



Cabinet Office

A Democracy that Works for Everyone: A Clear and Secure Democracy

Government response to Sir Eric Pickles' review of electoral fraud

December 2016

Foreword

On behalf of the Government, I am pleased to welcome Sir Eric Pickles' report, *Securing the ballot*, and to be able to respond positively to the majority of his recommendations. The report produced by Sir Eric is an important step in the route to improving the integrity and robustness of our electoral system. It follows on from the long-delayed introduction of Individual Electoral Registration in Great Britain which has now added rigor in the process for compiling the electoral register.

The Government's view is that electoral fraud is unacceptable on any level. We have set out on a path to ensure a clear and secure democracy following the commitments in our 2015 Manifesto to “protect our electoral system” and put “greater priority on tackling fraud”. Last year’s election court judgment in the London Borough of Tower Hamlets was a wake-up call that more needs to be done to protect the integrity of our democracy.

Sir Eric makes 50 recommendations which create a significant package for change. We are keen to promote positive benefits in the short term and this leads us to focusing on some main areas:

- preventing the intimidation and undue influence of voters;
- ending the dubious practice of postal vote harvesting; and
- piloting the use of ID in polling stations.

Broader reforms can be achieved through guidance and secondary legislation, but we are also looking for legislative opportunities to strengthen offences, penalties and legal challenge processes through primary legislation, though this will rely on the availability of parliamentary time.

In this response, we work through Sir Eric’s recommendations in order to set our views and proposed actions. We recognise the consequences of devolution and will be keen to work with colleagues in the devolved administrations to ensure an effective and consistent fit for changes brought forward, as we are clear that decisions around such changes ultimately rest with those administrations. The Government is aware that electoral legislation and practice in Great Britain and in Northern Ireland are not always the same, and consideration will be given to what changes might be implemented while respecting that framework.

I wish to add my thanks to all those who provided evidence and engaged in the debate that led to the production of the report. The Government’s proposals put forward direct and sensible steps towards strengthening electoral integrity. We will work to ensure that high levels of democratic participation go hand in hand with these new checks and balances.

This is all part of delivering a democracy that works for everyone.

Chris Skidmore MP
Minister for the Constitution

Polling Stations: Management, Security, Identification.

Recommendation 1. Greater powers should be given to Returning Officers and the police to take action to address unwanted behaviour in and around polling stations (e.g. to be able to set up *Cordons Sanitaire* and to ensure that the police have the powers they need to disperse and deal with people who are ‘causing a nuisance’ or ‘leading people to feel intimidated’ outside a polling station). Guidance should indicate where such a power could or should be used.

Sir Eric’s Report has drawn attention to instances of intimidation outside the immediate curtilage of polling stations. We consider that such behaviour intended to pressurise voters in this way is unacceptable. There are some existing provisions and offences in place that may be used to address such activity, however, we agree that the existing powers of Returning Officers and the police to deal with these issues, in the event that they arise, should be strengthened where appropriate.

We would wish to consider the practical implications of strengthening the existing powers, for example, whether it would be necessary to create any new offences, and also the potential impact on the police and policing arrangements in setting up and monitoring *Cordons Sanitaires* around polling stations. The proposed changes are likely to require primary legislation and we would look to bring forward provisions when a suitable opportunity arises.

The Government also agrees that guidance will have an important part to play in the use of these new powers. The Electoral Commission is responsible for issuing guidance to Returning Officers on carrying out their duties and its response to Sir Eric’s Report is supportive of this recommendation, and has indicated that the Commission will continue to emphasise in its guidance the powers already available to Returning Officers and polling station staff. We would wish to consider, with the Electoral Commission, the provision of guidance under this recommendation also in order to identify how it may be strengthened.

Recommendation 2. A lower test of ‘intimidation’ than the one currently set in the Representation of the People Act 1983 should be introduced.

This recommendation follows from recommendation 1. The Government notes the concern that the framing of existing electoral law may not be sufficient to address intimidatory behaviour highlighted in the Report. We note that the Electoral Commission in its response to this recommendation states that it would support a revised and more clearly defined offence of undue influence.

The Government is, therefore, supportive of this recommendation. Such a revision will require primary legislation and the Government will look to bring forward provisions when a suitable opportunity arises.

Recommendation 3. The taking of pictures and use of cameras (including camera phones) in polling stations should be made illegal in order to prevent voters being intimidated into recording how they voted and to preserve the secrecy of the ballot.

Sir Eric has highlighted the uncertainty in the current law over the taking of pictures and use of cameras in polling stations. We agree that there are practices relating to the taking of photographs that may compromise the secrecy of the ballot and the integrity of the voting process, especially in light of advances in technology and the significant take-up of smartphones.

There are other considerations here in terms of the legitimate use of photography for media reporting and issues around criminalisation of those who are coerced. It would be wrong to bring in sanctions against people who are forced or unduly influenced, so preventing the activity on a practical level where they are contradictory to secrecy provisions may be a more pragmatic way forward.

The Government, therefore, considers this to be an issue that may more immediately be dealt with through stronger guidance and stringent application of secrecy provisions by returning officers and polling station staff.

Recommendation 4. The use of English (and Welsh, where appropriate) in polling stations should be required at all times, including any assistance given to electors by electoral staff.

We note the concerns raised in Sir Eric's Report that the use of languages other than English or Welsh in polling stations could hide coercion or influence in polling stations. The Government recognises the drivers behind this recommendation and agrees that the potential of such activity for illegal purposes should be addressed. The Government is also mindful of the broader integration agenda and the importance of all citizens being able to speak English to engage in society, as well as the potential impacts on those who speak other languages, including Gaelic.

The Government takes the view that this issue can be delivered through stronger guidance and ensuring that polling stations staff are vigilant and follow guidance and procedure.

Recommendation 5. Guidance and training should be strengthened to ensure that staff in polling stations enforce the rule that voters go to the booth individually.

The Government is supportive of this recommendation, which is designed to strengthen the integrity of voting in polling stations. It is the Electoral Commission's role to issue guidance to polling station staff, and we note that in its response to Sir Eric's Report the Commission states that it supports this recommendation. We shall work with the Electoral Commission to ensure that clearer guidance is provided for future polls on this issue and that Returning Officers are clear with polling station staff on the importance of following correct procedure to preclude instances, or inference, of fraud. This would not prevent assistance by polling staff to the disabled and those with poor sight.

Recommendation 6. Guidance should be produced on layout of polling stations and actions to minimise scope for people to be able to take a ballot paper out of a polling station.

The Government is supportive of this recommendation. As with recommendation 5, it is the Electoral Commission's role to issue guidance to electoral administrators on the layout and the security of polling stations, and we note that the Commission in its response to Sir Eric's Report supports this recommendation. We shall work with the Electoral Commission to ensure that clearer guidance is provided for future polls.

Recommendation 7. 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 Government considers that the current provisions in Great Britain allowing a postal voter to hand in their postal ballot paper at a polling station on polling day are helpful to postal voters who may need that flexibility because they find themselves unable to complete or post their postal ballots in good time (e.g. through illness or a need to travel away from home unexpectedly). This facility can enable the return of completed ballot papers which otherwise would not be received in time to be included in the count.

We acknowledge the concerns raised by Sir Eric that where a number of postal ballot papers are handed in at a polling station on polling day, this can lead to suspicions that persons are seeking to undermine the integrity of postal voting. The

primary purpose of postal voting is to facilitate voting of people who are otherwise not able to vote in person on election day. There is no fundamental reason why the vast majority of those who register to receive a postal vote cannot complete the form when they receive it within a reasonable timescale.

The Government agrees that the proposed measures would tighten up the current arrangements and may act as a deterrent to potential fraudsters as well as providing greater transparency in practice in this area and supports its implementation. The Government will wish to consider the practical implications of the proposed measures, including whether any explanations and signatures that are provided should be made public after the poll and if so whether this raises any secrecy or privacy issues.

Whilst this change could be implemented via secondary legislation, it also links with recommendation 19 which could create a relevant offence but which will need primary legislation to bring into effect.

Recommendation 8. The Government should consider the options for electors to have to produce personal identification before voting at polling stations. There is no need to be over elaborate; measures should enhance public confidence and be proportional. A driving licence, passport or utility bills would not seem unreasonable to establish identity. The Government may wish to pilot different methods. But the present system is unsatisfactory; perfection must not get in the way of a practical solution.

The Government notes the arguments that Sir Eric's Report has highlighted for requiring voters in polling stations in Great Britain to provide some form of identification before being allowed to vote. We are aware that this is supported by the Electoral Commission and that international observer bodies have raised the issue in past reports on UK elections. The Government's 2015 manifesto also called for consideration of introducing proof of ID to vote. There is already a requirement for voters in Northern Ireland to show photographic ID before they are able to vote, which has enhanced confidence in the integrity of the electoral system.

It is recognised that requiring voters in Great Britain to produce identification would address some vulnerabilities in the current voting process and enhance the security of voting in polling stations.

Sir Eric's report has recommended that the Government should consider the options for requiring voters to produce identification, and we note that Sir Eric has set out possible ways for voters to prove their identity, which includes providing their date of birth, national insurance number or signature, or producing photographic or non-photographic ID.

We agree with Sir Eric that piloting different options at local elections could be helpful in assessing the impact on voters of requiring them to prove their identity, and provide useful learning which would help inform any decision on how to extend the provisions at elections more widely.

The Government is keen for a variety of ID options to be piloted and the Annex to this response sets out possible options as to how such electoral integrity pilots may be trialled at local authority polls in May 2018.

[Registration: Address verification, multiple addresses, verification of nationality.](#)

Recommendation 9. Clearer guidance should be provided on the circumstances in which Electoral Registration Officers should seek further evidence as to an applicant's address.

We agree with Sir Eric's suggestion that EROs should use their existing powers to greater effect when determining the residency of an applicant to register to vote. We agree with both Sir Eric and the Electoral Commission that this could be best achieved through guidance to EROs - the Commission, in its response to Sir Eric's report¹, states that it will continue to keep its guidance under review and will consider whether further guidance is needed in this area. One potential way to address this could be through the use of case examples, to make clear to EROs the circumstances in which application hearings should be conducted.

Recommendation 10. The Government should consider how residence can be defined in law and what factors should be taken into consideration by Electoral Registration Officers in making that determination.

We have considered this recommendation in conjunction with recommendation 11.

Recommendation 11. The Government should produce statutory (if necessary) guidance for Electoral Registration Officers which ensures a consistent UK wide approach to determining residence.

The Government acknowledges that legislation does not provide the degree of certainty on this topic sought by both Sir Eric and electoral administrators. We also note the Electoral Commission's suggestion that any legislative change in this area

¹ Paragraph 39 of [Electoral Commission response to Sir Eric Pickles' review and recommendations on electoral fraud](#)

should address, and define, the possibility of registration in more than one place. We agree there is inconsistency with rules on council tax liability, sometimes leading to taxation without representation for British citizens.

The Government broadly accepts recommendation 10 and will give consideration as to how this definition might be achieved. It is worth noting two further points however: firstly, that primary legislation will be required to give effect to any change, which would rely on available parliamentary time. Secondly, that any definition of residence needs to be carefully considered in light of existing case law and practice - there could be unforeseen consequences for those currently on the register through the introduction of defined residence qualifications and these will need careful mitigation and explanation. Finally, given the forthcoming devolution of the local government franchise to the Scottish Parliament and the Welsh Assembly, any implementation of new legislation in this area will need to ensure consistency across the UK.

Recommendation 11 would follow naturally as a result of implementing the legislative change suggested in recommendation 10 and we welcome the Electoral Commission's stated flexibility as to the source of guidance for EROs on determining residence.

Recommendation 12. Legislation should be amended to strengthen the requirement to provide a previous address, by requiring a reason for non-supply of a previous address by applicants.

As highlighted by Sir Eric, the provision of a previous address is critical in ensuring the accuracy of electoral registers and thereby eliminating the possibility of out of date registrations being used for fraud, either electoral or financial. However, the Government's view is that addressing this issue should be achieved without placing an additional burden on electoral administrators, or creating delays in the processing of applications, an issue which could be critical in proximity to the registration deadline for a poll.

The Government agrees with Sir Eric that the registration form should be amended to require a mandatory response where no previous address is provided. Whilst we recognise that this may have an impact on the overall design of the paper application form, it is the Government's view that this is achievable within the current form structure. It is also worth noting that the overwhelming majority of applications (78%) are now made online - an environment in which design challenges can be more easily mitigated and where it is possible to force either the provision of a previous address or a reason why one cannot be given before an application can be submitted.

This change can be effected through secondary legislation; the Government intends to make this change at the earliest opportunity. However, responsibility for taking this forward in respect of local government registers is devolved to the Scottish Parliament and the Welsh Assembly. Consequently, the Government will consult extensively with the devolved administrations and the Electoral Commission before pursuing such a change.

Recommendation 13. The Government should take action to address the clear vulnerability to the registration system as a result of the lack of systematic checks on nationality.

We have considered this recommendation in conjunction with recommendations 14 and 15.

Recommendation 14. Registration application forms should be amended to contain warnings that nationality information may be checked against Government records and to re-iterate the existing warnings on the criminal penalty for provision of false information.

We have considered this recommendation in conjunction with recommendations 13 and 15.

Recommendation 15. The Government should consider the feasibility of an automated approach to checking nationality, to work as part of the existing individual electoral registration infrastructure.

The Government acknowledges the vulnerability of the current electoral registration system as regards potential nationality fraud and is grateful to the work of Sir Eric, the Electoral Commission, electoral administrators, and others in highlighting this issue. The Government agrees with Sir Eric that the current system of checks, where EROs may challenge a stated nationality only on the basis of suspicion, has the potential to allow for false declarations of eligibility, both by those claiming a nationality which they do not hold, and by those whose immigration status does not allow them to register.

Sir Eric suggests in his report that warnings on the requirement to provide accurate nationality information and the penalties for providing false information be amended and re-iterated on the application form. The Government agrees that the provision of additional warning information on the application form and register to vote website has the potential to be a deterrent to casual fraudsters. Moreover, given that the current warnings on nationality only apply to qualifying Commonwealth applicants,

the Government sees further value in enhancing those warnings to apply to all those registering to vote.

In light of these considerations, the Government accepts Sir Eric's recommendation and intends to bring forward secondary legislation to amend the application form in this regard. As with all legislation involving the division of competence on electoral registration between the UK Government and the devolved administrations, legislation would be required in the Scottish Parliament and Welsh Assembly to implement changes to the registration process. Following the introduction of these changes, the Government will monitor their impact via the register to vote website.

The report also recommends that the Government considers the feasibility of an automated approach to nationality checking. Whilst the Government strongly sympathises with the objective of preventing the registration of ineligible persons, it recognises that this recommendation would give rise to significant practical challenges. For example, there is no national register of UK nationals and not all UK nationals have British passports. Such factors mean it would not be possible to provide for an automated nationality check in every case as a routine component of the electoral registration process.

What is unclear, both from the evidence submitted to Sir Eric's review and from the collection of data by the Electoral Commission and the Office of National Statistics, is the extent to which this vulnerability is/has been exploited, although the Government believes there should be "zero tolerance" towards electoral fraud involving migrants. A good understanding of the scale of this issue is vital in ensuring that any response is proportionate in its impact on both applicants and administrators, as well as representing good value for public money.

It is worth noting that competence over the registration for the local government register in Scotland will shortly be devolved to the Scottish Parliament and, in due course, will be also be devolved to the Welsh Assembly in respect of the local government register in Wales. Any changes to the system of registration, and associated checks on information provided by applicants, would need to be taken forward by the UK Government in conjunction with the devolved administrations to ensure consistency in the registration process.

It is, therefore, the Government's intention to work with the Electoral Commission, the administrations in Scotland, Wales, and Northern Ireland, the Association of Electoral Administrators, and others to explore:

- Whether data could be collected to assess the scale of problem involving ineligible migrants registering to vote.

- Which approaches to this issue may be viable and whether it would be feasible for these solutions to be scaled in proportion to the extent of the underlying issue (once this is established).
- Following from the collection of relevant data, whether a more systematic approach to checking information contained in electoral registers or applications would be justified.

In the meantime, the Government is committed to developing effective support services for electoral registration officers (EROs) in cases where they have doubts about a person's identity and/or eligibility to register to vote and require information to corroborate the person's nationality and immigration status.

Recommendation 16. To protect the integrity of the electoral register and assist integration, the Government should work with councils to introduce a separate, voluntary municipal register for those who do not have voting rights, but do have permission to reside in the UK.

The Government agrees with Sir Eric that it is important to address the potential underlying reasons for registration fraud as well as preventing and detecting fraud when it does occur. Whilst the recommendation put forward by Sir Eric may be one potential solution to this issue, there may well be a range of options which will need to be considered before a final position can be reached.

These will need to be considered not only in terms of their impact on registration fraud but also in their wider views of local authorities, citizens, and credit reference agencies and their customers. Nevertheless, the Government would welcome the views of interested parties as to the best way to prevent registration fraud for financial reasons and will seek to consult with key stakeholders in due course.

Recommendation 17. The Government should investigate the development of a facility in the IER Digital Service to retain the IP address used to make applications. This should be subject to a rigorous cost/benefit analysis to ensure that that such an approach would be of genuine value to law enforcement.

Subsequent to the publication of Sir Eric's report, the Government has sought the views of the National Police Chiefs Council (NPCC) on this recommendation. The NPCC agreed that an IP address would have little value in proving registration fraud given the probable difficulties in associating an IP address to a specific individual, particularly where a computer is used to make a fraudulent application which either shares an IP address with other computers or which is located in a public environment (such as an internet cafe or public Wi-Fi connection). On the basis of

these comments, and in consideration of the underlying data protection issues surround the collation of national datasets, the Government does not accept this recommendation.

Postal Voting: on demand, applications, ballot packs, campaigners.

Recommendation 18. The offences contained in Section 66 of the Representation of the People Act 1983 which protect the secrecy of the ballot in relation to in person voting should be extended to postal ballots.

The Government supports this recommendation. We agree with Sir Eric that the secrecy of the ballot is fundamental to the ability of electors to be able to exercise their right to vote freely and without pressure to vote in a certain way. Sir Eric's Report has highlighted that there is legislation in place designed to protect the secrecy of the ballot for persons voting in polling stations but there are no equivalent provisions governing postal ballot papers completed outside a polling station. Particularly in light of modern technology, this increases the risks of undue influence or intimidation of postal voters.

The Government agrees that the secrecy provisions set out at section 66 of the Representation of the People Act 1983 should be extended to postal voting, which would help to prevent undue influence and protect the vital principle of the secrecy of the ballot. Consideration should, however, be given to how the police will enforce any change to the law and effectively investigate alleged breaches. Primary legislation would be needed to implement the recommendation and the Government will seek to bring forward provisions on this issue when a suitable opportunity arises.

Recommendation 19. Political campaigners/activists should be banned from handling completed postal votes and postal vote envelopes. The provisions should not apply to family members and designated carers (subject to a limit of two, as per Recommendation 7).

The Government recognises the importance of combatting inappropriate conduct by campaigners and activists, and that the recommendation is designed to enhance the security of postal voting.

'Postal vote harvesting' by political activists raises significant risks of ballot papers being fraudulently altered, the undue influence of postal voters, and the secrecy of the ballot being compromised. The Electoral Commission's code of conduct for campaigners already states that activists should not handle completed postal ballot ballots or envelopes: yet this is only a voluntary code, rather than a statutory prohibition.

There are practical implications that will require careful consideration, including how a ban on specified persons handling postal ballot papers will be enforced and the creation of a new offence.

We will carefully consider how to deliver the ban on specified persons handling postal ballot papers, including enforcement and the creation of a new offence. We will discuss the issues with the Electoral Commission and electoral stakeholders. Such a change requires primary legislation in order to be implemented.

Recommendation 20. In order to achieve a balance between preventing unscrupulous behaviour and permitting legitimate campaigners to provide assistance to help people participate, the Code of Conduct should reflect legislation. If a particular behaviour is unacceptable, it should be prohibited across the board in legislation, and the legislation then enforced equally across all parties/candidates.

The Government is supportive of this recommendation which is linked to recommendation 19. The Electoral Commission is currently responsible for drafting the Code of Conduct and we note that in its response to the recommendation it states that it will continue to assess the effectiveness of the Code.

The Government will also consider if any new legislation is necessary to address activities and behaviour that are not covered by existing electoral law, taking into account the work of the Law Commissions in their review of UK electoral law.

Where any change is made, it should be reflected in the Code but, unless an activity is illegal, the Code itself should not seek to impose a ban.

Recommendation 21. Requests for a waiver of the need to provide a signature for a postal vote should require attestation, and the restrictions on people who can attest the waiver application should be the same as for proxy voters on the grounds of blindness or other disability.

The existing provisions enabling postal vote applicants, in certain circumstances, to request a waiver of the requirement to provide a signature are designed to facilitate participation in the electoral process. There is currently no requirement for formal checks to be carried out to ensure that such applications are genuine and the Government recognises that this represents a potential vulnerability in the security of postal voting. The Government, therefore, supports Sir Eric's recommendation that, in future, requests for a waiver should require attestation.

The Government notes that it is recommended that those people who may attest a waiver application should essentially be the same as those who may attest an application for a proxy vote on the grounds of blindness or disability. As an application for a waiver may be made on the grounds of a disability or because the applicant is unable to read or write, Government will need to consider whether any persons, in addition to those set out in the recommendation, should be able to attest a waiver application, though without framing the list of eligible persons too widely in order to ensure that the security of the process is maintained. This is an issue on which the Government would wish to seek the views of the Electoral Commission and key electoral stakeholders.

It will require secondary legislation to give effect to this recommendation.

Recommendation 22. The option to permanently request a postal vote should be removed, and the option to apply for a postal vote for a specified period should be subject to a 3 year limit. After this period, the applicant should be required to submit a new postal vote application (with identifiers), and the Electoral Registration Officer should be required to review the application to satisfy themselves that the individual is currently resident at the address.

The current facility allowing electors to apply for a postal vote for either a specified period of time that may cover a number of electoral events or on an indefinite basis has proved popular with many postal voters. The Government recognises that in order to maintain the security of postal voting, the details of electors who are signed up for a postal vote over a series of polls should be verified at regular intervals. Currently, electors who have a postal vote on a long term basis are required to provide a fresh signature every 5 years and this helps to ensure the data on postal voters held by Electoral Registration Officers (EROs) is up to date.

However, the Government agrees that this recommendation, which would require existing postal voters to re-apply for a postal vote at least every three years, would strengthen the current arrangements through a more regular review and assessment and help to address postal voting being inappropriately intercepted by unscrupulous activists, or simply stop the expense of postal votes being sent to defunct addresses. It would also ensure that the data held on postal voters by Electoral Registration Officers is more up to date, which may help to reduce the instances of postal votes being rejected at polls due to mismatched personal identifiers.

The Government, therefore, sees merit in this recommendation and will wish to consider with the Electoral Commission and other stakeholders the practical implications of implementing the proposed changes, and also whether the changes

should apply also to proxy voting and to absent voting provisions in Northern Ireland. It will require primary legislation to implement this recommendation.

Recommendation 23. It should be standard practice for local authorities to provide guidance in postal ballot packs on the secrecy of the vote and how to report electoral fraud.

The Government supports this recommendation. Ensuring the secrecy of the ballot and reporting electoral fraud is a matter for Returning Officers, following guidance issued by the Electoral Commission. We see this recommendation being implemented through such guidance rather than any statutory provision. We will work with them to ensure that such guidance helps to maintain the integrity and security of ballots.

[Proxy Voting: emergency proxy votes, fraud.](#)

Recommendation 24. The provisions on an ID requirement in polling stations should apply to those casting a vote as a proxy on behalf of a voter.

We have considered this recommendation in conjunction with recommendation 8.

We agree that any requirements that are introduced (at a pilot or otherwise) for electors voting in polling stations should also apply to those casting a vote as a proxy on behalf of a voter.

Recommendation 25. A power of enquiry should be available to Returning Officers to question applications for an emergency proxy.

Sir Eric's report notes that the availability of emergency proxies can play a key role in enabling access to the electoral process but highlighted doubts raised by electoral administrators about the genuineness of some applications that have been made and their concern that this facility could be vulnerable to fraud.

We support Sir Eric's recommendation and agree that it could help to tighten up the current arrangements though will wish to consider the practical implications of introducing a power of enquiry and how this would fit in with the existing powers of Electoral Registration Officers.

The Government, therefore, is minded to take this recommendation forward and will wish to consider the proposals with the Electoral Commission and other stakeholders to identify and address any issues that will require changes to secondary legislation.

Recommendation 26. Consideration should be given to changing the deadline – to 5pm on the day before polling day – for emergency proxies (other than those for medical reasons or administrative failure by the Returning Officer) – so that Returning Officers have sufficient time to exercise the power of enquiry.

This is linked to recommendation 25 and, again, the Government is minded to take this proposal forward alongside that recommendation with the Electoral Commission and other stakeholders.

It will require secondary legislation for implementation.

Recommendation 27. The legislation on offences relating to proxy voting should be clarified around compelling/preventing someone applying for a proxy vote and altering someone's completed application.

The Government notes that Sir Eric has recommended that the law should be clarified on these issues to improve the security of proxy voting. We note that the Electoral Commission in its response to Sir Eric's Report has indicated that it supports this recommendation which is in line with previous recommendations made by the Commission on the clarification of offences in this area.

The Government sees the merits of the recommendation and, whilst wishing to consider any potential change in the context of existing absent voting offences and the implications of amending the law in this area, is minded to take this forward.

The recommendation will require primary legislation to be implemented.

Recommendation 28. The limit on the number of close relatives for whom a person can act as a proxy should be reduced to two.

We note that Sir Eric's report highlights concerns about the current rules that allow a person to act as a proxy for an unlimited number of close relatives, and that it concludes that limiting the number of close relatives for whom a person may act as a proxy to two would be an appropriate way to address concerns about the abuse of proxy voting.

The Government recognises the basis for this recommendation but we consider that this recommendation potentially raises accessibility issues. Sir Eric's report recognises that this recommendation could have a particular impact on overseas voters who depend on proxy voting in order to be able to exercise their right to vote,

though concludes that on balance a limit of two people would be appropriate. We will want to look at this issue and consider the possible impact on domestic voters. We note that the Electoral Commission has indicated in its response to the Report that it does not support this recommendation, highlighting that the proposal may disadvantage some electors with a genuine need to appoint a proxy.

The Government is not minded to make a decision on taking forward this recommendation at this stage and wishes to give the matter further consideration. The Government notes that the recommendation, if accepted, would require primary legislation.

Election Counts

Recommendation 29. Given the concerns raised in Tower Hamlets and elsewhere regarding the running of election counts, there should be clearer and robust guidance for Returning Officers and electoral administrators to ensure best practice in all election counts.

The Report highlights that the election count process is not generally a cause for concern though notes that there have been instances where it has been felt that inappropriate behaviour has taken place at election counts, such as at Tower Hamlets 2014.

We agree that Returning Officers need to ensure there is effective planning for election counts and to be aware of any potential for disruptive or inappropriate behaviour and to factor this into their planning processes.

We agree with Sir Eric that this is not an area requiring legislation and the concerns raised can be addressed through clearer and robust guidance. The Electoral Commission is responsible for preparing guidance to Returning Officers on their duties. We note that the Electoral Commission, in its response to this recommendation, indicates that it will continue to keep its guidance under review and will consider whether its existing guidance could be enhanced to reflect the concerns raised by Sir Eric's Report.

We are therefore supportive of this recommendation and will wish to take it forward through discussion with the Electoral Commission on how guidance and other planning preparatory tools available to Returning Officers can be utilised to ensure good practice is in effect.

Election Petitions: hearings, standing, costs, public interest, time limits, standard of proof, informal mechanism

Recommendation 30. The system for challenging elections should be brought into the ordinary civil procedure and a single right of appeal should be available on both points of law and fact.

Recommendation 31. A single elector should be able to challenge the outcome of any election.

Recommendation 32. Returning Officers should have standing to bring election petitions. This should be limited to breaches of electoral law relating to the administration of the election or registration of electors and the Returning Officer should be able to test the effect on the result before proceeding.

Recommendation 33. Political parties should be able to bring election petitions in the name of the party.

Recommendation 34. The Government should change the law if necessary to remove all doubt as to the court's ability to make protective costs or expenses orders.

Recommendation 35. Where an election court finds evidence implicating non-named individuals as beneficiaries of electoral fraud, it should be possible for a petition or process to be raised against them within the usual timeframe, starting however from the date of the election court's judgment rather than the date of the election.

Recommendation 36. It should be possible to apply to extend the maximum time limit for an election petition to be lodged, and to amend the grounds of an election petition once it has been submitted. Consideration should be given to the length of the extension period and the circumstances where it should be available.

Recommendation 37. The criminal standard of proof should be retained for election petitions.

Sir Eric's Report makes a series of recommendations (30 to 37) concerning the law governing election petitions. As Sir Eric notes, this is an area that the UK Law Commissions have also been considering as part their review of UK electoral law, and some of Sir Eric's recommendations are based on proposals in the Law Commission's Interim Report on Electoral Law published in February 2016.

The Government recognises that the law governing petitions has remained largely unchanged for a significant period of time and Sir Eric's Report has highlighted areas where changes may be appropriate.

Whilst this is a complex area, with any changes having the potential to impact on the outcome of elections, the Government is minded to bring forward legislation to make these changes. We will also wish to consider the Report's body of recommendations on election petitions in the context of the Law Commissions' similar issues and their recommendations.

Recommendation 38. In conjunction with the devolved administrations, the Government should consider implementing a process for electors' complaints about the administration of elections (which do not aim to overturn the result) to be investigated by the Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales, and the Northern Ireland Ombudsman as a means of providing an appropriate and accessible channel for considering complaints of a less serious nature.

The Government agrees with this recommendation. We note that the Electoral Commission supports this recommendation, and that the Law Commissions have also made the same proposal in their review of UK electoral law.

The Government is minded to take this forward at a suitable opportunity. The Government is already proposing broader legislation to reform the framework for Public Ombudsman.

There may be devolution issues here, and we will discuss with relevant colleagues their views on introducing similar provisions to ensure elections across the United Kingdom can be appropriately challenged.

Nominations

Recommendation 39. The procedures around candidate nominations should be reviewed to consider the prevention of sham nominations and ensuring that nominations are validly made.

Sir Eric's Report has highlighted issues that have arisen with candidates' nominations and we agree there are strong arguments for the law in this area to be reviewed. We note that the Electoral Commission supports this recommendation, and the Law Commissions have made recommendations on this issue in their Interim Report on the reform of electoral law. Any proposed changes that give

Returning Officers greater powers to reject 'sham' or invalid nominations would need to be considered in the context of the existing general requirement for Returning Officers to take nominations at face value.

The Government will carefully consider whether to take this recommendation forward, and wish to discuss the issues it raises with the Electoral Commission and electoral administrators. Any changes to the procedures around candidate nominations are likely to require primary legislation.

Offences: Maximum offences, undue influence, spiritual influence, bribery and treating

Recommendation 40. The Government should consider increasing the maximum sentences for electoral fraud relating to postal voting, personation and registration (including making the latter an indictable offence).

The Government agrees that the existing penalties highlighted in this recommendation should be reviewed. We note that both the Electoral Commission and Law Commissions are supportive of change in this area.

The Government is minded to take this recommendation forward. Any changes will require primary legislation.

Recommendation 41. The offence of undue influence should retain a reference to spiritual / religious influence.

The Government has considered this recommendation in conjunction with recommendation 2. The Tower Hamlets election court highlighted the need for continued protection against this form of undue influence. Both the freedom of worship and the freedom to vote should be exercised without intimidation.

Sir Eric's Report highlights concerns that examples of intimidatory behaviour have arisen which might not be captured in the alternative approach recommended by the Law Commissions.

We concur that the existing offence of spiritual interference should be maintained. Accepting this recommendation requires no change to existing legislation.

High Risk Areas: education and awareness

Recommendation 42. The learning from the work undertaken by local authorities in 17 areas at higher risk of electoral fraud ahead of the May 2015 polls should be utilised to inform guidance and practices that can assist areas in dealing with electoral fraud.

We agree that we should take steps to ensure that learning and best practice is consolidated and disseminated among local authorities and that this information and experience can help to address electoral fraud issues more universally.

The Government is keen to see this recommendation taken forward and will discuss how the recommendation would best be implemented with the Electoral Commission and other electoral stakeholders.

[Governance and Oversight: role of electoral commission, role of the police, Role of Returning Officers and Electoral Registration Officers, role of Government ministers.](#)

Recommendation 43. The role of the Electoral Commission should be revisited to identify how the Commission may best operate in providing guidance, training and support with relation to the administration of electoral events. The Electoral Commission should also more narrowly focus on its core functions – of party finance and overseeing national campaign expenditure.

The Electoral Commission's duties and obligations are set out in primary legislation and the Government agrees with Sir Eric that the Commission should concentrate on these core functions. The Government welcomes the Electoral Commission's commitment to consider whether there are changes to the Commission's activities which could significantly improve their response to electoral fraud.

Recommendation 44. The Government should consider how the performance management regime should be reformed and focus more clearly on key outcomes. Such a system of benchmarks would be better undertaken by the Cabinet Office, subject to the statutory framework being approved by Parliament.

The Government recognises the drivers behind this recommendation and is looking at how the performance standards regime operates. We are keen to work with the Commission to identify how the issues Sir Eric raises can be addressed in the current or a revised structure.

Any changes to powers relating to the performance management regime for Returning Officers and Electoral Registration Officers in Great Britain would require primary legislation.

We would welcome representations from local government and other organisations on how the system of performance management for Electoral Registration Offices and Returning Officers could be improved and more tightly focused.

Recommendation 45. Work should be undertaken by Government to link with the Association of Police and Crime Commissioners, the College of Policing, the National Police Chiefs' Council and the National Crime Agency to ensure that electoral fraud is seen as a significant issue, and that there is a consistency of approach / response across police forces to dealing with allegations of electoral fraud and impropriety.

Recommendation 46. The Government could consider how the National Crime Agency, which has a remit to look at organised, economic and cyber-crime, might play a greater role in investigating and coordinating complex cases of electoral fraud, especially where it interacts with other financial or benefit fraud.

Sir Eric's recommendation to look further into how national agencies can assist with tackling fraud is a positive one. The Government is conscious of the co-ordination and response work already done by the NPCC and the availability of training on electoral fraud matters from the College of Policing but, as the Electoral Commission notes, there is scope for further consideration in this area, in particular to ensure that there is a consistency of approach and that the perception of Police responses is more positive.

We agree that there are clearly lessons to be learnt from the lack of any criminal prosecutions following the Tower Hamlets election court judgment. Systematic election fraud clearly took place, but no criminal sanctions followed.

The Government is keen to work with all the agencies cited to investigate what can be done and notes positive responses from the National Crime Agency (NCA) and NPCC on existing engagement where it has been required and to future involvement in appropriate instances. The organisations have been keen to highlight that suitable mechanisms for escalation and engagement already exist for actual instances of fraud and, whilst not an area suitable to become a responsibility of the NCA, the NCA is open to share intelligence and engage where required.

Recommendation 47. Officers at the most senior level in a local authority, such as Chief Executives and Heads of Paid Service, should be appointed as Electoral Registration Officers and Returning Officers and should undertake relevant training to ensure that they have the skills required for the roles.

The importance of the role and the potential for issues to arise (as highlighted by the problems seen in Tower Hamlets in recent years) argues for a positive approach to ensuring that those running elections and other electoral events have the necessary degree of authority and are able to respond robustly and with resilience to improper behaviour from whatever quarter it comes. To that end ensuring that senior officers hold those positions is right in the Government's view.

This is not something that we think requires legislation at this stage and we hope that a clear steer in this response to Sir Eric's recommendation alongside guidance from the Electoral Commission should be a suitable response.

That needs to be allied to effective training and awareness provisions and the Government is keen to engage with the Commission and other organisations such as SOLACE, as a representative body for local authority senior staff, to consider how that can be achieved. We note that, in Northern Ireland, the Chief Electoral Officer is responsible for electoral administration.

Recommendation 48. That the position of Electoral Registration Officers and Returning Officers is clarified with respect to Freedom of Information rules and they are made subject to the relevant provisions to release information.

The Government agrees that Electoral Registration Officers and Returning Officers (including Acting Returning Officers, Local Government Returning Officers and Police Area Returning Officers) should be brought within the scope of the Freedom of Information Act 2000. There are a number of potential benefits to ensuring the information held by EROs is publicly available. These include enhancing the accountability of EROs to the public and providing greater transparency as to the work underway to support electoral registration, which is vital in underpinning the democratic process.

Of course, steps need to be taken to ensure privacy and security. The information held by EROs and ROs covers a wide range of material, from highly sensitive information relating to the democratic process; personal information about electors (National Insurance numbers, dates of birth and signatures); as well as more generic information (for example annual canvass return rates). Electoral law already specifies in a number of places the types of information that can be supplied by EROs/ROs; in what circumstances; and by whom. For example, access to highly sensitive material, such as used ballot papers, is carefully restricted. Other

information is already publicly available but only in prescribed circumstances, for example, the public can view the full electoral register, but only under supervision, at the ERO's office or in other specified places. The nature of an ERO's/RO's work means that there are times when their workload is particularly significant (for example, during the annual canvass and at election time); and the impact of the FOI Act on their ability to carry out these functions will need to be carefully thought through.

We will need to consult with individual EROs and ROs, the Association of Electoral Administrators and the Society of Local Authority Chief Executives. Given forthcoming devolution of legislative and executive competence in relation to certain elections to Scotland and Wales, we will also need to consult with Scottish and Welsh Governments.

Section 5 of the FOI Act enables the Secretary of State by Order to designate persons that perform functions of a public nature and contractors providing services that are functions of public authorities, as public authorities for the purposes of the FOI Act.

Recommendation 49. A protocol for reporting within a local authority on issues relating to electoral fraud should be developed and guidance given by the Electoral Commission in conjunction with the National Police Chiefs Council and other relevant bodies.

This recommendation fits with others above about engagement of national agencies and a consistency of approach in responding to electoral fraud issues. As part of discussions on consistency of response, we are keen to see this recommendation pursued by the Commission with support from the NPCC.

Recommendation 50. The Government should undertake a review of how democratic checks and balances can be increased in local government executive structures where power is concentrated.

This is an interesting and potentially wide-ranging recommendation that clearly flows from the issues identified in Tower Hamlets and which serves as a warning as to how impropriety in the process of an election can lead to issues when those elected take positions of authority.

As Sir Eric recognises in his report, executive forms of governance can provide stronger governance and accountability. The Government agrees with Sir Eric's recommendation that such governance must include robust and effective processes

that openly and transparently hold those exercising executive responsibilities to account, and which prevent, discourage, and expose municipal corruption.

The Government is already legislating to provide stronger scrutiny arrangements for the new mayoral combined authorities. We accept that the example of Tower Hamlets illustrates that further checks and balances might be needed, in addition to the steps already taken by the Government to increase transparency and local accountability. The Department for Communities and Local Government will further consider which of the proposals ought to be taken forward, across the range of areas outlined in this recommendation.

Conclusion

This response creates a challenging programme of work that will take place over a number of years and requires partnership working with other governments and a range of organisations at both the national and local level.

It is essential that some of this work is put in place in the short term to prevent further attempts to undermine the electoral process, and to ensure public confidence and support participation. It needs to be implemented carefully and effectively but also in good time.

The Government looks forward to tackling the challenge of responding to these recommendations positively with the support of partners to ensure we strengthen the integrity of our electoral system for the benefit of all, and achieve the goal of a democracy that works for everybody.

Chris Skidmore MP
Minister for the Constitution

Annex - Electoral integrity pilot schemes

Background

Sir Eric's report identified that one of the most significant issues in relation to polling stations is whether voters should be required to produce a form of identification before being allowed to vote.

The report recommended that the Government considers the options for voters to have to produce personal identification before voting at polling stations. We agree that such measures should be proportionate, and should enhance public confidence in the integrity of the democratic process.

The Government agrees with Sir Eric that the viability of voter identification options should be explored further, with pilot schemes in specified local authority areas. These could be undertaken in line with the existing provisions for piloting within the *Representation of the People Act 2000*. These electoral integrity pilot schemes could be introduced at local government elections in England in 2018. The Government would welcome the trialling of such schemes in Scotland and Wales, but recognises that this is a matter for devolved administrations to consider.

This Annex sets out the Government's view on the types of identification that could be piloted, as well as the locations where pilots could take place, before presenting a number of pilot scheme models.

Types of identification

Sir Eric identified six principal options for the types of identification that voters could be asked to produce at polling stations. Having given careful consideration to all of the available options, we intend to explore the following types of identification in a number of pilot schemes:

- A bank card (or similar) with a signature, and the requirement to give a signature;
- Other photographic or non-photographic identification (e.g. bus pass);
- A passport, driver's licence, or other official photographic identification; or

The Government agrees with Sir Eric that a significant benefit for a number of these types of identification is that they are commonly held by most UK adults, and could therefore be readily produced when requested at polling stations.

It has been noted that requiring voters to provide certain types of identification at polling stations may involve significant work in producing records that could be used to check information against. We share Sir Eric's concern that some types of identification do not provide absolute assurance against fraudulent activity. For

example, dates of birth may be easily recited by others, and many people may not be able to recite their National Insurance numbers when asked.

By contrast, bank (or similar) cards with signatures could represent a more robust form of identification. Bank cards are held by many UK adults and, as they mostly contain a signature, would preclude the need for additional records to be produced for information to be checked against.

The requirement to produce other types of identification provides voters with a wider range of options for identification containing either a photograph or a signature (or both). However, we have acknowledged Sir Eric's reservation that, as the number and type of cards are likely to be varied, it would be harder to mandate this provision in a way that offers an acceptable level of rigour.

We have noted that the use of specified photographic identification is considered to provide the greatest certainty of identification. We are aware of the important consideration that not all UK adults will be able to produce passports, driver's licences, or similar documents, if requested.

The option of introducing a voluntary electoral ID card, expressly for the purpose of proving identity at a polling station, may offer a means of addressing this challenge. It is, however, likely that this option will be expensive and administratively burdensome.

We believe that some options identified by Sir Eric are worthy of further exploration in pilot schemes. When used alone, some types of identification may provide sufficient assurance against fraudulent activity, while others may be more effective when used in combination. We intend to invite local authorities to apply to pilot a number of schemes that involve both photographic and non-photographic identification.

Locations

The Government supports Sir Eric's suggestion that pilot schemes could usefully take place in local authority areas which have previously experienced significant cases of electoral fraud, or which are considered to be at high risk of fraudulent activity. The Electoral Commission has identified 18 local authority areas that it considers to be most at risk of allegations of electoral fraud.² We will invite applications to participate in our pilot schemes from those specified authority areas, which are:

- Birmingham
- Blackburn with Darwen
- Bradford
- Kirklees
- Luton
- Oldham

² Electoral Commission (2015), available at: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/198706/Briefing-Plans-to-tackle-electoral-fraud-ahead-of-May-elections.pdf

- Bristol
- Burnley
- Calderdale
- Coventry
- Derby
- Hyndburn
- Pendle
- Peterborough
- Slough
- Tower Hamlets
- Walsall
- Woking

It is, however, important that our assessment of the impact of the introduction of voter identification measures gives an accurate picture of voter experiences from across the country. We will therefore also intend to invite applications to participate in pilot schemes from local authority areas where electoral fraud has not been identified as a risk. This will provide us with an opportunity to test the impact of voter identification measures outside of areas with specific electoral integrity issues.

Pilot Scheme Models

Considering the types of identification and the locations that have been identified, a number of potential models for pilot schemes have been developed.

The purpose of these pilot scheme models would be to test the impact of voter identification schemes on protection against fraud, the perception of integrity, and on voter participation and turnout. Although three discrete models have been outlined below, the Government will continue to assess whether implementing all three as pilot schemes in specified local authority areas is appropriate and proportionate.

Below, we also consider the arguments for the introduction of a new electoral identity card, but given the significant obstacles to its implementation at the 2018 elections, we do not include it as a pilot scheme model in its own right.

Model 1 - Existing photo identification only

Under this model, voters would be required to provide one of the following specified documents at their polling station before going to vote:

- A UK, Irish, EU, or Commonwealth passport;
- A UK, Irish, or EU driving licence;
- Other official photographic identity cards, such as a proof of age card; or
- A locally recognised photographic identification card (e.g. local travel card or pass).

Documents would not necessarily need to be current, but would obviously need to bear a good degree of likeness to the voter, so that their identity can be satisfactorily verified. Provisional driving licences would also be accepted.

We have acknowledged Sir Eric's argument that the inclusion of locally issued, official photographic identification cards would cover those voters who are not able to produce other types of identification. In this case, Returning Officers and their polling station staff would need to be aware of the suitable local identification cards in order to be able to verify their authenticity.

Under this model voters who were not able to produce the required documentation would not be issued with their ballot paper.

Model 2 - Supplementary identification

Under this model, any voters who could not produce one of the documents specified above would be asked to provide their signature along with two other documents (which could be photographic). We propose that one document from Group A *and* one from Group B would have to be produced in order for voters to receive their ballot paper:

- | <u>Group A</u> | <u>Group B</u> |
|--|---|
| <ul style="list-style-type: none">● A utility bill;● A council tax bill;● A bank or building society statement;● A letter confirming Electoral Registration | <ul style="list-style-type: none">● A bank or building society card (e.g. debit, credit, or similar card) that contains a signature;● Another suitable official document with a signature. |

This model would provide an additional level of assurance about the identification of a voter, if photographic evidence cannot be supplied. Documents from Group A would provide the address of a voter, which could easily be checked against the register. Voters would also be required to sign for their ballot paper, and documents supplied from Group B would provide for the verification of voter signatures.

We consider that asking voters to prove their address in combination with a signed document offers a greater layer of rigour than either of the two options would offer if used alone. This model also increases the likelihood that individuals who are not able to provide photographic identification will still be able to vote.

Electoral proof of identity card

In his review, Sir Eric noted that the Electoral Commission has recommended that the Government consider a pilot scheme that would involve a new, photographic electoral identity card. This would be similar to the model used for elections in Northern Ireland, and could be used by voters who are not able to provide another form of photographic identification when they go to vote.

Given the potentially significant logistical and cost obstacles to piloting a specific new electoral identity card, we do not consider that it is feasible to implement a pilot scheme at local government elections in 2018.

For the body taking on responsibility for processing applications, and manufacturing and distributing cards, there would be a significant financial and administrative burden. The most effective way to communicate the details of a pilot scheme to voters in advance of an election also needs to be considered. The Government remains aware that all costs associated with pilot schemes should be proportionate.

Importantly, as Sir Eric notes, the implementation of this model also needs to be balanced against the decision to rule out the introduction of a National Identity Card.

We are grateful for the work that the Electoral Commission has previously done on producing cost models for electoral card schemes. The Commission has estimated that, if rolled out across the UK at the local authority level, such a scheme would cost between £3 million, £5 million, and £7.2 million per year. If implemented on a nationwide scale, the costs would be significantly greater.

The cost of producing cards (and an attendant public awareness campaign) would be limited by the fact that a pilot would only take place in a specified number of local authority areas, rather than across the country and given its potential benefits and the widespread support among election stakeholders for its implementation, we will continue to think carefully about testing a scheme at future elections.