

BIG BROTHER WATCH

**Big Brother Watch briefing
on the Elections Bill and
voter ID; House of Lords
Report Stage**

April 2022

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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INTRODUCTION

1. The Elections Bill poses a threat to democratic integrity in the UK. This Bill would introduce a mandatory voter ID scheme - a policy which has been described by David Davis MP as an “illogical and illiberal solution to a non-existent problem.”¹ Such a measure is neither necessary nor proportionate to the extremely rare issue of voter impersonation in the UK but would disenfranchise voters across the country.
2. Protocol 1, Article 3 to the European Convention on Human Rights (ECHR) enshrines the right to free elections and requires the government to support citizens’ right to free expression by holding free elections. The Protocol states: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”²
3. It is incumbent on democratic states not to create unnecessary barriers for those exercising their right to vote. If democracy is to be of the people, then it should be for voters to choose their representatives and not the other way around.
4. Furthermore, there is no justification for compulsory voter ID in the UK. Since 2014, only 3 people in the UK have been convicted of voter fraud.³ Yet a voter ID trial in 2019 resulted in over 2,000 people being refused a ballot paper for forgetting ID.⁴
5. In spite of the lack of evidence to justify an alteration in electoral processes, which could disenfranchise millions, the Government have cited the idea that there might be more instances of voter fraud than those cases known to have resulted in prosecution. This is a baseless claim which runs in the face of the principle of the presumption of innocence.
6. Whilst discussing the low levels of voter fraud in the UK during House of Lords Second Reading, Baroness Hayman of Ullock pointed out

¹ David Davis MP, Twitter, September 2021, <https://twitter.com/daviddavismp/status/1433391047200157696>

² Article 3 of the First Protocol: Right to free elections, European Convention on Human Rights, Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en/human-rights-act/article-3-first-protocol-right-free-elections>

³ Legislative Scrutiny: Elections Bill, Joint Committee on Human Rights report, p8, <https://committees.parliament.uk/publications/7096/documents/74960/default/>

⁴ May 2019 voter identification pilot schemes, Electoral Commission, 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/our-findings>

“The Government have tried to justify their proposals through a precautionary principle: that it [voter fraud] might be happening more. While there is nothing inherently wrong with taking a precautionary step, this seems a remarkable basis on which to introduce a policy that seems certain to deny many more legitimate votes than it will prevent illegitimate ones.”⁵

7. The Public Administration and Constitutional Affairs Committee has heavily criticised the Government’s voter ID proposals, arguing that these measures would lock people out of our democratic systems and perpetuate distrust. In a recently published report, the Committee said,

“Introducing a compulsory voter ID requirement risks upsetting the balance of our current electoral system, making it more difficult to vote and removing an element of the trust inherent in the current system.”⁶

8. This measure is not only an inhibition on the right to cast a ballot, but also marks a steady march towards an intrusive national ID system. The British public have repeatedly opposed attempts to introduce such a scheme. Compelling individuals to possess identity documents in order to partake in democratic processes marks a clear step in the direction of a national ID card.
9. It is clear that the introduction of compulsory voter ID is neither necessary nor proportionate. As such, **Big Brother Watch urges peers to support the amendment laid by Lord Woolley which leaves out clause 1 of the Bill.** Below are our key concerns.

CLAUSE 1 – VOTER IDENTIFICATION

10. Clause 1 of the Elections Bill states: “Schedule 1 makes provision, including provision amending RPA 1983, in connection with the production of identification at polling stations by voters.” Schedule 1 sets out which “specified documents” would be accepted and make provision to introduce a new, free elector card.
11. Specified documents set out in Schedule 1 include the following:
 - (a) a United Kingdom passport;
 - (b) a passport issued by an EEA state or a Commonwealth country;
 - (c) a licence to drive a motor vehicle granted under—

⁵ HL Deb. 23 January 2022, vol. 819, col. 233

⁶ The Elections Bill, Fifth Report of Session 2021–22, Public Administration and Constitutional Affairs Committee, 2021, p.31, <https://committees.parliament.uk/publications/8194/documents/83775/default/>

- (i) Part 3 of the Road Traffic Act 1988, or
- (ii) the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (N.I. 1));
- (d) a driving licence issued by any of the Channel Islands, the Isle of Man or an EEA state;
- (e) a biometric immigration document issued in accordance with regulations under section 20 with regulations under section 5 of the UK Borders Act 2007;
- (f) an identity card bearing the Proof of Age Standards Scheme hologram (a PASS card);
- (g) a Ministry of Defence Form 90 (Defence Identity Card);
- (h) any of the following concessionary travel passes—
 - (i) one funded by the Government of the United Kingdom, the Scottish Government or the Welsh Government;
 - (ii) an Oyster 60+ card;
 - (iii) a Freedom Pass;
- (i) any of the following concessionary travel passes issued under the Northern Ireland Concessionary Fares Scheme—
 - (i) a Senior SmartPass;
 - (ii) a Registered Blind SmartPass or Blind Person's SmartPass;
 - (iii) a War Disablement SmartPass or War Disabled SmartPass;
 - (iv) a 60+ SmartPass;
 - (v) a Half Fare SmartPass;
- (j) a badge of a form prescribed under section 21 of the Chronically Sick and Disabled Persons Act 1970 or section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (blue badge scheme);
- (k) an electoral identity document issued under section 13BD (electoral identity document: Great Britain);
- (l) an anonymous elector's document issued under section 13BE (anonymous elector's document: Great Britain) the holder of which has an anonymous entry at the time of the application for a ballot paper;

(m) an electoral identity card issued under section 13C (electoral identity card: Northern Ireland);

(n) a national identity card issued by an EEA state.

12. The case for a compulsory voter ID system has not been justified or explained. Evidence shows that voter impersonation is an incredibly rare crime. Following the 2017 elections, which saw 44.6 million votes cast and the highest voter turnout at a general election for 20 years,⁷ there was only one conviction resulting from 28 allegations of in-person voter fraud⁸ - i.e. 0.000063% of votes cast.

13. This was a point made by the former head of the civil service, Lord Kerlake during House of Lords Second reading, when he said

“The evidence for personation is tiny—I am a former returning officer—and far outweighed by the evidence that people will be prevented or inhibited from voting by the proposals put forward by the Government. Moreover, we know it will be younger and lower-income people who are most affected. I am very doubtful that we need this at all”⁹

14. According to the Electoral Reform Society, around 9 million eligible voters are missing from the electoral roll.¹⁰ However, this number could be raised significantly with the introduction of voter ID.

VOTER ID TRIALS - A BARRIER TO DEMOCRATIC RIGHTS

15. Requiring voter ID would create an extra obstacle for the millions of people without ID in the electorate, which could increase disenfranchisement, decrease turnout and undermine fairness.

16. In trials of voter ID requirements during 2018 and 2019 local elections, three different types of voter ID demands were tested: photo ID; mixed ID (either photo ID or two pieces of non-photo ID); or the poll card. In areas piloting the

⁷ General Election 2017: results and analysis, HoC Library, 2019, <https://researchbriefings.files.parliament.uk/documents/CBP-7979/CBP-7979.pdf>

⁸ Analysis of cases of alleged electoral fraud in the UK in 2017, Electoral Commission, 2018, https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Fraud-allegations-data-report-2017.pdf

⁹ HL Deb. 23 February 2022, Vol. 819, Col. 272

¹⁰ Millions missing from the electoral register in event of snap election, Electoral Reform Society, 2019, <https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/millions-missing-from-the-electoral-register-in-event-of-snap-election/>

photo ID and mixed ID requirements, voters who did not already have such ID could apply to their local council for an identity certificate.

17. The results of voter ID trials demonstrate that such requirements are disproportionate and damaging to democracy. In the 2018 voter ID trials, around 350 people were refused their vote across the 5 trial areas (not including around a further 680 who were initially turned away before returning with ID)¹¹. In 2019 voter ID trials, over 750 people were refused their vote in local elections across 8 trial areas.¹²
18. Disenfranchisement resulting from compulsory voter ID requirements is a serious detriment to individuals' rights, and could also impact electoral outcomes. In the 2018 voter ID trials, the 154 people turned away from the polling station in Bromley alone is a larger amount than the majorities won by 13 MPs at the 2017 general election.¹³ Voter ID disenfranchisement clearly has the potential to significantly impact election results and the make-up of local and national governments.
19. In the 2019 trials, approximately 2,083 people were refused a ballot paper after arriving at their polling station without the required ID, and 758 failed to return with the required ID (36%), thus losing their vote.¹⁴ The figures do not include the unknown numbers of voters who were put off from attending the polling station altogether due to the ID regulations.
20. Given the sheer number of individuals turned away during voter ID trials in England in relation to registered instances of voter fraud, it is clear that introducing this measure is neither proportionate nor necessary. This was a point made by the House of Commons PACAC Committee in their report. The Committee argued that the Government should not proceed with these proposals until the test of proportionality and necessity could be met:

"The Government has said the measures in the Bill are proportionate. Given the potential for a significant number of people not to vote as a consequence of the voter ID requirement, the Government should not proceed with its proposals for the introduction of ID for voting until at least it

¹¹ A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials, Electoral Reform Society, 2018, <https://www.electoral-reform.org.uk/latest-news-and-research/publications/a-sledgehammer-to-crack-a-nut-the-2018-voter-id-trials/#sub-section-9>

¹² Ibid.

¹³ A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials, Electoral Reform Society, 2018, <https://www.electoral-reform.org.uk/latest-news-and-research/publications/a-sledgehammer-to-crack-a-nut-the-2018-voter-id-trials/#sub-section-9>

¹⁴ Palese, M. Five things we have learnt about England's voter ID trials in the 2019 local elections, LSE Blog, 2019, <https://blogs.lse.ac.uk/politicsandpolicy/five-things-we-have-learnt-about-englands-voter-id-trials-in-the-2019-local-elections/>

has set out the criteria that were used in this proportionality assessment and explained the weight given to each criteria in the assessment.”¹⁵

IMPACT ON ELDERLY, POOR AND BAME GROUPS

21. According to the 2011 census, those in our country least likely to hold photo ID are the elderly, people from ethnic minority backgrounds and poorer people.

22. This was a point made at Commons Second Reading by then Labour Shadow Minister, Cat Smith MP who said:

“The reality is that requirements for ID discriminate against some groups more than others. Concerns have been raised from across the House and from charities and campaigning organisations that disabled people, older people, younger people and people without the spare cash to buy that passport or driving licence are going to be disenfranchised.”¹⁶

23. The numbers of people without photo IDs are significant. 9.5 million people do not have a passport¹⁷; around 9 million do not have a driving license¹⁸. According to the Government’s own statistics, around 4% don’t have recognisable ID (roughly 2.1 million people)¹⁹, however this number has been estimated to be as high as 3.5 million people²⁰. It is clear that making voter ID mandatory would be a barrier to many people in exercising their right to vote.

24. The prohibitive cost of most forms of ID is significant and increasingly pertinent during a growing cost of living crisis. This point was made by Baroness Chakrabarti during the Second Reading of the Bill in the House of Lords:

“This spring, the minimum wage for people over 23 will rise to the princely sum of £9.50 an hour; and universal credit for those aged 25 and above will

¹⁵ The Elections Bill, Fifth Report of Session 2021–22, Public Administration and Constitutional Affairs Committee, 2021, p.31, <https://committees.parliament.uk/publications/8194/documents/83775/default/>

¹⁶ HC Debate, 7 September 2021, vol. 700, col. 221

¹⁷ Detailed country of birth and nationality analysis from the 2011 Census of England and Wales, ONS, 2013, https://webarchive.nationalarchives.gov.uk/ukgwa/20160107124139/http://www.ons.gov.uk/ons/dcp171776_310441.pdf

¹⁸ Voter ID: An Expensive Distraction, Electoral Reform Society, <https://www.electoral-reform.org.uk/campaigns/upgrading-our-democracy/voter-id/>

¹⁹ Photographic ID Research – Headline Findings, Cabinet Office, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_headline_findings_report.pdf

²⁰ Delivering and costing a proof of identity scheme for polling station voters in Great Britain, Electoral Commission, 2015, https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Proof-of-identity-scheme-updated-March-2016.pdf

rise to £334.91 per month. Therefore, at £75, a passport costs a great deal of money for many of our ordinary citizens.”²¹

25. It is important to note that none of the recent trial areas significantly reflected these groups and as such the trials have not represented the impact that voter ID requirements will have in the areas most likely to be adversely affected.²²
26. In its findings, the Electoral Commission confirmed that the five voter ID trial areas in 2018 “were not sufficiently varied to be representative of the different areas and groups of people across the rest of Great Britain”, in terms of environment (rural/urban) and demography (race, wealth, age etc.)²³:
 - a) The areas trialled were politically uniform: all returned MPs from the same party in 2017 (Conservative), and all but one have councils run by the same party (again, Conservative, with Watford the only exception).
 - b) The areas were relatively well-off: each of the local authorities ranks in the top half of the 2016 Legatum Prosperity index - a broad measure of economic health - with Woking, Bromley and Watford featuring particularly highly (13th, 59th and 83rd out of 389 respectively).
27. In its review of the 2019 voter ID trials, the Electoral Commission confirmed again that: “as was the case with the five 2018 pilots, the ten areas piloting in 2019 are not fully representative, in socio-demographic terms, of many areas of Great Britain.”²⁴
28. It appears that a lower socio-economic status was associated with a higher voter rejection rate in the 2018 trials. Gosport, which had 25.1% of its population in the bottom social grade at the last census (2011), had a higher voter rejection rate (0.21%) than Bromley (0.16%), which recorded 16.2% of its population in the bottom social grade. Although definitive conclusions cannot be drawn, this initial trend is a concerning indication that socio-economic status may correlate with voter ID associated disenfranchisement.

²¹ HL Deb. 23 February 2022, Vol 819, Col. 276

²² Voter ID: An Expensive Distraction, Electoral Reform Society, <https://www.electoral-reform.org.uk/campaigns/upgrading-our-democracy/voter-id/>

²³ May 2018 voter identification pilot schemes, Electoral Commission, 2018, https://www.electoralcommission.org.uk/sites/default/files/pdf_file/May-2018-voter-identification-pilots-evaluation-report.pdf

²⁴ May 2019 voter identification pilot schemes, Electoral Commission, 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/our-findings>

29. The impact of this measure on the elderly was also noted during Second Reading in the House of Commons. Abena Oppong-Asare, MP for Erith and Thamesmead, illustrated this point when she said:

*"A 91-year-old constituent wrote to me recently. He told me that he had just given up his driving licence because he is now housebound. Asking him to apply for a new form of ID, in my view, is unreasonable and ludicrous. Another constituent with multiple disabilities also contacted me. That constituent has never had a passport or a driving licence, and is extremely concerned, fearing that the process of application for a new form of ID will be difficult to complete."*²⁵

30. While Schedule 1 of the Bill makes provision to introduce a new free elector card, polling suggests that many of those without ID are unlikely to apply for such a card. When asked about whether they would apply, 42 per cent of those with no photo ID said they would be unlikely or very unlikely to apply for a free elector card.²⁶

NATIONAL ID CARD SCHEME BY THE BACK DOOR

31. The UK has long rejected proposals for a national ID scheme. However, the requirement for personal ID to access the most fundamental democratic right citizens have, the right to vote, could in practice require all citizens to hold ID.
32. The United Kingdom has never been a papers-carrying country but the introduction of compulsory voter ID moves us a step closer, requiring every individual to possess an identity document at the threat of being locked out of our democratic processes.
33. This was a point addressed most recently during House of Lords Committee Stage by Baroness Chakrabarti, when she said:

*"Pretty much every argument that was put against compulsory ID, particularly the more libertarian arguments about this being a country of free-born people who should not need to identify themselves before the exercise of the most fundamental rights and freedoms, applies here. I am afraid that it leaves many people in this country very concerned about the true motivation behind this policy at this time."*²⁷

²⁵ HC Deb. 7 September 2021, vol. 700, col. 223

²⁶ IFF Research (2021), Briefing on the Elections Bill for its Second Reading, Electoral Reform Society, 2021, <https://www.electoral-reform.org.uk/wp-content/uploads/2021/09/Briefing-on-the-Elections-Bill-second-reading-Sept-2021-1.pdf>

²⁷ HL Debate, 21 March, vol. 820, col. 655

34. As mentioned in paragraph 30, the Bill makes provisions for the introduction of a new elector card. The extent to which this proposal will normalise the need to carry such a card or another form of ID, was noted in Committee Stage of the Bill in the House of Commons when David Davis MP said:

“Our country has over the centuries been different from other countries: we do not allow our policemen to come up to people and say, ‘Can I see your papers, please?’ It is important to maintain that distinction between the citizen and the state, particularly when we are talking about the fundamental rights of the individual, such as the right to vote.”²⁸

35. Citizens in the UK should not need a license from the state to vote. It is clear that compulsory voter ID moves us closer to that reality.

RECOMMENDATION

36. The Government’s plan to introduce compulsory voter ID through the Elections Bill is not one which meets the tests of necessity and proportionality.

37. Voter ID trials in local elections which took place in 2018 and 2019 resulted in thousands of people initially being denied the ability to exercise their democratic rights, with hundreds not registering a vote at all. In a General Election, where turnouts are generally higher, similar outcomes could undermine the integrity of results in seats across the country.

38. This potential damage to the integrity of our elections is weighed against the fact that voter fraud is a relatively minor problem in the UK, with only 3 convictions registered since 2014.

39. The Prime Minister, Boris Johnson once said:

“If I am ever asked, on the streets of London, or in any other venue, public or private, to produce my ID card as evidence that I am who I say I am, when I have done nothing wrong and when I am simply ambling along and breathing God’s fresh air like any other freeborn Englishman, then I will take that card out of my wallet and physically eat it in the presence of whatever emanation of the state has demanded that I produce it.”²⁹

Parliamentarians should take heed of the Prime Minister’s previous opposition to creating a check-point society.

²⁸ HC Debate, 7 September 2021, vol. 700, col. 216

²⁹ Johnson, B. Ask to see my ID card and I'll eat it, Daily Telegraph, 25 November, 2004, <https://www.telegraph.co.uk/comment/3613116/Ask-to-see-my-ID-card-and-Ill-eat-it.html>

40. Voter ID would largely impact the most marginalised in society, would constitute another step on the road towards an intrusive national ID card scheme and could lock millions of people out of the democratic process.

41. **Big Brother Watch urges peers to support the amendment laid by Lord Woolley which removes clause 1 of the Bill.**