

Briefing: New rules on overseas voters increase risk of foreign money influencing UK politics

On Tuesday 12 December, Peers will debate a statutory instrument removing the 15-year limit on voting rights for UK citizens living abroad.ⁱ The government estimates that as a result of the change between 3.2-3.4 million British nationals living overseas could become eligible to vote, (and therefore donate to candidates and political parties) and form unincorporated associations (UAs) with two or more registered overseas electors. This would allow overseas voters whether individually or through such associations to spend potentially significant amounts of money on UK election campaigns.ⁱⁱ As highlighted in a regret motion moved by Labour in the Lords, and by Labour and SNP MPs when the Commons debated the SI on 6 December, this change could “*dangerously weaken*” restrictions on overseas political donations and allow foreign money into our democracy.ⁱⁱⁱ

What’s the problem?

UK politics is already highly vulnerable to bad actors - including hostile states - seeking to subvert democracy through donations to political parties. Addressing these vulnerabilities is especially critical given the upcoming General Election and corresponding influx of donations. While there is nothing wrong in principle with extending the franchise to more overseas voters, **without proper safeguards these new rules will leave UK politics more exposed to foreign and undue influence** for three key reasons:

1. Overseas voters will be able to provide an **attestation of their identity by another overseas voter**, and it will be difficult for electoral authorities to enforce penalties against those who provide false identity information or false attestations.^{iv}
2. Current law stipulates that anyone who can vote is eligible to donate. However, it does not require political parties to take a risk-based approach to donors or to **identify the source of donated funds**.
3. Changes to the Electoral Commission’s (EC) powers under the Elections Act 2022 have left the UK **without any one body responsible for criminal enforcement** of election finance laws. Spotlight on Corruption recently wrote to the National Crime Agency (NCA), urging it to fill this enforcement gap.^v

Checks on the source of donors’ funds

Extending the right to vote (and donate) to millions of new voters overseas without a corresponding requirement to check the source of donors’ funds significantly increases the risk of foreign influence over UK politics.

- Independent experts including the EC, the Committee on Standards in Public Life, and the chair of the Intelligence and Security Committee, have recognised the need for political parties to

check the source of donated funds.^{vi} On 7 December, an EC director Louise Edwards wrote that the current levels of transparency around donations is “*not enough*”, and that the EC “*continues to recommend*” laws to help protect parties from those who seek to evade the law as well as more checks on the identity of donors.^{vii} The government has so far resisted introducing such requirements.^{viii}

- Some of the new overseas voters and potential donors live in, and so will be more vulnerable to the influence of and pressure from, states which have already actively sought to influence UK politics through donations (including China and Russia as identified by Intelligence and Security Committee reports, and in a warning from MI5 in January 2022).^{ix}
- Concerns have previously been raised by the EC that changes of this kind may increase levels of fraud.^x This is particularly due to the fact that overseas voters will be able to provide an attestation of their identity by another overseas voter and it will be difficult for electoral authorities to enforce penalties against those who provide false identity information or false attestation.^{xi}
- There is also a risk that an avalanche of applications from abroad will overload an underfunded electoral system. The EC has previously warned that a sudden increase in applications from overseas would “*add strain to already stretched resources of electoral administrators*”.^{xii}

Closing the enforcement gap for electoral finance offences

The extremely weak criminal enforcement regime for electoral finance violations must be urgently strengthened.

- At a time of increased risk of electoral fraud from overseas, and of illegal donations originating from overseas, there is currently no enforcement body in the UK with overall responsibility for leading the UK’s strategic, national enforcement response to serious criminal offences in election finance. This means that there is a grave risk that there is no effective criminal deterrence against rogue actors who may seek to undermine the UK’s electoral processes.
- **The only police force with a specialist unit to tackle electoral law breaches is the Metropolitan Police.** However, its remit is limited to electoral fraud and malpractice within London, and **it has not carried out a single investigation** into two key offences under the Political Parties, Elections and Referendum Act 2000 in the past 13 years: facilitating the making of an unlawful donation, and failing to provide information to a party about a principal donor. The force has also recently recommended that it fully withdraw from enforcing election finance offences.^{xiii}
- The Elections Act 2022 removed the EC’s power to institute criminal proceedings, although it is still responsible for civil enforcement.^{xiv} The EC itself has highlighted the gap in criminal enforcement.^{xv} The government has recognized that it may be difficult for the EC to enforce restrictions on foreign spending internationally “*as it is outside their jurisdiction*”.^{xvi}
- In the case of overseas donors, any investigation would rely on the cooperation of another jurisdiction. For overseas voters based in high-risk jurisdictions, such cooperation is far from guaranteed.
- **The NCA** – with its broad national-level powers, specialist legal tools for tackling national security risks and money laundering, its extensive overseas law enforcement network, and its close working relationship with MI5 – **has the ability to coordinate and lead criminal enforcement of the UK’s electoral laws.** However, whether because of weaknesses in the laws

or lack of resources or specialist expertise, it appears to have taken a back seat on enforcement of electoral law breaches, or ruled out further action when cases have been referred to it.

In order to defend UK democracy from foreign and undue influence, **we recommend the government:**

1. **Closely monitors the impact of the new rules for overseas voters**, including by publishing quarterly statements on:
 - the number of new overseas voters that have registered,
 - how many have used the attestation route to register,
 - the number and value of donations made by overseas voters, and
 - the number of UAs established by overseas voters.
2. **Ensures a more effective criminal enforcement regime**, by giving the NCA a specific mandate to oversee and coordinate the criminal response to foreign interference and dirty money in electoral finance, and setting up a specific electoral finance unit in the NCA.
3. Introduces a new requirement on political parties to do **proper checks on the source of funds**, and requires UAs to disclose fully the source of all donations made to them.
4. Requires **UAs** to undertake permissibility and **due diligence checks** on money they receive that is intended as a donation, and **declare the source** of all political gifts above £500; and consult on prohibiting UAs from donating.
5. Ensures **company donations can only be made from profits generated in the UK**, and donations should not exceed net profits after tax generated in the UK in the preceding two years.^{xvii}
6. **Restores the full independence of the Electoral Commission** and enhances its powers.

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ⁱ Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023 <https://www.legislation.gov.uk/ukdsi/2023/9780348252675/contents;https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

ⁱⁱ <https://researchbriefings.files.parliament.uk/documents/SN05923/SN05923.pdf>; Section 26 of the Elections Act 2022 inserted section 89A into PPERA; see also Department for Levelling Up, Housing and Communities (13 September 2023) Non-party campaigner: draft code of practice

ⁱⁱⁱ <https://lordsbusiness.parliament.uk/ItemOfBusiness?ItemOfBusinessId=134143§ionId=48&businessPaperDate=2023-11-28>

^{iv} House of Commons Library (16 November 2023) [Overseas Voters](https://www.parliament.uk/resources/hcl/overseas-voters)

^v <https://www.spotlightcorruption.org/wp-content/uploads/2023/12/Letter-to-NCA-on-election-finance.pdf>

^{vi} https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf;

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999636/CSPL_Regulating_Election_Finance_Review_Final_Web.pdf;

<https://www.spotlightcorruption.org/final-foreign-political-donations/>

^{vii} <https://www.electoralcommission.org.uk/media-centre/political-parties-accept-over-ps25m-donations-third-quarter-2023>

^{viii} Including by rejecting amendments to the National Security Act to introduce a requirement to take steps to identify donations from foreign powers. See: <https://www.spotlightcorruption.org/final-foreign-political-donations/>.

^{ix} <https://isc.independent.gov.uk/wp-content/uploads/2023/07/ISC-China.pdf>; https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf; <https://www.theguardian.com/uk-news/2022/jan/13/chinese-national-trying-to-improperly-influence-politicians-says-mi5>

^x https://assets.publishing.service.gov.uk/media/5a7c67d2ed915d696ccf8d7/Draft_response_to_Overseas_Electors_policy_statement_v2_1_1_.pdf

^{xi} <https://researchbriefings.files.parliament.uk/documents/SN05923/SN05923.pdf>

^{xii} <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/parliamentary-briefings/briefing-overseas-electors-bill>

^{xiii} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939165/CSPL_regulation_of_election_finance_-_written_submissions_52_-_54.pdf

^{xiv} Section 19 of the Elections Act 2022 amended Schedule 1 of PPERA

^{xv} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905688/CSPL_Regulation_of_election_finance_-_written_submissions_1_-_20.pdf

^{xvi} <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>

^{xvii} CSPL (July 2021) [Regulating Election Finance](https://www.spotlightcorruption.org/final-foreign-political-donations/) pg. 51