

LIBERTY

**LIBERTY'S BRIEFING ON VOTER ID AND THE
ELECTIONS BILL FOR SECOND READING IN
THE HOUSE OF COMMONS**

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ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

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INTRODUCTION

1. The Elections Bill is a large and wide-ranging piece of legislation that touches on almost all aspects of elections and campaigning in the United Kingdom. While we have concerns about the provisions relating to third-party campaigning, the role of the Electoral Commission and more, this briefing focuses only on Clause 1 and Schedule 1, which amend the Representation of the People Act 1983 (RPA 1983) to introduce a new requirement for voter ID in elections in Great Britain.
2. Voter ID is a solution in search of a problem. There is a vanishingly small incidence of electoral fraud at polling stations in the UK,¹ and voters correctly recognise that our elections are safe from fraud and abuse.² At the same time, the new requirements will not affect everyone equally, with marginalised groups likely to be discriminated against and face disenfranchisement as a result of the proposals. Further, certain key aspects of how the new system would work have not been set out on the face of the Bill, but rather promised in secondary legislation where they will see less scrutiny from parliamentarians. Liberty urges MPs to resist introduction of voter ID.

A SOLUTION IN SEARCH OF A PROBLEM

3. The voter ID provisions of the Elections Bill are sold as tackling the crime of personation – casting a vote at a polling station while pretending to be someone else. Personation is a serious crime, punishable by an unlimited fine and up to two years in prison. Not only could large-scale personation skew the results of a tight election, it also threatens to deny an unsuspecting person their rightful vote.
4. Fortunately, personation is exceedingly rare in British elections. Between 2010 and 2018 there were just two convictions for personation and the largest number of allegations in a year was 45.³ In 2019, between the local elections in May, the European Parliament elections that same month and the General Election in December, around 60 million votes were cast in total. From this arose 33 allegations of polling station irregularities, resulting in one conviction and one caution for personation.⁴

¹ Electoral Commission, Electoral fraud data, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/electoral-fraud-data>.

² Electoral Commission, Public Opinion Tracker 2021, 22 June 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>.

³ Full Fact, Voter ID scheme: far more turned away than convicted of electoral fraud, 16 October 2019, <https://fullfact.org/crime/voter-id-2019>.

⁴ House of Commons Library, Voter ID, 9 July 2021, <https://commonslibrary.parliament.uk/research-briefings/cbp-9187/> p.61.

5. Faced with these astonishingly low numbers, the impact assessment for the Bill offers a ‘rationale for intervention’:

“Despite the low number of allegations and rare cases of personation in polling stations being prosecuted, there is a concern that the absence of evidence does not mean this practice is not taking place. And even if it is not, there is a precautionary principle that comes into play in terms of the potential for it to happen.”⁵

6. While there is little wrong with taking a precautionary step in and of itself, this is a remarkable basis upon which to introduce a policy that seems certain to deny more legitimate votes than it will prevent illegitimate ones.
7. Alongside the lack of evidence for significant voter fraud at polling stations, it is also useful to consider the implausibility of the suggestion. As Dr Jessica Garland, Director of Policy and Research at the Electoral Reform Society told the Joint Committee on Human Rights:

“To change an election result by personation would require a huge operation, identifying which constituencies would be marginal enough to make a difference. That is difficult for political scientists, let alone anyone else. On top of that, a lot of people would have to be involved. You would have to know who was not going to vote in order for that not to be detected, and presumably the candidate would have to be aware. We are talking about a large-scale operation. It is implausible that it could be going on undetected.”⁶

8. While the Government implicitly accepts that there is no real problem with personation, they claim that introducing voter ID will help improve people’s *perception* of the security and integrity of elections. Again, there is not a problem to be solved here. In the latest edition of the Electoral Commission’s Public Opinion Tracker, which measures public views on the electoral process and democracy, 90% of respondents said that voting at a polling station was safe from fraud and abuse.⁷ Respondents disagreed that electoral fraud would be easy to get away with or could affect an election result, and agreed that there are sufficient safeguards in place to prevent it. Asked what could increase their satisfaction with the process of voting at elections, twice as many people advocated a

⁵ Cabinet Office, Elections Bill: Impact Assessment, <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf> p.9.

⁶ Joint Committee on Human Rights, Oral evidence: Legislative Scrutiny: Electoral Integrity Bill, HC 223, 26 May 2021, <https://committees.parliament.uk/oralevidence/2270/html/>.

⁷ Electoral Commission, Public Opinion Tracker 2021, 22 June 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>.

proportional voting system over increased security against electoral fraud. Overall, public confidence in elections is at its highest level since data collection began.⁸

9. In May 2019, voter ID was trialled across ten local authorities, with three different identification requirements tested: photo ID, mixed photo and non-photo ID, and poll cards. Assessing the pilots, the Electoral Commission found no cases of electoral fraud, but concluded:

“It is not possible to assess whether the identification requirement prevented any actual attempts to commit impersonation fraud. There is no evidence to suggest that the absence of allegations in the pilots was because of the ID requirements.”⁹

10. While they could not show that the imposition of voter ID had any effect at all on the security of the election, it was recorded that across the ten councils, 740 people were turned away for not having the correct identification. This is over four times the number of people that have so much as been accused of personation at a polling station anywhere in Great Britain between 2010 and 2018.¹⁰ As former leader of the Scottish Conservatives, Ruth Davidson said, “it’s trying to give a solution to a problem that doesn’t exist, and that makes it politics as performance”.¹¹

THE COST OF ACTION

11. While there is no clear benefit to be seen from introducing voter ID, the policy is likely to result in significant costs. Introducing an extra requirement at polling stations will inevitably add time to the process of voting as poll workers check documents. The 2019 General Election saw long queues outside polling stations in London and around the country, a situation that would only be exacerbated by the introduction of voter ID.¹²
12. More directly quantifiable is the financial cost of introducing voter ID. The impact assessment for the Elections Bill suggests that the policy will cost between £65 million

⁸ Electoral Commission, Public confidence in elections at highest level for 10 years, 22 June 2021, <https://www.electoralcommission.org.uk/media-centre/public-confidence-elections-highest-level-10-years>.

⁹ Electoral Commission, May 2019 voter identification pilot schemes: Impact on security, 15 October 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/impact-security>.

¹⁰ Full Fact, Voter ID scheme: far more turned away than convicted of electoral fraud, 16 October 2019, <https://fullfact.org/crime/voter-id-2019>.

¹¹ Henry Zeffman, Former Scottish Conservatives leader Ruth Davidson lashes out at voter ID plans, *The Times*, 13 May 2021, <https://www.thetimes.co.uk/article/former-scottish-conservatives-leader-ruth-davidson-lashes-out-at-voter-id-plans-mzbwlnsv>.

¹² Lizzy Buchan, Long queues reported at polling stations as voters turn out for 'election of a lifetime', *The Independent*, 12 December 2019, <https://www.independent.co.uk/news/uk/politics/general-election-2019-voting-queue-polling-station-wait-time-ballot-a9244006.html>.

and £180 million over the next ten years, with £120 million as a central estimate.¹³ Between the lack of convictions for voter fraud, the lack of allegations and the lack of concern among the electorate, it is difficult to see the justification for spending up to £180 million to make it harder to vote.

DISENFRANCHISING THE PEOPLE

13. While the financial and logistical costs are considerable, however, by far the most important cost is the democratic deficit caused by depriving citizens of their right to vote. The right to vote is protected by Article 3 of Protocol 1 to the European Convention on Human Rights (A3P1 to the ECHR), incorporated into domestic law by the Human Rights Act 1998. The rights bestowed by A3P1 are not absolute, and States have a wide margin of appreciation as to the form of electoral arrangements they may put in place, but at the same time, as emphasised in *Hirst*, they are “crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law”.¹⁴ In examining compliance with A3P1, the court will assess the proportionality of the measures, whether they pursue a legitimate aim, and whether the restrictions interfere with the free expression of the opinion of the people.
14. The Government’s stated goal of securing the integrity of elections would be a legitimate aim, but proportionality is brought into question by the lack of evidence of personation outlined above and the real prospect of disenfranchisement posed by the proposed requirements. In the ECHR memorandum on the Bill, the Cabinet Office says that the voter ID provisions do engage A3P1, but are not inconsistent with it,¹⁵ with the policy aiming to “maintain and improve the integrity and effectiveness of the rights under A3P1 by protecting individuals from having their vote taken by someone else impersonating them”.¹⁶ It should not be missed that the method by which the Government intends to do this stands to disenfranchise far more people than could ever be affected by personation.
15. The Electoral Commission found in 2015 that around 3.5 million citizens (7.5% of the electorate) did not have photo ID,¹⁷ while more recent UK Government research put the

¹³ Impact Assessment, p.34.

¹⁴ *Hirst v. UK* (No. 2)74025/01 [2005] ECHR 681, 6 October 2005, <http://www.bailii.org/eu/cases/ECHR/2005/681.html> §58.

¹⁵ Cabinet Office, Elections Bill: ECHR memorandum, <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/ECHRMemorandumElectionsBill.pdf> p.10.

¹⁶ ECHR memorandum, p.5.

¹⁷ Electoral Commission, May 2018 Voter ID Pilots Evaluation Report, July 2018, https://www.electoralcommission.org.uk/sites/default/files/pdf_file/May-2018-voter-identification-pilots-evaluation-report.pdf.

figure at 4% without adequate ID and 2% without any photographic identification at all.¹⁸ This figure of 4% of the electorate without a form of identification that would be accepted at a polling station aligns with the Electoral Commission’s latest research conducted at the start of this year.¹⁹ In real terms, this amounts to around 2 million people potentially being denied their right to vote as a consequence of this legislation.²⁰

16. The Government’s response to these figures would be that they are providing a ‘voter card’ – free identification available from the local council that would operate as an acceptable form of identification for voting. But it is exactly those people who need it who would be least likely to apply for a voter card. Cabinet Office research found that 42% of respondents with no photo ID said that they would be unlikely or very unlikely to apply for a voter card.²¹ On top of this, 37% of respondents with non-recognisable photo ID said the same. This amounts to hundreds of thousands of registered, eligible voters who would be left without the means to cast a vote at a polling station.
17. Not reflected in these statistics is the unknown number of people who possess appropriate identification but would not vote as a result of the new requirements, whether due to opposition to voter ID or simply not having the right identification to hand. In the 2019 pilots, 0.4% of people who attempted to vote in the photo ID pilots were turned away and did not return to the polling station – the equivalent of 184,000 voters in Great Britain. It is not recorded how many of these people owned a form of appropriate identification that was not with them; only that they were not able to vote in that election.²²

DISCRIMINATORY EFFECTS

18. While the Elections Bill stands to disenfranchise large numbers of people across the country, its effects are not likely to be felt equally. The Electoral Commission’s 2021 Public Opinion Tracker found that from a baseline of 4% of people who did not have any form of acceptable identification, certain groups had a far higher proportion without photo ID,

¹⁸ Cabinet Office, Evaluation of Voter ID Pilots 2019, July 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819404/2019_Voter_ID_Pilots_Evaluation.pdf.

¹⁹ Electoral Commission, Public Opinion Tracker 2021, 22 June 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>.

²⁰ Peter Walker, Heather Stewart and Haroon Siddique, More than 2m voters may lack photo ID required under new UK bill, *The Guardian*, 11 May 2021, <https://www.theguardian.com/politics/2021/may/11/more-than-2m-voters-may-lack-photo-id-required-under-new-uk-bill>.

²¹ Cabinet Office, Photographic ID Research – Headline Findings, 31 March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research-headline_findings_report.pdf p. 8.

²² Impact Assessment, p. 36.

including those who were unemployed (11%) or renting from a local authority or housing association (12-13%).²³

19. The Elections Bill equality impact assessment rather euphemistically suggests “it is anticipated that the Voter Card we will be of particular benefit [sic] to those voters from groups with protected characteristics including, age, race and disability”.²⁴ What this means is that voters with certain protected characteristics are less likely to have appropriate ID and therefore more likely to be disenfranchised by the Bill.
20. Gypsy and Traveller communities are likely to be significantly affected by the introduction of voter ID. The 2011 Census found that only 66% of those who identify as White Gypsy or Irish Traveller held a passport, compared with 86% across all ethnicities.²⁵ While the list of acceptable forms of ID is wider than just passports, the survey for the equality impact assessment “did not reach a sufficiently large sample size of those who identify as White Gypsy or Irish Traveller to make reliable statistical estimates”, despite the clear potential for significant disenfranchisement of Gypsy and Traveller communities.²⁶
21. In the case of disability, Cabinet Office research found that people with severely (12%) or somewhat (8%) limiting disabilities were more likely than those with no disabilities (4%) to report that they felt the identification requirement would make it difficult or very difficult to vote.²⁷ Here again the introduction of a free voter card does not solve the problem, as the same factors that may inhibit disabled people from acquiring other forms of identification still apply. As detailed below, the Bill does not specify how voter cards will be made available, but there are significant problems with each potential method. For example, many disabled people may have difficulties with physically travelling to an office, while ordering online may also not be possible for many people. In 2020, only 81% of disabled adults counted themselves as recent internet users, with 14.9% of respondents having never used the internet at all.²⁸

²³ Electoral Commission, Public Opinion Tracker 2021, 22 June 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/public-attitudes>.

²⁴ Cabinet Office, The Elections Bill: Equality Impact Assessment, July 2021, <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-07-01ElectoralIntegrityBillEqualityImpactAssessment.pdf> p.7.

²⁵ Office for National Statistics, CT0527_2011 Census - Bespoke passports held by ethnic group - National to Parliamentary Constituency, 28 October 2015, <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/adhocs/004804ct05272011censusbespokepassportsheldbyethnicgrouponnationaltoparliamentaryconstituency>.

²⁶ Equality Impact Assessment p.8.

²⁷ Cabinet Office, Photographic ID Research – Headline Findings, 31 March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf p.10.

²⁸ Office for National Statistics, Internet users, UK: 2020, 6 April 2021, <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2020>.

22. There is again also the concern that these statistics exclude voters who possess the appropriate ID but would be dissuaded from voting by the new measures. The Cabinet Office research found 5% of respondents say the introduction of voter ID would make them less likely to vote in person.²⁹ This data was not disaggregated, but the Electoral Commission found a correlation in the 2019 pilots between the proportion of a ward's population from an Asian background and the number of people not issued with a ballot paper. The Electoral Commission concluded that while the data “does not definitively suggest that Asian voters were disproportionately affected by the requirement to show ID”, it does “emphasise the importance of ensuring that the ID requirements are suitable for all and that any public awareness activities are genuinely effective across all communities”.³⁰

23. In evidence to the Joint Committee on Human Rights, Operation Black Vote Founder Lord Woolley of Woodford expressed his worry that the proposed requirements would foment further mistrust in government in Black, Asian and minority ethnic communities and lead to reduced voting even among those with the correct identification:

“I am deeply afraid that if there is another layer of bureaucracy it will be another impediment for a group that is already hesitant about fully engaging in the democratic process. Part of that mistrust is real. We have seen it with vaccinations. There is mistrust in the Government and mistrust in institutions. That has cost lives and made us all a little unsafe, so that hesitancy is extremely real.”³¹

24. For disabled people, the proposed new requirements would add another layer of complication to voting – an experience that 80% of respondents to a Dimensions UK survey felt was already difficult for people with a learning disability.³² Advocacy lead Dr Mark Brookes MBE raised concerns that it is “not just the difficulty of obtaining ID which will undermine efforts to improve accessibility, but also the added stress of having to bring it to the polling station”, and for disabled voters without a support worker or

²⁹ Cabinet Office, Photographic ID Research – Headline Findings, 31 March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf p.9.

³⁰ Electoral Commission, May 2019 voter identification pilot schemes: Impact on voters experience, 15 October 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/impact-voters-experience>.

³¹ Joint Committee on Human Rights, Oral evidence: Legislative Scrutiny: Electoral Integrity Bill, HC 223, 26 May 2021, <https://committees.parliament.uk/oralevidence/2270/html>.

³² Dimensions UK, Dimensions survey highlights importance of empowering people with a learning disability and/or autism to vote, 6 May 2021, <https://dimensions-uk.org/press-release/dimensions-survey-highlights-importance-empowering-people-learning-disability>.

someone who can help in the process, “that could leave people feeling unable to go out and exercise their right to vote”. He warned:

“Rather than making voting an empowering and accessible experience, there is a real risk that people with a learning disability – and especially those who live independently – could be left angry, frustrated and disenfranchised by these changes... According to Dimensions’ survey, a shocking 82% of people with learning disabilities already feel the government does not listen to their views as much as they listen to those of others. With these changes, I worry it will only be harder to make our voices heard, transforming the voting experience into something stressful and inaccessible and reversing the progress that has been made over recent years.”³³

25. The Elections Bill contains some genuinely welcome provisions to improve accessibility for disabled voters at polling stations. These will be meaningless if the voter ID requirements act to effectively disenfranchise disabled people at the same time.

CIRCUMVENTING PARLIAMENT

26. It is difficult to say exactly what effect the imposition of voter ID would have on voters without appropriate identification for the simple fact that much of the practical workings of the new system is not actually contained in the Bill. Schedule 1, paragraph 2 amends RPA 1983 to provide for the creation of an ‘electoral identity document’ or voter card, but leaves almost every detail to regulations. The Secretary of State or Minister for the Cabinet Office may specify how an application is to be made, what information and supporting evidence is required, when it must happen, how long it will be valid for and what the form of a voter card must be. The only detail on the face of the Bill is the welcome insistence that the voter card must be free.

27. The Cabinet Office’s delegated powers memorandum states:

“The Government considers it appropriate to set this level of procedural detail in secondary legislation in order to allow for consultation with the electoral community to take place, and to ensure a means for the detailed requirements of the application form and supporting documents to be updated in future.”³⁴

³³ Dr Mark Brookes, Elections Bill risks the disenfranchisement of people with a learning disability, *Open Access Government*, 16 August 2021, <https://www.openaccessgovernment.org/elections-bill-risks-the-disenfranchisement-of-people-with-a-learning-disability/117600>.

³⁴ Cabinet Office, Elections Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform

28. It is unclear why this ‘consultation with the electoral community’ could not have happened before publication of the Bill so that views could have been fed in and an informed debate on its full impact could have taken place. Parliamentarians are now asked to debate and endorse the Bill without knowing how the key mitigation against the disenfranchisement of people without identification is supposed to take place.
29. This is not an unusual situation for this Government, which has overseen a proliferation of secondary legislation over the past year and a half, best demonstrated by the over 480 Coronavirus-related statutory instruments (SIs) laid before Parliament since the start of the pandemic. The Hansard Society, which closely tracks these SIs, has declared the marginalisation of the House of Commons in this period “shocking”, and warned that the Government has “become too comfortable with decision-making that evades parliamentary scrutiny”.³⁵ While the method for acquiring a voter card may not be on the same level as the imposition of a lockdown, it still may constitute the difference between a person being able to vote or not vote, and our representatives in Parliament should have a proper opportunity to scrutinise, and if appropriate reject, the proposals.

CONCLUSION

30. The Elections Bill is far from the only concerning piece of legislation currently going through Parliament. The Judicial Review and Courts Bill, awaiting second reading, and the Police, Crime, Sentencing and Courts Bill, entering the House of Lords, also contain provisions that Liberty has warned could have serious effects on human rights. What the three bills have in common is that they all stand to make it harder for members of the public to hold the Government to account: in the courts through proposed changes to judicial review; in the streets with the weakening of the right to protest; and in the polling booth through this Bill. It is difficult to put an exact number on how many people may be disenfranchised by the introduction of voter ID. All indications suggest a figure in the hundreds of thousands, but considering the vanishingly low incidence of personation, the cost in time and money, and the outsized impact on already marginalised groups, it is difficult to conceive of a number that would be acceptable. Liberty urges

Committee, July 2021, <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/DelegatedPowersMemorandumELECTIONBILL.pdf> p.3.

³⁵ Dr Ruth Fox, Professor Meg Russell, Dr Ronan Cormacain & Dr Joe Tomlinson, The marginalisation of the House of Commons under Covid has been shocking; a year on, Parliament’s role must urgently be restored, *Hansard Society*, 21 April 2021, <https://www.hansardsociety.org.uk/publications/briefings/the-marginalisation-of-the-house-of-commons-under-covid-has-been-shocking-a>.

parliamentarians to advocate for the removal of Clause 1 and Schedule 1 from the Elections Bill.

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