



Cabinet Office

Protecting the Debate: Intimidation, Influence and Information

Government Response

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Protecting the Debate: Intimidation, Influence and Information

Government Response

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Foreword

Our democracy is built on inclusive participation and open and informed debate. It thrives on these values and at the heart of this is the integrity of our election system; how voters elect those who represent them.

This Government is committed to ensuring that everyone - candidates, campaigners and voters - can participate in our democracy free from abuse and intimidation.

In recent years, we have witnessed rising levels of violence and abuse linked to the political debate. This increase in the prevalence of intimidation in public life risks stopping talented people from standing for public service and putting voters off politics.

Robust debate is fundamental in an open democracy, but threats and other forms of abuse are unacceptable and must not be tolerated. We are taking action and that is why last summer we launched the consultation *Protecting the Debate: Intimidation, Influence and Information*, to gather feedback on proposals aimed at protecting our electoral system against intimidation and undue influence of candidates, campaigners and voters. With an aim to 'protect the debate', the consultation also sought public views on improving transparency in digital election material.

The consultation received a range of responses from many people and I welcome each of the responses to the consultation. This feedback has helped us decide on what steps to take moving forward.

The Government's response that follows provides a summary of the responses to each of the questions asked, as well as the Government's proposals on how to take these measures forward to ensure that we protect the fundamental structures of political freedom.

These measures are just one element of a package of work that is needed to tackle intimidation in public life and bring our election rules up to date. Action is already underway, and there's more to do. Every single one of us in our country benefits from democracy that is properly respected, protected and promoted, so these proposals are for everyone. We all have a part to play.

Chloe Smith MP
Minister for the Constitution

Introduction

In July 2017 the Committee on Standards in Public Life (the Committee) was asked by the Prime Minister to conduct a review of intimidation experienced by parliamentary candidates, including those who stood at the 2017 General Election. In its review the Committee also considered the broader implications for other candidates for public office and public office holders. Their review, *Intimidation in Public Life*¹, was published in December 2017.

In response to the CSPL's report, the Cabinet Office launched the consultation *Protecting the Debate: Intimidation, Influence and Information* in July 2018. The consultation sought feedback on three proposals:

- **Section 1:** A new offence in electoral law of intimidating candidates and campaigners during the election period.
- **Section 2:** Clarification of the electoral offence of undue influence.
- **Section 3:** Extending the electoral law requirements for an imprint on campaigning materials to electronic communications.

The consultation remained open for 13 weeks and received 41 formal responses and numerous pieces of correspondence. The majority of respondents answered questions relating to each of the sections.

The Government's post consultation response sets out: a summary of the feedback received, the Government's response to points raised and the Government's intentions going forward for each section. The response also includes a background chapter which illustrates why the consultation was launched and what else the Government is doing to tackle intimidation in public life and transparency of digital election material.

The feedback we received on the proposed new offence of intimidation of candidates and campaigners was mostly in favour of what was proposed. We have taken comments on board, and, as this response will illustrate, we plan to legislate for this offence when parliamentary time allows for it.

Section two of the consultation posed questions on if and how the offence of undue influence of voters should be clarified. Responses to this section illustrated support for a simplified offence and, in line with what the consultation proposed, the Government intends to legislate on this when parliamentary time allows.

Section three of the consultation asked respondents for their views on a digital imprint regime. Overall, the majority of respondents were in favour of such a system. We will look to bring forward our proposals to introduce a digital imprint regime later this year.

¹ Committee on the Standards of Public Life, *Intimidation in Public Life*. December 2017. Available online here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666927/6.3637_CO_v6_061217_Web3.1_2_.pdf

The Government is keen to implement measures in line with what was proposed in the consultation. In recent years, we have witnessed rising levels of intimidation in the political debate and it is right that we act to ensure that our electoral process is protected. Equally important is the need for transparency in respect of digital election material, so that voters can make their choice at the ballot box based on informed discussions.

Contact details

Further copies of this report and the consultation paper can be obtained by contacting the Elections Division, Cabinet Office:

Email: elections@cabinetoffice.gov.uk

Address:

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

This report is also available at gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Cabinet Office at the above address.

Background

The Committee on Standards in Public Life report

In 2017 the Committee, in response to a request from the Prime Minister, conducted a review of intimidation of parliamentary candidates, candidates for public office and other public office holders. In December of 2017 the Committee published its report *Intimidation in Public Life*. The report examined the scale of intimidation in public life and the impact it can have on our democratic processes. Gathering evidence from parliamentary candidates, members of the public, and expert organisations the report makes for a comprehensive and sobering read on how intimidation can, and is, shaping public life.

Importantly, the report offered constructive recommendations to tackle this growing problem. The recommendations were directed at a range of bodies including Government, social media companies, political parties, the National Police Chief Council and news organisations, emphasising that everyone in public life has a role to play to protect our democracy.

In relation to electoral law the Committee made two recommendations to the Government. First, it recommended that the Government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners. Second, it recommended (though not as a numbered recommendation) that the Government should extend electoral law requirements for an imprint on campaigning materials to electronic communications.

The Government's response to the Committee on Standards in Public Life report

The Government published its response² on 8 March 2018, which thanked the Committee for its work and committed the Government to a series of actions based on the Committee's recommendations.

In its response, the Government committed to consulting on a new electoral offence of intimidation of all candidates (but not to limit the consultation, or the offence, to candidates at UK Parliamentary General Elections) and campaigners. Additionally it agreed to look at the problem of intimidation in light of the recommendation made by (the then) Sir Eric Pickles in his report *Securing the Ballot*,³ that the offence of undue influence in respect of electors should be strengthened. The Government also committed to addressing the Committee's recommendation to extend electoral law requirements for an imprint to digital election material in the consultation *Protecting the Debate: Intimidation, Influence and Information*.

² Government's response to the Committee on Standards of Public Life Review of Intimidation in Public Life. Available online here: <https://www.gov.uk/government/publications/government-response-to-the-committee-on-standards-in-public-life-review-of-intimidation-in-public-life>

³ Sir Eric Pickles "*Securing the ballot: review into electoral fraud*" (August 2016) Available online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545416/eric_pickles_report_electoral_fraud.pdf

The Government's consultation *Protecting the Debate: Intimidation, Influence and Information*

The Government's consultation *Protecting the Debate: Intimidation, Influence and Information* launched on 29 July 2018 and closed on 28 October 2018. It invited comments on a new offence in electoral law of intimidating candidates and campaigners during the election period, simplifying the electoral offence of undue influence, and extending the electoral law requirements for an imprint on campaigning materials to electronic communications.

In addition to the Committee's report, we have also taken into consideration several other relevant reports to develop the consultation and this response, including (the then) Sir Eric Pickles report *Securing the ballot: A Review of Electoral Fraud*⁴, the *Internet Safety Strategy - Green Paper*⁵ and the *Government's response to the Internet Safety Strategy - Green Paper*⁶.

Section one of the consultation proposed the introduction of a new electoral offence of intimidation of candidates and campaigners during the election and referendum period. The consultation asked several questions about how this offence should work including what penalty should be applied, who should be protected, when the offence should apply and what elections and referendums should be included.

Our politics will be poorer if talented potential candidates decide not to stand because they see the unacceptable abuse hurled at those who do volunteer for public life. It is crucial that we work together to prevent the worrying trend of intimidation in public life stopping talented people standing for election, and the proposed offence aims to achieve this.

There is also a need to ensure that existing protections against intimidation of electors are effective. Section two of the consultation sought opinion on the Government's proposal to simplify the existing offence of undue influence of voters. The consultation asked questions on two main areas (i) providing clarity of the offence; and (ii) intimidation at polling stations.

Section three of the consultation included high level questions concerning a potential digital imprint regime. In recent years there has been a significant increase in the use of digital campaigning during elections in the UK. This includes increasingly sophisticated use of data, and personalised and targeted messaging.

⁴ Sir Eric Pickles "Securing the ballot: review into electoral fraud" (August 2016) Available online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545416/eric_pickles_report_electoral_fraud.pdf

⁵ *Internet Safety Strategy – Green Paper*. (October 2017) Available online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650949/Internet_Safety_Strategy_green_paper.pdf

⁶ *Government's response to the Internet Safety Strategy – Green Paper*. (May 2018) Available online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708873/Government_Response_to_the_Internet_Safety_Strategy_Green_Paper_-_Final.pdf

Over the past year a number of reports and public bodies, including the Electoral Commission, have recommended that the Government extend the imprint rules for printed election material to include digital content. Current imprint rules require all printed election material such as posters and flyers to include the name and address of the:

- Printer of the document
- Promoter of the material
- Person on behalf of whom the material is being published (and who is not the promoter)

The rise in digital political campaigning over the past decade in the UK has led to large quantities of election materials being disseminated to voters without an imprint, meaning that voters do not always know who is responsible for the material. At present, the Electoral Commission issues guidance recommending that digital imprints be included on websites, emails and other electronic materials. However, this is not legally binding.

In this digital age, the Government is committed to ensuring transparency for voters. Allowing voters to see who is behind digital election material will help them to better assess the credibility of campaign messages and make an informed choice on the arguments presented.

Each of the measures proposed in the consultation contribute to the overarching objective to protect the political debate that is intrinsic to our electoral system, and ultimately to help voters make informed decisions at the ballot box. Through these proposals we want to promote debate and discussion instead of intimidation during election periods, to prevent undue influence of voters and to ensure that political debate is informed and transparent.

However the consultation, and the changes to electoral law that were proposed, are just one element of a strategy to address the increasing levels of intimidation in public life. To truly tackle this problem, all those involved in our democratic processes have a part to play to protect the debate, including each of the organisations to which the Committee made recommendations in their report.

Government action

On 7 March 2019 Chloe Smith, Minister for the Constitution, published a comprehensive written update to the Government's response to the Committee's report⁷, setting out what the Government and other public bodies have been doing to deliver on the recommendations.

In addition to the consultation *Protecting the Debate: Intimidation, Influence and Information*, the Government has taken the following actions to implement recommendations made by the Committee:

- The Government has taken steps to implement the recommendation by the Committee that "the Government should bring forward legislation to remove the requirement for

⁷ Written Statement HCWS1389 'Update on Government's response to the Committee on Standards in Public Life Review of Intimidation in Public Life', made by Chloe Smith, 07 March 2019. Available online here: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-03-07/HCWS1389/>

candidates standing as local councillors to have their home addresses published on the ballot paper". We have made four statutory instruments in relation to the nomination of candidates at local government and parish council elections in Great Britain, and elections of combined authority mayors and local mayors, that remove the existing requirement that each candidate's home address must be published during the election process and be included on the ballot paper at these polls. A candidate may instead choose that their home address is not made public, and that the local authority area in which the candidate's address is located will appear instead on ballot papers.

The provisions will come into force for the polls on 2 May 2019. The changes are designed to enhance the security of candidates standing at those polls, and their families.

- The Home Office and Department for Digital, Culture, Media and Sport jointly published the Online Harms White Paper on 8 April 2019. This sets out the Government's plans for world-leading legislation to make the UK the safest place in the world to be online. It proposes establishing in law a new duty of care on companies towards their users. This will make companies more responsible for their users' safety online, especially children and other vulnerable groups, and will help to build trust in digital markets. The duty will be overseen by an independent regulator - setting clear safety standards and with the power to take effective action against companies that breach their duty. The Government is now consulting on its proposals ahead of bringing forward legislation.
- We are leading contact with other Five Eyes Countries (Australia; New Zealand; Canada; USA) to establish a network of learning regarding our approaches to identifying and tackling online hate crime and intimidation. This will aim to identify synergies or gaps in approaches, promote consensus, and gather best practice that can be shared for the benefit of all countries.
- We have written to Local Authority Chief Executives, to raise awareness about the sensitive interest provisions in the Localism Act 2011 which protect the personal addresses of councillors in England, ensuring that monitoring officers are aware of the guidance published by the Ministry of Housing, Communities and Local Government. This has been made public on GOV.UK.
- The Government has held discussions with social media companies and the Electoral Commission about how a 'pop up' social media team for elections could provide support for users that report inappropriate behaviour work and we will continue to collaborate as we explore potential next steps.

Over and above the recommendation in the Committee report, the Government will be considering what further steps are necessary to ensure the safety of Parliamentarians and their staff, in the vicinity of Parliament, in their constituencies and online, and Ministers are open to representations from MPs on this matter.

To assist with this the Crown Prosecution Service have also produced an information pack for MP on intimidatory behaviour to help MPs and their staff to recognise and report intimidatory behaviour.

It is incumbent on all of us in public life to combat intimidation in public life and the Government will continue to work with others including public bodies, social media companies, policing and prosecution authorities, and political parties to tackle this serious issue.

Executive Summary

A total of 41 responses to the consultation *Protecting the debate: Intimidation, Influence and Information* were received, including responses from six political parties, nine public sector and civil society organisations, four regional and local government councils, two political candidates, two social media platforms, academics, journalists, a think tank and a variety of responses of the members of the public. The Government welcomes the range of responses to the consultation and it is grateful for all those who took the time to respond.

The consultation examined complex areas of electoral law, and the range of feedback from different perspectives and expertise has provided a useful insight into the various elements of the proposals. The responses have been carefully analysed and they have helped us decide on the next steps for the proposed new offence, the offence of undue influence and a proposed digital imprints regime.

In addition to formal responses to the consultation we also received a substantial amount of correspondence on the issues raised in the consultation. These were also useful to generate a greater understanding on the main points of interest and concern from the general public.

The following is a brief summary of the responses to each of the sections of the consultation.

Section 1: A New Electoral Offence

Respondents were asked a total of 12 questions on the proposed new electoral offence of intimidation of candidates and campaigners. The questions posed fell under the following sections:

1. construction of the new offence;
2. penalty;
3. which elections should be covered;
4. who should be protected;
5. applicable time period; and
6. ensuring the offence only applies in appropriate cases.

Broadly speaking the proposed offence was well received and the construction of the offence was generally welcomed. Respondents acknowledged the need to act to protect the political debate by ensuring that good candidates are not deterred from standing and that campaigners are not deterred from sharing their messages.

The main elements that attracted feedback included the proposed penalty, the applicable time period, and feedback on who should be protected by the offence.

Although the majority of respondents agreed with the proposed penalty some responses expressed concern that the sanction of banning someone from standing for an elected office for five years may not be a sufficient deterrent to meet the objective of stopping the intimidation of candidates and campaigners. Alternative sanctions were asked to be considered instead,

including removing the right to vote and extending the maximum prison sentence for electoral offences to 10 years.

Several questions arose about when the offence should apply, with some suggestions that the offence should be applicable during the long campaign period (the long campaign usually starts five months before a General Election and ends 25 working days before polling day), or that it should be applied throughout the year and not be tied to the election period at all.

The consultation also gathered useful feedback on who should be protected under the offence including the types of people that could be classified as a campaigner. Some respondents raised concerns that the offence would specifically target 'online trolls'. It is important to be clear that the objective of the proposed offence is to tackle intimidation of candidates and campaigners, whether it takes place online or offline. Although the offence could apply to online abuse, this would only be applicable if the behaviour met the required threshold of abuse in criminal law.

In this respect the offence would not punish behaviour that is not currently criminal, rather it aims to illustrate that intimidatory behaviour is a serious offence and one that can damage our democracy. It is also important to emphasise that the proposed new offence would respect the right to freedom of expression under Article 10 of the European Convention on Human Rights, whilst also protecting against intimidation and abuse of candidates and campaigners.

Section 2: Clarifying undue influence

The consultation included 10 questions on clarifying the offence of undue influence. These questions addressed two main elements:

1. simplifying the law on undue influence; and
2. intimidation inside and outside a polling place.

All respondents agreed that the law on undue influence requires greater clarity, and the proposals on how to achieve this simplification were broadly welcomed. The two main themes that arose from the responses: i) were discussions around the concepts that would be captured by undue influence and ii) how a specific reference to intimidation inside and outside of a polling station could be included in the offence.

Several points arose about how harm, intimidation and duress could be included in the redefined offence and how these concepts would be recognised. Respondents generally agreed that intimidation inside and outside of a polling station should be captured but they were cautious about how the area of 'inside and outside a polling station' would be defined, particularly considering that polling stations differ in shape and size. Some respondents suggested that if undue influence was sufficiently clarified there may not be a need to specifically reference intimidation inside and outside a polling station as this could already be captured in the updated offence.

Section 3: Increasing Transparency in Digital Election Campaigning

The majority of respondents supported the idea of digital imprints and encouraged taking steps to combat election disinformation and undue influence online. The respondents also generally believed that a digital imprints regime should apply across all digital platforms but did not provide details on how that could be practically achieved. Some respondents were concerned a poorly applied digital imprints regime could have negative impacts on freedom of speech and freedom of the press.

Broadly speaking, the majority of responses supported a digital imprint regime that was consistently applied to election material⁸:

- across the UK, including Northern Ireland;
- irrespective of the amount spent;
- throughout the year; and
- on all digital platforms.

There was a lack of consensus on:

- how to future-proof the regime;
- whether responsible bodies have sufficient powers to enforce the rules; and
- whether those who share digital election material should include an imprint.

⁸ "Election material" is defined in section 143A of the Political Parties, Elections and Referendums Act 2000

Section 1: A new electoral offence

Consultation questions and Government response

This section will provide a summary of contributions to the consultation, and the Government's response to the different elements of the proposed new offence as outlined in the consultation:

1. Construction of the new offence
2. Penalty
3. Which elections should be covered
4. Who should be protected
5. Applicable time period
6. Ensuring the offence only applies in appropriate cases

1. Construction of the new 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 Committee, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?

The proposal to apply electoral sanctions to existing offences of intimidatory behaviour was broadly welcomed, with 75% of respondents agreeing with this approach. In general, respondents acknowledged the need to act to protect the political debate from intimidation and abuse.

Both the Conservative Party and the Liberal Democrats were amongst the respondents that support the proposal. The Conservative Party emphasised its support of measures to tackle the unwarranted abuse and intimidation that has been witnessed in recent elections. The Green Party Northern Ireland also agreed but suggested that the offence should include inciting others to intimidatory behaviour.

In support of the proposal, some responses referred to their personal knowledge of instances of intimidation of candidates and reports of abuse in the political sphere.⁹ One response emphasised that other measures should be taken to tackle the serious problem of intimidation in public life, including a stronger response from social media companies and political parties.

Two responses in particular examined how the proposed offence would interact with freedom of expression. One outlined that the new offence struck the right balance between deterring intimidation and allowing free expression and robust debate. On the other hand another response disagreed with the new offence and illustrated its concern that the offence could hamper debate in the UK by creating a chilling effect around political speech.

⁹ For example: Electoral Reform Society "New voices how Welsh politics can begin to reflect Wales". Available online here: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politics-can-begin-to-reflect-wales/>

Some responses proposed alternative mechanisms to achieve the objective of section one of the consultation. The Crown Prosecution Service (CPS) suggested consideration of whether the Sentencing Council could be asked to revisit the definition of aggravating factors in Sentencing Guidelines to capture candidates and campaigners.

The Labour Party's response outlined that it did not support the creation of a new offence because it would duplicate offences. It suggested that any provision prescribing possible electoral consequences for intimidation in the context of election activity should be incorporated into an updated election offence replacing the concept of undue influence.

The Scottish National Party also did not agree with the proposed approach. It suggested that a better approach to tackle this problem would be to remove corrupt and illegal practices from electoral law and to give power to sentencers to attach electoral consequences to sentences if there is a proven link to elections.

Government response

The Government intends to develop a new electoral offence of intimidation of candidates and campaigners by the means of applying electoral sanctions to existing offences of intimidatory behaviour, including, but not limited to, those offences identified by the Committee in its report. We are also aware that those offences may differ in Scotland, and we will ensure those offences are covered by the new electoral offence.

This measure must be part of a wider package, including the other recommendations made by the Committee, in order to thoroughly address the growing problem of intimidation in public life. As noted above, the Minister for the Constitution provided an update to Parliament on the Government's activities on 7 March 2019.

Regarding concerns about freedom of expression, the proposed offence is not a measure to prevent the public from scrutinising those who represent them. It is about protecting the fundamental structures of political freedom. The purpose of a specific electoral offence will be both to highlight the seriousness of the threat of intimidation of candidates and campaigners to the integrity of public life and our democracy, and to provide for specific electoral sanctions to deter and punish this behaviour.

In light of this, the new electoral offence will be developed in accordance with the right to freedom of expression protected under Article 10 of the European Convention of Human Rights. Freedom of expression will not be put at risk by the offence as the current evidential standards and thresholds that protect freedom of expression will apply because the offence will apply electoral sanctions to existing criminal offences. This will provide a mechanism to maintain an open, robust and informed debate, while ensuring that voters can make their choice at the ballot box based on an informed discussion focused on policy and principle, rather than on intimidation or abuse.

In relation to the CPS's suggestion to consider tackling intimidation through aggravating factors set out in sentencing guidelines the Government notes that this is a matter for the Sentencing Council, which is independent of Government.

The Government does not intend to take forward the proposals of the Labour Party or the Scottish National Party. It will continue to keep electoral law under consideration and implement reforms as appropriate.

2. Penalty

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

71% of responses agreed with the sanction of prohibiting someone from standing for an elected office for five years. Some responses were concerned that this electoral sanction would not be a sufficient deterrent upon those people who are most likely to commit the offence. Alternative penalties were suggested, including that the proposed sanction could be longer, or that the electoral sanction to remove a person's right to vote should be invoked. Some responses suggested applying additional criminal sanctions to deter intimidation, including a prison sentence. The Electoral Commission (EC) in its response suggested that the maximum sentence for serious cases of electoral fraud should be increased to 10 years and that this sentence should be applicable to cases of intimidation.

Some responses also asked if this sanction would apply to a candidate or an elected representative who was convicted of the offence, and if so what effect would the sanction have on these people.

Question 3: Do you think the new electoral offence should remove an offender's right to vote?

A majority (57%) of respondents thought that the new offence should not remove an offender's right to vote. The question of whether an offender should have their right to vote removed attracted two conflicting reactions. On the one hand, some respondents believed that someone convicted of this offence should have their right to vote removed or that the court should at least have the option to remove the right to vote. It was thought that this sanction would be a greater deterrent than being barred from standing for elected office.

On the other hand, the question of removing a person's right to vote also attracted concern. Some respondents emphasised that the deprivation of the right to vote should not be resorted to lightly as it is a fundamental right in a democratic society.

Government response

In line with feedback from the majority of responses the Government plans to maintain the proposed penalty to bar someone from standing for elected office. This approach is in line with the Committee's report, which highlighted the value of applying appropriate electoral sanctions.

This is also in line with the existing framework of electoral sanctions for corrupt practices, under the Representation of the People Act 1983 (RPA 1983). It is considered that, reflecting the Committee's report and the existing framework for electoral sanctions, barring someone from standing for office is the most appropriate electoral incapacity available. Applying this sanction

does not seek to associate the offence primarily with election candidates, rather it aims to use existing electoral sanctions to emphasise the threat that intimidation poses to our electoral system.

The penalty will also be accompanied by criminal sanctions. Under the RPA 1983 a person who is guilty of a corrupt practice is (generally) liable to up to one year imprisonment or a fine or both. It is expected that the electoral sanction combined with the applicable criminal sanction will deter intimidatory behaviour and allow those engaged in the electoral process to participate freely. Existing criminal sanctions for the underlying criminal offence will also apply.

If a corrupt practice offence, such as the proposed offence, is committed by a candidate they would be disqualified from standing. In accordance with the RPA 1983 a candidate is disqualified from standing as a Member of Parliament (MP) or in a local election for 5 years if they are convicted of a corrupt electoral practice.¹⁰

If an elected representative (such as an MP or a local councillor) was convicted of a criminal offence, they could be disqualified from their seat. This would depend on the length of the prison sentence they were handed down under criminal law. An MP¹¹ would lose their seat if they were sentenced to more than one year in prison and a councillor¹² would be disqualified if they were sentenced to three months or more in prison. Additionally, as per the Recall of MPs Act 2015, if an MP is convicted of an offence and sentenced to a custodial sentence, a petition to recall an MP is opened when all avenues of appeal are exhausted and, if successful, the MP would lose their seat and a by-election would be called.

The Government does not intend to remove the right to vote under the new offence. Removing the right to vote is restricted to the most serious of electoral offences that affect another person's right to vote, such as fraud or personation. Consequently the Government considers that it would be disproportionate to remove an offender's right to vote under the new offence.

4. Which elections would be covered?

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.

85% of respondents agreed that the offence should apply at all polls. This proposal did not receive a lot of discussion.

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.

85% of respondents agreed that the offence should apply during a referendum. Like question 4, this proposal did not attract a lot of comments.

¹⁰ Section 173 RPA 1983.

¹¹ Sections 1 and 2 RPA 1981.

¹² Section 80 Local Government Act 1972.

Government response

The Government intends to implement the offence so that it is applicable to candidates and campaigners at all polls and referendums that the UK Government has responsibility for.

Candidates and campaigners play an important role at all types of elections and referendums and intimidation is not restricted to parliamentary elections. It is possible that exposure to abuse at a local election could deter a potential candidate from standing at local or national poll. It is therefore right that the protection is extended to cover all polls, the responsibility for which remains with the UK Parliament (i.e. all non-devolved polls).

In line with the usual process for national referendums the Government intends that the specific rules created for a national referendum would apply the new electoral offence, with appropriate modifications.

5. Who should be protected?

A. Candidates

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.

65% of respondents agreed that the existing definition of when someone becomes a candidate is suitable for the proposed new offence.

Although the majority agreed with this proposal, questions were raised about how this would be implemented in practice. Several responses, including the Green Party Northern Ireland, the Centenary Action Group, and others highlighted that the offence would not include people who could be considered as *de facto* candidates before they become official candidates. The Liberal Democrats expressed concern that the current definition would not include candidates who appear on party lists.

Similar issues arose in feedback about an applicable time period for the offence. Both of these elements sparked discussion about whether the offence should not be entirely limited to the election period. This point will be looked at further in response to questions 8 and 9.

B. Campaigners

Question 7(a): 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 7(b): 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?

65% agreed that campaigners should be included under the proposed new electoral offence. Respondents suggested several types of people who should fall under this definition, including:

- people who are formally recognised as a campaigner by a candidate or their agent, or the Returning Officer;
- polling agents, election agents, counting agents and tellers;
- employees of a registered party or independent candidate;
- political commentators;
- members and volunteers of a registered political party; and
- activists.

Some respondents also suggested defining a campaigner based on the type of activity that they undertake rather than their role. Examples of what campaigning entails were submitted to the consultation including:

- delivering leaflets bearing the imprint of the candidate or campaign
- helping at a street stall that is part of the campaign
- canvassing for the candidate
- sharing an election communication online that bears the imprint of the candidate or campaign.

C. Other

The Association of Electoral Administrators (AEA) and some local councils suggested that Returning Officers and their staff should also be protected under the new electoral offence.

Government response

A. Candidates

The Government is keen to protect candidates and campaigners under the proposed new offence. The Government believes that the existing definition of when someone becomes a candidate is appropriate. According to the RPA 1983¹³ a person who has previously declared themselves as a candidate for an election becomes a candidate when Parliament is dissolved prior to an election (i.e. prior to when the writ for an election is announced). In a by-election, the point a person who has previously declared themselves to be a candidate becomes a candidate is at the point the vacancy occurs. And for a local election, a person who has declared themselves to be a candidate officially becomes a candidate on the last day for publishing the notice of election. Subsequent to these points in time, any individual who is declared or nominated as a candidate is a candidate from that point on.

The Government agrees that it is appropriate to also protect candidates who appear on Party Lists and it will seek to include people on Party Lists in the new electoral offence. This would be applicable only in the case of Greater London Authority elections, as these are the only types of elections for which the UK Government will have responsibility for, after the UK leaves the EU, that use the Party List system.

¹³ Section 118A RPA 1983.

B. Campaigners

Campaigners will be included in the new electoral offence. Currently there is no definition of a campaigner in law. Nonetheless it is clear that campaigners play an important role in the electoral process. The Government believes that the most workable approach is to define a campaigner by the type of activity undertaken. Cabinet Office will work with the Attorney General's Office and the Crown Prosecution Service to develop a clear definition that protects campaigners who undertake a series of lawful political activities in an organised manner which are aimed at a public audience to persuade voters to vote a certain way at an election or referendum.

C. Other

Before developing the consultation the Government considered extending the proposed offence to include other groups of people, including public servants who deliver elections. However we have not received evidence to support the need to extend the protection to Returning Officers and their staff. Based on this, the offence will not be extended to electoral administrators, but they will remain protected under existing criminal law.

6. Applicable time period

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

57% of respondents agreed that the protection should start from the period of notice of elections. Those who disagreed considered that candidates and campaigners could also face intimidation outside of this time period and that the offence should be extended to a broader time period.

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.

47% agreed that there should be a period of time before the notice of elections during which the protection should be applied.

Some responses suggested that the proposed new offence should also apply during the long campaign period. The Conservative Party referred to the fact that under the Political Parties and Elections Act 2009 spending rules apply during the long campaign in the run up to the UK Parliamentary General Elections. It was pointed out that during this period people are actively campaigning and although their candidacy has not officially commenced they could be at risk of intimidation. It was also suggested that incumbent MPs should be protected during the long campaign period.

Other responses thought that the proposed offence should not be tied to the election period at all, and that instead the offence should be applicable throughout the year.

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

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

50% of all responses agreed with the proposal that the protection offered by the offence should end seven calendar days after the close of the poll.

The Northern Ireland Green Party suggested that the offence should end seven calendar days after the close of the election count. Similar to question 9, some responses thought that there should be no end date to the application of the offence.

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.

90% agreed that the protection should apply during a referendum period. It was suggested that the protection should start once the relevant legislation setting the date of the referendum has come into force. After this time, regardless of whether the regulated period for referendum campaign spending has started campaigners can start campaigning and may be at risk of being intimidated.

Government response

The consultation proposed that the new electoral offence would apply during the period of notice of elections (i.e. 25 working days before polling day when notice of election has been posted up) until seven calendar days after the close of poll. This is in line with the Committee's report which emphasised that the election period is an important point in the democratic process and it is also a time where tensions are heightened and cases of intimidation are more likely.

Responses to questions asked under "Who would be protected: Candidates" and the "Applicable time period" raised related points on the issue of whether or not the offence should apply either year round or during a specific time period connected, but not limited, to the period of notice of elections. In response to both sets of questions it was highlighted that in practice candidates and campaigners are active in advance of this period and are therefore potential targets of abuse and intimidation outside of the proposed election period.

The Government acknowledges that it is common practice for candidates and campaigners to campaign before the official election period officially begins. However, in line with the rationale outlined in the Committee's report, it does not consider that the offence should apply all year round. As an election draws nearer tensions are heightened and so there is a greater need for the additional protection at this time. Outside of the applicable time period existing criminal law applies.

That said the Government agrees that it is appropriate that the new offence should apply during the long campaign for parliamentary elections. The long campaign starts (usually) five months before a General Election and ends on the day a candidate is officially nominated (usually 25 working days before the day of poll). The long campaign period is set out in section 76ZA of the

RPA 1983 where it covers pre-candidacy election expenses for General Elections. These spending restrictions apply to anyone who wants to become a candidate at a UK Parliamentary Election. It is therefore based upon their intention to stand.

As it is likely that campaigning will take place during the long campaign it is right that we seek to protect against intimidation during this timeframe, in addition to the notice of elections period. The Government intends that the new offence will be applicable during the notice of election period for all non-devolved elections and also during the long campaign for all UK parliamentary elections.

However we do not propose to change the definition of a candidate. The offence would apply during the long campaign if somebody attacked a person, who has not yet been officially nominated or declared, but in all the circumstances should be taken to be a candidate. This could also include incumbent MPs. The court would look to the mental element to determine the case, i.e. did the offender commit the offence because they believed that the person was a candidate. This would include examining the proximity to the election, the evidence indicating that the person is likely to be a candidate in that election, and the extent to which the criminal conduct may be said to be linked to the person's status as a candidate.

In relation to the end date of the offence, the Government intends that the applicable time period will cover up until seven calendar days after the close of the election count.

7. Ensuring the offence only applies in appropriate cases

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?

85% of respondents agreed that the offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner. The Conservative Party thought that this approach might be overly restrictive. It suggested that the offence could be framed as intimidation in connection with a candidate or campaigner, as intimidation can be driven by opposition to political views and opinions, rather than candidacy.

Government response

The Government intends that the new offence would only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner. This is in order to ensure that the offence is enforceable it is necessary that there is clear and identifiable mental culpability of the offender, i.e. that the person committing the offence is motivated because the person they are committing the offence against is a candidate or a campaigner.

Next Steps

Responses to section one provided us with useful insight from a range of stakeholders and individuals. We are grateful for the support, information and opinion provided which has fed into how we plan to take this proposal forward.

The Government is committed to acting to protect our electoral process and it plans to legislate for this offence when parliamentary time allows. The offence will be designed in the manner described throughout the response to section one, and it will apply to UK parliamentary elections and other non-devolved elections. It will apply the electoral sanction that removes a person's right to stand for election, in addition to appropriate criminal sanctions, to an offender who intimidates a candidate (including people who appear on a party list) or campaigner during the long campaign, the electoral period or the referendum period.

Section 2: Intimidation of voters - Undue Influence

Consultation questions and Government response

This section will provide a summary of feedback received on section two of the consultation: clarifying undue influence. It will also include the Government's response to the different elements as outlined in the consultation:

1. Simplifying the law on undue influence
2. Intimidation inside and outside of a polling place

1. Simplifying the law on undue influence

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

100% of respondents agreed that the law of undue influence requires greater clarity. Responses emphasised the importance of reviewing the law to ensure it is clear and enforceable and in line with today's language and society.

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.

85% agreed that the offence should not materially change the element of the offence relating to physical acts of violence or threat of violence. The CPS, in its response, asked whether intimidation *per se* should amount to undue influence or if a different (lesser) threshold for the threat of violence would be appropriate.

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 should be captured within this offence. Do you agree? If not, please explain.

84% of responses agreed with this proposal. There was some discussion around what conduct constitutes harm and some responses noted that 'harm' ought to be carefully and simply defined when clarifying undue influence. News Media UK highlighted that any redrafting of the offence should extinguish any ambiguity in order to ensure that 'harm' could not extend to the infliction of offence or hurt feelings, nor should it punish political fervour. It noted that the redrafted offence should target more precisely threats of physical harm and abuse of position.

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

90% of responses agreed that the offence should keep a reference to direct and indirect acts which cause the elector harm. Respondents were content with the retention and the majority acknowledged that both direct and indirect acts can equally be a source for concern.

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.

85% agreed that offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm should be retained. A couple of respondents expressed concern that offences 'on behalf of a perpetrator' could be too wide or vague.

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.

78% agreed that the scope of section 115(2)(a) should continue to include acts which are carried out before and after the election.

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

88% of responses agreed that the offence should cover actions of duress. The Electoral Commission suggested that consideration should be given to the definition of duress in order to separate it from duress as used in criminal and contract law. It also noted that a simplified undue influence offence should not conflict with the right to freedom of expression, in light of the fact that many people will legitimately want to persuade others to vote for certain candidates and any restrictions on this freedom will need careful consideration.

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

94% agreed that the offence should still cover trickery. This proposal did not garner a lot of discussion. However, one response considered that the definition of trickery would be too vague for the offence to be enforceable.

Government's Response to simplifying the law on undue influence

The Government welcomes the responses to the questions posed on simplifying the law on undue influence. It is clear from the contributions that there is support for clarifying the offence. This feedback also aligns with recommendations from the review by (the then) Sir Eric Pickles into electoral fraud and the Law Commission's Interim Report.

Likewise the Government recognises the need and value in simplifying the offence of undue influence. It is keen to ensure that the offence offers adequate protection for electors to be free

from undue influence and that the offence is effective for enforcement agencies. The Government will legislate to clarify the offence with this intent.

In accordance with what was described in the consultation the following is a breakdown of what the redefined offence of undue influence, which will still be aimed squarely at protecting voters from undue influences to vote in a certain way, will encompass:

- physical acts of violence or threat of violence;
- non-physical acts inflicting or threatening to inflict damage, harm or loss;
- actions of duress;
- actions of trickery;
- acts which are intended to cause harm;
- direct and indirect acts which cause the elector harm;
- offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm; and
- acts which are carried out before and after the election.

In line with the Government's previous commitment¹⁴ it also intends to maintain the elements of temporal or spiritual injury in the redrafted offence. In addition, 'intimidation, including (but not limited to) intimidation inside and outside a polling station' will be included in the redefined offence.

As it currently stands intimidation is already implicitly included in the Representation of the People Act 1983 offence of undue influence. However, for intimidation to be captured it has to reach the level of conduct described in the offence, for example violence or threats of violence and duress.

In order to ensure that behaviour that could unduly influence an elector is captured in the offence, and to clarify what the offence includes, the Government considers that intimidation should be explicitly included as an element of undue influence. For the offence to apply in this circumstance, the behaviour would not need to amount to physical force, violence or restraint, but would include behaviour which could reasonably be classed as intimidating.

In relation to suggestions that certain elements within the offence ought to be defined to provide clarity to their meaning, such as harm or duress, the Government does not intend to set definitions. The concepts of harm, duress and intimidation are not currently defined in criminal law and the Government does not propose to define them in electoral law. They will be left to be construed according to their ordinary meaning and as conduct that a prosecutor could be expected to identify.

In line with the concerns raised in some responses, the offence will be redrafted in accordance with Article 10, Freedom of Expression, of the European Convention on Human Rights. Simplifying the offence will not result in punishing political fervour.

Intimidation at polling stations

¹⁴ "Government's response to Sir Eric Pickles Review of Electoral Fraud", December 2016. Available online here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/580514/government-response-sir-eric-pickles-review-electoral-fraud.pdf

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.

78% of respondents agreed that the scope of the offence should remain the same, subject to including a specific reference to intimidation at polling stations. The CPS asked whether there was a need to specifically include intimidation 'at a polling station'. It was considered that intimidation at a polling station would be captured if other elements of undue influence were sufficiently clarified. The Electoral Commission shared a similar viewpoint.

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

83% of respondents agree that the offence should capture intimidatory behaviour inside or outside the polling station. The AEA and other respondents highlighted that the area that would amount to 'inside or outside of the polling station' would need to be clearly defined. It was suggested by some that this should include both the inside and outside of a polling station and any defined areas immediately surrounding the polling place designated by the Returning Officer as appropriate.

73% of respondents agreed that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint. The Electoral Commission expressed concern about lowering the bar of undue influence to include any behaviour which could be reasonably considered as intimidation at a polling station and emphasised the importance of ensuring that freedom of expression and assembly are not infringed.

Some responses included what type of behaviour ought to be captured as intimidation at a polling station including verbal intimidatory behaviour and online intimidation. On the other hand another response to the consultation thought that verbal abuse would be too difficult to police.

Government's response to intimidation at polling stations

The Government intends to clarify undue influence to include a specific reference to intimidation, including (but not limited to) intimidation inside and outside a polling station. It is intended that this approach will capture intimidation of voters in all circumstances, including 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.

In terms of how the area included in 'inside and outside a polling station' would be defined or identified, the Government is aware that this won't always be as straightforward as it may seem as a variety of buildings are used to hold polls. Polling places which house the polling stations, and the grounds they sit in, vary in size, shape and space and it is difficult to define a standard radius.

A solution may be to set a distance from the grounds of the polling place or polling station. That could mean X metres from a polling place at a station or from the wider grounds of a building. Based on feedback from the consultation another option could be including defined areas immediately surrounding the polling place or polling station which would be designated by the Returning Officer as appropriate.

The Government will take this forward in line with its work to implement the recommendation from (the then) Sir Eric Pickles' report to provide a provision of a facility for Returning Officers to be able to create a *cordon sanitaire* around a polling station in Great Britain.

Next Steps

We have analysed feedback received on section two of the consultation and we are keen to take forward changes to the current law on undue influence to make it more readily understandable and support its use where necessary.

As outlined above, the Government intends to act on this. We will bring legislation forward, when parliamentary time allows, to simplify the offence of undue influence to ensure that voters are protected so that they can make their choice without being subject to inappropriate pressure.

Section 3: Digital Imprints

Consultation questions and Government response

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?

The majority of respondents agreed that the current regime for printed election material promotes transparency and gives confidence in our systems. For example, one respondent believed that the current printed imprint system promotes accountability, by making political parties and campaigners responsible for their printed communications.

On the other hand, another respondent believed transparency does not necessarily produce confidence in a system. Some responses also suggested that the existing law on printed imprints was not enforced, highlighting instances where posters without imprints had remained in place over the course of an election campaign. Others noted the importance of the law on printed imprints, citing examples of when those imprints have helped identify the role of a relevant party in an election leaflet, enabling legal action in respect of electoral offences or defamation to be taken if required.

Government Response

It is encouraging that the majority of respondents viewed the existing printed imprint system as one that promotes transparency and gives confidence in the current regime. In developing proposals for a digital imprints regime, our starting point has been to look to replicate the printed imprint model in the digital sphere.

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?

The majority of respondents advocated a consistent application of Political Parties, Elections and Referendums Act (PPERA) 2000 imprint rules across the UK.

Government Response

Currently, certain aspects of the PPERA 2000 do not apply to Northern Ireland. This means that the regime covering printed imprints on Parliamentary election material in Northern Ireland is currently less comprehensive than in Great Britain. The strong support for a consistent application of the imprint rules across the UK, suggests it would be sensible to ensure digital imprint rules are equally applied across all areas of the UK.

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

The majority of respondents suggested that imprints should be required on all digital election material, regardless of spend, and viewed a spending threshold as problematic. A minority of respondents recommended introducing an imprint that includes information on who funded or produced the content. One respondent thought imposing a spending limit would further confuse campaigners as to whether specific material required an imprint or not, while another wondered how material posted by bots (where spending was below the threshold) would be captured. Another respondent thought setting spending limits would be challenging because digital election material can be disseminated at such little cost that any threshold would be low and meaningless.

Two respondents supported prioritising spending over a certain threshold, for practical purposes, suggesting that it could make for easier monitoring. In addition, one of the two respondents suggested that there should be some flexibility in the law, believing that getting things wrong online should not result in legal action. A separate response also questioned whether imprint regulations could unfairly penalise local and grassroots movements.

Government Response

We note the strong support for having a digital imprints regime that does not differentiate by the amount spent on election material.

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

The majority of respondents agreed that new rules on digital material should only apply to what we already consider to be ‘election material’. In general, respondents were cautious about extending election material rules to broader categories, emphasising the need to strike a balance between a system that increases transparency, but does not hinder free speech or a chance to democratically engage online. A minority of respondents asked for ‘political ad’ rules to be introduced, while one respondent emphasised that any requirements to publish an individual’s name would expose vulnerable individuals, or those who had a good reason to remain anonymous.

Respondents also raised specific questions, suggestions and concerns, such as: (i) whether a party member’s personal Twitter feed, in support of a candidate from the same party, would be considered online campaign material, (ii) whether political messages from individuals known as ‘influencers’, that are paid-for financially, or in kind, could be regulated, and (iii) whether it was necessary for vulnerable communities and victims of crime to publish their name on an imprint. There was some concern about whether groups that are controlled by another group would be required to publish an imprint.

Similar concerns were raised about issue-related campaigns that post material that does not specifically relate to an election.

Government response

It is helpful to hear respondents’ views on election material. The Government intends to retain the definition of ‘election material’, which is defined in section 143A of the PPERA 2000 as material

which can be reasonably regarded as intended to promote or procure electoral success for registered parties or candidates at a relevant election. The Government will carefully consider these views as we develop the policy for a digital imprint regime.

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

In general, the majority of respondents agreed and recommended that digital imprint regulations should apply all year round. One respondent suggested the requirement for imprints should only apply when people are formally treated as candidates.

Some respondents raised a number of technical points that they believed should be taken into consideration. For example, one respondent suggested imprints should be required on paid-for digital material all year around, including on memes (trending topics, images or catchphrases), social networking sites, GIFs (interchanging graphic images) and podcasts. The response also suggested imprints should be included when activities such as microblogging, photo sharing or video sharing include election material.

Government Response

We agree with the majority of respondents that an imprint should be required on digital election material, whenever that material is published. This matches the current regime for printed election material. We will consider the technical points raised as we continue to develop the policy.

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

In general, the majority of respondents recommended addressing all forms of digital communication by adopting a platform-neutral approach. Some respondents questioned why what they saw as 'political advertising', was not covered by national advertising standards and recommended addressing micro-targeted political ads online. Respondents also suggested regulating all mechanisms of digital communication to future-proof any digital imprint regulations introduced and to avoid prioritising social media platforms. They also felt a consistent application of digital imprint rules across all forms of digital communication would ensure the rules were fair and applied across the board.

Government response

Digital communication has in recent years taken a number of forms. This includes email, SMS, social media, instant chat and other methods of communication. Each of these methods of communication pose their own monitoring and enforcement challenges when we consider how digital imprints might be applied, particularly when digital information is copied, shared or edited. Whilst social media has proven the most popular form of digital communication in the run up to recent elections, we are aware that regulating certain forms of digital election material over others could confuse candidates, agents and political parties as well as hinder the transparency of information for voters. On the other hand, regulating every form of digital election material may prove expensive and over-burdensome in cases where it is already evident where the information has come from. We will take these issues into consideration as our digital imprints policy develops.

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?

Although the majority of respondents recommended producing a digital imprint with a clear visible identity, there were mixed views as to what this could look like. Suggestions included using a template, a link, a watermark, citations and hovering text.

Some respondents also suggested: (i) embedding imprints in email, (ii) including an authorisation stamp on an imprint, (iii) adding an imprint in the form of a pop-up, text box, link or citation, and (iv) regulating social media bios and information on profiles. A number of respondents also recommended reducing the information a digital imprint would be required to provide, with some saying that simply adding the name of the political party to whom the imprint relates, would suffice. The comments included in the responses received also posed questions around: (i) how imprints on platforms with word or character limits would work, (ii) how digital imprints on phone apps would work, (iii) whether personal communication would also require an imprint, (iv) who the 'printer' of the election material is (for example is it the mail server used to send an email or the company hosting the website) and whether the European Digital Advertising regulations sufficiently cover the requirement for an imprint.

Government response

Clearly, the technical capabilities and nature of various digital platforms presents a number of challenges when considering how a digital imprints proposal might be introduced. As the policy develops, the Government will engage with a variety of stakeholders to determine how the regime can be platform neutral.

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

In general, the majority of respondents did not believe that an imprint on a bio was sufficiently visible. The reasons respondents gave for this include: (i) only a small proportion of users click to see the bio of the Tweeter, (ii) a bio is not visible when the material appears in a user's twitter timeline, (iii) a bio does not guarantee that the link will be maintained, (iv) a Twitter bio would appear cluttered on other forms of digital communication and (v) because advertisers could potentially remove the imprint from the bio.

Government response

Whilst overarching spaces, such as Twitter bios, do provide some transparency for digital election material, respondents raised a number of concerns regarding how digital imprints on bios would work on other platforms, and whether a bio could be tampered with, deleted or forged. We will engage with relevant stakeholders to review the technical capabilities of different digital platforms as our policy proposals develop.

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

The majority of respondents recommended making digital platforms take greater responsibility for future-proofing these mechanisms. In addition, respondents also proposed: (a) introducing a clear template for all platforms to follow, (b) placing the responsibility for regulatory compliance with the campaigner who posts the material, (c) adopting a principles-based (rather than a company specific) approach that will apply even when changes in companies, technologies and products occur, (d) introducing a legally-binding Code of Practice that must be followed and can easily be updated, (e) providing a reporting function so people can report any material without an imprint, and (f) introducing digital imprints which can be machine-read, recorded and stored.

Government response

Whilst we cannot predict what direction future digital platforms and forms of communication may take, we will aim to ensure any digital imprint regulations are clear, purposeful, effective and platform neutral.

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

Respondents had mixed views to this question, many highlighting the need to further assess the risks and difficulties associated with sharing digital election material. Overall, respondents thought an imprint should follow the material on which it is placed when it is shared, even if the information is moved, forwarded or copied. However, respondents did not agree when this should not be required, some suggesting only the original publisher of the material should bear the imprint, others suggesting newspapers, journalists and third-parties should not be responsible for how the material is used. One respondent recommended that all election material should carry a 'party of source' label and another response suggested that material that is changed and re-published should be regarded as new content and should carry a new imprint.

Government response

As one respondent noted, if individuals who share information for personal reasons are required to include an imprint, this could deter them from sharing election material online and therefore limit democratic engagement. Balancing arguments both for and against regulations that require shared digital election material to include an imprint will therefore be taken into consideration as the policy is developed. The Government will think very carefully about how we might introduce a digital imprints regime that provides greater transparency for voters, but does not adversely affect democratic engagement or stifle healthy debate.

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

The majority of respondents recommended maintaining current enforcement powers. However, a number were concerned about the police resources available to investigate election offences. Respondents also touched upon the availability, shortage and expense of resources in their answer to this question, with many noting that: (i) enforcement of a digital imprints regime rests upon the quality and speed of information provided by various companies, (ii) the maximum fine for a breach of such rules could simply be perceived as the 'cost of doing business', (iii) a relevant

authority may not have enough time to determine whether an election should be rerun if a significant breach of rules occurred, and (iv) the investigatory powers of the relevant authorities are inadequate when the authorities have not opened the investigation themselves. Another respondent also suggested that fines for breaches of election material laws should consider the number of people who have viewed the material.

Government response

We understand respondents' reasons for raising the concerns outlined above and will carefully consider the issue of enforcement and the use of fines as a deterrent when developing a digital imprints regime.

Next steps

We have carefully considered the responses received to this consultation and would like to thank our respondents for the invaluable feedback they provided. The information received has affirmed the need for a transparency of digital election material, and is helping to inform our policy proposals. We believe citizens deserve transparency, and, on that basis, we will look to bring forward our proposals to introduce a digital imprint regime later this year.

As a part of their work on the Online Harms White Paper, we will work with the Department for Digital, Culture, Media and Sport on their review of online advertising, and the appropriate regulations for the digital imprint proposals. The Cabinet Office will now consider the technical details of how the legislation should be framed, to ensure an effective and proportionate digital imprint regime.

We envisage a regime that will increase the transparency of digital election material whilst not unnecessarily or disproportionately interfering with individual members of the public expressing opinions and engaging in democratic debate.

The regime would cover digital election material. "Election material" is defined at section 143A of PPERA and means material which can be reasonably regarded as intended to promote or procure electoral success for registered parties or candidates at a relevant election.

These rules would apply whenever election material is published on digital platforms.

Conclusion

We have carefully considered each of the contributions to the consultation and would like to thank the respondents for the valuable input they have provided. This feedback has helped to develop the three proposals but also reaffirmed the need to act. We aim to: promote debate and discussion instead of intimidation, prevent undue influence on an elector and ensure that political debate is informed and transparent.

It is clear from the Committee's report, recent instances of abuse, and the responses to the consultation that intimidation can do real damage to our democracy and has no part to play in a healthy debate. The proposed electoral offence of intimidation of candidates and campaigners aims to protect against intimidation during the election period and, where applicable, the long campaign. It is hoped that this measure will help to preserve the integrity of the electoral system by making sure that candidates, campaigners and voters are not put off politics, standing for elected office or campaigning, while also focusing the political debate on informed discussion and robust debate rather than intimidation and abuse.

Equally, it is crucial the voters can go to the ballot box free from undue influence, including intimidation. The current offence of undue influence has proven to be a complex piece of law that, as noted by (the then) Sir Eric Pickles, is considered to be incredibly difficult to prove to the criminal standard. The need to clarify the offence was supported by every respondent to section two of the consultation and the Government intends to legislate to clarify the law to ensure that voters can make their choice free from undue influence.

As Lord Bew notes in the Committee's report, "there is no single, easy solution" to tackle intimidation in public life, and it is acknowledged that the proposed changes to electoral law are just one element of a package of work needed to tackle this problem. In line with this it is also right that we strive to improve information and transparency for voters.

Having considered how we can protect against intimidation and undue influence, we also need to look at the nature of the information voters are given. 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 printed election material can be extended to digital communications, we aim to improve transparency for voters. A thriving democracy is based on participation, and transparency of digital election material means citizens can make their choices with more information and confidence.

To address these wide-ranging and complex issues the Government calls on everyone to play their part in fostering a healthy public political culture, including political parties, candidates, campaigners, social media companies, the police and criminal justice system, all those involved in public life and citizens themselves. It is crucial that we stand together to oppose behaviour which threatens our democracy.



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