

Our Democracy Is Not For Sale

– Comments on the Electoral
Reform Bill

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COMMON WEAL POLICY



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Introduction

Within the program for government announced by the Scottish government for 2018/19 there is a bill that is described as the “Electoral Reform Bill”. On the anniversary of women getting the vote it is fitting that the electoral process is being reviewed and updated for the digital age.

The description of the bill is:

The Bill will implement a range of electoral reforms, some of which will use the 2016 Scotland Act powers. These include proposals included in the recent Electoral Reform Consultation to extend the powers of the Electoral Management Board, and make changes to Boundary reviews. It will also include some technical matters, for example transferring oversight of the Electoral Commission to the Scottish Parliament.

The electoral process has been under scrutiny; particularly the conduct of the Vote Leave campaign during the European Union Referendum. This follows on from the breaking of electoral law at the 2015 United Kingdom

general election by the Labour, Conservative and Liberal Democrat parties (all of which received the maximum fine possible from the Electoral Commission). This has led to the fines being paid by the largest political parties as being treated as “a cost of doing business” in the view of the Electoral Commission.

Additionally there are allegations of attempts to influence UK elections and referendums by foreign regimes and wealthy individuals prepared to spend millions to get the result that they want.

The culmination of these events was that the Electoral Commission published a paper in June 2018 called “Digital Campaigning Improving Transparency for Voters” which contains a series of recommendations towards “each of the UK’s governments and legislatures” to make elections fit and proper for the digital age.

This paper examines each of those recommendations with respect to those that apply to the Scottish Government.

Who Runs Digital Campaigns?

During the elections of 2017 based on the spending returns of political parties 42% of advertising spending was spent on digital advertising. Additionally there could be digital content designed to influence voters which was not reported. As there is no requirement to include an imprint on digital election advertising it is difficult to identify the source of the advertisement which could be from a Scottish political party, be sponsored by an individual or produced by a foreign regime.

Therefore the first recommendation of the electoral commission is:

Each of the UK’s governments and legislatures should change the law so that digital material must have an imprint saying who is behind the campaign and who created it

This is simply bringing digital electoral advertising in line with physical advertising. So far the only election where this has happened is the Scottish Independence referendum and the Scottish Government should use the Electoral Reform Bill to make this apply to all elections which are controlled by the Scottish Government.

Spending on Digital Campaign Activity

As mentioned in the introduction many larger parties routinely ignore campaign spending limits treating the maximum fine of £20,000 as the cost of doing business. They feel the benefit of winning an election outweighs any downsides of breaking electoral law. The spending of political parties and referendum campaigns is increasingly digital and the electoral commission is keen that this spending is reported in a way that it makes it easy to

identify when spending laws have been broken.

As a consequence the Electoral Commission make the following recommendations with respect to spending on digital campaign activity:

- Campaigners should be required to provide more detailed and meaningful invoices from their digital

suppliers to improve transparency

- Each of the UK's governments and legislatures should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different categories of spending. These categories should give more information about the money spent on digital campaigns

The electoral commission are also keen to maintain the principal that election campaigns should not be decided by whichever party has the largest financial resources (this is the principal behind the ban on election advertising on television). As digital campaigning relies on specialist knowledge and expensive technical skills the electoral commission feels that the cost of those skills (unless freely given) should contribute to the spending limits. For this reason it makes the recommendation that:

- Each of the UK's governments and legislatures should change the law so that campaign-related staff costs are included in the spending limits

on political election and referendum campaign spending

Furthermore the electoral commission feels that unlimited spending prior to elections and referendums can distort the debate within an election period. As a result they recommend extending the period of time before an election that controls should start:

- Each of the UK's governments and legislatures should look at when spending and funding controls should start to apply before an election

Given the clearly identified issues with the breaking of spending limits the Electoral Commission recommend that ensuring a political party does not break their spending limit is better than fining them after the election so they make the following recommendation:

- The electoral commission recommends that spending information to be available to voters and the electoral commission more quickly after a campaign or preferably during it.

Who pays for digital campaigns?

When a single individual can make a donation of £4.2 million and another can make a donation of £3.2 million to an election campaign (as happened during the European Referendum) the concept of not being able to buy an election is broken. Clearly there should be a limit on how much an individual can donate to a campaign. Additionally there is a number of accusations that foreign individuals or regimes are making donations to campaigns to influence a vote. In particular the electoral commission are concerned about the source of the money for any donations, for example the donation could appear to come from a UK registered individual but the source of the funds could be outside of the UK.

In this regard the Electoral Commission make a number of recommendations, many of which apply to the UK government rather than Scottish one. However they do make the recommendation that:

- Each of the UK's governments and legislatures should clarify that spending on election of

referendum campaign by foreign individuals is not allowed

The key point to this recommendation is what constitutes a foreign individual. To my mind there should be a no donation without taxation rule. If an individual is not paying taxes in Scotland then they should not be making a donation to influence Scottish elections or referendums. Now if we remember that a donation is only reported when it is greater the £500 during a campaign, then almost any donor who can afford £500 should be paying taxes (putting £1 in a collecting bucket does not need to be reported as a political donation for obvious reasons). We currently have a situation where Scottish elections are being financed by parties based outside Scotland using money raised outside Scotland and run by staff not paying Scottish taxes. Clearly this is a distortion of our democracy. Any Scottish taxpayer would have a Scottish tax code. So it should be quite simple to validate donations to Scottish campaigns are made by people with Scottish tax codes.

Enforcing the Rules

As has been previously mentioned the electoral commission are concerned that current fines are so low that the major UK political parties consider them "a cost of

doing business". When the maximum fine is £20,000 this is a small amount against the power to be gained by winning an election or referendum.

As a result the electoral commission makes the following recommendation:

- Each of the UK's governments and legislatures should increase the fine the electoral commission can sanction campaigners for breaking the rules

They have not said what the figure should be (for example a figure of £1 million may be needed to be a sufficient deterrent to some larger parties though this could bankrupt smaller ones). Certainly a maximum figure of say £1 million should only be applied in the cases where there has been electoral fraud or the deliberate concealment of true spending. So it may be better to have a deterrent of re-running the election or the referendum where the law has been broken (with the offending candidate barred from the election) as this would be a more equitable approach.

Conclusion

When debating electoral reform it is easy to begin from the perspective of the political party or viewpoint an individual supports. However viewing electoral reform through this prism risks distorting democracy and destroying the credibility of the elected government as a result. However there is clearly a need to amend the rules particular in respect to campaign spending, digital campaigning and the influence of foreign individuals or regimes.

To stick a balance between the perspective of the author and the need to update the electoral rules my recommendation is to follow the recommendations of the electoral commission as set out in their document "Digital Campaigning Improving Transparency for Voters". To do anything more or less risks distorting democracy in the favour of the government of the day. To this end the following recommendations should be applied:

- The Scottish government should change the law so that digital material must have an imprint saying who is behind the campaign and who created it
- Campaigners should be required to provide more detailed and meaningful invoices from their digital suppliers to improve transparency
- The Scottish Government should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different categories of spending. These categories should give more information about the money spent on digital campaigns
- The Scottish government should change the law so that campaign-related staff costs are included in the spending limits on political election and referendum campaign spending

In addition the Electoral Commission make the following recommendations with respect to investigating and detecting the breaking of electoral law:

- The powers of the Electoral Commission should be increased to obtain information outside of an investigation
- The powers of the Electoral Commission should be increased with respect to the sharing of information with other agencies (such as the ICO) when it is in the public interest.
- The Electoral Commission should be given powers to investigate and sanction candidates for breaking the candidate rules

- The Scottish government should look at when spending and funding controls should start to apply before and election
- The Scottish government should ensure that spending information to be available to voters and the electoral commission more quickly after a campaign with a view to reporting election spending during the campaign from the 2026 parliamentary election
- The Scottish government should clarify that spending on election of referendum campaign by foreign individuals is not allowed and the definition of foreign individuals be ones who do not pay taxes in Scotland
- The Scottish government should increase the fine the electoral commission can sanction campaigners for breaking the rules

For the final 3 recommendation (those made by the Electoral Commission to extend their own powers) it is recommended that there should be an investigation into the impact of these powers and what limits should be applied to ensure these powers are not abused.

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the candidate rules

- We can do nothing and allow the confidence of the public in our parliamentary democracy to trail away (with the accompanying danger to our freedoms and democracy) or we can act now to ensure the

right safeguards are in place to prevent the abuse of democracy by those who are rich enough to do so. I believe the time is right for a new Electoral Reform Bill to reduce some of the inequality within the current system.



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