

## **Elections Bill**

**A briefing note for Committee Stage for members of the House of Lords from organisations representing Returning Officers**

**March 2022**

### **About SOLACE and ALACE**

The Society of Local Authority Chief Executives and Senior Managers is the UK's leading membership network for public sector and local government professionals. We currently represent over 1600 members across the UK, some of whom are Returning Officers and Electoral Registration Officers. SOLACE's objectives include influencing the debate about the future of public services and ensuring that policy is informed by the experience and expertise of our members.

The Association of Local Authority Chief Executives and Senior Managers is a trade union. Many of its members are Returning Officers and Electoral Registration Officers. Among other things, ALACE provides support for members facing employment issues. These can occasionally arise from the role of Returning Officer, in particular when being (Acting) Returning Officer at a Parliamentary election – even though the statutory role of (A)RO is not part of the individual's employment by a council.

### **Summary**

**We are concerned about the practical implications of some of the provisions in the Bill from the perspective of Returning Officers. We recognise that some issues within the Bill, such as the introduction of a requirement to show ID at a polling station, are politically contested. Our comments and suggestions generally do not address the principle of change but raise issues about the detailed ramifications of change for processes that are already complex and challenging to organise and deliver successfully.**

**We recognise that some points we raise will fall to be addressed through the drafting of secondary legislation. We believe it is important that, in such cases, the Government is pressed to give commitments during the passage of the Bill about what the secondary legislation will deliver.**

**The changes we seek to the Bill, or commitments that we are calling on the Government to make, are:**

#### **Resources and capacity to deliver**

The Government should commit to a full consultation on the new burdens assessment including the additional funding to be provided to Returning Officers, both in advance of implementation and in the light of experience to ensure that the level of funding and its distribution reflect actual costs incurred.

#### **Timing of introduction of changes**

The changes in the Bill should be implemented in good time for local elections in May 2023 and should not first be tested at a General Election.

The Government should commit that, if a General Election were to be called for May 2023 or any earlier date, the election would be run under current legislation, not under legislation as amended by the Bill. This is particularly important in respect of the requirement to produce ID at a polling station.

### **Schedule 1: Application deadline for free Voter ID cards**

The deadline for applying for a Voter ID card should not be 5pm the day prior to polling day. The Government's proposal that such applications could be made until 5pm on the day prior to polls is impractical and is inconsistent with current practice in Northern Ireland.

We believe the deadline should be at least one week before polling day; alternatively, if a late deadline is to apply, then there must be options for electronic delivery of temporary Voter ID cards.

### **Clause 5: Handing in of postal votes**

The proposals in Clause 5 of the Bill will not prevent postal vote harvesting but will prevent some validly completed postal voting packs from being handed in and counted. Clause 5 should be dropped or a limit greater than two specified on the face of the Bill.

We are also concerned about the practical impact of the Bill on posting boxes at council offices during an election and offer amendments to remove any doubt about the ability of a voter to place his or her postal voting pack in a posting box.

### **Clause 12: Overseas voters**

The Government should provide more options for swift transmission and return of ballot papers to and from overseas. For example, overseas voters could return their completed postal voting packs to UK consulates and embassies so that they could be included in swifter diplomatic mail for return to the UK.

We also believe that the cycle for registration should be five years rather than three.

## **Resources and capacity to deliver**

**Our position: the Government should commit to a full consultation on the new burdens assessment including the additional funding to be provided to Returning Officers, both in advance of implementation and in the light of experience to ensure that the level of funding and its distribution reflect actual costs incurred.**

**Background:** the Government has produced an impact assessment (July 2021) but this has not been the subject of full consultation with electoral administrators and Returning Officers, or with councils which will have to bear the cost of changes to electoral registration processes as well as the impact on cost of local elections. Nor does the impact assessment necessarily take full account of changes during passage of the Bill or of secondary legislation, which is yet to be published.

**Reason for our position:** we are concerned that the complexity of changes envisaged by the Bill may not have been accurately assessed and that, unless there is full consultation on an updated impact assessment, Returning Officers will not be provided with adequate resources. The same might be said of the financial impact for councils.

An illustration is the impact of clause 13 of and Schedule 8 to the Bill on EU Citizens' voting rights for local government elections in England. All EU citizens on the electoral register will need to have their eligibility to be registered reviewed, at a point after the legislation comes into force, with those determined to have become ineligible - under the new provisions - being removed from the relevant electoral register. Unless there is efficient and fast data sharing in place between the electoral administration systems and Home Office immigration system, this would be very complex administratively and burdensome on electoral administrators.

It is important that the assessment of the financial impact is not a one off exercise. The Government should commit to reviewing the impact after the legislation has been implemented, so that the level of funding and its distribution can be adjusted in the light of experience of actual costs incurred.

### **Timing of introduction of changes**

**Our position: the changes in the Bill should be implemented in good time for local elections in May 2023 and should not first be tested at a General Election.**

If the Dissolution and Calling of Parliament Bill becomes law, the timing of future general elections cannot be predicted. **The Government should commit that, if a General Election were to be called for May 2023 or any earlier date, the election would be run under current legislation, not under legislation as amended by the Bill. This is particularly important in respect of the requirement to produce ID at a polling station.**

**Background:** elections are massively complex processes to organise and to deliver successfully. The Bill's proposals include some of the most significant changes to the voting process in Great Britain that have been made for decades, if not since the Victorian era. Despite the modern, digital age, many of the practical aspects of the process have changed little since the Victorian era – for example that voters still mark paper ballots, the vast majority of them in polling stations, and that votes are counted by hand. The legislation governing elections is already inordinately complex, and the Bill's provisions do nothing to rationalise that legislation but add yet further complexity.

**Reason for our position:** the changes in the Bill are complex and will be administratively burdensome on electoral teams, Returning Officers and polling station staff. There are other potential implications for councils.

A significant additional risk will be presented if the changes on voter ID were implemented for the first time at a General Election. This would result in increased risk either across the whole of Great Britain or only in some areas. Some areas will, in any case, not have had experience of the changes in the Bill before 2024. For example, London has local elections in May 2022. Apart from by-elections, voters and electoral administrators may not have any experience of the voter ID requirements before 2024 when, at the latest, a General Election will have to be held.

Provisions within the Bill should be implemented before local elections and then be reviewed, before being rolled out in a General Election. We are particularly concerned about getting voters to adapt to the change of producing ID in order to obtain a ballot paper at a polling station. We recognise that voters in Northern Ireland have done this for many years, and we accept that once voters in Great Britain have had the chance to experience it they

will become used to the process. However turnout at General elections is always much higher than at local elections (typically c.65-70% vs c.30-35%).

We support the Government's intention to implement this aspect of the Bill in time for the May 2023 elections. There is a significant risk that, if the requirement to produce ID is first implemented at a General Election, voters will experience much longer queues than normal. This will arise because of lack of familiarity of polling station staff with asking for and checking voter ID (together with any additional requirements to note the type of ID shown) and the lack of familiarity of the public, with the potential for delay and dispute being caused where voters have not brought ID or have brought incorrect ID. This is likely to require polling station staff to explain - far more often than they have to do now - why a ballot paper cannot be issued, with delay for voters waiting in the queue, potential for "arguments" to develop and – if the voter later returns with correct ID – double handling of that voter. While these risks can be mitigated by training of staff and good publicity for the change, we do not believe that the risk can be avoided and therefore we are concerned about the wisdom of first testing these arrangements at a General Election.

In line with the Electoral Commission's advice, we strongly support the need for any secondary legislation to be in force at least six months before the election concerned. There is still time for the Government to secure passage of the Bill during 2022 and produce and consult on secondary legislation so that it could be made before the end of 2022, and therefore have the changes in force for the May 2023 elections.

#### **Schedule 1: Application deadline for free Voter ID cards**

**Our position: the deadline for applying for a Voter ID card should not be 5pm the day prior to polling day. The Government's proposal that such applications could be made until 5pm on the day prior to polls is impractical and is inconsistent with current practice in Northern Ireland.**

**We believe the deadline should be at least one week before polling day; alternatively, if a late deadline is to apply, then there must be options for electronic delivery of temporary Voter ID cards.**

#### **Possible amendment to Schedule 1**

Page 66, line 33, after "subsection (4)(a)" insert "may not provide for a deadline for an application to be made that is later than five days before the day of a particular election and".

**Background:** The Government is intending to allow voters to apply for free Voter ID cards up until 5pm on the day prior to polls. This will place an additional burden on administrators at the busiest time and is impractical. The expectation that election teams will be able to deal with this so closely in advance of poll is flawed, particularly as no electronic delivery option is being legislated for.

The Government's position is inconsistent with the arrangements in Northern Ireland, where voter ID has been in operation for many years: voters are able to apply for free voter ID up until 10 working days prior to polls and the deadline in Northern Ireland for applications for the elections on 5 May 2022 elections is 22 April 2022.

**Reason for our position:** with the exception of emergency proxy votes for medical and work reasons, all other tasks by voters preparatory to polling day have to be undertaken several days prior to the election: registering to vote, applying for a postal vote, appointing a proxy. We see no logical reason why applying for a Voter ID card should not be subject to the same reasonable expectation i.e. that voters will take the step to make an application for such a card some time before polling day and not leave it until the last minute. The

Government has offered no rationale for allowing applications until 5pm on the day prior to the poll, when applications in Northern Ireland have to be made ten working days before this year's elections in Northern Ireland.

To be successful, systems and resources need to be ready for the first time that Voter ID is required. It will be difficult if not impossible to issue cards in time by post immediately prior to an election which therefore means the Government's approach will encourage in person applications. Electoral administrators have a multitude of tasks to address already in the run up to polling day and, if the Government maintains its approach, the Bill needs amending to provide for an electronic delivery option of a temporary Voter ID card by email or other messaging service.

### **Clause 5: Handing in of postal votes**

**Our position: the proposals in Clause 5 of the Bill will not prevent postal vote harvesting but will prevent some validly completed postal voting packs from being handed in and counted. Clause 5 should be dropped or a limit greater than two specified on the face of the Bill. Possible amendments are below.**

**We are also concerned about the practical impact of the Bill on posting boxes at council offices during an election and offer amendments to remove any doubt about the ability of a voter to place his or her postal voting pack in a posting box.**

#### **Amendments to Clause 5 if it remains in the Bill**

Page 5, line 5 before "Where" insert "Subject to paragraph (1A),".

Page 5, line 7, at end insert "(1A) No provision may be made under paragraph (1) in respect of the delivery by hand to the offices of the returning officer where the postal voting documents are placed in a posting box located outside those offices."

Page 5, line 41, after "relates" insert "; (c) The "prescribed number of electors" shall be a number not less than five".

Page 8, line 3, after "relate" insert "; (c) The "prescribed number of electors" shall be a number not less than five".

### **Background**

The Government have proposed limiting the number of postal votes a voter can hand in to polling stations or to the returning officer to two. This would be specified in secondary legislation and is not on the face of clause 5 of the Bill. Secondary legislation could also require that the person must complete a form if handing in postal votes. While we recognise that there have been isolated cases of postal vote fraud reported at some elections, the rationale for the limit of two has not been set out and, in any case, whatever limit is specified may easily be circumvented.

Clause 5 ultimately derives from the recommendation in Sir (as he was then) Eric Pickles' report on "Securing the Ballot" in 2016: "Completed postal ballot packs should only be handed in at a polling station by the voter or a family member / designated carer acting on their behalf – a limit of two should be applied for any one person handing in completed ballots and require an explanation as to why they are being handed in and signature provided." The justification offered in that report – that postal votes handed in on the day might be subject to less scrutiny and checking than postal votes arriving sooner – is simply inaccurate. All returning officers perform the same checks on postal votes, regardless of when or they are received.

Placing a limit on the number of postal votes that could be handed in to polling stations might be an effective tool in deterring people from turning up at polling stations with a high number of postal votes. However, it would not in itself stop "industrial scale postal vote harvesting". This is because, under the Government's proposals, a person could still collect any number of postal votes and post them prior to polling day – although any political campaigner who

did so would almost certainly commit an offence under the new section 112A of the Representation of the People Act 1983 inserted by Clause 4.

It is unclear how the secondary legislation will be cast in respect of council offices where returning officers are usually based. Does using a posting box in the wall of the offices constitute “returning by hand” to the returning officer? If it does, would that mean posting boxes at council offices have to be sealed during election periods, in order to prevent people returning more than the prescribed number of postal votes? This would create unnecessary difficulty in the delivery of other items to a council. Perhaps the legislation is intended to capture only the handing in of postal votes at a reception desk, for example. Moreover there seems no reason why someone who posts a voting pack in a posting box at council offices should face any additional hurdle compared to posting it in a Post Office post-box.

**Reason for our position:** clause 5 will not prevent postal vote harvesting and can easily be circumvented, yet the Government’s proposal will cause additional complexity and delay, for example because a form would have to be filled in or, if a voter were to turn up with too many postal votes, potential lengthy or adversarial discussion about the fact that the postal votes would be rejected. If voters are unaware of these changes it could lead to legitimate postal votes not being counted and it could increase the likelihood of polling staff experiencing abuse and intimidation on polling day.

We are calling for clause 5 to be dropped or, in the alternative, that the postal vote handling limit to be increased from two to five (as this would enable family households to hand in votes more easily – there being few families in one household with more than five adult members); and that the limit should be set out on the face of the Bill rather than in secondary legislation.

The Government should clarify how these provisions are intended to operate at council offices where returning officers are based. We offer amendments that seek to ensure that there is no hurdle to placing a postal vote pack in a posting box at council offices.

#### **Clause 12: Overseas voters**

**Our position: the Government should provide more options for swift transmission and return of ballot papers to and from overseas. For example, overseas voters could return their completed postal voting packs to UK consulates and embassies so that they could be included in swifter diplomatic mail for return to the UK.**

**We also believe that the cycle for registration should be five years rather than three.**

#### **Possible amendments**

Page 18, line 8, for “third” substitute “fifth”.

Page 18, line 25, for “third” substitute “fifth”.

**Background:** overseas voters provide challenges, both practically and administratively. The Bill significantly expands the franchise for overseas voters. They can appoint proxies but this is not an ideal solution for all voters. The process for overseas voters receiving and returning their votes in time to be counted in a General Election is unsatisfactory. This is a consequence of a number of factors including the UK not having electronic or online voting and the timetable for Parliamentary elections being short, and therefore not providing sufficient time for voting packs to be dispatched overseas and returned in time.

The Government has not examined arrangements to improve the speed of the process in both directions, or to provide alternatives to physical mail such as e-dispatch and e-receipt. Other methods of returning votes more swiftly than might be achieved using normal postal delivery services could be explored.

At present, overseas electors often do not keep their registration up-to-date and register only when general elections are called. The new three-year registration period might help with this administrative burden but, because general elections can be five years apart, will not necessarily avoid it.

**Reason for our position:** clause 12 will result in the enfranchisement of large numbers of UK citizens who live overseas – some of whom may have been overseas for many decades and/or since they were children. We are aware that some countries, such as Australia, allow voting in their embassies. Without the introduction of electronic voting, this would not be possible for UK citizens as embassies would have to be equipped with a supply of ballot papers for each constituency as well as access to the register for each constituency (or at least the extract showing overseas voters). In any event, only a proportion of overseas voters will live within reasonable distance of UK embassies – unlike the number of Australians who live in London, for example. Therefore we believe the Government should provide more options for swift transmission and return of ballot papers for overseas voters. For example, could diplomatic mail be used to send voting packs to other countries and therefore enter the other country's postal system more swiftly? Could overseas voters return their completed postal voting packs to UK consulates and embassies so that they could be included in swifter diplomatic mail for return to the UK? Such arrangements would not seem to require any change to electoral law.

However the Government could go further and legislate to permit electronic transmission and receipt of voting packs for overseas voters.

Whatever the arrangements for overseas voters to take part in elections, the three year registration cycle – while an improvement on the current annual cycle – could still see the majority of overseas voters needing to re-register when a General Election is called, as the cycle for such elections is up to five years.