
Elections Bill Briefing - General

02/02/22

Summary

The Elections Bill is expected to return to the House of Lords for its Second Reading on 23rd February 2022. To inform strategy as the bill passes through the Lords, the Elections Bill has been reviewed and compared against PACAC recommendations. This briefing identifies two feasible approaches as well as target Peers to collaborate with in order to limit the impact of the Elections Bill in accordance with our priorities.

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1. Key clauses of concern

The key areas of concern identified centre around provisions which concentrate power in the hands of Government ministers and prevent election processes from being appropriately scrutinised and monitored. Provisions in the bill which limit civil society's ability to campaign are also identified as areas of concern.

Independence and powers of the Electoral Commission

- **Clause 14: Strategy and policy statement**

Clause 14 introduces a requirement for the Electoral Commission to follow a Strategy and Policy Statement written by the Secretary of State to guide its operations.

"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."

"The Commission must have regard to the statement when carrying out their functions."

Refer to [The Elections Bill](#), pages 20 and 21.

The requirement for the Electoral Commission to act according to guidance made in the Secretary of State's statement (and to also produce a report detailing how the Electoral Commission has aligned its activities with that statement, as per 4B (4)) is a direct challenge to the Electoral Commission's neutrality and independence.

This Strategy and Policy statement will be drawn up with Government aims in mind, by the Secretary of State. The Secretary of State must consult with bodies including the Electoral Commission and PACAC when drawing up the statement, but it is ultimately up to the SoS what recommendations are taken into consideration and fed into the strategy and policy statement.

It is clear this clause could lead to the Electoral Commission's work being compromised by a new duty to satisfy Government priorities and to follow a path designated by the Government.

Also refer to recommendation 10, p. 65, PACAC, [Fifth Report on the Elections Bill](#).

- **Clause 15: Examination of duty to have regard to strategy and policy statement**

Clause 15 gives power to the Speaker's Committee on the Electoral Commission to examine whether the Commission is performing its duties in relation to the Strategy and Policy Statement.

"The Speaker's Committee may examine the performance by the 40 Commission of the Commission's duty under section 4B(2) (duty to have regard to strategy and policy statement)."

Refer to [The Elections Bill](#), page 25.

The Speaker's Committee on the Electoral Commission currently contains a majority from the governing party. This is unlikely to change.

By being held accountable to both the Secretary of State and the Speaker's Committee, the Electoral Commission is not being held to account by neutral bodies, something that may compromise the Electoral Commission's impartiality.

The potential for the Electoral Commission to be directed to do something that undermines its independence is high.

Also refer to recommendation 10, p. 65, PACAC, [Fifth Report on the Elections Bill](#).

- **Clause 17: Criminal proceedings**

Clause 17 removes the Electoral Commission's power to bring criminal proceedings.

"(2) The Commission may not—

(a) borrow money;

(b) 35 institute criminal proceedings in England and Wales or Northern Ireland."

Refer to [The Elections Bill](#), page 27.

If the Electoral Commission is no longer allowed to bring prosecutions, it weakens the Electoral Commission's ability to challenge and deter wrongdoing in elections.

Without a challenge or deterrent, it is possible that the complexities of electoral law could be exploited to manipulate an election, and while the Electoral Commission may gather evidence of this the likelihood of this evidence being taken forward by crown prosecutors is not certain.

This clause leaves the Electoral Commission toothless - able to look upon breaches of the law but unable to effect change and challenge them.

Power of the Secretary of State to determine permitted campaigners

- **Clause 25: Third parties capable of giving notification for purposes of Part 6 of PPERA**

Clause 25 enables the Secretary of State to make provisions regarding which organisations and entities are permitted or banned from campaigning at election time

The Secretary of State may by order amend subsection (2) by—

(a) adding a description of third party to the list in that subsection, 5

(b) removing a description of third party from that list, or

(c) varying the description of a third party in that list.

Refer to [The Elections Bill](#), page 35.

Third parties are permitted to campaign at election time, providing they give notice to the Electoral Commission and are registered. Clause 25 affords new powers to the Secretary of State to allow them to make changes to the type of organisations that can register with the Electoral Commission.

These changes include the ability to remove certain types of organisations from the list permitted to campaign, meaning that the Secretary of State and by extension the Government will be able to control who does and does not campaign at election time.

This piece of legislation writes into law the possibility that a Government could legally engineer its own opposition and cancel any voices that it would rather not hear during crucial elections. This is particularly significant when it comes to categories of campaign groups such as trade unions - which of course are major backers of the Government's main opposition.

2. Other clauses of concern

- **Clause 22: Prohibition on entities being registered political parties and recognised third parties at same time**

Clause 22 prohibits political parties from being recognised political parties and registered third parties at the same time

"A party may not make an application under this section at any time when the party is also a recognised third party for the purposes of Part 6 (see section 85(5))."

Refer to [The Elections Bill](#), page 32.

This clause, in effect, prevents the practice of joint campaigning - where political parties will work jointly in order to achieve a common campaign aim.

Currently, the only means by which political parties are able to campaign jointly is by using a mechanism to register simultaneously as third parties. If this bill passes, unless there are explicit provisions to allow joint campaigning added in, political parties will no longer be able to work directly together.

- **Clause 26: Recognised third parties: changes to existing limits etc**

Clause 26 introduces complex new registration requirements for smaller campaign groups which could lead to self-censorship and divert vital resource away from campaigning projects.

“during a regulated period, any controlled 15 expenditure is incurred by or on behalf of a third party in excess of £10,000;”

Refer to [The Elections Bill](#), page 36.

Third parties that spend between £10,000 and £20,000 (a spend typical of a small charity or civil society organisation) on elections campaigning will suddenly find themselves subject to dramatically increased registration requirements around campaigning.

These requirements are technically complex and interpreting them and following them to the letter will require significant resources - not something small charities typically have a lot of.

So, if they are forced to divert resources and if they enact potential self-censorship for fear of not correctly meeting the registration requirements, then these smaller organisations will see their voices stifled.

- **Clause 27: Joint campaigning by registered parties and third parties**

Clause 27 means that in the case of joint campaigning between a party and a third party or between various third parties, spending limits are imposed as if those parties working together were a singular entity.

“See section 94BA (arrangements between third parties and registered parties) for provision under which expenditure incurred by or on behalf of a third party is to be treated as counting towards the limit mentioned in subsection”

Refer to [The Elections Bill](#), page 37.

This reduces the total spend of groups campaigning together and also lowers the threshold at which these groups are required to undertake complex reporting and registration procedures.

Ultimately, Clause 27 reduces organisations’ capacity for collaborative campaigning - and stifles the ability for civil society organisations to join forces. This will disadvantage smaller, grassroots organisations that may need a little help to increase their platform.

3. PACAC Report - December 2021

In December 2021, the House of Commons Public Administration and Constitutional Affairs Committee released a report into the Elections Bill.

This report revealed some serious concerns about the bill and details several hesitations over the bill's contents. Concerns are as follows:

- The committee stated that electoral law was already fragmented and complicated enough in the UK - and believes that this bill will just make things worse.
- The committee stated that the bill did not receive appropriate pre-legislative scrutiny, citing claims that the Government was inflexible when it came to policy recommendations.
- The committee stated that public consultation in the draft stages of the bill was limited.
- PACAC expresses disappointment that further secondary legislation will be used to clarify vague points of the bill - the committee feel this complicated electoral law further.
- The committee found that voter ID requirements risked upsetting the voting system and potentially risked reducing trust in the voting system. The committee also said that the Government did not present any evidence as to why voter ID ought to be mandated.
- PACAC notes that the parts of the bill relating to the Electoral Commission could be seen to affect its neutrality.

PACAC report - recommendations

- Calls for significant post-legislative scrutiny of the bill to make up for the lack of pre-legislative scrutiny:

“Given the lack of pre-legislative consultation and scrutiny on this constitutionally important Bill and the significant change in scope of the Bill after its introduction and Second Reading, the Government should include a statutory commitment to post-legislative scrutiny of the Bill on the face of the Bill.”

Recommendation 10, p. 65, PACAC, [Fifth Report on the Elections Bill](#)

The Elections Bill was put forward without a White Paper and so was not open in draft form for pre-legislative scrutiny. Instead, a series of written ministerial statements were

issued but there were no opportunities for debate or chance to build cross-party consensus in advance of the legislation being put before Parliament.

It would be possible to conduct post-legislative scrutiny into the bill by launching an inquiry or a committee to conduct a review. This has been done before with the Fixed Term Parliaments Act 2011, where provision was made within the bill to set up a [joint committee](#) to review the Fixed Term Parliaments Act 2011. The Joint Committee published its report in March 2021 and that legislation is now being repealed.

- Recommends that requirements for voter ID be removed from the bill until and unless the Government can show that there is evidence supporting its introduction.

“Given the potential for a significant number of people not to vote as a consequence of the voter ID requirement, the Government should not proceed with its proposals for the introduction of ID for voting until at least it has set out the criteria that were used in this proportionality assessment and explained the weight given to each criteria in the assessment.”

Recommendation 19, p. 66, PACAC, [Fifth Report on the Elections Bill](#)

- Asks that the Electoral Commission be allowed to depart from the Strategy and Policy statement that the Secretary of State will be allowed to outline as part of the bill. Currently, the Commission would be required to stick to the terms of that statement.

“We recommend that the Bill be amended to provide that the Electoral Commission is able to depart from the guidance set out in the Statement if it has a statutory duty to do so or if it reasonably believes it is justified in specific circumstances. This amendment is necessary to give effect to the Government’s stated intention that the Statement will not amount to a power to direct the Electoral Commission”

Recommendation 31, p. 68, PACAC, [Fifth Report on the Elections Bill](#)

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- Asks that parliament should have a say in the strategy and policy statement.

“Given the Government’s stated objective of improving parliamentary scrutiny of the Electoral Commission, we recommend the application of the ‘super-affirmative procedure’ for approval of the Statement, to ensure that parliamentarians have the formal opportunity to feed into and make recommendations on the draft Statement before it is laid for approval (via the ‘affirmative’ parliamentary approval procedure). We consider this additional scrutiny step is necessary and proportionate given the novelty and importance of the Statement. ”

Recommendation 34, p. 69, PACAC, [Fifth Report on the Elections Bill](#)

- Recommends the removal of clauses 13-15 (concerning the Electoral Commission - these are the old clause numbers) in the meantime so that a formal public consultation can take place regarding them.

“We recommend that—notwithstanding the proposed recommendations set out above in paragraphs 150, 161, 167, 168 and 178—Clauses 13 to 15 of the Bill are removed, pending a formal public consultation on the proposed measures and to take into account any recommendations put forward by this Committee in its final report on the work of the Electoral Commission. ”

Recommendation 42, p. 70, PACAC, [Fifth Report on the Elections Bill](#)