



Cabinet Office

# **Protecting the Debate: Intimidation, Influence and Information**

# **Responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life.**

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“The ideal of a truly plural and open public sphere where everyone can take part is in danger...In public life, and increasingly in private conversations too, it is becoming harder and harder to conduct any political discussion, on any issue, without it descending into tribalism and rancour...We must all seek to uphold the highest standards of conduct. We must set a tone in public discourse which is neither dehumanising nor derogatory and which recognises the rights of others to participate...These responsibilities fall on each of us as individuals, and collectively on the political parties.”

Prime Minister Theresa May

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# Foreword

Our democracy is for everyone; a democracy that rests on every individual being able to participate, free from violence, free from intimidation and free from abuse. This principle is something that distinguishes democracies from non-democracies, and our democracy is held up as an example to countries across the world.

But a tone of bitterness and aggression has entered into our public debate. The Committee on Standards in Public Life note that "...the scale and intensity of intimidation is now shaping public life. This is a matter of serious concern."<sup>1</sup>

I share this concern. It is essential for our democracy that individuals are able to stand for elected office without fear of abuse. And it is equally essential that electors can make their choice at the ballot box based on an informed discussion focused on policy and principle, rather than on misinformation or abuse. As society has changed through the increase in use of social media, it is right that the Government considers how to protect the debate.

A specific electoral offence would work to highlight the seriousness of the threat of intimidation of candidates and campaigners to the integrity of public life and the electoral process, and to provide for specific electoral sanctions. As we review the intimidation of candidates and campaigners, we're also reviewing the existing offence of undue influence of voters, which aims to protect voters from improper influences to vote in a particular way, or not to vote at all.

Digital technology has transformed campaigning with an increasing risk that the provenance of campaign material is less clear. By reviewing how electoral law requirements for an imprint on print campaigning materials can be extended to digital communications, we aim to improve transparency for voters.

There is no doubt that we need to act to address the issues that we face. We cannot let intimidation to become normalised, and allow it to adversely impact the quality of our democracy or the lives of those who play an active role in it. We all benefit from informed debate.

I strongly encourage you to respond to this consultation. I am interested to know your views on the key questions posed in this consultation and your thoughts as to how we can protect the debate for everyone.

Thank you for taking part.

Chloe Smith

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<sup>1</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, p27

# Executive Summary

1. In December 2017, the Committee on Standards in Public Life (referenced throughout this report as 'CSPL' or 'the Committee'), published its review: 'Intimidation in Public Life', which set out 33 recommendations for action which could work to protect those in public life, and voters from a severe level of intimidation and abuse that is now commonplace.
2. The Committee called upon all those involved in the political debate: Government, social media companies, political parties, the police, broadcast and print media, MPs and Parliamentary candidates, and voters to work to tackle this issue.
3. This consultation reviews the following recommendations and issues:
  - 3.1. Section 1: the Government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners;
  - 3.2. Section 2: consolidation and clarification of the electoral offence of undue influence;
  - 3.3. Section 3: the Government should extend electoral law requirements for an imprint on campaigning materials to electronic communications.
4. Each of these three issues is aimed at improving political debate, and helping electors to make an informed decision. We look to promote debate and discussion instead of intimidation during election periods, seek to prevent undue influence on an elector and aim to ensure that political debate is informed and transparent.
5. The Government sees that this consultation paper as one element of a strategy in which all those involved in our democratic processes have a part to play, including all of those organisations to which the Committee made recommendations.

## **Section 1: A new electoral offence of intimidation**

6. The Committee recommended that the Government consults on the introduction of a new electoral offence of intimidation of Parliamentary candidates and party campaigners to allow for appropriate electoral sanctions and to make clear that this kind of abuse will not be tolerated.
7. The report produced evidence of the impact of intimidation, not just on individuals but on our democratic process. It was evidenced that individuals can be deterred from standing, threatening 'the integrity of public life.'<sup>2</sup>
8. The Government, in its response to the report, agreed with this recommendation, but extended the scope of the consultation to consider the protection of candidates and their campaigners at all non-devolved elections.

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<sup>2</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, p61

9. A benefit of creating an electoral offence is that an electoral offence can allocate electorate sanctions. For a criminal offence, the sanctions are criminal, such as a fine or imprisonment. For an electoral offence, the sanctions are criminal (as above) but also civil, such as the incapacity to vote, stand as an MP or any elected office.
10. The Government proposes that the most effective way to realise the Committee's recommendations is to apply appropriate electoral sanctions to existing intimidatory offences such as those identified by the Committee, where that offence is committed against a candidate or a relevant campaigner during an electoral period. That would avoid the sort of duplication that could easily make enforcement more difficult, whilst making it clear beyond argument that all existing criminal behaviour, committed in appropriate circumstances, could attract electoral sanctions. It will be important to ensure that the new offence will capture intimidation against a particular candidate or campaigner, *only in their role as a candidate or campaigner*.
11. Additional electoral sanctions would work to deter intimidatory behaviour during the election period, allowing those engaging in the electoral process to participate actively and to the fullest. We propose that the new electoral offence should be classed as a corrupt practice. The individual found guilty of the offence would be prohibited from standing as an MP or holding any elective office for a period of five years.
12. The existing criminal sanctions for the offence committed will apply and, therefore, the punishment will reflect adequately the severity of the crime as committed. We note how the existing sentencing guidelines of aggravating factors could be used should an individual be sentenced for the new electoral offence. Within existing sentencing guidelines, aggravating factors include when an "offence is committed against those working in the public sector or providing a service to the public".
13. The Government believes that all candidates and campaigners play an equally important part in public life, no matter at which poll or referendum. As a result, the Government proposes that the new electoral offence would cover all types of non-devolved polls and referendums.
14. Offences committed against candidates standing for all elections would attract additional electoral sanctions. Campaigners play a vital role in the democratic process and it is right that they should not be abused or intimidated. Offences committed against those working to promote a particular candidate or party should attract additional electoral sanctions.
15. The offence will be applicable only during the election or referendum period, which will start at least from notice of poll and close seven calendar days after close of poll.

## **Section 2: Clarification of the electoral offence of undue influence**

16. The existing offence of undue influence is designed to prevent intimidation of the elector. Following both the Review by (then) Sir Eric Pickles into electoral fraud, and the Law Commission's recommendations from their Interim Report, this consultation considers (a) providing clarity of the offence; and (b) intimidation at polling stations.



### **Section 3: Digital Imprints Electoral Campaign Material**

17. Recent years have seen rapid increases in the use of digital campaign techniques at elections in the UK, including increasingly sophisticated use of data and more personalised and targeted messaging. In a new digital age, the Government is committed to ensuring transparency for voters. Allowing voters to see who is behind digital electoral material will help them to assess the credibility of campaign messages and make an informed choice on the arguments presented.
  
18. This consultation covers high level questions around the definition of electoral material and the timeframe for when the rules should apply, what forms of digital communications should be covered and how to overcome technical difficulties in a digital context to ensure that the imprint is well incorporated. It also considers how new rules for digital imprints will be enforced and who should be liable.

## List of Consultation Questions

We would welcome responses to the following questions set out in this Consultation Paper.

**Question:** In what capacity are you giving the information? Eg: as a voter, an elected representative, an organisation.

### Section 1: A New Electoral Offence

**Question 1:** Do you agree that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour, such as those identified by the CSPL, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?

**Question 2:** We propose that the new electoral offence will attract the sanction of being barred from standing for elected office for 5 years. Do you agree?

**Question 3:** We do not propose that the new electoral offence should remove an offender's right to vote. Do you agree?

**Question 4:** We think that offences committed against candidates and campaigners during all types of polls should attract the additional electoral sanctions. Do you agree? If not, please explain.

**Question 5:** We propose that offences against campaigners during a referendum campaign should attract the additional electoral sanctions. Do you agree? If not, please explain.

**Question 6:** We propose that the existing definition of when someone becomes a 'candidate', with reference to any election campaign, would be clear and workable for the new electoral offence. Do you agree? If not, please explain.

**Question 7a:** Do you think the new electoral offence should extend to campaigners? If so, please explain which campaigners you think should fall within the scope of the new electoral offence, given the above considerations. If not, please explain.

**Question 7b:** If you think that campaigners should be included, do you have a suggestion as to how this could be done for use in the relevant legislation?

**Question 8:** Do you agree that protection should start from the period of notice of elections? If not, please explain.

**Question 9:** Should there be a period before notice of election for a scheduled poll during which this offence applies? If so, what would be a suitable time period of protection? If not, please explain.

**Question 10a:** Do you agree that protection, under the new electoral offence, should end seven calendar days after the close of poll?

**Question 10b:** If not, when do you think protection under the new electoral offence should end?

**Question 11:** Do you agree that protection, under the new electoral offence, should apply during the referendum period, as determined by the relevant referendum legislation? If not, please explain.

**Question 12:** Do you agree that a new electoral offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner?

## **Section 2: Intimidation of Voters - Undue Influence**

**Question 13:** Do you agree that the law of undue influence requires greater clarity in its application? If not, please explain.

**Question 14:** If it is decided to simplify the existing offence of undue influence, we do not propose to materially change the element of the offence relating to physical acts of violence or threat of violence. Do you agree? If not, please explain.

**Question 15:** Any act, whether lawful or unlawful, which is intended to cause harm to the individual and is carried out with the intention to make a person vote, vote in a particular way, or deter them from voting and should be captured within this offence. Do you agree? If not, please explain.

**Question 16:** We propose to retain reference to 'direct and indirect' acts which cause the elector harm. Do you agree? If not, please explain.

**Question 17:** We propose that the redefined offence retains reference to offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm. Do you agree? If not, please explain.

**Question 18:** We propose that the scope of section 115(2)(a) continues to include those acts which are carried out before and after the election. Do you agree? If not, please explain.

**Question 19:** Do you agree that the offence should continue to cover actions of duress? If not please explain

**Question 20:** Any redefined offence would still look to cover actions of trickery. Do you agree? If not, please explain.

**Question 21:** Do you agree that the scope of the offence should remain the same, subject to including a specific reference to intimidation at polling stations? If not, please explain.

**Question 22a:** Do you agree that the offence should specifically capture intimidatory behaviour carried out inside or outside of the polling station? If not, please explain.

**Question 22b:** If so, do you agree that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint?

### **Section 3: Increasing Transparency in Digital Election Campaigning**

**Question 23:** Do you as a voter believe that the current system as applied to printed election material promotes transparency and gives confidence in our systems?

**Question 24:** Should the imprint rules in PPERA be commenced for Northern Ireland?

**Question 25:** Should the imprint rules for Northern Ireland elections be the same as for the rest of the United Kingdom?

**Question 26:** What are your views on whether imprints should be required on all digital electoral material or only where spending on such material has been over a certain threshold?

**Question 27:** Should any new rules on digital material only apply to what we would already consider to be “electoral material” or should broader categories be considered?

**Question 28:** Do you agree that the requirement for imprints on election material can arise all year round, not just during election periods?

**Question 29:** Should we prioritise regulating certain forms of digital communications over others? If so, please give reasons.

**Question 30:** What sort of mechanisms for including an imprint should be acceptable? Are there any technical difficulties that would need to be overcome to include text which is not accessible without a further step?

**Question 31:** Would you find an imprint in an overarching space such as a ‘bio’ on Twitter sufficiently visible?

**Question 32:** How can these mechanisms be future-proofed in expectation of developments in media and technology?

**Question 33:** Should those who subsequently share digital electoral material also be required to include an imprint and, if so, whose details should be on it - theirs or the original publisher?

**Question 34:** Do you think the responsible bodies have sufficient enforcement powers?

# Scope of Consultation

Topic of consultation	This consultation seeks views on: <ul style="list-style-type: none"><li>• the proposed electoral offence of intimidation of candidates and campaigners;</li><li>• Consolidation and clarification of the electoral offence of undue influence;</li><li>• extending electoral law requirements for an imprint on campaigning materials to electronic communications.</li></ul>
Purpose of consultation	The purpose of the consultation is to gather views from interested parties on the form and nature of the proposed offence of intimidation, extending imprints to electronic communications, and clarifying the offence of undue influence, with a view to reaching agreement on all three issues.
Target of consultation	This consultation is aimed at stakeholders and other interested parties.
Responses	Responses to the consultation should be sent to the address below by 22 October 2018.
Next Steps	The Government will consider all responses to the consultation received. The Government's response to those contributions, including a summary of responses will be published on GOV.UK in Winter.

## HOW TO RESPOND TO THIS CONSULTATION

Please send responses to this consultation to:  
elections@cabinetoffice.gov.uk

Or to:  
Electoral Administration Team  
4th Floor Orange Zone  
Cabinet Office  
1 Horse Guards Road  
London  
SW1A 2HQ

The Consultation will close on 22 October 2018.

### Northern Ireland

Electoral policy and law for Northern Ireland is the responsibility of the Secretary of State for Northern Ireland and consultation responses will be shared with the Northern Ireland Office.

### **Complaints or comments**

If you have any complaints or comments about the consultation process you should contact the Elections Administration Team at the above address.

### **Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available online at [www.gov.uk/government/publications](http://www.gov.uk/government/publications). Alternative format versions of this publication can be requested by emailing [elections@cabinetoffice.gov.uk](mailto:elections@cabinetoffice.gov.uk).

### **Publication of response**

A paper summarising the responses to this consultation will be published on the GOV.UK website publications page in due course.

### **Representative groups**

Representative groups are asked to include a summary of the people and organisations they represent with their response.

### **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you wish the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

### **Consultation principles**

The principles that Government Departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles. These principles can be accessed online here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

# 1. Introduction

- 1.1. Open and robust debate is an essential and valuable part of every democracy. It is crucial that every member of society can engage in our democracy and that elected representatives are open to scrutiny. However, in recent years we have seen an increasingly hostile political environment, where aggression and overt intimidation have entered into political life. The most tragic example of this is the brutal murder of Jo Cox by an individual who declared himself to be a political activist.
- 1.2. To address this issue, the Prime Minister invited the Committee on Standards in Public Life, an independent advisory public body, to conduct a review into the abuse and intimidation of Parliamentary candidates.
- 1.3. The objective of the request for the review was to examine the extent of intimidation in public life and whether existing measures address this growing problem sufficiently.
- 1.4. The Committee published its report “Intimidation in Public Life: A Review by the Committee on Standards in Public Life” in December 2017. The report set out recommendations to tackle intimidatory behaviour, for consideration by a number of stakeholders, ranging from Government to social media companies.
- 1.5. This consultation paper will examine and consult on the following issues:
  - 1.5.1. The Committee’s recommendation that the Government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and campaigners. The consultation will examine this recommendation in a wider sense, including whether candidates and campaigners at all polls, not just General Elections, require additional protection under a new electoral offence;
  - 1.5.2. Consolidation and clarification of the electoral offence of undue influence (as proposed by the Government in its response to the CSPL report);
  - 1.5.3. The Committee’s recommendation (though not as a numbered recommendation) that the electoral law requirements for an imprint on campaigning materials be extended to electronic communications.
- 1.6. Through this consultation paper we aim to facilitate debate and opinion on the merits of these three issues, within the broader context of promoting an open, fair and inclusive democracy.
- 1.7. We hope that this paper goes some way to drawing attention to the significant impact intimidatory behaviour can have during election and referendum periods, as well as promoting awareness of the existing protective measures available.

## **2. Intimidation in Public Life: A Review by the Committee on Standards in Public Life**

- 2.1. The Committee's report is a comprehensive review into the scale of intimidation against Parliamentary candidates and others in public life. Examining the impact that this behaviour has on our political culture, the report outlines the risks posed to our democratic processes.
- 2.2. The Committee gathered evidence from Parliamentary candidates, members of the public and expert organisations. It heard that in recent years that intimidation of Parliamentary candidates and others in public life has increased. This behaviour includes harassment, abuse, threatened violence including sexual violence, and damage to property. In particular, it found that intimidation is heightened during the electoral period.
- 2.3. Although intimidation in public life is not a new phenomenon, the Committee noted that the scale of intimidation is now shaping public life.
- 2.4. Evidence from the report indicated that this type of behaviour can deter an individual from running for office, and curtail everyone's freedom to engage in informed public discourse.
- 2.5. The Committee was clear that addressing this issue was not about preventing the public from scrutinising those who represent them, rather it is about 'protecting the fundamental structures of political freedom.' Intimidation creates a hostile environment, and poses significant risk to the integrity of the democratic process. Candidates must be able to engage in robust political debate, without being shut down due to abuse. The Committee was hopeful that our political culture can be protected if action is taken.
- 2.6. To address this increasingly hostile atmosphere the Committee made a total of 33 recommendations calling on all involved to play their part in reducing the damage being caused to public life. The recommendations were directed at different organisations, including the Government, social media companies, political parties, local authority monitoring officers, MPs, police, press regulation bodies and news organisations.
- 2.7. The recommendations addressed a broad range of issues, from calling on political parties to develop a joint code of conduct on intimidatory behaviour, to requesting that social media companies implement automated techniques to identify intimidatory content, and to publish data on the number of complaints they receive.
- 2.8. The Committee was clear that its recommendations stand as a package and should be considered and implemented together. In doing so, it is hoped that the



recommendations will provide a robust response sufficient to protect our representative democracy.

- 2.9. The Committee acknowledged that public bodies acting alone will not be enough to tackle this issue in its entirety. It called upon those participating in public debate to maintain high ethical standards and shape the public political culture by recognising others' freedom to hold differing points of view and an individual's freedom to participate in public life.<sup>3</sup>

“We have heard evidence that intimidatory behaviour can stem from of our current political culture, with low levels of trust in politicians and a feeling of frustration and alienation by some people. Against that backdrop, it is down to all in public life to play their part in restoring and protecting our public political culture by setting a tone which respects the right of every individual to participate and does not, however inadvertently, open a door to intimidation.” Lord Bew, Chair of the Committee<sup>4</sup>

### 3. Government Response

- 3.1. The Government responded to the Committee's report on 8 March 2018, welcoming and supporting the Committee's findings.<sup>5</sup> It recognises that intimidation in public life is a serious issue which must be addressed. To tackle this, as well as tackling intimidation in private life, the Government is undertaking a broad range of cross departmental initiatives.
- 3.2. At the beginning of this year, the Government published the Digital Charter - a rolling programme of work to agree standards and rules for the digital world and put them into practice. The charter aims to make the UK the best place to be a digital citizen and the safest place to be online. It includes a range of actions including plans for a social media code of practice and transparent reporting. Additionally the Data Protection Act, which came into force in May 2018, gives more power to individuals to control how their data is used and manage their digital experience.
- 3.3. The Government has asked the Law Commission to conduct a review into online abusive communications to ensure that criminal law is sufficient to tackle abusive behaviour online.
- 3.4. The Ministerial Code, which sets out the standards of conduct expected of ministers, has been updated to ensure there is a culture of respect at the centre of

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<sup>3</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, chapter 4

<sup>4</sup> Lord Bew, Chair of the Committee o Standards in Public Life, 13 December 2017, available at [www.gov.uk/government/news/intimidation-in-public-life-committee-publishes-report](http://www.gov.uk/government/news/intimidation-in-public-life-committee-publishes-report) [accessed on 26.06.2018]

<sup>5</sup> Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life, 8 March 2018, available at <https://www.gov.uk/government/publications/government-response-to-the-committee-on-standards-in-public-life-review-of-intimidation-in-public-life> [accessed on 27.06.2018]

public life. Additionally, a code of conduct exists to ensure that all those in Government observe the highest standards of behaviour and conduct.

- 3.5. It is important to recognise, in accordance with the Committee's recommendations, that responsibility also lies with social media companies, political parties, enforcement officials and individuals. This consultation is just one element in a range of recommendations made in the Committee's report. The strength of this proposal will take full effect only if implemented alongside the package of recommendations aimed at a range of stakeholders to address the breadth of the problem. We call upon all these groups to play their part in ensuring that there is adequate focus on the prevention of intimidation.
- 3.6. The Committee emphasised the importance of nationally consistent enforcement and effective policing to give effect both to any new electoral offence and to the existing criminal law. In particular, it commented on the need to update the College of Policing Authorised Professional Practice (APP) guidelines to include additional guidelines on offences relating to Parliamentary candidates.<sup>6</sup> The Committee also emphasised the need for further guidance to make clear to candidates what behaviour might constitute a criminal offence and how candidates might respond if they experience it.<sup>7</sup> Each of these proposals would make an important contribution to deterring criminal behaviour by clarifying what behaviour is impermissible, encouraging reporting, and lending greater focus to the activities of the police and the Crown Prosecution Service.
- 3.7. The effective implementation of any proposed policy requires cooperation and support from the police. In particular, we note how any proposal on the recommendation to introduce a new electoral offence would work in tandem with the Committee's recommendation to ensure that local police forces have adequate training to allow them to investigate offences effectively. We envisage that designated Special Points of Contacts in relation to elections could play a key role in the enforcement of any proposal for a new electoral offence.
- 3.8. A new electoral offence of intimidating candidates and campaigners will not, on its own, prevent intimidation during the electoral period. This is just one strand of a package of work to tackle this issue, and we call upon all those involved in public life to take responsibility and play their part in maintaining a healthy political culture.

## Section 1: A New Electoral Offence

4. CSPL recommended the "Government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners."<sup>8</sup> They argued that intimidation of such people "is of particular

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<sup>6</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, p67

<sup>7</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, p67

<sup>8</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, p22

significance because of the threat it poses to the integrity of the democratic process and of public service more widely.”<sup>9</sup> The report highlighted that the two benefits of introducing a new electoral offence of intimidation would:

- a) serve to highlight the seriousness of the issue; and
- b) serve as a deterrent to those specifically targeting candidates and campaigners.

## 4.1. Rationale for a new electoral offence

What is intimidatory behaviour?

- 4.1.1. The CSPL’s report describes intimidation as “words and/or behaviour intended or likely to block or deter participation, which could reasonably lead to an individual wanting to withdraw from public life.”<sup>10</sup>
- 4.1.2. During election periods candidates and campaigners may be subject to heightened abuse. Intimidation in this context is distinct from legitimate political discourse. Intimidatory actions are not political argument or reasonable discussion. Intimidation of this kind is done to degrade an individual who has put themselves forward in the public sphere to serve for the good of others. It is intended to cause the individual to withdraw from public spaces. These spaces could be social media, public events, political discourse or even from public life altogether.
- 4.1.3. Intimidation can take place online and offline. In recent years the rise of social media platforms has contributed to a significant increase in incidents of intimidation. Platforms such as Facebook and Twitter are regularly used as mediums for intimidation, as well as private email. The ability to sit shielded behind a device or a screen feels much more removed than carrying out the intimidatory activity in person or even putting pen to paper. As a result, social media has created an arena where this form of behaviour has become more prevalent.
- 4.1.4. Through platforms such as Twitter and Instagram, those in the public eye, as well as ordinary people, are within reach and more contactable than ever before. This digital progress can have a visible positive impact on democratic engagement. It is, though, a double edged sword, as it has heightened the vulnerability of candidates, campaigners and everyone during the electoral period. Abuse is carried out not just during working hours, but on platforms running 24/7.
- 4.1.5. British democracy has always been robust and oppositional. But a line is crossed when disagreement mutates into intimidation. Electors have a right to make their choice at the ballot box based on high quality, open, and informed debate. As highly personal attacks obscure policy plans or professional capabilities, voters’ ease of choice is reduced and trust in our political system is undermined. Through

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<sup>9</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p16

<sup>10</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p26

this, it is evident that a failure to tackle intimidatory behaviour in the political sphere affects everyone.

- 4.1.6. The following extracts of evidence given to CSPL reflect a toxic environment where people have genuine concerns about their personal safety and that of their colleagues.

“Threats have varied from...gestures of slitting my throat (witnessed by my then 6 year old daughter)...to requesting sexual activities including one disgusting comment...I’ve found it extremely embarrassing and humiliating as well as frightening.” Sarah Leister-Burgess.<sup>11</sup>

“It is hard to explain how it makes you feel. It is anonymous people that you’ve never met, true, but it has a genuinely detrimental effect on your mental health. You are constantly thinking about these people and the hatred and bile they are directing towards you.” Rachel Maclean MP<sup>12</sup>

“I spoke on a number of occasions in the House of Commons in different committees about the rights of women. To which I suffered daily attacks on Twitter, on my email system or endless online articles written about how people wished to see me raped, they wished to come to find my sons hanging from a tree because I don’t care about men...” Jess Phillips MP (quoted by National Democratic Institute for International Affairs)<sup>13</sup>

- 4.1.7. Comments reflect that some individuals would have refrained from standing if they had known in advance of the abuse they would be exposed to:

“I wouldn’t have given up my job and stood for election if the abuse I would receive had been explained to me. I wouldn’t have. I believed I had something to contribute with lengthy experience in the NHS, but I have a young family, and I wouldn’t have wanted to put them through it. Their wellbeing is the priority.” Dr Lisa Cameron MP<sup>14</sup>

- 4.1.8. Evidence also indicates that campaigners may be deterred from campaigning on behalf of candidates, parties, or referendum outcomes, a fundamental activity that boosts democratic engagement.

“Intimidation may well put people off even acting as volunteers and activists for political parties at a grassroots level, which is often the first step towards public roles.” William Wragg MP<sup>15</sup>

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<sup>11</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p26

<sup>12</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p26

<sup>13</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p27

<sup>14</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p29

<sup>15</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p28

- 4.1.9. It is not right that individuals should be deterred from taking part in the democratic process. This threat is not just to the individual's safety and well-being, but threatens our democratic process, which matters to everyone. It is right that we act to protect individuals to ensure that no one is deterred from standing or actively campaigning and engaging in the democratic process.
- 4.1.10. Comments were from across party lines but also reflected a greater impact on women and younger, less experienced, people entering the campaigning environment.
- “Whilst experienced party members and I could handle ourselves, the experience was very off-putting for new members, particularly young and elderly activists. By the end of the campaign we feared for their safety and new activists were only sent out with experienced activists.” Councillor Ameet Jogia<sup>16</sup>
- 4.1.11. The extent of this behaviour is illustrated by the following statistics cited by CSPL:
- “In a survey of 950 Parliamentary candidates from the 2017 general election, 33% of candidates reported ‘inappropriate behaviour’ by supporters of opposition parties and/or candidates. 68% of the 118 Conservative candidates who responded to the survey experienced inappropriate, intimidatory behaviour during the 2017 election campaign, compared to 36% of the 229 Labour candidates.”<sup>17</sup>
- 4.1.12. According to evidence submitted by Amnesty International to the CSPL, no female MP who was active on Twitter has been free from online intimidation.<sup>18</sup>
- 4.1.13. Those standing for office put themselves in the public eye. With this, it is expected that freedom of expression will form part of a vibrant and robust debate. However, there is no place for the bullying, grossly offensive or dangerous behaviour.

### International examples

- 4.1.14. International comparisons revealed a number of examples of other democracies struggling with the issue of intimidation and abuse.
- 4.1.15. Laura Boldrini, the president of the Italian Chamber of Deputies launched a campaign in February 2017 against fake news and online abuse. She acknowledged the impact this type of behaviour could have on a progressive democracy. In speaking to BuzzFeed, Laura Boldrini said:

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<sup>16</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p29

<sup>17</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p48

<sup>18</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p27

“It is unacceptable that women, after numerous battles to defend our rights and gain respect, now find ourselves constantly insulted and abused online, often having to face a choice: accept this kind of humiliation or stay away from the internet.”<sup>19</sup>

- 4.1.16. America has taken specific action to protect certain federal officials from possible. Chapter 41 of the US Code criminalises threats against the President and ‘other federal officials.’ ‘Other federal officials’ could include a range of individuals, from past to future Presidents and Vice Presidents, and the immediate family of those covered. Individuals found guilty under this offence could face up to five years in prison and/or up to a \$250,000 fine.<sup>20</sup>
- 4.1.17. By prohibiting offences against the most senior federal officials, it protects the course of the US democratic process. Whilst aimed at specific individuals, this offence indirectly protects everyone in the US democracy.

### Impact of intimidation

- 4.1.18. Intimidation of candidates and campaigners during election campaigns can lead to the loss of voices from democracy by forcing candidates out of the debate. Female, Black, Asian, Minority Ethnic candidates are underrepresented in public life and an Amnesty International study demonstrated that these individuals were disproportionately targeted in the last General Election.<sup>21</sup> Through creating a climate of fear and silencing, intimidation can discourage people from entering politics in the first place. Acts of intimidation risk undermining the progress society has made in forming more representative elected bodies.
- 4.1.19. This stark quote in the CSPL report highlighted the potential long term impact of intimidation on our progressive democracy:
- “If this issue is not addressed, we could be left with a political culture that does not reflect the society it should represent.”<sup>22</sup>
- 4.1.20. This situation needs to be addressed. A new electoral offence during the election period would rightly add further protection to individuals looking to undertake public service. It would support a fair and equal democracy, particularly in the current digital age. Additional sanctions would act as a deterrent against intimidatory behaviour.

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<sup>19</sup> Nardelli, A (February 2017) *The President Of Italy's Chamber Of Deputies Is Launching A Campaign Against Fake News*, BuzzFeed online, available at: [https://www.buzzfeed.com/albertonardelli/the-president-of-italys-lower-house-says-fake-news-is-fuelli?utm\\_term=.gfJoR3yDd#.exaVzg2Qx](https://www.buzzfeed.com/albertonardelli/the-president-of-italys-lower-house-says-fake-news-is-fuelli?utm_term=.gfJoR3yDd#.exaVzg2Qx) [accessed 20.06.2018]

<sup>20</sup> Legal Information Institute, available at [https://www.law.cornell.edu/u\\_scode/text/18/part-1/chapter-41](https://www.law.cornell.edu/u_scode/text/18/part-1/chapter-41) [accessed 20.06.2018]

<sup>21</sup> Amnesty International UK, [www.amnesty.org.uk/online-violence-women-mps](http://www.amnesty.org.uk/online-violence-women-mps) [accessed 25.06.2018]

<sup>22</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, col 1, p29

- 4.1.21. A new electoral offence would highlight the seriousness of the offence, showing that society will not tolerate the risk to democratic participation facing everyone because of intimidation in the electoral period.

## **4.2. Construction of the new electoral offence**

- 4.2.1. In considering how such an offence might be framed, the Committee made some important points which have informed the Government's own consideration of this proposal:
- i. the Committee concluded that the current criminal law is sufficient to cover the full range of cases of intimidation. Its report sets out many of the offences informing this conclusion (at page 58 of the report and at Annex A). The offences listed range from assault at common law, through public order and harassment offences, to offences in relation to malicious communication - including when committed in electronic form. The Committee's conclusion was that no behaviour which is currently legal should be made illegal;
  - ii. but the Report did conclude that the Government should consult on whether an offence "in electoral law" should be established to ensure that specific electoral sanctions should apply in cases during an election period to reflect the threat that intimidation of Parliamentary candidates and their campaigners poses to the integrity of elections.
- 4.2.2. The Committee found that existing criminal laws surrounding intimidation are sufficient for both online and offline offences. This conclusion was supported by the Crown Prosecution Service. We agree that current criminal law sufficiently prohibits a large and diverse range of intimidatory acts.
- 4.2.3. It is difficult, in practice, to balance the Committee's wish for a clear, tightly defined offence with the need to make sure a new electoral offence does in fact, capture all the behaviour which is currently criminal. The Government believes that the most effective way to realise the Committee's recommendations is to apply appropriate electoral sanctions to any of the offences identified by the Committee where that offence is committed against a candidate or a relevant campaigner during an electoral period. That would avoid the sort of duplication of current criminal law that could easily make enforcement more difficult, and make it clear beyond argument that all existing criminal behaviour, committed in appropriate circumstances, could attract electoral sanctions.
- 4.2.4. There are many examples in the law of England and Wales where an objective of legislating was to ensure the issue at hand was specifically treated with a firm response, despite existing law already prohibiting the activity.

- 4.2.5. In light of these considerations, we propose to create a new electoral offence which would apply electoral sanctions to existing criminal offences which capture intimidatory behaviour, including those offences identified by the CSPL (Annex A) when such offences take place against a candidate or campaigner during an election period. The new electoral offence would be classified as a corrupt practice for the purposes of the Representation of the People Act 1983 (RPA 1983). In addition, we would apply the equivalent relevant offences which exist in Scotland and Northern Ireland.
- 4.2.6. This approach ensures that the electoral sanctions would apply only to behaviour which is currently illegal under the criminal law. We consider that the list of offences identified by CSPL (Annex A) is a non-exhaustive list. Should we take forward this new electoral offence after the consultation, we will further examine existing legislation and make sure our new legislation can keep pace with any future criminal legislation too.

#### Question 1

- **Do you agree that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour, such as those identified by the CSPL, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?**

### 4.3. Penalty for the new electoral offence

- 4.3.1. CSPL pointed to the benefit of applying appropriate electoral sanctions to offences constituting intimidatory behaviour. Additional electoral sanctions would work to deter intimidatory behaviour from taking place during the election period, allowing those engaging in the electoral process to participate in peace.

#### Electoral Sanctions

- 4.3.2. Under the RPA 1983, there are a number of existing electoral offences, which are either a 'corrupt' or 'illegal' practice. We therefore consider it appropriate to include the new offence under this Act and apply suitable sanctions.
- 4.3.3. Section 168 and 169 of the RPA 1983 set out the sanctions where a person is found guilty in the criminal court of a corrupt or illegal practice under the Act. These range from a fine to a maximum of two years in prison.
- 4.3.4. Sections 173 of the RPA 1983 attaches additional penalties to persons found guilty of corrupt or illegal practices under the Act, prohibiting those individuals from standing or holding any elected office for a period of three or five years respectively. A corrupt practice is reserved for the most serious of electoral offences, and in some cases, removes an individual's right to vote for a period of five years.



- 4.3.5. Section 160 applies the same civil sanctions, referred to under section 173, where a person has been reported by an election court as being personally guilty of a corrupt or illegal practice.
- 4.3.6. We propose that the new electoral offence should be classed as a corrupt practice. The offence will be similar to the existing offence of undue influence, which is concerned with the intimidation of voters, and is classified as a corrupt practice. We, therefore, consider this to be the logical comparator. If a person is found guilty of committing the offence in question in a criminal court or has been reported by election court as personally guilty of the offence (if the claim was brought alongside a petition challenging the outcome of a poll) the individual would be prohibited from standing or holding any elected office for a period of five years.
- 4.3.7. This additional sanction would add a further deterrent to this type of behaviour. It would also create further consequences for parties as good candidates could be prohibited from standing, supporting a separate recommendation by CSPL which called on political leaders to take action, and for parties to set the standard and the tone of the debate.<sup>23</sup>

#### Removal of the right to vote:

- 4.3.8. If an individual is found guilty of the following corrupt or illegal practices under the RPA 1983, a sanction removing the right to vote is imposed:
- i. personation (under section 60);
  - ii. proxy and postal fraud (under section 62A and 62B); and
  - iii. other voting offences (under section 61).
- 4.3.9. These are offences which are at the heart of enabling (or seeking to enable) an individual to cast a vote fraudulently and can take away another's right to vote. In the case of intimidating a candidate or campaigner, the perpetrator is not taking away another's right to vote but rather potentially impacting for whom they may vote. We do not propose that individuals found guilty of the new electoral offence of intimidation have their voting rights removed, but are interested to seek views as to whether this is the correct approach and if this potential sanction should be available to the courts.

#### Questions 2 and 3

- **We propose that the new electoral offence will attract the sanction of being barred from standing for elected office for 5 years. Do you agree?**
  
- **Do you think the new electoral offence should remove an offender's right to vote?**

#### Criminal Sanctions

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<sup>23</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'* Col 1, pg 15

- 4.3.10. As we are not proposing to create a new criminal offence, the existing criminal sanctions will apply and, therefore, the punishment will adequately reflect the severity of the crime as committed by the perpetrator. The criminal sanctions attached to the wide ranging intimidatory offences, (as indicated by the list at Annex A), range from a fine to imprisonment for up to 10 years. This will ensure that the punishment matches the crime committed and the strong deterrent of both the existing and new offences apply.
- 4.3.11. When a court is considering an appropriate sentence, it must weigh up the seriousness of the offence, which is determined by the culpability of the offender and the harm caused by the offence. Aggravating factors are circumstances which increase the seriousness of a criminal act, and are, therefore, to be considered as part of the sentencing process, which may result in a higher sentence.
- 4.3.12. Within existing sentencing guidelines, aggravating factors include where an “offence is committed against those working in the public sector or providing a service to the public.”<sup>24</sup> Accordingly, when sentencing, the courts may consider interference with the democratic process to be an aggravating factor.

#### **4.4. Which elections would be covered?**

- 4.4.1. In its response, the Government committed to considering the CSPL recommendation but also referenced a need to think wider. We believe the scope should be as CSPL recommended; covering candidates and campaigners, but we believe it should cover candidates and campaigners at all polls, not just those at General Elections.
- 4.4.2. In particular, local elections can be hard fought. This could indicate that intimidation and abuse is likely there also.
- 4.4.3. Additionally, we acknowledge that it is not just polls contesting seats that can attract intimidatory behaviour. It is right to extend protection to campaigners in referendum campaigns. In line with the usual process for referendums, we intend that the rules for referendums would apply the new electoral offence with appropriate modifications.

#### **Questions 4 and 5**

- **We think that offences committed against candidates and campaigners during all types of polls should attract the additional electoral sanctions. Do you agree? If not, please explain.**
- **We propose that offences against campaigners during a referendum campaign should attract the additional electoral sanctions. Do you agree? If not, please explain.**

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<sup>24</sup> Sentencing Guideline Council. 2004 ‘*Overarching Principles: Seriousness*’. Pg 7, para 1.23.

## 4.5. Who would be protected?

- 4.5.1. We have set out how intimidatory behaviour harms everyone and protections should be provided to all participants in elections where relevant and necessary. Voters are already covered by existing legislation in both electoral and criminal law through the offence of undue influence, which aims to protect voters from undue pressure to vote in a particular way, or not to vote at all. We believe that this approach is right. The rules around undue influence need further consideration to identify whether a simpler and more readily understandable and/or applicable construction can be devised. This is considered separately in Section 2 of this document. We do not believe there is a need to extend the new electoral offence to protect the voter.
- 4.5.2. In its response to the CSPL paper, the Government acknowledged that there may be a need to consider whether Returning Officers and their staff need additional protections. After consideration, it concluded that, apart from limited examples, there is not a general ‘culture’ of electoral administrators being abused or intimidated. This is an area to observe for the future, but we do not propose the new electoral offence would include additional protections for Returning Officers and their staff who are adequately protected under criminal law.

## Candidates

- 4.5.3. We cannot lose enthusiastic and passionate individuals who are committed to public service because of intimidation. Protecting individuals who want to put themselves forward for candidacy would help to ensure that good, potential public servants would not be deterred from standing.
- 4.5.4. The Committee recommended that the Government consult on whether a new electoral offence should be created for Parliamentary candidates. The Government believes that equal protection should be offered to candidates standing for all elections.
- 4.5.5. In order to establish whether an individual is a candidate, and therefore, whether an offence committed against them would attract additional penalties, we can look to existing provisions under the RPA 1983.
- 4.5.6. A person who has previously expressed an interest in standing for an election becomes a candidate when an election is ‘officially declared’ (either by dissolution of Parliament, issue of Writ for a Parliamentary by-election, or in other elections, on the last day for publishing the notice of election.) Subsequently, any individual who is declared or nominated as a candidate, is a candidate from that point on.

- 4.5.7. We propose that we would adopt the same approach for determining if a candidate is a candidate for the purpose of the new electoral offence.

#### Question 6

- **We propose that the existing definition of when someone becomes a ‘candidate’, with reference to any election campaign, would be clear and workable for the new electoral offence. Do you agree? If not, please explain.**

## Campaigners

- 4.5.8. The CSPL report recommended that a specific electoral offence should also extend to ‘party campaigners’. CSPL highlighted particular instances where campaigners were faced with instances of intimidation.<sup>25</sup> The Government considers that campaigners play an important role in the electoral process, and therefore agrees with this recommendation.
- 4.5.9. There is no current definition of who is classed as a ‘party campaigner’ that could be suitable for the purposes of the new electoral offence. As a result, how ‘campaigners’ are to be defined will be an important consideration. The new electoral offence would need to be clear on this point in order for someone to be identifiable as a campaigner by a reasonable person.
- 4.5.10. To provide legal certainty, it must be possible to form a tight definition of ‘campaigner’. This could include, for example, an employee of a registered party or independent candidate, or a member of a registered political party. However, we see a number of concerns with a narrow definition. This could exclude those campaigners who work on independent campaigns, referendum campaigns, and those that volunteer. It should not matter *who* that person is, or whether the individual has a formal tie to a party via employment or party membership; in order to protect the quality of the political debate, it is important that offences committed against all those looking to promote or procure a particular outcome at an election are considered. We are not looking at protecting certain individuals, but we are looking to protect a high quality debate based on policy rather than disinformation and avoid such debate being curtailed by abuse.
- 4.5.11. However, in taking this approach, we acknowledge that there are complexities in practice of distilling a definition of who a ‘campaigner’ is for these purposes. The term ‘campaigner’ could cover individuals who undertake varying degrees of actions, responsibilities and frequency in participation. There is a risk that by casting the net widely, there is less certainty about who is and is not a campaigner, which may make the offence more difficult to prosecute. Uncertainty in any elements of the definition could give rise to real injustice.
- 4.5.12. In practice, there are evident difficulties in establishing who should be classed as a party campaigner for the purposes of the new electoral offence of intimidation. To

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<sup>25</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, p28

extend the new electoral offence to only candidates risks the change being seen as protecting politicians, when in fact democracy includes many more who participate actively in public life. It could place limitations on the impact of the new electoral offence in promoting a healthier public political culture and protecting the integrity of the debate. However on the other hand it is important that any definition must also be useable by enforcement agencies.

- 4.5.13. We will work with the CPS to try to establish a satisfactory and precise definition of campaigner.

#### **Questions 7a and 7b**

- **Do you think the new electoral offence should extend to campaigners? If so, please explain which campaigners you think should fall within the scope of the new electoral offence, given the above considerations. If not, please explain.**
- **If you think that campaigners should be included, do you have a suggestion as to how this could be done for use in the relevant legislation?**

## **4.6. Applicable time period**

- 4.6.1. In line with CSPL's recommendation, the offence should be applicable only during the election period. That is a particular and important point in the democratic process at which the effect of intimidatory behaviour could have significant effect. It is also a time during which tensions are heightened, and instances of intimidation of candidates and campaigners are more likely.
- 4.6.2. The time period in which the new electoral offence would be committed must be clear, consistent and capable of being known, including by offenders. Any offence carried out outside of this clearly defined time period would be protected under existing criminal law, for example an offence carried out against a successful candidate; we are not proposing a permanent privilege.
- 4.6.3. We propose that protection during the election period would start at least from the period of notice of elections, which is 25 days before polling day. It is clear from this point that a campaign can begin as an election is formally publicised to take place. Protection from this time, until the end of the election period, would be applied to both candidates and campaigners.
- 4.6.4. We acknowledge that there could be a period of time before notice of election in which an individual may have made a declaration to stand, or an individual could be formally accepted as the party candidate. An individual may face intimidation during this period.

4.6.5. This period is not consistent across candidates or polls. If we were to use this as a starting point, the time period would not be sufficiently clear and capable of being known. We do acknowledge the scope for candidates to be deterred by the allegations and threats of others prior to notice of elections, so we support and encourage the CSPL recommendation that political parties continue to set clear expectations about behaviour of their members and supporters, prohibiting intimidatory behaviour and ask that party members challenge intimidatory behaviour, both inside and outside of the electoral period.<sup>26</sup>

#### Questions 8 and 9

- **Do you agree that protection should start from the period of notice of elections? If not, please explain.**
- **Should there be a period before notice of election for a scheduled poll, for example during the long campaign period, during which this offence applies? If so, what would be a suitable time period of protection? If not, please explain.**

4.6.6. Similarly, for the new electoral offence to be effective, it must have a clearly defined end date. We propose that protection of candidates and campaigners needs to extend at least until the close of poll.

4.6.7. We considered the risk of intimidation in the time immediately after close of poll, particularly intimidation during the election count, and intimidation of candidates before they have formally accepted their seat or role. We propose that the election period protection would end seven calendar days after the close of poll. In considering an end date, we took into account the different times when a term of office commences, and the time frames during which an elected candidate must declare their acceptance of office, documented in the table below.

**Table 1: Timeframe after poll day**

<b>Election</b>	<b>Calendar day after the election on which term of office comes into place</b>	<b>Deadline for declaration of acceptance of seat or role</b>
Local Authorities (Elected Mayors)	4	2 months
Police and Crime Commissioner (PCC)	7	2 months
Local Elections in England and Northern Ireland	4	2 months
London and Greater London Authority	2	2 months

<sup>26</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, col 1, pg15

- 4.6.8. As the dates for different polls vary, setting a specific number of days from the close of poll would ensure the offence had consistent application and a clear end date.
- 4.6.9. We consider that seven calendar days after close of poll is sufficient time for individuals to accept their seat or role, whilst not extending the offence beyond a reasonable length of time. It also maintains a clear end date that is consistent, definable and applicable across all polls. This end date would apply equally to protect candidates and campaigners. We are aware that intimidation may still occur after this point. These instances would remain protected under existing law, and such offences would not attract additional electoral sanctions.

#### **Questions 10a and 10b**

- **Do you agree that protection, under the new electoral offence, should end seven calendar days after the close of poll?**
  - **If not, when do you think protection under the new electoral offence should end?**
- 4.6.10. We consider that the new electoral offence should also apply during referendum campaigns. Although offences against candidates would not be applicable at referendums, we consider that the new electoral offence should apply to offences against campaigners. We consider that the relevant time period covered by the new electoral offence would be the referendum period, as determined by the relevant referendum legislation.

#### **Question 11**

- **Do you agree that protection, under the new electoral offence, should apply during the referendum period, as determined by the relevant referendum legislation? If not, please explain.**

## **5. Ensuring the offence applies only in appropriate cases**

- 5.1. The Committee described the purpose of a new electoral offence in a number of different ways. It wanted the offence to relate to behaviour which might lead to anyone wanting to withdraw from public life. It suggested that it might be concerned, much more narrowly, with cases where a person intimidates a candidate or campaigner with the intention of unduly influencing the outcome of a particular election. It also discussed, in more general terms, the need to safeguard the integrity of elections and the democratic process at large.
- 5.2. It will be necessary, in framing any new offence, to ensure that it is clear enough to work in practice and at the same time is targeted specifically at the circumstances giving rise to particular concern: intimidation of candidates and campaigners during an election period.

- 5.3. This will present some challenges. It seems to us that none of the three approaches taken by the Committee would achieve the desired outcome on its own. For example, we do not think focusing on the supposed intention of an offender to affect the outcome of a particular election is sufficient to capture all of the circumstances with which we are concerned. In any event, we think that would be very difficult to prove in practice.
- 5.4. The purpose of a new offence does have to be clear if it is to work effectively. That purpose will be not just about influencing an electoral outcome, but it will have to relate to the status or activity of the victim of that intimidation. For example, a person who assaults a candidate for election should not be guilty of the new offence simply because their victim *is* such a candidate. That would capture a range of behaviour which, though serious, is entirely unrelated to the democratic process.
- 5.5. Nor is it enough for an offender simply to *know* that their victim is a candidate or campaigner. Even if an offender knows that their victim is standing for election, the offence may have nothing to do with that: the offence would not necessarily have been committed *because* the victim is a candidate, but for some other reason. The general criminal law would, of course, continue to apply in such cases. But in our view it would not be appropriate for electoral sanctions to apply as well.
- 5.6. It seems to us that the cases we are actually concerned with are those where an offence is committed against a particular candidate *because that person is a candidate*. The same would be true of campaigners. In making sure a new offence is tightly defined - as the Committee has suggested - we will need to make sure that electoral sanctions can be applied only in cases where a candidate or campaigner is intimidated *because they are a candidate or campaigner*.

#### Question 12

- **Do you agree that a new electoral offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner?**

- 5.7. This approach would not present the problems associated with the Committee's suggestion of linking an offence to an intention to affect the outcome of a particular election. It is precedent: there are already instances in the criminal law where offences which are motivated, wholly or in part, by hostility towards members of a particular group are singled out for particular sanctions (e.g., Part 2 of the Crime and Disorder Act 1998 in relation to racial and religious hatred). It seems to us that consideration of an alleged offender's motivation would be a practical solution in relation to a new offence relating to candidates and campaigners.

#### **Balance with Article 10 of the European Convention on Human Rights (ECHR)**

- 5.8. The CSPL report discussed in detail how communications must be 'grossly offensive' in order to be classed as intimidation. The report highlighted that a communication must



be 'more than simply offensive, shocking or disturbing.' Some members of the public may be shocked as to what level of communication is classed as 'grossly offensive'.<sup>27</sup>

- 5.9. We agree with the Committee's report findings that the demanding evidential standard is rightly set in order to strike compatibility with Article 10 of the ECHR. It is important to acknowledge that a new offence would not be a 'catch all' for any intimidation candidates received.

"Freedom of expression constitutes one of the essential foundations of a democratic society ... It is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also as to those that offend, shock or disturb ..." (Sunday Times v UK (No 2) [1992] 14 EHRR 123)

- 5.10. The new electoral offence will continue to respect the obligations of Article 10 ECHR and will not infringe of freedoms of expression. We propose that the new electoral offence will apply appropriate electoral sanctions to existing offences of intimidation. As a result, we would retain existing evidential standards and thresholds.

## **6. Territorial extent and application**

- 6.1. The new electoral offence would apply where offences are committed within the UK at Parliamentary elections and at other non devolved elections:

- i. UK Parliamentary elections;
- ii. Principal area local authority elections (in England);
- iii. Parish, town and community council elections (in England);
- iv. Greater London Authority elections (to the London Assembly and of the London Mayor);
- v. Mayoral elections in England;
- vi. Police and Crime Commissioner elections (in England and Wales)
- vii. Local Elections in Northern Ireland:
- viii. Northern Ireland Assembly elections;
- iv. Local and national referendums; and
- v. Mayors for combined authority elections.

- 6.2. The conduct of local government elections in Scotland and Wales and elections to the Scottish Parliament and to the National Assembly for Wales are now devolved in Scotland and Wales. The scope of the consultation will not apply to these elections. Police and Crime Commissioner elections in Wales remain a reserved matter. The conduct of local government elections and Assembly elections in Northern Ireland remains non devolved. Parliamentary elections are also not devolved.

- 6.3. We wish to capture all relevant criminal offences which exist throughout the UK. We will work with officials in the devolved administrations to ensure that the criminal

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<sup>27</sup> Committee on Standards in Public Life. 2017. *'Intimidation in Public Life'*, col 1, p64

legislation referred to in the new electoral offence would capture the relevant criminal law for Scotland, and Northern Ireland.

- 6.4. The Secretary of State for Northern Ireland will consider what is appropriate for Northern Ireland elections. We are keen to work with the Scottish and Welsh Governments on this issue and discuss any action they may wish to take.

## Section 2: Intimidation of Voters - Undue Influence

- 7.1 Being able to make a clear and informed choice at the ballot box requires electors to be able to consider the debate and the options put before them, and to make their choice without being subject to unwanted attentions when doing so.
- 7.2. CSPL's recommendations targeted the quality of the debate through considering how to ensure that the pool of individuals putting themselves forward is not diminished, and ensuring that the information available to electors is transparent and through the extension of the imprint requirement. There is also a need to ensure that existing protections against intimidation of electors are effective.
- 7.3. The Government is keen to take forward changes to the current laws on undue influence to make it more readily understandable and support its use where necessary.
- 7.4. The consideration will focus on two issues: (a) providing clarity of the offence; and (b) intimidation at polling stations.
- 7.5. The current offence, which aims to protect voters from undue influences to vote in a particular way, or not to vote at all says:

### Undue Influence

*"115(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.*

*(2) A person shall be guilty of undue influence—*  
*(a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or*  
*(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, an elector or proxy for an elector either to vote or to refrain from voting."*

### Simplifying the law on undue influence

- 8.1 The current law was originally brought into effect in 1983, some 35 years ago, and has been acknowledged to be a complex piece of drafting which is difficult to interpret and use.
- 8.2. The work of the Law Commissions' has highlighted some of the current issues with the offence of undue influence. Their explanations and interpretations of the legislation were helpful in unpicking the offence, and in identifying its meaning and the variety of mischief the offence looks to prevent. The review by (then) Sir Eric Pickles into electoral fraud also considered this issue. We agree that the offence of undue influence needs simplifying to produce clarity, whilst maintaining its wide scope against different forms of undue influence.
- 8.3. We intend that any simplification is drawn no narrower than the existing offence and will look to capture all of the behaviour that currently falls within the scope of the existing legislation.

### Question 13

- **Do you agree that the law of undue influence requires greater clarity in its application? If not, please explain.**

- 8.4. The scope of the offence is very wide and the judgment in the case: *Mr. Lutfur Rahman to Mayor of Tower Hamlets* (referred to in this consultation as "*the Tower Hamlets case*") broke the offence down into the following two elements:
- s115(a) refers to the 'use (or threat of the use) of force, violence or restraint, or the infliction (or threat of infliction) of injury, damage or harm directed towards inducing or compelling a person to vote or abstain;' and
  - s115(b) refers to 'duress that impedes or prevents (or intends to do so) the 'free exercise of the franchise of an elector'.<sup>28</sup>
- 8.5. The Election Commissioner, in the *Tower Hamlets case* Richard Mawrey QC, highlighted that this requires 'a high degree of physical intimidation to be applied to the voter and suggests that this is the reason why 'few intimidation cases have been brought under the existing law in the past two centuries.'<sup>29</sup> Potential cases of undue influence may be difficult to address as a result of the complexities involved in applying the terminology. Clarifying the terminology will ensure that the behaviour that the Act intended to prevent will be prohibited.
- 8.6. Further clarity could be given to the offence by clearly establishing components which constitute undue influence, and setting definitions of such components to allow for successful prosecutions. The current offence of undue influence intends to cover the following four components:
- Physical acts of violence or threat of violence;

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<sup>28</sup> Mr Lutfur Rahman to Mayor of Tower Hamlets (2015), paragraph 166

<sup>29</sup> Mr Lutfur Rahman to Mayor of Tower Hamlets (2015), paragraph 168

- Non-physical acts inflicting or threatening to inflict damage, harm or loss;
- Trickery; and
- Wider intimidation.

**Physical acts of violence or threat of violence:**

8.7. It should never be acceptable or allowable for a person to use violence or force, or to threaten violence or force, in order to make a person vote, vote in a particular way or deter them from voting. Physical intimidation is one of the most serious forms of intimidation of the voter. The threat or use of violence or actual or threatened abduction would be a serious form of intimidation. Whilst these actions may also constitute a serious criminal offence under the general criminal law, of all the elements of section 115, it seems to us that this is the most clear, and one of the most important to retain.

**Question 14**

- **If it is decided to simplify the existing offence of undue influence, we do not propose to materially change the element of the offence relating to physical acts of violence or threat of violence. Do you agree? If not, please explain.**

**Non-physical acts inflicting or threatening to inflict damage, harm or loss:**

8.8. Any action that inflicts, or threatens to inflict damage, harm or loss, whether done by means of a lawful act or otherwise, should be prohibited when carried out in order to make a person vote, vote in a particular way or deter them from voting. For example, an employer could terminate (or threaten to terminate) an employee's employment contract if the employee did not vote in accordance with the employer's wishes. It is not right that an individual can abuse their position of power in order to influence an individual in the electoral process.

**Question 15**

- **Any act, whether lawful or unlawful, which is intended to cause harm to the individual and is carried out with the intention to make a person vote, vote in a particular way, or deter them from voting and should be captured within this offence. Do you agree? If not, please explain.**
- 8.9. Under the current formulation of the law, actions which directly or indirectly, carried out by the perpetrator or a person on his behalf, cause harm to an individual in order to influence their participation in an election are clearly prohibited. An indirect action is not caused immediately or necessarily obviously by a person, but happens because of something that they may have done.
- 8.10. An example may be a more general threat to candidates of a particular party and not to a specific candidate. Additionally, s115(2)(a) offers protection to voters who are victims of undue influence both before and after the election. For example, a person may be threatened or harmed after the election on account of having voted or refrained from voting. Retaining this element in relation to actions that cause harm rightly offers full protection to an elector. We consider it important to retain these aspects of the s115(2)(a) limb of the offence.

### Questions 16, 17 and 18

- **We propose to retain reference to ‘direct and indirect’ acts which cause the elector harm. Do you agree? If not, please explain.**
- **We propose that the redefined offence retains reference to offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm. Do you agree? If not, please explain.**
- **We propose that the scope of section 115(2)(a) continues to include those acts which are carried out before and after the election. Do you agree? If not, please explain.**

### Wider Intimidation:

- 8.11. The law, in section 115(2)(b), covers wider circumstances where the free exercise of the franchise is impeded or prevented (or the intention is that they be impeded or prevented) as a result of actions of duress. These are actions of intimidation which may not cause individuals specific harm or loss, but act to coerce someone to vote in particular way, or refrain from voting, against their will. An example of this would be where an individual is pressured to vote in a certain way by a family member as failure to do so would bring shame on the family.

### Question 19

- **Do you agree that the offence should continue to cover actions of duress? If not, please explain.**

### Trickery:

- 8.12. Undue influence also covers wider circumstances where the free exercise of the franchise is impeded or prevented (or the intention is that they impeded or prevented) as a result of ‘any fraudulent device or contrivance’. This is intended to capture circumstances where a person ‘tricks’ a voter into voting in a particular way and so prevents them exercising their vote freely. For instance, a candidate could misrepresent themselves as standing for party A when in fact they are standing for party B; so they may think that they have voted freely, but the exercise of their vote has been impeded by the ‘trickery’. These actions of trickery can only be carried out before an election takes place, and must be carried out by the perpetrator himself.

### Question 20

- **Any redefined offence would still look to cover actions of trickery. Do you agree? If not, please explain.**

## Intimidation at polling stations

- 9.1 In December 2016, (then) Sir Eric Pickles’ published “Securing the Ballot: A review into Electoral Fraud”. Recommendation 2 of (then) Sir Eric’s report advised that a

lower test of 'intimidation' than the one currently set in law should be introduced. This concern arose mainly from the election petition challenging the election of Mr Lutfur Rahman as Mayor of Tower Hamlets in *the Tower Hamlets case*.

9. 2. The Election Commissioner in the *Tower Hamlets case*, had to consider whether the behaviour conducted at polling stations crossed the line into the commission of an offence under the law as set out above. He stated that the current law required a high degree of intimidation to be applied to the voter before that section was engaged.
9. 3. The Election Commissioner said there was little doubt that the intention of the activists outside the polling stations was to induce or prevail upon electors to vote in a particular way. He concluded, however, that the behaviour in that case was not such that it involved the use of sufficient 'force, violence or restraint' or sufficient 'duress' to amount to undue influence.
9. 4. In the judgment he noted "*the court appreciates that many in Tower Hamlets will be disappointed, even horrified, that the 1983 Act does not penalise thuggish conduct at polling stations of the sort that occurred in 2014.*" He also noted how "*the conduct that the court has found took place at polling stations on 22 May 2014 would undeniably have amounted to the common law offence of intimidation. Intimidation is what it was and what it was intended to be by those organising it. Those who experienced it described it as 'intimidation' and said that they had been 'intimidated'.*"<sup>30</sup>
9. 5. However, the court did not find the individuals guilty of intimidation under the relevant electoral law, as it stated that the law demands 'quite a serious level of violence'<sup>31</sup> which the court could not be satisfied had been reached.
9. 6. In its response, the Government accepted the recommendation of (then) Sir Eric, acknowledging that the current framing of electoral law may not be sufficient to address the type of intimidatory behaviour highlighted in the report.
9. 7. The Government is, therefore, proposing to amend the offence of undue influence to include behaviour intended to intimidate voters into voting in a particular way, or prevent them from voting, which takes place either inside or outside polling stations. For the offence to apply, the behaviour would not need to amount to physical force, violence or restraint, but would include behaviour which could reasonably be classed as intimidating.

#### **Question 21, 22a and 22b**

- **Do you agree that the scope of the offence should remain the same, subject to including a specific reference to intimidation at polling stations? If not, please explain.**

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<sup>30</sup> Mr Lutfur Rahman to Mayor of Tower Hamlets (2015), paragraph 615

<sup>31</sup> Mr Lutfur Rahman to Mayor of Tower Hamlets (2015), paragraph 618

- **Do you agree that the offence should specifically capture intimidatory behaviour carried out inside or outside of the polling station? If not, please explain.**
- **If so, do you agree that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint?**



# Section 3: Increasing Transparency in Digital Election Campaigning

## Increasing Transparency in Digital Election Campaigning

### Introduction

- 10.1. Having considered how we can protect against intimidation and unacceptable influence, we also need to look at the nature of the information voters are given. Whilst there has always been a strong tradition of campaigning for voters in person and on paper, that process has now become digital where the provenance of the information has become less clear.
- 10.2. A thriving democracy is based on participation and digital communications have a vital role to play in this. However, we must ensure that voters are aware of who is targeting them online to preserve the integrity of our electoral system.
- 10.3. This section of the Consultation is focused on how to ensure greater transparency for voters, so that they can make well informed choices. It does not cover the content of digital electoral material.
- 10.4. Voters must be able to have confidence in our electoral system, whether they interact with it online or offline.

### *A time for change?*

- 10.5. The landscape of digital communications has developed greatly in recent years. Campaigners are using increasingly new ways of reaching voters with many social media companies being at the forefront of this.
- 10.6. Social media companies have started to take note of the risks to voters that this could present.
- 10.7. Facebook has announced that all election-related and issue adverts on Facebook and Instagram in the U.S. must clearly be labelled, including a “paid for by” disclosure from the advertiser at the top of the advert.<sup>32</sup>
- 10.8. Twitter has announced that it will require advertisers who want to run political campaigning adverts for Federal elections to self-identify and certify that they are located in the U.S. They intend to include a visual badge and disclaimer information on promoted content from certified accounts in the near future to allow users to easily identify political campaigning adverts, know who has paid for them and whether this was authorised by a candidate.<sup>33</sup>
- 10.9. Google has announced that it will require additional verification for anyone who wants to purchase an election advert on Google in the U.S. Advertisers must confirm that they are a U.S. citizen or lawful permanent resident, as required by law. That means advertisers will have to provide a government-issued ID and other key information.

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<sup>32</sup> Facebook: Shining a Light on Ads with Political Content, May 24 2018

<sup>33</sup> Twitter: Increasing Transparency for Political Campaigning Ads on Twitter, May 24 2018

- 10.10. Google is also requiring that adverts incorporate a clear disclosure of who is paying for it and plans this summer to release a new “Transparency Report” specifically focused on election adverts.<sup>34</sup>

**So what constitutes “election material” as already defined in law?**

- 10.11. Election material is already defined in UK law as any material which can reasonably be regarded as intended to promote or procure electoral success at any relevant election for a registered party or candidate (*section 143A Political Parties, Elections and Referendums Act 2000*).
- 10.12. Essentially, this is material that is designed to encourage people to vote a certain way. For example, this could be material which suggests a number of advantages in voting for one candidate, or material which criticises another.
- 10.13. At present, whenever *printed* election material is published, it must contain certain details (referred to as an “imprint”) to show who is responsible for its production. Printed material such as leaflets and posters must include the name and address of: the printer, the promoter (the person who has authorised the material to be printed) and any person on behalf of whom the material is being published.
- 10.14. The law regulating imprints for printed electoral material also provides some detail as to where this information must be included if the material is single sided, more than one side, or in a newspaper or periodical. This applies whether or not someone has paid for the electoral material.

**Question 23**

- **Do you as a voter believe that the current system as applied to printed election material promotes transparency and gives confidence in our systems?**

**How would a new system for digital imprints apply for parliamentary and local government elections across the United Kingdom?**

- 10.15. This consultation is restricted to the imprints regime for Parliamentary elections in the United Kingdom, local government elections<sup>35</sup> in England and Northern Ireland and police and crime commissioner elections in England and Wales. Competence for local government elections in Wales and Scotland has been devolved to the Welsh Assembly and Scottish Parliament. The imprints regime is different in Northern Ireland.
- 10.16. We are also seeking views on whether a new system for digital imprints should apply for national referendums and local referendums in England.
- 10.17. For England, Wales and Scotland, the requirement to have imprints on printed electoral material for candidates is already contained in section 110 of the

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<sup>34</sup> Google Senior Vice President, Kent Walker: Public Policy Blog, Supporting Election Integrity Through Greater Advertising Transparency, May 4 2018.

<sup>35</sup> Local government elections covered include: local government and parish council elections and the various mayoral elections in England

Representation of the People Act 1983 (RPA 1983). The Political Parties, Elections and Referendums Act 2000 (PPERA) introduced the imprint rules for political parties, third party campaigners and referendum campaigners. To ensure a consistent approach, section 110 of the Representation of the People Act 1983 was amended by PERA to bring these two separate pieces of legislation in line with each other. There is provision in PERA to extend the rules for printed electoral material to digital communications and to design a new system which puts the confidence of the voter first.

- 10.18. In Northern Ireland, similar imprint rules for printed electoral candidate campaign material apply (as contained in section 110 of the Representation of the People Act 1983) for Parliamentary and Assembly Elections. However, the imprint rules contained in PERA have only been commenced for England, Wales and Scotland. As such, Northern Ireland does not have imprint rules for political parties, third party campaigners and referendum campaigners.

#### **Question 24**

- **Should the imprint rules in PERA be commenced for Northern Ireland?**

- 10.19. For local elections in Northern Ireland, paragraph 28 of schedule 9 to the Electoral Law Act 1962 provides for a regime similar, but not identical, to that for Parliamentary elections in Northern Ireland.

#### **Question 25**

- **Should the imprint rules for Northern Ireland elections be the same as for the rest of the United Kingdom?**

#### **Can we learn lessons from elsewhere?**

- 10.20. Successful campaigns communicate with voters so that they can exercise their right to vote in a meaningful and informed way.
- 10.21. Thinking about what has been done elsewhere could help us to introduce change so that it is clear to the voter who is behind digital campaign material.
- 10.22. The rules for the Scottish Independence Referendum in 2014 required that any digital material which “wholly or mainly related to the referendum” had to include certain details in an imprint.
- 10.23. The Scottish Referendum set a potential precedent for how future rules could apply for digital content but overall the Electoral Commission considered that despite the intention that the rules be proportionate, the scope meant that a potentially wide amount of campaign material had to include an imprint.<sup>36</sup>
- 10.24. There was confusion amongst campaigners and the public about what was and was not covered. For example, there were questions as to whether an individual’s personal Facebook and Twitter accounts should include an imprint. The Electoral

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<sup>36</sup> Electoral Commission: Scottish Independence Referendum, December 2014 p110

Commission concluded that this should apply for those using social media accounts primarily for campaigning, but individuals or members of organisations who were just expressing personal views would not need to include an imprint.<sup>37</sup>

- 10.25. It is the Government's strong view that future legislation should ensure we learn the lessons from this.

### **U.S. Public Consultation**

The Government is committed to increasing transparency in online political campaigning and maintaining public confidence in the integrity of elections and referendums. In doing so, it is helpful to consider what is being done elsewhere.

In the U.S. the Federal Electoral Commission (FEC) is the independent regulatory agency responsible for enforcing campaign finance laws in federal elections.

Under the Federal Election Campaign Act and current Federal Electoral Commission regulations, a disclaimer ("imprint" as this would be referred to in the UK) must appear on certain communications in order to identify who paid for the communication and, where applicable, whether the communication was authorised by a candidate.

The term "public communication", as defined by the Act and regulations, does not currently include internet communications other than communications placed for a fee on another person's website. In November 2016, the FEC sought views on the definition of "public communications" in order to determine whether this should be changed to include communications placed for a fee on another person's "internet-enabled device or application" in addition to those on websites.

A public consultation is currently underway exploring two alternative options for disclaimers as follows:

Alternative A: The current disclaimer requirements that apply to printed public communications would be adapted with specific requirements that apply to text and graphic public communications distributed over the internet.

Alternative B: Disclaimers on internet communications would need to meet the same general requirements that currently apply for all public communications requiring disclaimers. In practice, this would mean that there are no additional specific disclaimer requirements for digital material to be made in line with what is already in place for printed communications.

In essence, both proposals are intended to give the American public easy access to information about the persons paying for, and candidates authorising, internet communications.

The UK Government could decide to follow the approach taken by the U.S. by making an analogy between print and digital communications. It is also interesting to note how the proposed revised definition is seeking to include "internet-enabled device or application" and whether this would be a clear and technically accurate way to refer to the various media through which paid internet communications are and will be sent and received.

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<sup>37</sup> Electoral Commission: Scottish Independence Referendum, December 2014 p110

### **Republic of Ireland and Social Media**

On 25 May 2018, Ireland held a referendum on the eighth amendment of the country's constitution which covered the country's abortion law.

In the referendum on the Eighth Amendment, foreign advertisements relating to the referendum were banned by Facebook. This was a self - initiative by Facebook and applied to adverts that had been paid for by organisations outside Ireland. This aimed to address concerns that foreign groups would try to influence the debate through social media.

Google and YouTube also suspended all advertising related to the referendum.

The Transparent Referendum Initiative (TRI) was a separate volunteer initiative which ran during the referendum campaign. The aim was to increase the transparency of paid, online advertising, including for social media.

Its final press release, "*Unregulated online advertising used extensively during Referendum campaign, including after attempts at self-regulation by Google and Facebook*" was published on 24 May 2018. A database comprising Facebook adverts was shown to approximately 600 Irish people who volunteered to share information on adverts shown to them. Since launching on 14 February 2018, 1,300 Facebook adverts from 280 advertisers were captured. 405 adverts were collected in the last week alone. After the exclusion of adverts from neutral media organisations, the initiative identified 1,281 Facebook adverts advocating for a particular side of the debate.

The initiative noted that even after the Facebook ban on foreign adverts, there continued to be adverts from anonymous or untraceable pages and concluded that greater transparency from social media companies is needed in terms of full disclosure of who and how much has been paid for online advertising.

### **Principle and Purpose**

- 10.26. Recent years have seen rapid increases in the use of digital campaign techniques at elections in the UK, including increasingly sophisticated use of data and more personalised and targeted messaging.
- 10.27. In a new digital age, the Government is committed to ensuring transparency for voters.
- 10.28. Allowing voters to see who is behind digital electoral material will help them to assess the credibility of campaign messages and make an informed choice on the arguments presented.
- 10.29. Being able to trace the source of digital electoral material will also help the Electoral Commission to see where money is being spent to target voters.
- 10.30. Digital electoral material can be disseminated quickly, anonymously and at little cost.
- 10.31. However, it is also the case that whilst most posting on social media is currently free, individuals or organisations may spend money employing people to post

messages on their behalf, or even acquiring bots to boost content (a bot, as defined in the Collins English dictionary, is “*a computer programme that carries out tasks for other programmes or users*” so in the context of social media it would mimic human behaviour by posting, liking and talking to real people). Tracing the source of funding through the use of a digital imprint could help the Electoral Commission to see who is behind larger campaigns, and these costs could count towards a campaigner’s spending limit for an election or referendum.<sup>38</sup>

- 10.32. Imprints on digital electoral material could therefore also help the Electoral Commission to enforce its overall spending rules by affording it a better idea of who may need to register and submit a spending return after an election or referendum.
- 10.33. There is no spending threshold before someone is required to include an imprint on printed electoral material. Introducing a spending threshold would exclude any person from the requirement to include an imprint if the cost of the campaign material fell below a specified limit, but potentially create uncertainty as to whether an imprint should be included.

#### Question 26

- **What are your views on whether imprints should be required on all digital electoral material or only where spending on such material has been over a certain threshold?**

#### When should imprints be required?

- 10.34. What could constitute digital electoral material covers a wide range.
- 10.35. The law defines election material as material which can “*reasonably be regarded*” as intending to influence voters.
- 10.36. For example, material which says “*Vote for [Political Party X]*” is clearly trying to influence voters.
- 10.37. In contrast, “*I’ll be voting on Thursday*” and “*This ward is very close*” are examples of encouraging people to vote rather than being targeted at a particular political party or candidate.
- 10.38. This distinction is aimed at capturing the right material and ensuring that the most influential campaign material is caught by the imprint rules.
- 10.39. The test for the Scottish Referendum was much broader than the ‘*reasonably regarded*’ test as it regulated material ‘*relating to*’ the referendum regardless of whether or not it could be ‘*reasonably regarded*’ as intending to procure or promote any particular result. This could be interpreted as regulating material that did not support any particular outcome. This caused some confusion in the Scottish Referendum, as it was not clear which material required an imprint.

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<sup>38</sup> Note that in practice, social media and digital companies will need to ensure that there is somewhere where an imprint can be added as currently some social media companies do not allow for any space.

- 10.40. The Electoral Commission in its review of the Scottish Independence Referendum, supported the requirement to include imprints on non-print material, but for future legislation wished to ensure that the imprint rules strike the right balance between ensuring there is transparency about who is campaigning and proportionate and modern regulatory requirements<sup>39</sup>.
- 10.41. The Law Commission, in its 2014 interim report on electoral reform, considered this issue and concluded that *“the imprint requirement should extend to online campaign material which may reasonably be regarded as intending to procure or promote any particular result, subject to a reasonable practicability defence.”*<sup>40</sup>
- 10.42. Digital technology will continue to transform election campaigning and will continue to evolve. In seeking views on the scope of digital campaign material, we are trying to decide what should be covered by the rules.

#### **Question 27**

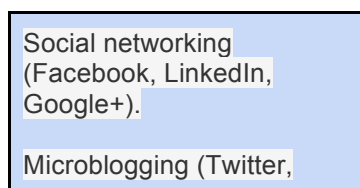
- **Should any new rules on digital material only apply to what we would already consider to be “electoral material” or should broader categories be considered?**
- 10.43. There is also the question as to whether the requirement to include an imprint should apply during the election period or should go wider than that. The current position in law is that the requirement is not limited to the election period. Material which is designed to influence a voter to vote for one party or another may be distributed outside that period.

#### **Question 28**

- **Do you agree that the requirement for imprints on election material can arise all year round, not just during election periods?**

### **What forms of digital communications should be covered?**

- 10.44. What constitutes digital communication already covers a broad spectrum of different mechanisms and platforms for disseminating material.
- 10.45. The following list includes a variety of platforms, which could feature digital electoral material, but it is by no means exhaustive.

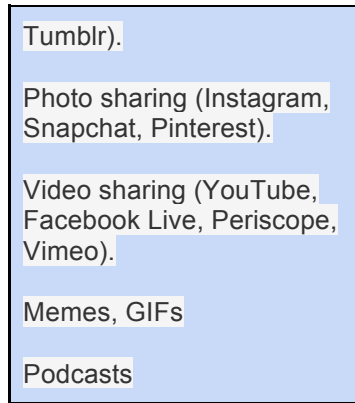


Social networking  
(Facebook, LinkedIn,  
Google+).

Microblogging (Twitter,

<sup>39</sup> Electoral Commission: Scottish Independence Referendum, December 2014 p18.

<sup>40</sup> Law Commission, Electoral Law: An Interim Report, 4 February 2016, p156.



### Question 29

- **Should we prioritise regulating certain forms of digital communications over others? If so, please give reasons.**

10.46. There are separate laws regulating offensive digital communications. For example, sending a message using a public electronic communications network that is of an indecent, obscene or menacing character, is an offence under the Communications Act 2003; and sending communication with intent to cause distress and anxiety is an offence under the Malicious Communications Act 1988. The introduction of imprints for digital electoral material will not change this, regardless of prioritising any particular type of communication.

### **How should the imprint be incorporated?**

10.47. The imprint on printed electoral material should always be clearly visible but this may be more difficult in a digital context, for example given space constraints. Pop up and hover and scrolling texts could provide a link to the imprint as an alternative to having the information displayed directly on the election material. This may require social media and other digital companies to ensure that there is somewhere where the imprint can be added.

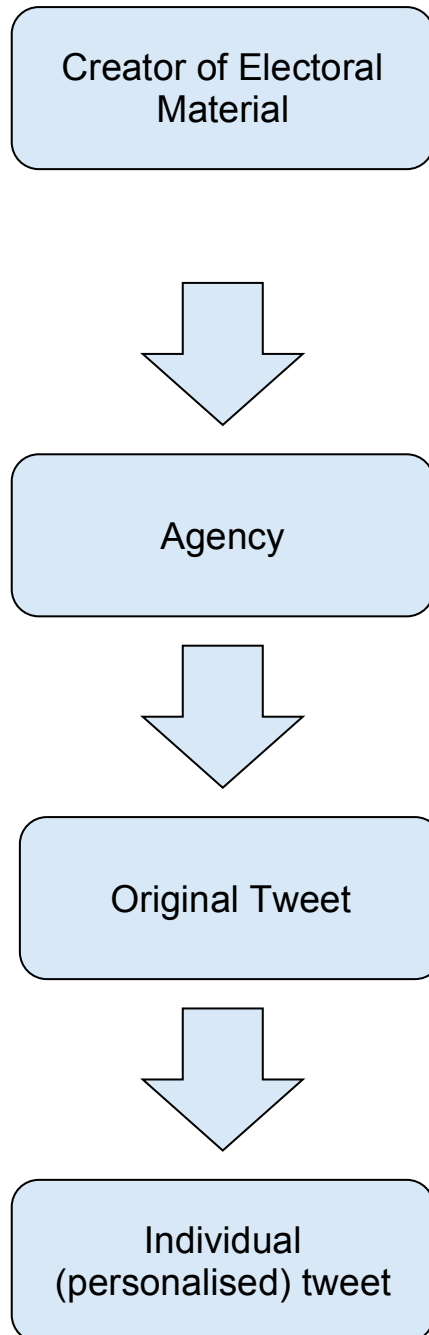
### Questions 30, 31, 32

- **What sort of mechanisms for including an imprint should be acceptable? Are there any technical difficulties that would need to be overcome to include text which is not accessible without a further step?**
- **Would you find an imprint in an overarching space such as a 'bio' on Twitter sufficiently visible?**
- **How can these mechanisms be future-proofed in expectation of developments in media and technology?**

### **Who should be responsible for including the imprint?**



10.48. Extending the imprint rules to digital material raises questions as to who should be responsible for adding an imprint to the material. The diagram illustrates how it could be difficult to determine who should be accountable.



### Question 33

- Should those who subsequently share digital electoral material also be required to include an imprint and, if so, whose details should be on it - theirs or the original publisher?

### Enforcement and Redress

- 10.49. If the requirement to include imprints on election material is extended to digital communications then the existing enforcement provisions for imprints will apply to digital material. These include both civil and criminal sanctions.
- 10.50. It is at the discretion of the Electoral Commission to regulate according to its enforcement aims, objectives and approach. Part of its statutory role is monitoring compliance with electoral law, which may require the Electoral Commission to obtain information from, or visit premises used by, those who it regulates. Where appropriate this is done on a voluntary basis, with advance notice. However, it also has the power to ensure that information can be obtained via disclosure notices and inspection warrants. The Electoral Commission has civil sanction powers and can impose fines of up to £20,000 for breaches of the Act.
- 10.51. Under section 143(8) and 143(9) of PPERA (and sections 110(9) and 110(10) of the RPA 1983) it is a criminal offence not to comply with the requirement to have an imprint. It is an illegal practice also under the RPA 1983 not to comply with the requirement to have an imprint, which imposes additional civil sanctions for any breach.
- 10.52. It is for the police and the Crown Prosecution Service to investigate and prosecute candidates and agents for any breach of these offences.<sup>41</sup>
- 10.53. The Electoral Commission also has agreements in place with the police and prosecutors across the United Kingdom. If the Electoral Commission were to become aware of any criminal offence within its regulatory remit for which it does not have civil sanctions, or for which it considers civil sanctions would not be an adequate measure, it can liaise and share information with the relevant authority which can consider investigating or prosecuting.
- 10.54. Under current legislation for printed election material, if the promoter of the material, any other person on behalf of whom the material is being published or the printer of the documents commits an offence, they are liable to a fine up to level 5 on the standard scale (unlimited in England and Wales, £5,000 in Scotland and Northern Ireland). These are the court powers to impose fines under criminal law (and separate to the Electoral Commission's power to fine for breaches of the Political Parties and Referendums Act 2000).

#### **Question 34**

- **Do you think the responsible bodies have sufficient enforcement powers?**

- 10.55. On a broader note, the draft social media code of practice, published as part of the Government response to the Internet Safety Strategy Green paper, provides guidance to social media providers on appropriate reporting mechanisms and moderation processes to tackle abusive content. Reporting mechanisms enable users within the UK to report content or behaviours which contravene the platforms' terms and conditions, even if the content or behaviours are conducted by those based outside the UK.

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<sup>41</sup> In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) will have responsibility for this.

10.56. The internet is a borderless, global communications medium. The UK will take a leading role internationally, working with like-minded democratic governments to address public policy issues and learn from the approach taken by other countries.

# Conclusion

This consultation has brought to light the issues which are wider than the immediate personal impact of intimidation of candidates and campaigners, or attribution of online materials. It has demonstrated the widespread impact that these issues are having on the elector making an informed decision at the ballot box, based on choice, policy and principle.

By introducing a new electoral offence of intimidation we hope to engender an informed, quality debate focused on policy and principle, rather than on misinformation or abuse. We hope it will encourage political parties to lead the way in creating a healthy political culture in which everyone can participate, and persuade those in public life to take responsibility for the tone of the debate during the election period.

We hope that Government action goes some way in promoting awareness of the impacts this kind of behaviour has; not just on the individual but on the working of our democratic system. This behaviour undermines the integrity of public life, by deterring talent and precluding effective debate. It has the potential to give rise to a culture and environment that diminishes the quality, diversity and discourse of our representatives in Parliament, councils and other elected offices.

Equally, election rules must keep up with technology to maintain the transparency of our electoral system and to allow for an informed and transparent debate. Whilst there are complexities and issues that need to be resolved in order to put in place an effective regulatory system, it is right that we consider how we can improve transparency for voters.

In removing barriers to quality discussion, it follows that we work to ensure that electors themselves are free from intimidation.

CSPL note:

“The public’s lack of trust in politics and the political system creates an environment where intimidation in public life is more likely. Everyone in public life must take responsibility for turning this around.”<sup>42</sup>

The Government considers that these three measures, working as part of the wider package of CSPL recommendations, should allow electors to make their choice at the ballot box based on quality, effective and informed discussion, free from abuse, intimidation and misinformation and with a range of candidates from which to choose.

The Government is keen to have your thoughts on this important matter and to act to protect the debate.

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<sup>42</sup> Committee on Standards in Public Life. 2017. *‘Intimidation in Public Life’*, pg 18

**Annex A: Criminal law- Summary table of existing offences relating to intimidation as taken from the CSPL report<sup>43</sup>**

*There are a number of other offences of intimidation. This list will be reviewed when drafting the new electoral offence to ensure that all relevant offences are included, and in order to ensure that the new electoral offence can keep pace with any future criminal intimidatory legislation.*

<b>Offence</b>	<b>Legislation</b>	<b>Maximum Penalty</b>
Common assault	Criminal Justice Act 1988	6 months' imprisonment and a fine
Destroying or damaging property	Criminal Damage Act 1971, s.1	3 months' imprisonment if less than £5,000; otherwise 10 years' imprisonment
Threats to destroy of damage property	Criminal Damage Act 1971, s.2	10 years' imprisonment
Threats to kill	Offences against the Person Act 1861, s.16	10 years' imprisonment
Harassment	Protection from Harassment Act 1997, s.2	6 months' imprisonment and a fine
Stalking	Protection from Harassment Act 1997, s.2A	6 months' imprisonment and a fine
Harassment involving putting someone in fear of violence	Protection from Harassment Act 1997, s.4 (as amended by the Policing and Crime Act 2017)	10 years' imprisonment and a fine
Stalking involving putting someone in fear of violence	Protection from Harassment Act 1997, s.4A (as amended by the Protection of Freedoms Act 2012 and the Policing and Crime Act 2017)	10 years' imprisonment and a fine

<sup>43</sup> Intimidation in Public Life: A Review by the Committee on Standards in Public Life, pg 58

Using threatening or abusive words or behaviour with intent to cause fear of violence	Public Order Act 1986, s.4	6 months' imprisonment
Using threatening or abusive words or behaviour in the hearing of someone likely to be cause alarm or distress	Public Order Act 1986, s.5	Fine (level 3)
Sending a message using a public electronic communications network that is of an indecent, obscene or menacing character	Communications Act 2003, s. 127	6 months' imprisonment and a fine
Sending communications with intent to cause distress and anxiety	Malicious Communications Act 1988, s.1 (as amended by the Criminal Justice and Courts Act 2015)	2 years' imprisonment and a fine

**Annex B- Electoral law: Summary table of existing offences relating to undue influence**

Offence	Legislation	Maximum Penalty	Electoral Penalties
Unduly influencing a person to vote in a certain way; and impeding or preventing the free exercise of the franchise	Representation of the People Act 1983, s. 115 (2) (a) and (b)	2 year imprisonment and / or a fine	Barred for five years from being elected to the House of Commons or holding any elective office. Commission of the offence amounts to a corrupt practice.
Making a false statement about a Parliamentary candidate	Representation of the People Act 1983, s. 106	Level 5 fine	Barred for three years from being elected to the House of Commons or holding any elective office. Commission of the offence amounts to an illegal practice.
Corruptly inducing a candidate to withdraw from an election, in consideration of payment	Representation of the People Act 1983, s. 107	Level 5 fine	Barred for three years from being elected to the House of Commons or holding any elective office. Commission of the offence amounts to an illegal practice.