminal proceedings

- (1) Paragraph 2 of Schedule 1 to PPERA (the Electoral Commission: incidental powers) is amended as follows.
- (2) The existing text becomes sub-paragraph (1).

- (3) In sub-paragraph (1)–
 - (a) after “may” insert “(subject to sub-paragraph (2))”;
 - (b) omit “(except borrow money)”.

(4) After sub-paragraph (1) insert –

“(2) The Commission may not –

- (a) borrow money;
- (b) institute criminal proceedings in England and Wales or Northern Ireland.”

Note on Elections Bill draft clauses on the Electoral Commission

This note provides a guide to the draft clauses relating to the Government's proposed legislative measures relating to the accountability of the Electoral Commission (ordered as in the draft clauses):

- Provisions to introduce a Strategy and Policy Statement that will set out guidance the Electoral Commission are required to have regard to (clause 12);
- Provisions to amend the functions of the Speaker's Committee to include a power to examine the Electoral Commission's compliance with their duty to give regard to the Strategy and Policy Statement (clause 13);
- Provisions to amend the membership of the Speaker's Committee on the Electoral Commission to allow concurrent membership for the Minister for the Cabinet Office and a Minister of the Crown with responsibility for the constitution appointed by the Prime Minister (clause 14);
- Provisions to remove the Electoral Commission's ability to bring criminal prosecutions in England, Wales and Northern Ireland (clause 15).

The draft clauses referred to hereafter have been provided alongside this note.

Clause 12. Strategy and Policy Statement

Clause 12 makes provisions for the introduction of a 'Strategy and Policy Statement' which will provide guidance to which the Electoral Commission (EC) is required to have regard, by inserting new sections into Part 1 of the Political Parties, Elections and Referendums Act 2000 ("PPERA"). The Statement will be drafted and designated by the Secretary of State (new section 4A(1) of PERA) and may contain guidance about:

- Government strategic and policy priorities relating to elections, referendums and other matters in respect of which the Commission have functions (s4A(2)(a));
- the role and responsibilities of the Commission in supporting or enabling those government priorities (s4A(2)(b));
- the Commission's exercise of its functions (s4A(3)(a));
- any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate (s4A(3)(b)).

Under new section 4B of PERA, the EC are required to have regard to the Statement, (except for any guidance within the Statement that pertains to the roles and responsibilities of other persons (s4B(3)). This new section also requires the EC to report to the Speaker's Committee on the Electoral Commission (SCEC) on consideration given to the Statement in the exercise of their functions (s4B(4)). This can either be done separately or as part of its existing annual reporting requirements to the House of Commons under PERA (existing paragraphs 18 and 20 of Schedule 1). This duty only applies after the end of a 12-month reporting period from the moment a Statement has been designated by the Secretary of State and every 12 months thereafter. If a new Statement is designated during the reporting period applying to a previous Statement, to avoid placing an undue burden on the EC, the Commission are only required to report on the discharge of their functions against the later Statement, after the end of a 12-month period (s4B(5)). In addition, if a Statement is withdrawn during a reporting period, the EC are not required to report on consideration given to the withdrawn Statement during that

particular reporting period (s4B(7)). Regardless of those exceptions to reporting requirements, the EC remain otherwise bound under PPERA to report annually to Parliament on its accounts and the performance of their functions during any given financial year.

New section 4C of PPERA outlines the consultation and approval process required before designating the Statement. Under s4C(2), the Secretary of State is required to consult the EC, the SCEC, and the Public Administration and Constitutional Affairs Committee (PACAC) on the draft Statement. He or she must also consult the Scottish and Welsh Ministers with regards to any guidance relating to the EC's devolved Scottish and Welsh functions. Following this consultation, the Secretary of State may make any changes to the draft he or she considers appropriate (including not making any changes) before laying the draft before Parliament (s4C(3)). The draft Statement is then submitted to parliamentary approval via the affirmative resolution procedure on a non-amendable motion, which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period.

New section 4C(5) contains definitions, including of the relevant devolved Welsh and Scottish functions of the EC on which the Statement may contain guidance. The reason the definitions are included is because there is an obligation to consult the Scottish or Welsh ministers (as relevant) on the areas of guidance which apply in relation to those devolved matters.

Under new sections 4C(7) and 4C(8), if the name or functions of the Public Administration and Constitutional Affairs Committee change or become the functions of a different committee, then any reference to the Public Administration and Constitutional Affairs Committee under section 4C(2) is to be read as a reference to the committee which for the time being has that name or those functions.

The Government may review the content of the Statement from time to time and at a minimum every 5 years, as outlined in new sections 4D and 4E of PPERA:

- The 5-year point review of the Statement: When 5 years have elapsed since a Statement was last designated after being subject to the statutory consultation process in s4C(2), the Secretary of State must as soon as reasonably practicable review the existing Statement and determine whether to revise it, leave it unchanged or withdraw it (s4D(5)). Where the Secretary of State decides not to withdraw the Statement as a result of reviewing it, he or she must consult the statutory consultees previously listed on a revised or unamended draft Statement (s4D(6)). As with the original Statement, following this consultation, the Secretary of State may make any changes to the draft he or she considers appropriate (including not making any changes) before laying the draft before Parliament for approval via the affirmative resolution procedure on a non-amendable motion (s4D(8) applies the process in s4C).
- Intermediary reviews: The Secretary of State may also review and revise a designated Statement within the 5-year period (s4E) on his or her own initiative or at the request of the EC provided that the Commission notify both the Secretary of State and the SCEC and give details of the changes to the Statement that the Commission propose should be made (s4E(2)). The Secretary of State may make changes he or she considers appropriate to the Statement and may determine that a proposed revision of the Statement does not require the consultation process outlined in section 4C (s4E(4)). In this event, the Secretary of State is required to consult the SCEC on whether the proposed changes to the Statement require a statutory consultation and

consider the SCEC's view before making a final determination (s4E(5)). In the event where the Secretary of State disagrees with the SCEC's opinion on the need for a statutory consultation, he or she may proceed with laying the draft Statement before Parliament for approval alongside a statement of the Secretary of State's reasons for the determination (s4E(8)). The Government must also inform the statutory consultees of any proposed changes to the Statement even if he or she determines that a statutory consultation is not required (s4E(6)).

Clause 13. Examination of duty of have regard to strategy and policy statement

Clause 13(1) makes provision to: expand the role of the SCEC to include a power to examine the performance by the EC of their duty to have regard to the Strategy and Policy Statement under new section 4B(2) (new section 13ZA(1) of PPERA), thus expressly expanding the SCEC's existing remit under PPERA beyond financial scrutiny and scrutiny of appointment of Commissioners.

To support this work, new section 13ZA(2) gives the SCEC powers to request relevant information from the EC. The EC must provide this information as soon as reasonably practicable and in such form as the Committee may reasonably require (s13ZA(3)). The information in question may include oral evidence in a public or private meeting of the SCEC. The EC are not required to disclose to the SCEC information that, in their opinion, might adversely affect any current investigation or proceedings or where disclosure would contravene data protection legislation (s13ZA(4)-(6)).

Clause 13(2) inserts a new paragraph 4 into Schedule 2 to PPERA. This makes provisions for evidence (written or oral) provided by a witness to the SCEC to be covered by statutory privilege and for any evidence given by a witness not to be used in civil, disciplinary or criminal proceedings against the witness, unless the evidence was given in bad faith.

Clause 14. Membership of the Speaker's Committee

Clause 14(1) and (2) make provision to amend section 2, and paragraph 2, of Schedule 2 to PPERA which set out the membership of the SCEC. The amendments allow concurrent membership for the Minister for the Cabinet Office and a Minister of the Crown with responsibilities in relation to the constitution appointed by the Prime Minister (new subsection (2A)) and clarify the meaning of "appointed member" in the context of concurrent membership (new paragraph 2(1A) of Schedule 2)). Clause 14(3) revokes the Transfer of Functions (Speaker's Committee) Order 2021 (S.I. 2021/310) which served a similar purpose to clause 14(1).

Clause 15. Criminal proceedings

Clause 15 makes provision for expressly removing the potential for the EC to bring criminal prosecutions in England, Wales and Northern Ireland (s15(4)(2)) by amending paragraph 2 of Schedule 1 to PPERA.

Shared in confidence

Strategy and Policy Statement (illustrative example)

Electoral Commission Strategy and Policy Statement

1. Priorities for the Electoral Commission

- 1) The Electoral Commission is the independent regulatory body responsible for giving guidance and support to Electoral Registration Officers and Returning Officers to undertake electoral registration and run elections and referendums effectively and in accordance with the law. It is also responsible for registering political parties, giving guidance to political parties and candidates on electoral rules as legislated by Parliament, and regulating donations and loans to political parties and other campaigners, and their spending.
- 2) The Government believes the Electoral Commission has an important role to play in maintaining the integrity of our elections and public confidence in that integrity. As a statutory body, the Electoral Commission has a range of duties and responsibilities, most notably set out in the Political Parties, Elections and Referendums Act 2000. Amongst these duties and responsibilities, the Government considers several to be core priority functions. It is the Government's view that these priority functions should be the focus of the Electoral Commission's work and allocation of resources. This Statement does not seek to interfere or inappropriately influence the investigative, operational or enforcement decisions of the Electoral Commission. This Statement does not in any way affect the ability of the Commission to undertake enforcement activity as it sees fit, but ensures greater accountability to Parliament on how the Electoral Commission discharges its wider functions.
- 3) The Government considers the core priority functions of the Electoral Commission, rooted in priorities already set out in law, to be:
 - a) The Commission is responsible for supporting Returning Officers and Electoral Registration Officers with the clear advice and guidance, and setting and monitoring robust performance standards, to ensure the successful delivery of polls that meet the UK's high standards of democratic integrity and free and fair elections;

- b) The Commission is responsible for informing the public and promoting awareness of elections, including the different electoral systems used in the UK and encouraging accurate voter registration and access to polls;
- c) The Commission is responsible for enforcing the rules as legislated by Parliament relating to the regulation of political finance and electoral spending that provide for an even playing field and public confidence in the electoral process;
- d) The Commission is responsible for providing clear and high quality guidance, advice and support to political parties, candidates and other campaigners that help their understanding of the rules as legislated by Parliament they must comply with.

2. Executive and legislative priorities in relation to elections

- 4) The UK Government's 2019 Manifesto set out this Government's commitment to protecting our democracy and ensuring that it remains secure, modern, transparent and fair. We will place citizens' participation at the heart of our democracy, trusting their choices and maintaining their confidence in our elections. We are guided by important principles that underpin our democracy:
 - a) that those who are entitled to vote should always be able to exercise that right freely, securely and in an informed way;
 - b) that fraud, intimidation and interference have no place in our democracy;
 - c) that we are the stewards of our shared democratic heritage which we seek to keep up to date for our age.
- 5) The Commission must have regard to supporting the Government's delivery of legitimate executive and legislative priorities in relation to elections during this Parliament, and as listed below.
- 6) Tackling electoral fraud by introducing voter identification and by addressing weaknesses in the current absent voting arrangements.

- a) The Commission must have regard to supporting effective delivery of the policy by raising public awareness about the requirements to show an approved form of photographic identification before taking part in UK parliamentary elections in Great Britain and local elections in England.
 - b) The Commission must have regard to supporting local authorities in meeting the requirement to issue a free Voter Card to any elector requiring it through the provision of guidance to Election Administrators and the police that will support their understanding of the operation of voter identification.
 - c) The Commission must have regard to tackling electoral fraud by promoting awareness amongst voters about absent voting arrangements (postal and proxy voting).
 - d) The Commission must have regard to the need to support Returning Officers, Electoral Registration Officers and the police in identifying and addressing the risk of corrupt and illegal practices, including intimidation and undue influence, as evident from past Election Court judgements including the London Borough of Tower Hamlets in 2015.
- 7) Ensuring clarity on the law.
- a) When drafting any non-statutory Code of Conduct for campaigners, the Commission must have regard to reflecting electoral law and other legislation, but not seek to go beyond it in stopping activity which is otherwise legal and proper.
- 8) Improving accessibility of elections by allowing a wider range of people to assist voters with disabilities if needed when voting in a polling station and by broadening the requirements for Returning Officers to support voters with disabilities.
- a) The Commission must have regard to supporting this policy by issuing guidance to Returning Officers on these new requirements.
- 9) Increasing participation by championing freedom of expression and tolerance, scrapping the 15 year rule, thus enfranchising all British citizens who were previously registered or resident in the UK, and by working to stamp out intimidation in public life through the delivery of a new electoral sanction.

- a) The Commission must have regard to continuing to support candidates facing intimidatory or abusive behaviour by updating guidance in the 'Joint Guidance on Intimidation for Candidates' jointly produced with the National Police Chiefs Council, Crown Prosecution Service and the College of Policing, including the new measures on intimidation introduced via the Elections Bill.
- b) The Commission must have regard to supporting increased enfranchisement by informing and encouraging the public about electoral registration, including newly-enfranchised overseas electors.

10) Improving transparency and combating foreign interference in UK elections:

- (a) The Commission must have regard to publishing clear and easily accessible information about the spending and donations received by political parties, campaigners and other groups, as well as high quality and accessible guidance for campaigners on how to comply with new rules legislated by Parliament.
- (b) The Electoral Commission must have regard to recognising the importance of protecting free speech by individuals, and the need to avoid disproportionate sanctions against genuine mistakes when producing statutory guidance on the new digital imprint regime.
- (c) The Electoral Commission must update the statutory guidance on spending by candidates and by parties, reflecting changes to the law on notional expenditure in the Elections Bill.

11) Supporting the Government's commitment to maintaining fair enforcement of electoral law.

- a) The Electoral Commission must have regard to ensuring robust, transparent and proportionate enforcement of the rules legislated by Parliament to avoid discouraging participation in public life.

3. Principles for the Electoral Commission

12) The following are key principles that the Electoral Commission must have regard to in the discharge of its functions.

- 13) Impartiality: The Electoral Commission must have regard to the need to uphold and demonstrate the principle of political impartiality by ensuring that it and its staff communicates and treats all operations, decisions, regulated entities and political matters neutrally and impartially.
- 14) Accountability: The Electoral Commission must have regard to the need to be fully accountable as a public body with such important responsibilities relating to our democratic processes. The Commission should at all times provide transparency around its decision making and work closely with the Speaker's Committee on the Electoral Commission, as well as the UK Parliament, Scottish Parliament and Senedd Cymru, to ensure public and democratic accountability.
- 15) Responsiveness to the public and the public interest: The Electoral Commission must have regard to responding to the need of the public and the public interest in the discharge of its functions, including when prioritising competing interests. The Commission must have regard to the importance of accurate and prompt election results through supporting Electoral Returning Officers' conduct of counts.
- 16) Value for money: The Electoral Commission must have regard to ensuring value for taxpayers' money in the discharge of its functions by considering carefully the balance between its core functions (protecting the integrity, security and effectiveness of elections) and its other functions. The Commission must have regard for the principles in guidance issued by the Government to Arm's Length Bodies on the spending of public money, including Cabinet Office guidance on grant standards and on lobbying by public bodies.
- 17) Enforcement: The Electoral Commission must have regard to the need to ensure their enforcement of electoral law is proportionate and consistent, so as not to unduly discourage democratic engagement by balancing the need to engage constructively with campaigners to support compliance, with the need to sanction malicious criminal activities. The Electoral Commission must have regard to best practice from other regulators (such as the 'Macrory principles'), including the use of requests for improvements before resorting to fines. The Electoral Commission should work closely and effectively with the police who hold responsibility for enforcing areas of electoral law and investigating more serious allegations of wrongdoing. In its approach to

enforcement, the Commission must have regard to the need to be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure.

- 18) Cooperation: The Electoral Commission must have regard to the need to cooperate with other regulators (such as the Information Commissioner and Ofcom) and public bodies to deliver its functions and avoid regulatory duplication or confusion; and ensure the effective enforcement of electoral law by working with the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service NI for criminal prosecutions. Where decisions are taken by the prosecuting bodies not to take forward prosecutions, the Commission must have regard to ensuring the record is clear that individuals or organisations do not remain under criminal investigation.
- 19) Communication and Consultation: The Commission must give regard to the views of political parties, candidates and other campaigners to better understand the realities of campaigning activities when preparing guidance by consulting with relevant stakeholders including the Parliamentary Parties Panels to ensure its guidance is helpful to campaigners. This will help to ensure buy-in to the guidance and trust in the Electoral Commission amongst the public and interested parties. The Commission must have regard to using the full skills and experience of its Electoral Commissioners, including those nominated by parties.
- 20) The Union: The Electoral Commission is a UK wide body with responsibilities relating to electoral matters in all four parts of the Union. The Electoral Commission must have regard to acting as a regulator for all four parts of the Union equally and the UK as a whole. This will involve an understanding of where electoral law, processes and practices differ and ensuring that the Electoral Commission in the discharge of its functions, particularly through advice provided to campaigners and published guidance, reflects those differences accurately.
- 21) Support to campaigners: The Commission must have regard to the need to provide campaigners with clear, consistent and user friendly guidance that supports campaigners in complying with electoral law. Electoral law can be complex and the Commission must endeavour to provide guidance that sets out the rules as simply as possible and offers practical advice, with illustrative examples, of how to comply with the rules, as legislated by Parliament.

22) Support to Electoral Registration Officers and Returning Officers: The Electoral Commission must have regard to the need to effectively support Electoral Registration Officers and Returning Officers in the discharge of their functions by providing them with clear guidance to deliver robust polls that meet the UK's high standards of democratic integrity and by monitoring performance against those standards. Greater support should be given to local authorities at higher risk of electoral fraud, including those with past history of electoral fraud.

Parliamentary briefing: Elections Bill

28 July 2021

This briefing highlights key considerations ahead of parliamentary consideration of the [Elections Bill](#), and outlines the Commission's position on its key measures.

The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity. A key part of our role is to provide advice to government and parliament on legislation relating to elections and the regulation of campaigners.

We will continue to provide independent advice to parliamentarians on the contents of the Bill, based on published evidence and our expertise. This will include more detailed information on individual clauses during the Bill's passage through Parliament.

Once the Bill has been passed into law we will work with voters, local electoral administrators, political parties, campaigners and representative bodies, to ensure everyone involved in elections understands and is prepared in good time for the new rules.

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Key considerations on the Bill's measures collectively

- The Elections Bill proposes significant changes, and will affect voters, campaigners and electoral administrators. It would introduce a number of important changes that the Commission and others have previously argued will bring benefits for voters, including: extending imprint rules to digital campaign material; allowing more flexible support for disabled voters; reforming the offence of undue influence; and improving transparency about new parties' assets.
- Implementation of the changes will need to be carefully planned and managed so that they can be delivered as intended. Ineffective delivery of such major change – for example, if there is not sufficient time to plan or the required resources are not available – could lead to errors or an inadequate experience for voters or campaigners. This could in turn damage confidence in the integrity of future elections.
- In considering how and when each of the measures should be commenced, the Government will need to take a holistic view of the capacity of voters, campaigners and electoral administrators to respond to and deliver change. [The Association of Electoral Administrators has recently highlighted concerns about existing capacity](#) within the local infrastructure for delivering elections.
- All those involved in delivering or participating in elections will need time to understand and prepare for changes to their roles and responsibilities. The Government's planning for implementing the Bill should take account of the range of elections that are already scheduled or expected to take place during the next three to four years.
- The Government's implementation plans will also need to be appropriately funded to ensure the collective package of measures is realistically deliverable. Changes for UK Parliament and Police and Crime Commissioner elections will be funded directly by government, but costs to deliver changes to electoral registration and for local elections will need to be met by local authorities in the longer-term. Resources will also be required for the Commission's work, including significant activity to support public awareness, from Parliament through the Speaker's Committee.
- The Bill covers the whole of the UK, but some provisions would apply differently to elections in England, Scotland, Wales and Northern Ireland. The Government has indicated that it will seek approval from other legislatures to allow these provisions to apply more consistently. It should set out progress with this approval process as early as possible, so that there can be clarity about the likely impact of the Bill for voters, campaigners and electoral administrators in different parts of the UK.
- It should also consider any risks for voters, campaigners or electoral administrators if there were to be significant differences in the rules that would apply for elections in future, particularly where different types of elections could be held on the same day.
- This Bill, and the secondary legislation that will be needed to implement it, will substantially increase the size of the UK's body of electoral law. [The laws around elections are already complex and fragmented](#), and the Government should confirm how it will address any additional risks from adding new legislation.

Part 1 Administration and conduct of elections

It is important that the UK's electoral system is both secure and accessible. Part 1 of the Bill includes significant changes to the way people will cast their votes at future elections.

Voter identification

The UK has low levels of proven electoral fraud, and voters should feel confident about their vote. However, our research has highlighted that it is an issue that concerns some voters. Two-thirds of people in our [recent public opinion tracking research](#) said they would feel more confident in the security of the voting system if there was a requirement to show identification.

There are already checks in place to confirm a voter's identity when they register to vote and vote by post. However, there are no similar checks in place at polling stations in Great Britain to prevent someone claiming to be someone else and voting in their name. This means that polling station voting in Great Britain is vulnerable to fraud. In Northern Ireland, there has been a requirement to show ID when voting since 1985, updated to a photo ID requirement since 2003.

At the 2018 and 2019 local elections, the UK Government trialled voter ID in a number of areas in England. We undertook [independent, statutory evaluations](#) in both years. Based on the evidence collected, we identified three key areas that need careful consideration if a voter ID requirement is introduced:

- A voter ID requirement should deliver clear improvements to current security levels. It should improve public confidence in the voting system by protecting voters from the risk of personation.
- Any new requirement should ensure accessibility for all voters. This must be considered for all voters, particularly those who are less likely to already have an accepted form of photo ID. The introduction of an ID requirement must not prevent these people from voting.
- The introduction of any ID requirement should be realistically deliverable for local electoral administrators, with manageable timescales and proper funding.

The Bill sets out proposals for a photo-based identification requirement for polling station voters at UK Parliament elections in Great Britain, Police and Crime Commissioner elections in England and Wales, and local elections in England. Of the approaches tested at the pilots, this provided the greatest improvement in security.

To make sure voting at polling stations remains accessible, this security measure must be balanced with other options for people who do not already have an accepted form of photo ID. The Bill makes clear that a proposed Voter Card must be issued free of charge.

Our recent public opinion tracking research found that 4% of people who were eligible to vote said they do not currently have any of the identification documents that would be required under these proposals. This was higher among some more disadvantaged groups including unemployed people, people who rent from a local authority or housing association, and people with disabilities.

Key considerations

- The application and issuing process for the proposed Voter Card will be key to ensuring the accessibility of a voter identification requirement, particularly for those people that don't have the required identification.
- Ensuring there is no charge for a Voter Card will be important, but significant further details about the application process will be set out in secondary legislation. The Government should set out during the passage of the Bill how it will make sure that applying for the new Voter Card is easy for people who need it.

Postal and proxy voting

Postal voting is a useful and popular voting method, used by around 20% of voters in Great Britain. Proxy voting is also an important option for people who can't vote in person. Just under 250,000 people appointed a proxy at the 2019 UK general election.

The Bill proposes banning campaigners from handling postal votes, which would formalise the current approach encouraged by a [voluntary Code of Conduct for Campaigners](#). The Bill also proposes extending ballot secrecy rules to include postal votes. These changes should improve trust and confidence in the system without reducing access to voting. Our [recent public opinion research](#) has shown that while 90% of people say they feel voting in a polling station is secure, this compares to 68% of people who believe postal voting is secure and 11% who don't know.

The Bill would also require voters to reapply for a postal vote after three years. This will help to ensure that postal voting personal identifiers (date of birth and signature) are up-to-date and accurate, and should reduce the risk of postal votes being rejected because these identifiers don't match when voters return postal ballot packs at elections.

It is not clear how new limits on handing in postal votes at polling stations, and on the number of voters for whom a person may act as a proxy, would offer significant additional protection for voters. Campaigners handing in postal votes would commit an offence under the proposed ban on handling postal ballot packs, and the reformed offence of undue influence would also apply if voters were forced against their will to hand over their postal votes to someone else or to appoint someone as a proxy.

Key considerations

- Changes to limit who can hand in postal votes at polling stations, and the number they can hand in, could create barriers for some voters who genuinely need assistance. They would also add complex new procedures for polling station staff.
- Security would be improved by the Bill's proposal to record who has handed in postal votes, without risking an impact on accessibility by placing new limits on the ability to hand them in.
- Limiting the number of voters for whom a person may act as a proxy could disadvantage some people who rely on someone else to vote on their behalf, including overseas voters.

Undue influence

Undue influence is a complex electoral offence that is not easy for voters to understand. Simplifying and defining this offence more clearly would help to protect voters against exploitation and would make clear what is and is not acceptable behaviour.

It would also make it easier for the police and prosecutors to enforce the law where appropriate. There is [widespread support for reforming this offence](#) among campaigners, electoral administrators, police and prosecutors.

Assistance with voting for people with disabilities

These changes would give voters with disabilities more flexibility in how they are supported at polling stations. Providing a wider range of equipment at polling stations should make it easier for people with disabilities to access appropriate support to be able to cast their vote on their own and in secret.

Replacing the current specific requirements set out in law with a broader duty for electoral administrators to provide reasonable equipment would allow voters with disabilities to use new equipment or technology to support them. This could support innovation and speed up the process of providing different types of support when new ways to meet voters' needs are identified.

[People with disabilities have also highlighted](#) that it can be difficult to find someone who is eligible to help them cast their vote at their polling station. Removing restrictions on who can act as a companion would give voters with disabilities more flexibility and choice in how they are supported.

Key considerations

- The Bill would give electoral administrators a broader responsibility to identify what equipment would be reasonable to provide to support voters with disabilities. It will be important for the Government to make sure there is appropriate funding for local administrators so that this support has the right impact for voters with disabilities.
- Our guidance will help electoral administrators to consider how best to identify and provide the right kind of support to voters with disabilities under this new responsibility, ensuring that voters are able to receive a consistent level of service wherever they live.

Further reading

- [Our independent evaluation of the voter ID pilots](#)
- [Our public opinion tracker 2021](#)
- [Our response to Sir Eric Pickles' review and recommendations on electoral fraud](#)
- [Our report on registering and voting from the view of someone with a disability](#)

Part 2 Overseas voters and EU citizens

Part 2 of the Bill includes proposals to significantly change the franchise, both for British citizens living abroad and for citizens of EU member states living in the UK.

Proposals to change which groups of people have the right to vote or stand as a candidate in elections are important constitutional matters for Parliament to consider and decide on. The Commission does not normally take a policy view on changes to the franchise, but we will provide advice to Parliament about their potential impact and practical implications.

Overseas voters

Our [research following UK general elections](#) since 2015 has consistently found that some overseas voters have experienced significant difficulties voting from outside the UK. Many did not have enough time to receive and return their postal vote before the close of the poll, which meant their votes could not be counted.

Just over 230,000 people were registered as overseas voters at the 2019 general election. A large number of new voters could be added to the electoral register as a result of the proposal to remove the current 15-year limit for British citizens overseas to register to vote in the UK, and so more people could be affected by these issues at future elections.

Key considerations

- To help support overseas voters to have their say at UK Parliamentary elections, we continue to recommend that the Government should explore new approaches to improve access to voting, drawing on evidence from other countries.
- We have previously highlighted that this could include options such as allowing people outside the UK to vote at embassies and consulates, or to download and print postal ballot packs from home in order to return them more quickly.

EU citizens

In the year to December 2020, there were [2.1 million \(non-UK\) EU citizens](#) on the electoral registers for local government elections in England and Wales. Implementing the proposed changes to the eligibility of EU citizens to vote and stand as candidates in some elections will involve a significant programme of activity by electoral administrators. This is likely to include communicating the new franchise rules and requirements to affected people, and reviewing their status to determine whether they remain eligible to vote in future elections.

Key consideration

- Implementing changes to the franchise and voting rights for EU citizens must be well-planned and appropriately funded to ensure all those eligible to be registered to vote have the opportunity to do so, and that registers are as accurate and complete as possible. The Government's planning and timing for delivering these changes must take account of the other significant changes proposed in this Bill.

Part 3 The Electoral Commission

Oversight of Electoral Commission

To ensure confidence in the impartiality of its approach, the Electoral Commission must be able to decide on its priorities and work independent of government influence or controls. Equally, parliamentary oversight and scrutiny of the Commission's work is essential to ensure that we command broad trust and confidence as an organisation. It is vital for public confidence that the Commission continues to be properly accountable to the UK Parliament, and also to the Scottish Parliament and Senedd.

Part 3 of the Bill includes significant changes to current accountability arrangements, including changes to the role and powers of Ministers, the Speaker's Committee and Parliament. The proposed Strategy and Policy Statement would give current and future Ministers new and broad scope to align the Commission's activities with the Government's strategic objectives, and to shape the exercise of our regulatory functions in relation to future elections and referendums.

Criminal prosecutions

Effective enforcement when the law is broken gives voters and campaigners confidence in the electoral system. They have the right to expect that any political party or campaigner which deliberately or recklessly breaks electoral law will face prosecution.

There have been no prosecutions under the Political Parties Elections and Referendum Act 2000 (PPERA) since it was passed by Parliament 20 years ago. We have focused on using the civil sanctions regime introduced 10 years ago, and the police and prosecutors have remained responsible for considering prosecutions. As the apparent risk of being prosecuted for a PERA offence is negligible, there are important implications for deterrence.

Although the Commission's current powers to establish a prosecution function are consistent with those available to many other regulators, the Bill proposes to remove these powers. This would reduce the scope for political finance offences to be prosecuted, relying solely on the police and prosecutors having the resources and will to take action.

Key considerations

- It is important that the Electoral Commission can continue to work independently to deliver the duties that the UK's legislatures have given us as the regulator of electoral law and political financing.
- There should be no actual or perceived involvement from government in our operational functions or decision-making. Our independence must be clear for voters and campaigners to see and preserved in electoral law, as this underpins fairness and trust in the electoral system.
- The Commission is funded by and formally accountable to the Scottish Parliament and the Senedd as well as the UK Parliament. The Government should make clear

that the proposed Strategy and Policy Statement, and the related development and approval processes, will reflect and not undermine these important shared accountability relationships.

- If the Electoral Commission is prohibited from undertaking criminal prosecutions, the capacity needs to exist within the police and Crown Prosecution Service for them to take forward prosecutions where appropriate, and without undue delay. The Government would need to work with them to ensure this was the case, and the Commission would continue to support them as well. This would include the full range of offences, from the lower order criminal offences that are often brought to light through our civil investigatory work, through to more significant offences such as deliberately breaching legal spending limits.

Further reading

- [Our enforcement work](#)
- [Our Corporate Plan and Annual Report](#)

Part 4 Regulation of expenditure

Part 4 of the Bill amends some of the existing rules that provide transparency and place limits on election campaign spending and funding. Our [recent public attitudes research](#) showed that there is an appetite for improvements for transparency, with only 14% of people agreeing that the spending and funding of political parties, candidates and other campaigning organisations at elections is open and transparent.

Notional expenditure of candidates and others

Rules about notional spending ensure that campaigners properly account for and report all goods, services and materials that are donated to them, and which they use to help them in any way with their campaign activities. [Data on spending](#) shows the total amount of notional spending reported by the 3,320 candidates who stood at the 2019 UK general election was £7 million. This was nearly 40% of the total amount of reported candidate spending.

Candidates, agents and party or campaigner staff need a clear understanding of when something is “notional spending” or “election expenses” because it counts towards their total campaign spend, which must not exceed the specified spending limit. The current law on notional spending is long established and has operated in practice for elections for many years.

The Government wants to change the legal test for when a candidate or agent authorises someone else to use benefits in kind on their behalf. The Bill would amend the rules so that candidates only need to report benefits in kind which they have “made use of” themselves or have authorised, directed or encouraged someone else to “make use of” on their behalf.

These changes would operate alongside existing rules for campaigners which allow them to spend a permitted sum on promoting a candidate in a constituency separately from the agent (e.g. up to £700 at a UK general election).

Key considerations

- There should be a clear understanding of how expenses or support for a candidate should be treated under the law. Candidates and other campaigners need to be clear how any expenses for campaigning in a constituency should be treated under the proposed changes and the existing legislation.
- The Government should set out how it has tested the proposed changes with campaigners, to help ensure that there is a common view about how support for a candidate should be authorised and accounted for, whether it is paid for by the agent or someone else.
- If these changes are passed into law, we will need to build on this common view to provide guidance for campaigners and update the draft statutory Code of Practice that we have prepared on candidate election expenses. The Electoral Commission already has a power to prepare a statutory Code for approval by the Minister and Parliament, and the scope of this power would be increased to cover notional spending.

Registration of political parties and non-party campaigners

Requiring new political parties to set out any assets or liabilities they hold over £500 when they apply to register would address a gap in the current rules for party accounts. It should give voters greater transparency by allowing them to see from the outset the level of funds or debts that a new party has.

The Bill will also introduce a prohibition on entities being registered as political parties and registered non-party campaigners at the same time. While there have been past instances of individuals being involved in some capacity in a party and a non-party campaigner simultaneously, there has only been one example in the past ten years of the same entity being registered as both a political party and non-party campaigner at the same time.

Key considerations

- The proposed ban on entities being registered as political parties and registered non-party campaigners at the same time is likely to reduce some types of campaign activity at future elections. It would reduce the amount that political parties can choose to spend on supporting or opposing another party or its candidates, including at elections where a party is not fielding any candidates itself. It could have an impact on parties and other campaigners considering electoral pacts and alliances in future.
- When accepting notifications from non-party campaigners as part of our role as the statutory registrar of political parties and non-party campaigners, we will need to check if the notifying entity is eligible. It will be important to ensure the law provides clarity and certainty about how to determine when a political party and a non-party campaigner are “the same” entity, so that those applying to register and the Commission can understand and apply the new requirement consistently.

Controlled expenditure by non-party campaigners

Non-party campaigners are a vital part of a healthy democracy and play an important role in sharing information with voters. It is important that these groups can easily participate in the UK’s elections. Controls in election law help voters to see and understand how these groups receive and spend money when they are intending to influence an election outcome.

Over recent years, there has been an increase in the number of non-party campaigners. Spending by these groups has risen too. At the 2019 UK general election, there were 61 registered non-party campaigners, and those who were required to report their spending recorded a total spend of more than £6m. Our [recent public attitudes research](#) showed some concerns about the risks of foreign interference. When we asked people to prioritise their concerns from a list of issues, two fifths (40%) said “foreign interference on UK elections results” was a problem.

The Bill proposes several changes to the rules on non-party campaigning. A new lower tier for non-party campaigner registration should provide greater transparency about who is planning to spend more than £10,000 in England or across the whole of the UK in the period before a UK general election. Currently campaigners are only required to register with the Commission and report spending if they intend to spend £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland.

Changes to the limits on unregistered campaigning would make it clear that foreign interference in UK elections is not acceptable. During the regulated period before an election, only specific categories of individuals and organisations would be allowed to spend more than £700 on activities that are intended to influence the election outcome. This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered.

Extending the rules on joint spending so they apply to political parties who spend jointly with a non-party campaigner would increase transparency and help ensure the effectiveness of the spending limits. It would need to be clear in practice how this additional rule will sit alongside other spending rules for parties. Parties must be able to clearly tell when the joint spending rule applies, and when other limits or controls apply, such as the existing targeted spending or notional spending rules.

Key considerations

- It is important for voter confidence to require transparency and to set limits on campaign spending that is intended to influence election outcomes, including where it is done by actors that are not candidates or political parties.
- The changes would provide greater transparency about who intends to campaign, but will not require any additional amounts of non-party campaigner spending to be reported compared to the current rules.
- The proposals mean there would be three separate levels of rules for non-party campaigners that apply to unregistered campaigning, registration of campaigners, and registration and reporting of campaigner spending. These tiers could be seen as proportionate layers of rules, but could also add to perceptions of complexity. The rules were last amended by legislation in 2014 and campaigners have highlighted that the changes were complex and deterred some from participating.
- The Government should set out how it intends the restrictions on overseas spending would be enforced. We are not able to take any enforcement action against organisations or individuals outside the UK that don't follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas.
- It will be important to ensure that the proposed changes to these rules are proportionate and do not discourage campaigners from participating and informing voters.

Further reading

- [Our Party and Election Finance Regulatory Review, 2013](#)
- [Our notional spending factsheet](#) and [our guidance for non-party campaigners](#)
- [Digital, Culture, Media and Sports Committee: Disinformation and 'fake news', 2019](#)
- [Lords Select Committee: Democracy and Digital Technologies report, 2020](#)

Part 5 Disqualification of offenders for holding elective office etc

Following [the 2019 UK general election](#), more than half of the candidates who took part in our post-election research said they were concerned about standing for election because of the risk of intimidation, threats and abuse. Three quarters of respondents said that they had experienced this type of behaviour.

It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners. Proposals in Part 5 of the Bill would enable the courts to impose a ban on standing for elected office. This would be a further sanction in addition to a prison sentence or fine, for example, that a court could apply when finding offences under existing criminal law. While this would strengthen the range of sanctions available against those who carry out this type of behaviour, its practical effect as a deterrent will need to be monitored.

Further reading

- [Our response to the UK Government policy consultation: Protecting the Debate](#)
- [Our survey of candidates following the 2019 UK Parliamentary general election](#)

Part 6 Information to be included with electronic material

Digital campaigning accounts for an increasingly large proportion of spending reported by campaigners after elections. Following the 2019 UK general election and European Parliament election, political parties reported that spending on digital advertising represented 53% of their total advertising spending.

New technologies offer significant opportunities to engage voters, but they must provide the same level of transparency that voters currently have with printed material. Our recent public opinion tracking research found that only 21% of people thought they could find out who has produced the political content they see online, and 37% disagreed. Over 70% of people agreed that it should be clear how much has been spent promoting an advert, by whom and also know why it has been targeted at them.

Applying new imprint transparency rules to digital election materials will help UK voters understand who is paying to target them online, and should help improve public trust and confidence in digital campaigns at future elections and referendums.

The Bill would also require campaigners to include imprints on digital 'political' campaign material, not just election material. This will further increase transparency for voters by providing important information about who has produced and funded material at all times, and not just in the run up to an election.

To ensure voter confidence in digital campaign regulation, swift action should be taken to deal with any campaign material that does not comply with the new imprint requirements. The Bill would create a new duty for social media and digital advertising providers to provide information to the Commission and the police about who has supplied and paid for material, which would help us to secure compliance with the law. It also sets out duties for social media and digital advertising providers, including to remove material without an imprint once a court has found a conviction or the Commission has imposed a sanction on a campaigner.

Key considerations

- Transparency could be further improved for voters if the imprint requirements were extended to cover all digital material from campaigners including those not registered with us, even if they had not paid to promote it. The proposed rules would only require imprints to be placed on digital material from unregistered campaigners if it was a paid-for advert.
- The government's proposals to extend imprint rules to digital election material will need to be supported by further detailed explanation and examples for campaigners and others. It will be important to ensure that the legislation and guidance provide a clear definition of what is meant by 'political material', so that anyone publishing material that could be covered can understand and follow the new rules.
- The Bill proposes a new duty for the Electoral Commission to prepare statutory guidance on digital imprints, which it is proposed in the Bill would be approved by Ministers and by Parliament. The Government should set out its assumptions about when the digital imprint rules should start to apply to campaign material. The

Government will need to allow reasonable time for us to consult with campaigners and draw up the statutory guidance if it is to be in place prior to the requirement coming into force.

- The rules will include takedown provisions for material without an imprint, but they are unlikely to apply swiftly. They could only be used after a court or the Commission has formally determined an offence and a campaigner has had an opportunity to state their case.

Further reading

- [Our response to the Cabinet Office technical consultation on digital imprints](#)
- [Our report on increasing transparency in digital campaigning, 2018](#)

Briefing: UK Government Elections Bill – impact on elections in Wales

September 2021

Welsh Government has sought views on the proposals set out in the UK Government's Elections Bill. The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity. A key part of our role is to provide advice to governments and parliaments on legislation relating to elections and the regulation of campaigners.

This briefing considers the clauses of the Bill for which we understand the UK Government is seeking legislative consent from the Senedd. It also highlights provisions in the Bill which relate to UK Parliament elections and would therefore have an impact on voters, campaigners and electoral administrators in Wales, including through a resulting divergence of rules for different elections in Wales. It reflects our current understanding of the Bill and of the associated secondary legislation which will follow. We will continue to support Welsh Government as the parliamentary process proceeds.

Bill provisions directly relevant to the Senedd and local government elections in Wales

This section of the briefing is about the parts of the Elections Bill that the UK Government has proposed should apply to the whole elections framework, including Senedd and local government elections in Wales. It has asked the Senedd to consent to some of these changes where the Senedd has competence over the relevant part of the law.

Campaigner regulation and registration

Digital imprints

Digital campaigning accounts for an increasingly large proportion of spending reported by campaigners after elections. Following the 2019 UK general election and European Parliament election, political parties reported that spending on digital advertising represented 53% of their total advertising spending. Party spending returns for the 2021 Senedd elections are due to be submitted in August and November 2021 (dependent on the level of spending) and we will publish this data in due course.

The introduction of digital imprint rules has been a long standing Electoral Commission recommendation, which would improve transparency and voter confidence. It was also a recommendation in our [recent report on the 2021 elections in Wales](#).

Our research after the election confirmed that people continue to value transparency about who is responsible for political campaign activity online at elections with a majority (69%) of

people agreeing that it is important for them to know who has produced the political information they see online, and three in five agreeing (59%) they would trust digital campaigning material more if they knew who produced it. To ensure voter confidence in digital campaign regulation, the law should provide for swift action to deal with any campaign material that does not comply with the new imprint requirements. The Bill would create a new duty for social media and digital advertising providers to provide information to the Commission and the police about who has supplied and paid for material, which would help us to secure compliance with the law. It also sets out duties for social media and digital advertising providers, including to remove material without an imprint once a court has found a conviction or the Commission has imposed a sanction on a campaigner.

Key considerations for Welsh Government

- Whether the Senedd decides to consent to the proposals in the Elections Bill or introduce separate legislation, we recommend that digital imprint rules should become a legal requirement at all elections across the UK.
- We understand that the UK Government as well as Welsh and Scottish Governments are currently considering questions of competence relating to the digital imprint proposals. If it is decided that the digital imprint proposals in the UK Government's Bill are a reserved matter, then we understand that the provisions would apply to all elections held in both Wales and Scotland if passed.
- The Commission understands from the recently published legislative consent memorandum that Welsh Government regards imprint policy as a devolved matter and does not plan to recommend that the Senedd give consent to the UK Government's legislation applying to Senedd and Welsh local government elections. If that is the case, we would recommend that Welsh Government legislates on a digital imprint law as soon as possible.
- If the Elections Bill proposals do not apply to Senedd and Welsh local government elections, Welsh Government would need to make a decision on the best way to introduce a digital imprint law in Wales. It should consider the proposals being made by the UK Government on a new digital imprint law, and also the rules that have been already implemented in Scotland.
- Transparency could be improved for voters if future imprint requirements in Wales were to cover all digital material from campaigners including those not registered with us, even if they had not paid to promote it. The proposed UK Government rules would only require imprints to be placed on digital material from unregistered campaigners if it was a paid-for advert. Welsh Government may wish to consider the difference in scope between the existing regime for devolved Scottish elections and that proposed in the UK Government Bill. We think there are benefits for transparency in both approaches – the UK Government's intention to make imprint rules apply generally to digital political material rather than solely to election material, will mean that a broader range of materials promoting parties or candidates will have to include an imprint. But the approach that requires imprints on all digital election material by unregistered campaigners in the Scottish rules provides more transparency than the UK Government's proposals would bring, and is more consistent with the imprint rules for printed election material.

- The digital imprint proposals in the Elections Bill will include takedown provisions for material without an imprint, but they are unlikely to apply swiftly. They could only be used after a court or the Commission has formally determined an offence.
- If the Senedd and the UK Parliament both pass legislation for digital imprint rules, it will be important to avoid the risk of separate legislative regimes applying to the same offence. That result could cause confusion for campaigners, regulators, and prosecutors. For example, depending on the scope of any proposals Welsh Government develops in future, it is possible that two separate imprint regimes could apply to a single piece of digital election material which promotes a candidate or party at a Senedd election, and to a piece of digital political material which promotes a candidate or party more generally. If the campaigner did not include an imprint, the Commission and the Crown Prosecution Service would potentially have to consider which offence should be investigated, and whether a campaigner in that scenario could actually have committed two offences under two separate regimes.

Registration of political parties and non-party campaigners

Requiring new political parties to set out any assets or liabilities they hold over £500 when they apply to register would address a gap in the current rules for party accounts. It should give voters greater transparency by allowing them to see from the outset the level of funds or debts that a new party has.

The Bill will also introduce a prohibition on entities being registered as political parties and registered non-party campaigners at the same time. So far, this situation has been rare, but this proposal would reduce the effective spending limit of parties and other campaigners considering electoral pacts and alliances in future. While there have been past instances of individuals being involved in some capacity in a party and a non-party campaigner simultaneously, there has only been one example in the past ten years of the same entity being registered as both a political party and non-party campaigner at the same time ahead of a UK Parliament general election.

Key considerations for Welsh Government

- The proposed ban on entities being registered as political parties and registered non-party campaigners at the same time is likely to reduce some types of campaign activity at future elections. It would reduce the amount that political parties can choose to spend on supporting or opposing another party or its candidates, including at elections where a party is not fielding any candidates itself. It could have an impact on parties and other campaigners considering electoral pacts and alliances in future.
- The amendment to ban entities being registered as political parties and registered non-party campaigners at the same time would change two sections of PPERA: one is reserved (s22) and the other is devolved (s88). If the Senedd decided not to consent to this amendment, then it appears that the law will apply differently for UK Parliamentary elections compared to Senedd elections. It would mean that a registered non-party campaigner would not be permitted to become a registered political party in any circumstances (s22), but the rules on whether a registered party can be a registered non-party campaigner would be different (s88). It appears that

would be allowed for Senedd elections but not for UK Parliamentary elections. This could be confusing for voters and campaigners and have implications for how the statutory register is maintained. (See the section below on “controlled expenditure by non-party campaigners” for further details.)

A non-party campaigner has to submit a notification when it intends to spend over the legal threshold. When accepting notifications as part of our role as the statutory registrar, the Commission checks if the notifying entity is eligible. It will be important to ensure the law provides clarity and certainty about how to determine when a political party and a non-party campaigner are “the same” entity, so that those applying to register and the Commission can understand and apply the new requirement consistently.

Notional expenditure of candidates and others

Rules about notional spending ensure that campaigners properly account for and report all goods, services and materials that are donated to them, and which they use to help them in any way with their campaign activities.

There is a considerable level of notional spending reported by candidates at elections. [Data on spending from the 2019 UK general election](#) shows the total amount of notional spending reported was £7 million, nearly 40% of the total amount of reported candidate spending.

Candidates, agents and party or campaigner staff need a clear understanding of when something is “notional spending” or “election expenses” because it counts towards their total campaign spend, which must not exceed the specified spending limit. The current law on notional spending is long established and has operated in practice for elections for many years.

The UK Government wants to change the legal test for when a candidate or agent authorises someone else to use benefits in kind on their behalf. The Bill would amend the rules so that candidates only need to report benefits in kind which they have “made use of” themselves or have authorised, directed or encouraged someone else to “make use of” on their behalf. The Bill would also allow an agent to authorise another campaigner to pay for expenses that count towards the candidate’s spending limit (currently, only an agent can pay for these expenses).

These changes would operate alongside existing rules for campaigners which allow them to spend a permitted sum on promoting a candidate in a constituency separately from the agent (e.g. up to £700 at a UK general election).

Key considerations for Welsh Government

- There should be a clear understanding of how expenses or support for a candidate should be treated under the law. Candidates and other campaigners need to be clear how any expenses for campaigning in a constituency should be treated under the proposed changes and the existing legislation.
- Governments should set out how they have tested the proposed changes with campaigners at the elections for which they have legislative responsibility, to help

ensure that there is a common view about how support for a candidate should be authorised and accounted for, whether it is paid for by the agent or someone else. This will also enable the Commission to provide clear guidance for campaigners and update the statutory Codes of Practice on election spending. In the event that the changes proposed in the Bill are not applied to elections in Wales, campaigners may have to plan and account for the same kind of activity and spending differently for different elections. We would ensure that any Commission guidance or Code of Practice best enabled this.

- Any differences in the rules would also affect how voters and the media can access information about this kind of spending. While Returning Officers are responsible for providing public access to candidate spending returns, the Commission would continue to publish summary candidate spending information in the most accessible and transparent way and will continue to encourage others to do the same.
- The rules for spending at devolved elections in Wales are the responsibility of the Senedd. We understand that the UK Government is seeking consent from Welsh Government to apply these amendments to devolved elections in Wales. If Welsh Government wants these changes to apply for Senedd and local government elections in Wales, then they will need to consider how the changes would be made to existing devolved legislation that sets out the rules for candidates, and how changes should be prepared for and implemented.
- There are parallel versions of these provisions set out in S.64 of the National Assembly for Wales (Representation of the People) Order 2007 for Senedd elections. Welsh Government will want to consider whether, and if it wants, to align these with the definition in the UK Government's Bill. (For example, it may be possible for the UK Parliament to amend the rules for Welsh local government elections in the RPA at the same time as amending the rules for elections in UK competence, or it may be required or preferred that all such amendments are made by the Senedd.)

Controlled expenditure by non-party campaigners

Non-party campaigners are a vital part of a healthy democracy and play an important role in sharing information with voters. It is important that these groups can easily participate in the UK's elections. Controls in election law help voters to see and understand how these groups receive and spend money when they are intending to influence an election outcome.

Over recent years, there has been an increase in the number of non-party campaigners. Spending by these groups has risen too. At the 2019 UK general election, there were 61 registered non-party campaigners, and those who were required to report their spending recorded a total spend of more than £6m. Our [recent public attitudes research](#) showed some concerns about the risks of foreign interference. When we asked people to prioritise their concerns from a list of issues, two fifths (40%) said "foreign interference on UK elections results" was a problem.

Reductions to the limits on unregistered campaigning would make it clear that foreign interference in UK elections is not acceptable. During the regulated period before an election, only specific categories of individuals and organisations would be allowed to spend

more than £700 on activities that are intended to influence the election outcome. This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered.

Extending the rules on joint spending so they apply to political parties who spend jointly with a non-party campaigner would increase transparency and help ensure the effectiveness of the spending limits. It would need to be clear in practice how this additional rule will sit alongside other spending rules for parties. Parties must be able to clearly tell when the joint spending rule applies, and when other limits or controls apply, such as the existing targeted spending or notional spending rules.

Key considerations for Welsh Government

- Non-party campaigner rules are a devolved policy area. The UK Parliament can amend these rules and how they apply to UK Parliamentary elections, but the Senedd has competence for the rules in relation to Senedd elections. Currently, the rules for non-party campaigners in the Political Parties, Elections and Referendums Act 2000 are broadly the same for all types of elections. If the Senedd or the Scottish Parliament decides not to consent to the proposals in the Elections Bill or to introduce separate legislation with different aims, there will be new kinds of divergence between the rules.
- We would encourage governments to consider with us the implications of future divergence in the non-party campaigner rules and the impact on the statutory register of non-party campaigners. The proposals raise questions such as whether the statutory register of non-party campaigners would better function as four separate registers for each election, what changes to the legal framework would be needed for this to be done and what legislative opportunity could be used if desired.
- It is important for voter confidence to require transparency and to set limits on campaign spending that is intended to influence election outcomes, including where it is done by actors that are not candidates or political parties.
- The changes would provide greater transparency about who intends to campaign, but will not require any additional amounts of non-party campaigner spending to be reported compared to the current rules.
- The proposals mean there would be three separate levels of rules for non-party campaigners that apply to unregistered campaigning, registration of campaigners, and registration and reporting of campaigner spending. In practice, the two upper levels will be the same for campaigners targeting voters in Wales because the Bill proposes a new registration only threshold of £10,000 which is the same as the existing threshold for registration and reporting in Wales. These tiers could add to perceptions of complexity. The rules were last amended by legislation in 2014 and campaigners have highlighted that the changes were complex and deterred some from participating.
- Any government considering applying restrictions on overseas spending should set out how they intend for the restrictions on overseas spending to be enforced. We are not able to take any enforcement action against organisations or individuals outside

the UK that don't follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas.

- It will be important to ensure that the proposed changes to these rules are proportionate and do not discourage campaigners from participating and informing voters.

Oversight of the Electoral Commission

Strong accountability to, and effective scrutiny by the UK's parliaments are essential for the Electoral Commission to secure confidence in its work across the political spectrum. The role of the Senedd, as well as UK and Scottish Parliaments, is important in achieving this. The Commission must also be able to decide on its priorities and work independent of government influence or controls. It is vital that there should be no actual or perceived involvement from government in our operational functions or decision-making.

The proposed Strategy and Policy Statement would give current and future UK Government Ministers a new and broad scope to align the Commission's activities with the UK Government's strategic objectives, and to shape the exercise of the Commission's functions in relation to future elections and referendums. The proposals, as currently worded, go beyond accountability and scrutiny of the Commission and its decision making by enabling the UK Government to issue statutory guidance for the Commission, therefore, directing and guiding how those decisions are made.

Key considerations for Welsh Government

- The existence of an independent regulator is fundamental to maintaining confidence in our electoral system when the laws that govern elections are made by a small subset of the parties that stand in elections. Our independence must be clear for voters and campaigners to see and preserved in electoral law, as this underpins fairness and trust in the electoral system.
- There is a requirement in the Bill for the Secretary of State to consult with Welsh Ministers before designating a Strategy and Policy Statement. There is also a requirement to consult with the Speaker's Committee of the UK Parliament, to which the Commission is accountable. However, the Secretary of State will not need to amend the statement in response to that consultation, and there is no equivalent requirement to consult with the Llywydd's Committee or the Scottish Parliament Corporate Body to whom the Commission also accounts. It is important for the Commission's accountability and independence to have parity for consultation with all three legislatures.
- Under the Bill proposals, it appears that the Commission will be able to depart from the statement if it reasonably considers that other considerations justify doing so. However, to make this practical, realistic and be upheld in the Courts would need further drafting in the Bill. We would welcome changes to the Bill that reflect the UK Government's commitment to the independence of the Commission, including its independence to act in the interests of voters across the UK.

Offences

Undue influence

Undue influence is a complex electoral offence that is not easy for voters to understand. Simplifying and defining this offence more clearly would help to protect voters against exploitation and would make clear what is and is not acceptable behaviour.

It would also make it easier for the police and prosecutors to enforce the law where appropriate. There is [widespread support for reforming this offence](#) among campaigners, electoral administrators, police and prosecutors.

We understand that the newly defined offence of undue influence would apply to local government elections in Wales but that anyone found guilty of a corrupt practice would be restricted from standing at both local government and Senedd elections. A separate provision for undue influence in relation to Senedd elections is set out in Part 3, Article 81 of the National Assembly for Wales (Representation of the People) Order 2007. When Welsh Government come to review and update the Order ahead of the 2026 Senedd election, there will be opportunity to review that definition of the undue influence offence.

Disqualification of offenders for holding elective office, etc

Following [the 2019 UK general election](#), more than half of the candidates who took part in our post-election research said they were concerned about standing for election because of the risk of intimidation, threats and abuse. Three quarters of respondents said that they had experienced this type of behaviour.

It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners. Proposals in Part 5 of the Bill would enable the courts to impose a ban on standing for elected office. This would be a further sanction in addition to a prison sentence or fine, for example that a court could apply when finding offences under existing criminal law. While this would strengthen the range of sanctions available against those who carry out this type of behaviour, its practical effect as a deterrent will need to be monitored.

Bill provisions directly relevant to reserved elections only

This section of the briefing is about the parts of the Elections Bill that the UK Government has proposed should apply to *reserved* elections. These are: UK Parliamentary elections, Police and Crime Commissioner elections, local government and mayoral elections in England, Northern Ireland Assembly elections and NI local government elections. If the UK Parliament passes the Bill, these changes would apply to UK Parliamentary Elections and PCC elections happening in Wales.

Voter identification

The UK has low levels of proven electoral fraud, and voters should feel confident about their vote. However, our research has highlighted that it is an issue that concerns voters. Two-thirds of people in our [recent public opinion tracking research](#) said they would feel more confident in the security of the voting system if there was a requirement to show identification.

There are already checks in place to confirm a voter's identity when they register to vote and vote by post. However, there are no similar checks in place at polling stations in Great Britain to prevent someone claiming to be someone else and voting in their name. This means that polling station voting in Great Britain is vulnerable to fraud. In Northern Ireland, there has been a requirement to show ID when voting since 1985, updated to a photo ID requirement since 2003.

At the 2018 and 2019 local elections, the UK Government trialled voter ID in a number of areas in England. We undertook [independent, statutory evaluations](#) in both years. Based on the evidence collected, we identified three key areas that need careful consideration if a voter ID requirement is introduced:

- A voter ID requirement should deliver clear improvements to current security levels. It should improve public confidence in the voting system by protecting voters from the risk of personation.
- Any new requirement should ensure accessibility for all voters. This must be considered for all voters, particularly those who are less likely to already have an accepted form of photo ID. The introduction of an ID requirement must not prevent these people from voting.
- The introduction of any ID requirement should be realistically deliverable for local electoral administrators, with manageable timescales and adequate funding.

The Bill sets out proposals for a photo-based identification requirement for polling station voters at UK Parliament elections in Great Britain, Police and Crime Commissioner elections in England and Wales, and local elections in England. Of the approaches tested at the pilots, this provided the greatest improvement in security.

To make sure voting at polling stations remains accessible, this security measure must be balanced with other options for people who do not already have an accepted form of photo ID. The Bill makes clear that a proposed Voter Card must be issued free of charge.

Our recent public opinion tracking research found that 4% of people who were eligible to vote said they do not currently have any of the identification documents that would be required under these proposals. This was higher among some more disadvantaged groups including unemployed people, people who rent from a local authority or housing association, and people with disabilities. The application and issuing process for the proposed Voter Card will be key to ensuring the accessibility of a voter identification requirement, particularly for those people that don't have the required identification.

Ensuring there is no charge for a Voter Card will be important, but significant further details about the application process will be set out in secondary legislation. The UK Government

should set out during the passage of the Bill how it will make sure that applying for the new Voter Card is easy for people who need it.

Electoral Registration Officers will be required to administer applications for a voter card. UK Government will need to consider how this additional responsibility will be funded.

Key considerations for Welsh Government

- If the proposals in the Bill are passed then voters will be required to show ID for UK Parliament elections and Police and Crime Commissioner elections, but not Senedd or local government elections. There is potential for voter confusion, particularly if UK and Welsh elections (including by-elections) are held in close proximity, or indeed on the same day. In undertaking its public awareness activities, the Commission would seek to reduce the risk of voter confusion.

Postal and proxy voting

Postal voting is a useful and popular voting method. Proxy voting is also an important option for people who can't vote in person. Just under 250,000 people appointed a proxy at the 2019 UK general election.

The Bill proposes banning campaigners from handling postal votes, which would formalise the current approach encouraged by a [voluntary Code of Conduct for Campaigners](#). The Bill also proposes extending ballot secrecy rules to include postal votes. These changes should improve trust and confidence in the system without reducing access to voting. Our [recent public opinion research](#) has shown that while 90% of people say they feel voting in a polling station is secure, this compares to 68% of people who believe postal voting is secure and 11% who don't know.

The Bill would also require those voters registered for a postal vote for UK Parliament elections to re-apply for a postal vote after three years, instead of being required to re-provide their personal identifiers after five years as is currently the case. This will help to ensure that postal voters' signatures are up-to-date and accurate, and should reduce the risk of postal votes being rejected because these identifiers don't match when voters return postal ballot packs. However, those voters registered for a postal vote for devolved elections in Wales will continue to be required to re-provide their identifiers after five years unless Welsh Government chooses to legislate to align the processes.

Many postal voters are registered to vote by post at both UK and devolved elections in Wales. Therefore, if the rules are not aligned this will likely lead to voter confusion over when they have re-applied and for which elections. Without an aligned system, there will also be an added burden placed upon electoral administrators, as they will be required to process postal vote applications at different times for the same voters, depending on type of election.

It is not clear how new limits on handing in postal votes at polling stations, and on the number of voters for whom a person may act as a proxy, would offer significant additional protection for voters. Campaigners handing in postal votes would commit an offence under the proposed ban on handling postal ballot packs, and the reformed offence of undue

influence would also apply if voters were forced against their will to hand over their postal votes to someone else or to appoint someone as a proxy.

Key considerations for Welsh Government

- A divergence in regimes being used for postal and proxy voting at elections taking place in Wales, will require clear support for voters to navigate the rules and to avoid the possibility of voter confusion. It would be important to ensure that differences in the rules between elections that fall under the various governments remits, would not create a barrier to participation.
- If postal voters are required to reapply every three years for their UK Parliament postal vote and to re-provide their identifiers every five years for their devolved election postal vote, this could increase the burden on voters to remain registered for their preferred way of voting and increase the risk of them inadvertently failing to ensure a postal vote for a specific set of elections. It would also create an additional burden on Electoral Registration Officers in Wales to maintain the two timetables. Welsh Government should consider whether to align the rules for devolved elections in Wales with the proposals in the UK Government's Bill.
- Changes to limit who can hand in postal votes at polling stations, and the number they can hand in, could create barriers for some voters who genuinely need assistance. They would also add complex new procedures for polling station staff.
- Security would be improved by the Bill's proposal to record who handed in postal votes, without risking an impact on the accessibility by placing new limits on the ability to hand them in.
- Limiting the number of voters for whom a person may act as a proxy could disadvantage some people who rely on someone else to vote on their behalf, including disabled voters.

Assistance with voting for disabled people

These changes would give disabled voters more flexibility in how they are supported at polling stations. Providing a wider range of equipment at polling stations should make it easier for disabled voters to access appropriate support to be able to cast their vote on their own and in secret.

Replacing the current specific requirements set out in law with a broader duty for electoral administrators to provide reasonable equipment would allow disabled voters to use new equipment or technology to support them. This could support innovation and speed up the process of providing different types of support when new ways to meet voters' needs are identified.

[Disabled voters have also highlighted](#) that it can be difficult to find someone who is eligible to help them cast their vote at their polling station. Removing restrictions on who can act as a companion would give disabled voters more flexibility and choice in how they are supported.

The Bill would give electoral administrators a broader responsibility to identify what equipment would be reasonable to provide to support disabled voters at UK Parliament elections. It will be important for the UK Government to make sure there is appropriate funding for local administrators so that this support has the right impact for disabled voters.

Our guidance will help electoral administrators to consider how best to identify and provide the right kind of support to disabled voters under this new responsibility, ensuring that voters are able to receive a consistent level of service wherever they live.

Key considerations for Welsh Government

- There should be no barriers to disabled voters participating in elections and it is right that governments are considering how accessibility can be approved. However, to support disabled voters confidence in participating in elections it will be important to ensure the support they can expect to receive, throughout the registration and voting process at all elections, is clearly communicated and the risks of any divergence across sets of election carefully considered.

Overseas voters at UK Parliament elections

The UK Government is proposing the removal of the 15 year limit on voting rights at UK Parliament elections for British citizens living overseas.

This would mean that any British citizen living abroad who has previously lived in or been registered to vote in the UK would have the right to vote at UK Parliament elections.

Decisions over the franchise for Senedd and local government elections, along with any referendum legislated for by the Senedd, are devolved. However, anyone who is registered to vote in the UK can make donations to political parties and campaigners.

EU Citizens local voting and candidacy rights

The Bill introduces provisions to restrict the criteria for EU citizens who may wish to vote in or stand for local elections, to only include those covered by one of two protected groups; either they were resident before 31 December 2020 or they are covered by a treaty (ie a bilateral agreement).

Local elections in Wales and Scotland are devolved to the Senedd and Scottish Parliament, and the amendments have no application to local elections in Wales or Scotland. No Legislative Consent Motion will therefore be sought with either Welsh or Scottish Government.

However, as Welsh Government outlined in its [Legislative Consent Memorandum](#), the suggested amendments in the Bill would change the current provisions in the Representation of the People Act 1983 in such a way that those provisions applying to the devolved franchise would be repealed, therefore changing those entitled to register for and vote at local government and Senedd elections.

We note that the UK Government has now tabled [amendments](#) for the Committee Stage of 22 September to rectify this and to clarify that changes affecting the rights of EU citizens to vote in local government elections in England and Northern Ireland do not affect the position in relation to local government and Senedd elections in Wales.

Agenda Item 6

By virtue of paragraph(s) ix of Standing Order 17.42

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