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#### **Article**

**Citation** (please note it is advisable to refer to the publisher's version if you intend to cite from this work)

**Stanford, B ORCID logo**ORCID: <https://orcid.org/0000-0001-8496-0380> (2024)  
**The Introduction and Implementation of Voter ID in the United Kingdom: A Project Summary. LJMU Student Law Journal, 3.**

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# **The Introduction and Implementation of Voter ID in the United Kingdom: A Project Summary**

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## **Abstract**

The introduction of voter identification (ID) in the Elections Act 2022 has attracted considerable attention amongst academics, lawyers and journalists alike, with tens of millions of people in the United Kingdom (UK) who traditionally cast their vote in polling stations being directly impacted. Concerns have been repeatedly raised that the reforms are unnecessary given the infrequency of impersonation, that the new law may disenfranchise minorities, the elderly and less well-off people, and pile more pressure on local authorities to administer the process, as well as costing tens of millions of pounds to implement. This article provides a brief overview of the introduction and implementation of voter ID in Great Britain and, more specifically, my own research activities in this area since 2017. During this project I have published numerous outputs, including public-facing and accessible blogs which have attracted a wide audience, but also substantive academic articles which have been used by legal teams in a challenge which ultimately proceeded to the UK Supreme Court. I have also collaborated with other academics, lawyers and journalists to disseminate my findings to a broader audience.

**Keywords:** Voter ID; Right to Vote; Democracy; Accountability.

## **1. Introduction**

At the end of 2017 I began to research and write extensively on the Conservative Party proposals to introduce compulsory voter ID laws for several types of elections in the United Kingdom, including future general elections. Prior to the implementation of the Elections Act 2022, voters in Great Britain did not need to produce any formal identification when visiting a polling station to cast their vote in any type of election. To test the water for this fundamental reform, a series of pilot schemes in England were held in 2018, and again in 2019. The authorisation of one such pilot scheme in the

2019 local elections was subject to judicial review, proceeding all the way to the Supreme Court which ruled in favour of the Government,<sup>1</sup> albeit with a narrow focus on the legality of the schemes rather than any consideration of the merits of voter ID.

The eventual passage of the Elections Act 2022 led to the formal introduction of voter ID in Great Britain, receiving much media attention and critique, but the Act also includes several other significant reforms which impacts the conduct of elections, the rights of candidates, voters and campaigners, as well as matters of transparency, scrutiny and accountability. These include reforms to the functions of the Electoral Commission impacting its operational independence, the introduction of “votes for life” for UK nationals residing overseas, arrangements for making reciprocal agreements with European states for European Union (EU) citizens’ voting rights, tagging of electronic campaigning material, changes to the voting system for some elections, conditions of so-called “third party” campaigning, as well as several other issues affecting candidate eligibility, political party registration and expenditure.

Whilst these are all important issues which merit further attention, this article will focus in particular on the implementation of voter ID in polling stations and my specific work on this issue over the past six years. Since 2017 I have published eight outputs on this issue,<sup>2</sup> and had numerous engagements and collaborations with official organisations, legal practitioners, representatives of the charitable sector, other academics, journalists and students. Following this introduction, the second section briefly sets out the importance of the issue and my motivation for the project. The third section then assesses the most important provisions of the Elections Act 2022 concerning the implementation of voter ID in Great Britain, as well as the initial impact of the reforms.

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<sup>1</sup> See respectively *R (Coughlan) v Minister for the Cabinet Office* [2019] EWHC 641 (Admin); [2020] EWCA Civ 723; [2022] UKSC 11.

<sup>2</sup> In chronological order: ‘Voter ID Plans Could Disenfranchise Millions’ (*The Conversation*, 18 December 2017) <<https://theconversation.com/voter-id-plans-could-disenfranchise-millions-89096>> accessed 19 December 2023; ‘Compulsory Voter Identification, Disenfranchisement and Human Rights: Electoral Reform in Great Britain’ (2018) 23(1) *European Human Rights Law Review* 57; ‘The Results of the 2018 Voter ID Pilots and why this is not the Time for a National Roll-Out’ (*LSE Politics and Policy Blog*, 31 July 2018) <<https://blogs.lse.ac.uk/politicsandpolicy/the-results-of-the-2018-voter-id-pilots/>> accessed 19 December 2023; ‘The 2018 English Local Elections ID Pilots and the Right to Vote: A Vote of (no) Confidence?’ (2018) 23(6) *European Human Rights Law Review* 600; ‘Electoral Reform and the Authorisation of Voter ID Pilot Schemes’ (Case Comment) (2019) 24(2) *Coventry Law Journal* 77; ‘The Elections Bill: The Arrival of Voter ID (and a Whole Lot More)’ (2021) 26(2) *Coventry Law Journal* 46; ‘R (on the application of Coughlan) v Minister for the Cabinet Office’ (Case Comment) (2022) 27(1) *Coventry Law Journal* 126; ‘No ID? No Vote! Voter ID Comes to Great Britain’ (*LSE Politics and Policy Blog*, 23 November 2022) <<https://blogs.lse.ac.uk/politicsandpolicy/no-id-no-vote-voter-id-comes-to-great-britain/>> accessed 19 December 2023.

The fourth section summarises my own project and research activities on this issue up to now, before the fifth section concludes.

## **2. Democracy at Stake**

### *2.1 The Electoral Framework*

The introduction of voter ID, as well as the other reforms contained in the Elections Act 2022, raise a number of a fundamental issues which necessitate close scrutiny. First and most importantly, the reforms strike at the very heart of democracy in the United Kingdom insofar as they concern the ability of the electorate and other interested parties to directly participate in the electoral process and have a stake in parliamentary democracy. Some of the measures also engage the rule of law given that they concern the power of the executive and matters of scrutiny and accountability.

An important preliminary observation concerns the context in which these reforms were enacted. Much of the electoral law system that currently underpins elections in the UK is outdated and complex. In recent years a variety of stakeholders have expressed concern at the state of the UK's electoral framework. The Electoral Commission has said that there is an 'urgent need for simplified and modernised electoral law' which is 'increasingly voluminous, complex and outdated'.<sup>3</sup> Going further, the Commission stated that this presents 'risks for voters, candidates and campaigners, electoral administrators, regulators and governments'.<sup>4</sup> On this point critics often point to the sheer volume of legislation governing elections in the UK. Writing in 2016, the Electoral Commission noted 17 pieces of primary legislation and 27 pieces of secondary legislation governing UK elections.<sup>5</sup> However, if we also factor in other sources of lesser importance or significance, this framework can stretch to more than 50 Acts of Parliament and 220 pieces of other legislation.<sup>6</sup> Moreover, the

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<sup>3</sup> Electoral Commission, Written Evidence to the Public Administration and Constitutional Affairs Committee: Electoral Law Inquiry (April 2019) <<https://committees.parliament.uk/writtenevidence/102289/html/>> accessed 19 December 2023.

<sup>4</sup> Ibid.

<sup>5</sup> Law Commission, Scottish Law Commission and the Northern Ireland Law Commission, 'Electoral Law: A Joint Interim Report' (4 February 2016) 5.

<sup>6</sup> Michela Palese, 'We've Told Parliament the Case for Updating our Campaign Rules – Now it's Time to Act' (*Electoral Reform Society*, 28 June 2019) <<https://www.electoral-reform.org.uk/weve-told-parliament-the-case-for-updating-our-campaign-rules-now-its-time-to-act/>> accessed 19 December 2023.

last consolidation of electoral law occurred in 1983 with the Representation of the People Act,<sup>7</sup> and some aspects of modern electoral law such as the need for a secret ballot can actually be traced back to the Ballot Act 1872.

Emerging technological and digital challenges have also prompted much criticism of the current framework's relevance and suitability for the 21<sup>st</sup> century. In 2019 the House of Commons Digital, Culture, Media and Sport Committee described the current electoral legal framework as 'not fit for purpose' in relation to advertising and political campaigning due to digitalisation and changing techniques.<sup>8</sup> Shortly after, the Electoral Reform Society went further and described the overall framework of UK electoral law as unfit for purpose, suggesting that 'elements of our electoral law date back to Victorian times, with legislation failing to keep up with societal and cultural changes, and developments in digital technology'.<sup>9</sup> These concerns were all the more exposed in August 2023 when the Electoral Commission revealed that it had itself been the subject of a complex cyber-attack.<sup>10</sup>

There is, therefore, a wholly legitimate need to update and modernise the UK's electoral legal framework. This was, to some extent, apparently recognised by the Government when the Bill was first introduced. At the second reading in the House of Commons, the Minister for the Constitution, Chloe Smith, claimed that the Bill would have the 'overall effect of keeping our elections safe, modern, transparent, fair and inclusive'.<sup>11</sup>

Whether the Act has delivered on this pledge is, however, seriously questioned. The significant reforms in the Elections Act should also be viewed in a wider context given the recent and sustained pressure on accountability and scrutiny mechanisms in the UK. We need only consider a few examples of recent and ongoing legislative reforms and reviews to see how the scope for challenging the actions and decisions of the

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<sup>7</sup> Ibid.

<sup>8</sup> House of Commons Digital, Culture, Media and Sport Committee, 'Disinformation and "Fake News": Final Report' (HC 1791, 2017-19) para 211.

<sup>9</sup> Palese (n 6).

<sup>10</sup> Electoral Commission, Information about the Cyber-Attack (last updated 14 August 2023) <<https://www.electoralcommission.org.uk/privacy-policy/public-notification-cyber-attack-electoral-commission-systems/information-about-cyber-attack>> accessed 19 December 2023.

<sup>11</sup> HC Deb vol 700 col 208 (7 September 2021) per Chloe Smith.

state are arguably diminishing. Some have gone so far to label this sliding trend of unaccountability as a 'disease within Government'.<sup>12</sup>

## *2.2 Democratic Backsliding*

In the UK, recent legislative reforms and developments have engaged matters concerning the rule of law, accountability, democracy and human rights, all of which have increased the power of the executive or otherwise limited measures of scrutiny. For example, the Overseas Operations (Service Personnel and Veterans) Act 2021 has imposed a statutory presumption against the prosecution of soldiers for alleged offences committed in the course of duty which occurred more than five years prior,<sup>13</sup> as well as introducing additional hurdles and time limits for bringing a criminal or civil case.<sup>14</sup> On a similar note, the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 allows for a 'Criminal Conduct Authorisation',<sup>15</sup> essentially authorising conduct which would otherwise amount to a crime and thus guaranteeing immunity for undercover agents who break the law in the conduct of their role.

In April 2022, a package of constitutionally significant Acts received Royal Assent on the same day. In addition to the enactment of the Elections Act 2022, the Judicial Review and Courts Act 2022 has reformed the scope and availability of remedies;<sup>16</sup> the Nationality and Borders Act 2022 has reformed resettlement routes, as well as introducing offshore refugee processing facilities and the possibility to revoke citizenship without notice;<sup>17</sup> and the Police, Crime, Sentencing and Courts Act 2022 allows the police to impose significant restrictions upon static protests, for example with start and finish times as well as maximum noise limits.<sup>18</sup> Further reforms include the Public Order Act 2023 which has introduced new criminal offences concerning protest such as "locking on" and obstructing major transport works, as well as

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<sup>12</sup> Ronan Cormacain, 'Unaccountability – The Disease Within Government' (*UK Constitutional Law Association*, 17 May 2021) <<https://ukconstitutionallaw.org/2021/05/17/ronan-cormacain-unaccountability-the-disease-within-government/>> accessed 19 December 2023.

<sup>13</sup> Overseas Operations (Service Personnel and Veterans) Act 2021 s 2. This presumption does not, however, apply to genocide, crimes against humanity, and war crimes.

<sup>14</sup> Ibid. Parts 1 and 2.

<sup>15</sup> Covert Human Intelligence Sources (Criminal Conduct) Act 2021 s 1.

<sup>16</sup> Judicial Review and Courts Act 2022 ss 1-2 respectively.

<sup>17</sup> Nationality and Borders Act 2022 Part 2; Schedule 4; and s 10 and Schedule 2 respectively.

<sup>18</sup> Police, Crime, Sentencing and Courts Act 2022 Part 3.

expanding police powers of stop and search and the ability to ban people from participating in protests.<sup>19</sup>

The UK Government has also been edging closer towards a conflict with the European Court of Human Rights (ECtHR) with respect to the deportation of illegal migrants and failed asylum seekers in particular. The Illegal Migration Act 2023 goes even further than the Nationality and Borders Act 2022 and, once its main provisions enter into force, effectively removes the right to access refugee protection in the UK for people who enter the UK illegally or via a “safe country”, even if victim of modern slavery, as their claims are deemed inadmissible for the purpose of an asylum claim.<sup>20</sup> Also controversial, amongst other reforms, is a new power for the Home Secretary to disregard interim measures issued by the ECtHR,<sup>21</sup> such as one issued in June 2022 to prevent a deportation flight to Rwanda. As a result, the Act has drawn fierce criticism for placing the UK in the position of potentially violating its obligations under the 1951 Refugee Convention and the principle of non-refoulement if people are deported to a place where they will face ill-treatment, as well empowering a Minister to defy the orders of the ECtHR.

The future of the Human Rights Act 1998 (HRA) has also been subject to fierce debate for at least 15 years with successive Governments threatening its reform or replacement with a so-called British Bill of Rights. In June 2022, the Bill of Rights Bill was introduced with the purpose of repealing and replacing the HRA 1998,<sup>22</sup> drawing much criticism for the likely reduction of effective human rights protection. According to the Government, ‘mission creep has resulted in human rights law being used for more and more purposes, with elastic interpretations that go way beyond anything that the architects of the [European] Convention had in mind’, whilst the new Bill will ‘reinforce our tradition of liberty whilst curtailing the abuses of human rights, restoring some common sense to our justice system, and ensuring that our human rights framework meets the needs of the society it serves’.<sup>23</sup> However, with Cabinet reshuffles as well as political and economic crises in the UK and beyond dominating

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<sup>19</sup> Public Order Act 2023 s 1; s 6; ss 10-11; and Part 2 respectively.

<sup>20</sup> Illegal Migration Act 2023 s 5.

<sup>21</sup> Ibid. s 55.

<sup>22</sup> UK Parliament, Bill of Rights Bill <<https://bills.parliament.uk/bills/3227>> accessed 12 December 2023. This Bill was at the Second Reading stage in the House of Commons at the time of writing.

<sup>23</sup> Ministry of Justice, Bill of Rights: Bill Documents, Policy Paper (22 June 2022) <<https://www.gov.uk/government/publications/bill-of-rights-bill-documents>> accessed 12 December 2023.

the agenda and either resetting Government priorities or stalling progress, plans to progress the Bill were formally dropped in June 2023.

Whilst each of these matters address a particular and specific issue, the mechanisms being subject to review and reform are all essential as they contribute to the safeguarding of democracy. Most importantly they all engage the rule of law – a fundamental constitutional principle of even greater importance in the absence of a codified constitution – in the sense that they all in some way help to ensure transparency, accountable government and some means of scrutiny. Returning to the Elections Act 2022 and the introduction of voter ID, this reform arguably engages the greatest power that individuals have over government, namely, the power to remove officials from office in parliamentary and local elections.

### **3. The Introduction and Implementation of the Elections Act 2022**

#### *3.1 The Origins of Voter ID*

With the exception of Northern Ireland,<sup>24</sup> voters in the rest of the UK have historically been able to cast votes in person in polling stations simply by confirming their name and address. Before the voter ID pilots were held in 2018 and 2019, the first indication of the proposal to introduce compulsory voter identification laws for elections came in 2017 in the build-up to the June 2017 General Election. The Conservative Party Manifesto for that election pledged to ‘legislate to ensure that a form of identification must be presented before voting’.<sup>25</sup> As discussed earlier, a series of pilot schemes were then held in the May 2018 and May 2019 local elections with mixed results and receiving much critique in the aftermath. These pilot schemes are authorised by section 10 of the Representation of the People Act 2000. In essence, s.10(2)(a) permits voter ID pilots that allow modifications to electoral rules in respect of ‘when, where and how voting at the elections is to take place’. The legal challenge to the Cabinet Office’s authorisation of a pilot scheme in 2019, pursuant to this provision, was rejected.<sup>26</sup>

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<sup>24</sup> Voters in Northern Ireland have had to produce some form of ID since 1985 and photo identification since 2003.

<sup>25</sup> Conservative Party Manifesto 2017, ‘Forward Together: Our Plan for a Stronger Britain and a Prosperous Future’ 43.

<sup>26</sup> *R (Coughlan) v Minister for the Cabinet Office* (n 1).



Then, shortly prior to the December 2019 General Election, the Queen’s Speech in October pledged to address “Electoral Integrity” with the purported objectives to ‘tackle electoral fraud and protect our democracy, whether people are casting their votes at the polling station or elsewhere’ and to ‘make it easier for disabled voters to vote at polling stations’.<sup>27</sup> The proposals could loosely be grouped into three categories: first on voting methods such as the introduction of voter ID as well as reforms to postal and proxy voting; second on providing greater assistance for blind and other disabled voters; and lastly a series of responses to emerging challenges such as online campaign material.

Little progress was made with the proposals until the Queen’s Speech in 2021 where a specific “Electoral Integrity Bill” was outlined with the purpose ‘to tackle electoral fraud, prevent foreign interference and to make it easier for British expats to participate in elections’.<sup>28</sup> Finally, the Bill was renamed simply to the “Elections Bill” and given its first reading in the House of Commons on 5 July 2021, eventually receiving Royal Assent on 28 April 2022.

### *3.2 Implementing the Act*

The Elections Act 2022 consists of seven Parts, further supplemented by 11 Schedules of considerable length and complexity to implement these changes. Whilst the introduction of voter identification requirements in Part 1 and Schedule 1 of the Act has attracted the most attention, other reforms to generate controversy include the issuing of strategic direction for the Electoral Commission as well as removing its power to initiate prosecutions for breaches of electoral law (Part 3), reforms to third party spending and campaigning (Part 4), and a requirement for digital campaigning material imprints (Part 6). With respect to voter ID, the Act introduces the requirement of voter identification at polling stations, which will apply to general elections as well

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<sup>27</sup> The Queen’s Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Monday 14 October 2019 (14 October 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839370/Queen\\_s\\_Speech\\_Lobby\\_Pack\\_2019\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839370/Queen_s_Speech_Lobby_Pack_2019_.pdf)> accessed 12 December 2023.

<sup>28</sup> The Queen’s Speech 2021 (11 May 2021) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/986770/Queen\\_s\\_Speech\\_2021\\_-\\_Background\\_Briefing\\_Notes\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes_.pdf)> accessed 12 December 2023.

as local elections in England, and Police and Crime Commissioner Elections in England and Wales.<sup>29</sup>

Whilst all of these proposals will have a significant impact upon electoral law in the UK to some extent, some raise particular concerns about the future conduct of elections, rights of voters and campaigners, as well as matters of transparency, scrutiny and accountability. Such is the potential impact of these reforms, David Howarth, a former Electoral Commissioner, has warned that the reforms ‘will benefit the Conservative Party at the expense of British democracy’.<sup>30</sup>

The potential and likely issues to arise with the introduction of voter ID laws in Great Britain have been commented on extensively elsewhere and so will not be repeated in detail here.<sup>31</sup> In essence, the Government’s rationale for the introduction of compulsory voter identification has been questioned given the minimal evidence that impersonation takes place at polling stations. Moreover, concerns have been raised about the possible negative impact on voter turnout and the risk of disenfranchisement, in particular, the disproportionate impact that voter ID requirements may have on ethnic minorities, the elderly, the young, women and the poorest in society who are statistically less likely to possess acceptable forms of photographic identification. Some political stakeholders have gone so far as to call the proposals a form of voter suppression similar to the phenomenon in the United States of America.<sup>32</sup>

These proposals directly impact the ability of members of the electorate to exercise the right to vote to determine the elected representatives and law-makers of the United Kingdom. In that respect, the right to vote in national elections is guaranteed by Article 3 of the First Protocol to the European Convention on Human Rights (ECHR).<sup>33</sup> Whilst some conditions upon this right can of course be applied, such as age, nationality or residence requirements, any conditions must not curtail the right in question in a way

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<sup>29</sup> Elections Act 2022 s 1 and Schedule 1.

<sup>30</sup> David Howarth, ‘Government’s Poisonous Elections Bill is Designed to Cement Tory Rule’ (*OpenDemocracy*, 6 September 2021) <<https://www.opendemocracy.net/en/opendemocracyuk/governments-poisonous-elections-bill-is-designed-to-cement-tory-rule/>> accessed 19 December 2023.

<sup>31</sup> Stanford (n 2); Heather Green, ‘The Voter ID Pilots: An Unlawful Electoral Experiment’ (2019) *Public Law* 242.

<sup>32</sup> Aubrey Allegretti, ‘Millions in UK Face Disenfranchisement under Voter ID Plans’ (*The Guardian*, 4 July 2021).

<sup>33</sup> Article 3 of the First Protocol to the ECHR 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”.

that impairs its very essence and effectiveness, and such conditions must be proportionate and pursue a legitimate aim.<sup>34</sup>

In light of these concerns, the proposals encountered difficulties in Scotland and Wales where, pursuant to the Sewel Convention, legislative consent is required when a UK Parliamentary Bill contains provisions which will impact devolved matters or the legislative or governmental powers of the nations. In quick succession, the governments of both nations refused to give consent to Westminster, exposing what might already be considered a tense relationship between the governments of the nations of the UK and the British Government. Consent was refused first by the Welsh Government on 9 September 2021,<sup>35</sup> followed by the Scottish Government on 21 September 2021.<sup>36</sup> This is significant given the infrequency of refusals for legislative consent in Scotland, Wales and Northern Ireland, with the Institute for Government suggesting that, since 1999, 'out of more than 350 legislative consent motions, on just 13 occasions has consent been denied, in part or in full'.<sup>37</sup>

To alleviate some of the initial concerns about the proposals, the Act allows a range of acceptable forms of identification and the creation of a free electoral identity document, similar to that already offered in Northern Ireland, but many questions remain about the necessity, contents and consequences of the reforms. First, the need for this significant reform remains unconvincing given the clear infrequency of allegations and prosecutions of voter fraud by means of impersonation.<sup>38</sup> Second, it has been estimated that the reform could cost up to £180 million over the next 10 years,<sup>39</sup> or up to £20 million per General Election,<sup>40</sup> which at a time of economic stagnation and recovery following the COVID-19 pandemic is not to be ignored. Third, the range of acceptable identification outlined in Schedule 1 of the Act has also drawn

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<sup>34</sup> *Mathieu-Mohin v Belgium* (1988) 10 E.H.R.R. 1 at [52]; *Hirst v United Kingdom (No.2)* (2006) 42 E.H.R.R. 41 at [62]; *Sitaropoulos v Greece* (2013) 56 E.H.R.R. 9 at [64].

<sup>35</sup> Senedd Cymru, Legislative Consent Memorandum: Elections Bill <https://senedd.wales/media/se2pxiww/lcm-ld14517-e.pdf>.

<sup>36</sup> Scottish Parliament, Legislative Consent Memorandum: Elections Bill <<https://www.parliament.scot/-/media/files/legislation/bills/lcms/elections-bill/splcms068.pdf>> accessed 19 December 2023.

<sup>37</sup> Akash Paun, Jess Sargeant and Elspeth Nicholson, 'Sewel Convention' (*Institute for Government*, 8 December 2020) <<https://www.instituteforgovernment.org.uk/explainers/sewel-convention>> accessed 19 December 2023.

<sup>38</sup> Michela Palese and Chris Terry, 'A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials' (*Electoral Reform Society*, September 2018) <<https://www.electoral-reform.org.uk/latest-news-and-research/publications/a-sledgehammer-to-crack-a-nut-the-2018-voter-id-trials/>> accessed 19 December 2023.

<sup>39</sup> Cabinet Office, Elections Bill Impact Assessment (1 July 2021) para 62 <<https://publications.parliament.uk/pa/bills/cbill/58-02/0138/2021-05-07ImpactAssessmentREV.pdf>> accessed 19 December 2023.

<sup>40</sup> Electoral Reform Society, 'Voter ID: An Expensive Distraction' <<https://www.electoral-reform.org.uk/campaigns/upgrading-our-democracy/voter-id/>> accessed 19 December 2023.

criticism due to the exclusion of student identification and concessionary travel cards, whilst certain forms of concessionary travel passes for people over the age of 60 will be permitted. These issues have not helped to allay the most fundamental concern that the reforms will effectively disenfranchise large portions of the electorate to the advantage of the Conservative Party.

The local elections in May 2023 were the first significant occasion when voter identification was put to the test. Nationally, according to the BBC, preliminary data from 160 councils showed that 26,165 individuals were initially refused a ballot paper.<sup>41</sup> Of those, 16,588 later returned with accepted identification whereas 9,577 did not. Overall, data from these councils showed that the percentages of people turned away were generally less than 1%. Echoing these figures to some extent, observations and data recorded by Democracy Volunteers revealed that 1.2% of all voters observed were turned away due to a lack of accepted identification, with the majority of these being from ethnic minorities.<sup>42</sup> The most comprehensive analysis to date was published by the Electoral Commission in September 2023.<sup>43</sup> They concluded that turnout had marginally decreased from 2019 when the last comparable elections took place, with around 4% of all people who said they did not vote at the elections listing the new voter ID requirement as the reason why. Moreover, the Commission found that at least 0.25% of people who tried to vote at a polling station were not able to because of the voter ID requirement, which was equivalent to approximately 14,000 people who were not issued with a ballot paper. Whilst these results confirmed that the vast majority of people who wanted to vote were able to, there clearly remains issues over the awareness of the new voter ID requirements as well as a need to ensure voters possess adequate identification.

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<sup>41</sup> Paul Seddon and Peter Saull, 'Local Elections 2023: Thousands Didn't Vote Due to ID Rule, Data Shows' (*BBC News*, 20 May 2023) <<https://www.bbc.co.uk/news/uk-politics-65602231>> accessed 19 December 2023.

<sup>42</sup> Democracy Volunteers, Final Report – English Local Elections 2023 (12 May 2023) <<https://democracyvolunteers.org/final-report-english-local-elections-2023/>> accessed 19 December 2023.

<sup>43</sup> Electoral Commission, Report on the May 2023 Local Elections in England (last updated 13 September 2023) <<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/our-reports-and-data-past-elections-and-referendums/england-local-council-elections/report-may-2023-local-elections-england>> accessed 19 December 2023.

## 4. My Research Journey 2017-2023

### 4.1 Initial Proposals and Pilot Schemes (2017-2019)

My interest in this area began in 2017 when proposals to legislate for voter identification in Great Britain materialised. First, in December 2017, I published a piece in *The Conversation* on the topic in the attempt to raise public awareness and disseminate my research findings in a more accessible manner.<sup>44</sup> This had considerable reach, with over 2000 readers across the UK, USA, Australia, France and beyond. I followed this up in early 2018 with my first substantive piece in the *European Human Rights Law Review*, a leading UK-based human rights journal, which attracted wide attention and would later go on to be used by a legal team challenging the second round of voter ID pilots held in England in 2019.<sup>45</sup>

The first set of pilot schemes in England, however, were held in May 2018 to test the water for this fundamental reform. These initial pilots were modest in scale and took place in Woking, Gosport, Bromley, Watford and Swindon. At this time I was awarded a small research grant by the Society of Legal Scholars to attend polling stations in Watford and Woking in order to observe voters and the voting process, and also to travel to Belfast for the purpose of interviewing election officials including the Chief Electoral Officer for Northern Ireland.<sup>46</sup> Shortly prior to this, in March 2018 I was appointed as an independent election observer accredited by the Electoral Commission, the UK's election watchdog. This was a necessary step to be authorised to attend polling stations and to record my observations on the day of elections. In the UK, electoral observation has a statutory basis under the Political Parties, Elections and Referendums Act (PPERA) 2000 and is carried out by a combination of individuals and organisations, generally on a voluntary basis, and the Electoral Commission which was itself established by the PPERA 2000 as the UK's elections watchdog.<sup>47</sup> The Act provides for the rights of representatives of the Electoral Commission to attend elections and referendums,<sup>48</sup> as well as individuals and organisations who are accredited with the Electoral Commission.<sup>49</sup>

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<sup>44</sup> Stanford (n 2).

<sup>45</sup> Ibid.

<sup>46</sup> Society of Legal Scholars, Research Activities Fund – Reports <<https://www.legalscholars.ac.uk/research-activities-fund-reports/>> accessed 19 December 2023.

<sup>47</sup> Political Parties, Elections and Referendums Act 2000 s 1.

<sup>48</sup> Ibid. s 6A.

<sup>49</sup> Ibid. ss 6C and 6D.

Given the significance and political sensitivity of electoral observation, the PPERA 2000 governs the role of observers, whether accredited individuals or organisations. The Act confers powers on the relevant officer to limit the number of observers present at relevant proceedings, for example a presiding officer at a polling station, as well as a power to cancel an observer's right to attend if the observer commits misconduct.<sup>50</sup> Furthermore, the Electoral Commission is obliged to prepare a Code of Practice,<sup>51</sup> which sets out the standards and expectations of accredited observers.<sup>52</sup> As such, I had to closely adhere to this instrument during my time attending polling stations. This includes the requirements to respect the laws of the UK and the authority of electoral bodies; to maintain strict political impartiality at all times; to abide by the requirements of secrecy; to not obstruct electoral processes; to provide appropriate identification; to maintain accuracy of observations and professionalism in drawing conclusions; and to maintain proper personal behaviour.<sup>53</sup>

I was also invited to contribute to a roundtable discussion with the Electoral Reform Society, the leading non-governmental organisation in the UK working on matters of democracy and electoral reform. Following the first pilot schemes in England I published further blogs and journal articles assessing their impact,<sup>54</sup> and one of my pieces was cited in a subsequent report by the Electoral Reform Society.<sup>55</sup>

Later in 2019, I was informed by a legal team that my published articles in the *European Human Rights Law Review* were being cited in their submission in a legal challenge to the May 2019 voter ID pilot to be conducted in Braintree. The case was brought by an individual applicant, Neil Coughlan, first reaching the High Court in March 2019, shortly before the elections took place. In the Claimant's skeleton argument, I was quoted on two occasions, first that 'compulsory identification may also have a detrimental impact upon women, the young and the elderly, who are far less likely to possess a driving licence than middle-aged males', and second, drawing upon the first round of pilot schemes, that 'several hundred eligible voters were effectively

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<sup>50</sup> Ibid. s 6E.

<sup>51</sup> Ibid. s 6F.

<sup>52</sup> Electoral Commission, Electoral Observation at United Kingdom Elections and Referendums Code of Practice for Electoral Observers (HC 1824 Scotland ELC/2018/02) <[https://www.electoralcommission.org.uk/sites/default/files/electoral\\_commission\\_pdf\\_file/Code-of-practice-for-electoral-observers-Web.pdf](https://www.electoralcommission.org.uk/sites/default/files/electoral_commission_pdf_file/Code-of-practice-for-electoral-observers-Web.pdf)> accessed 19 December 2023.

<sup>53</sup> Ibid. paras 3-3.23.

<sup>54</sup> Stanford (n 2).

<sup>55</sup> Palese and Terry (n 38).

denied the right to vote'.<sup>56</sup> My comments were included in the Claimant's skeleton argument which progressed from the High Court, to the Court of Appeal, and ultimately to the UK Supreme Court. Despite the considerable criticism of voter identification at the time, the Government successfully argued that the voter ID pilots were a lawful exercise of executive power, though the various courts made it clear that they did not consider the actual merits or flaws of voter ID.<sup>57</sup>

## 4.2 The Elections Act 2022 and Looking to the Future (2021-)

When proposals for the Elections Bill finally materialised in 2021, I rekindled my interest in the issue of voter identification. I published my second blog in the *LSE Politics and Policy Blog* in November 2022.<sup>58</sup> I also collaborated with the Liverpool John Moores University (LJMU) Press Team and published a corporate communications news piece.<sup>59</sup>

These pieces attracted considerable public attention and led to further engagement with journalists in the run up to the Local Elections in May 2023. After speaking with several journalists I was quoted at length in articles by *The Independent* in January 2023,<sup>60</sup> *Channel 4 News* in February 2023,<sup>61</sup> and regional newspapers such as the *South West Londoner* and *Peterborough Telegraph* in April 2023.<sup>62</sup> Alternative online news publishers also picked up and quoted my work.<sup>63</sup> My work was also read and

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<sup>56</sup> Stanford (n 2).

<sup>57</sup> *R (Neil Coughlan) v Cabinet Office* (n 1).

<sup>58</sup> Stanford (n 2).

<sup>59</sup> LJMU Corporate Communications, 'Research Supports Fears of UK Voter Suppression' (23 January 2023) <<https://www.ljmu.ac.uk/about-us/news/articles/2023/1/23/research-supports-fears-of-uk-voter-suppression>> accessed 19 December 2023.

<sup>60</sup> Joe Sommerlad, 'Voter ID Explained: What are the New Rules at Polling Stations for Upcoming Local Elections?' (*The Independent*, 4 May 2023) <<https://www.independent.co.uk/news/uk/politics/voter-id-uk-elections-b2332168.html>> accessed 19 December 2023.

<sup>61</sup> Helen Johnson, 'Why will Voter Identification be Required for Elections in Great Britain and what ID will Polling Stations Accept – Explained' (8 February 2023) <<https://www.channel4.com/news/factcheck/factcheck-why-will-voter-identification-be-required-for-elections-in-great-britain-and-what-id-will-polling-stations-accept-explained>> accessed 19 December 2023.

<sup>62</sup> The Newsroom, 'Local Elections 23: Don't be Put Off by Voter ID Changes' (*Peterborough Telegraph*, 21 April 2023) <<https://www.peterboroughtoday.co.uk/news/politics/local-elections-23-dont-be-put-off-by-voter-id-changes-4113516>> accessed 19 December 2023; Joseph Palmer, 'How will New Photo ID Voting Regulations Affect Local Elections?' (*SW Londoner*, 24 April 2023) <<https://www.swlondoner.co.uk/news/24042023-how-will-new-photo-id-voting-regulations-affect-local-elections>> accessed 19 December 2023.

<sup>63</sup> George Marron, 'No ID, No Vote: Is The UK Voter Identification Policy Appropriate?' (28 April 2023) <[https://thesocialtalks.com/news-analysis/no-id-no-vote-is-the-uk-voter-identification-policy-appropriate/?expand\\_article=1](https://thesocialtalks.com/news-analysis/no-id-no-vote-is-the-uk-voter-identification-policy-appropriate/?expand_article=1)> accessed 19 December 2023.

quoted by political activists and Members of Parliament on their office websites and social media.<sup>64</sup>

In the run up to the elections, I was determined to bring in greater student involvement. This prompted me to disseminate a survey to LJMU students with assistance from the Student Union.<sup>65</sup> I also sought accreditation with the Electoral Commission again to act as an individual election observer for the second time. After being guaranteed travel expenses via the Law School for this work, I travelled to polling stations in Ellesmere Port, Ormskirk, Liverpool and Birkenhead. I spoke with almost 20 election officials and observed over 100 individual voters cast their votes, some of whom experienced difficulties and were unable to vote due to lacking adequate identification. Having undertaken the role of an election observer twice, the sustainability of this opportunity is clear and I plan to conduct further election observation work in future. Shortly after the Local Elections, I collaborated with the LJMU Press Team for the second time and published a news piece summarising my research findings, including the findings from the survey I had distributed to students.<sup>66</sup> This had immediate impact as I was then invited by BBC Merseyside for an extensive interview on 9 June 2023.<sup>67</sup>

Looking to the future of voter ID, in its recent report on the May 2023 local elections the Electoral Commission issued nine recommendations,<sup>68</sup> some of which I have argued for previously. For example, the range of accepted identification should be reviewed to identify any additional documents that could be included to improve accessibility for voters. The current range of accepted identification is undoubtedly strict, especially to the detriment of young people and if we consider that the previous position was that voters simply needed to confirm their name and address. Moreover, alternative options should be available for those who lack identification, for example the ability for 'vouching' where one voter with identification is able to confirm the identity of someone who lacks identification. The Government has since pledged to

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<sup>64</sup> Labour for Electoral Reform <<https://labouforelectoralreform.org.uk/campaigns/access-to-democracy/>> accessed 19 December 2023; Kirsten Oswald MP, 'Voter ID' (27 April 2023) <<https://www.kirstenoswaldmp.scot/post/voter-id>> accessed 19 December 2023 and <[https://www.facebook.com/KirstenOswaldSNP/posts/pfbid02y7EAgAB9xEkayN3cSKJYf4hAm3ADmD7betD9KbW7UhqqVzn6RFLr99G3xDwmPbM8l?locale=en\\_GB](https://www.facebook.com/KirstenOswaldSNP/posts/pfbid02y7EAgAB9xEkayN3cSKJYf4hAm3ADmD7betD9KbW7UhqqVzn6RFLr99G3xDwmPbM8l?locale=en_GB)> accessed 19 December 2023.

<sup>65</sup> Ben Stanford, Survey: Voter ID - Voting Intentions and Personal Characteristics <<https://ljmu.onlinesurveys.ac.uk/voter-id>> accessed 19 December 2023.

<sup>66</sup> LJMU Corporate Communications, 'Photo ID – Did it Impact on Voter Rights in Liverpool?' (31 May 2023) <<https://www.ljmu.ac.uk/about-us/news/articles/2023/5/31/voter-id>> accessed 19 December 2023.

<sup>67</sup> BBC Merseyside, Claire Hamilton (9 June 2023) <<https://www.bbc.co.uk/programmes/p0fp0d40>> accessed 19 December 2023.

<sup>68</sup> Electoral Commission (n 43).



review the range of accepted identification,<sup>69</sup> though early indications suggest that this will not be expanded to a satisfactory level.

## 5. Conclusions

Amongst the numerous significant and controversial reforms in the Elections Act 2022, the implementation of voter ID has understandably attracted most commentary. Changing the process of voting in polling stations in such a substantial way by requiring photographic identification engages arguably the most fundamental principle of democracy of all, namely, the ability of the electorate to determine the legislature. Reflecting on the elections which have been impacted by the reforms so far, most notably the May 2023 local elections, it is clear that many of the concerns raised during the legislative process of the Elections Act were indeed legitimate. Moreover, when considering other recent and ongoing reforms, a clear and troubling pattern of democratic backsliding and undermining of accountability mechanisms is evident.<sup>70</sup> Reminding the Government of the importance of the rule of law – and the necessity of independent scrutiny bodies and accountability mechanisms for that purpose – remains essential.

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<sup>69</sup> Peter Walker, 'More Forms of ID may be Allowed for UK Voters After Damning Report' (*The Guardian*, 14 September 2023).

<sup>70</sup> See The Constitution Unit, 'Is this what Democratic Backsliding Feels Like?' (*Monitor* 79, November 2021)  
<[https://www.ucl.ac.uk/constitution-unit/sites/constitution\\_unit/files/monitor\\_79.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/monitor_79.pdf)> accessed 19 December 2023.

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