# REPRESENTATION OF THE PEOPLE BILL

# ECHR MEMORANDUM FOR THE BILL AS INTRODUCED IN THE HOUSE OF LORDS

1. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).
2. Baroness Taylor of Stevenage, Parliamentary Under-Secretary of State (Minister for Housing and Local Government), has made the following statement: "In my view the provisions of the Representation of the People Bill are compatible with the Convention rights."

## Summary of the Bill

Part 1 – Reduction of voting age to 16

3. Part 1 makes the amendments needed to reduce the voting age from 18 to 16 at UK Parliamentary elections; local elections in England, local elections in Northern Ireland, Police and Crime Commissioner elections in England and Wales, City of London elections, and for recall petitions across the UK.
4. This Part and Schedule 1 also amend legislation relating to registration of electors, including amendments to facilitate the registration of looked after children if they are placed away from the area where they were formerly resident, and the registration of those who are 14 or 15, who are entitled to register early (but not vote) in advance of attaining the voting age ("attainers"). It also makes amendments to enable children of those in service of the Crown, who may be posted away from their place of residence in the UK, to be entitled to register under a "service qualification" in the same way that a spouse or partner of a person in service is currently able to register. Further amendments in this part relate to how Electoral Registration Officers ("EROs") take action to make sure the register is up to date and ensure that people who failed to respond to an invitation to register when they were under the age of 16 are not subject to criminal penalties. Clauses 15 and 16 impose duties in relation to raising awareness of the new franchise among looked after children and those receiving aftercare.
5. Clauses 7 to 14 make provision which recognises that attainers are under 16 years old and consequently their personal data should be given special protection. This includes a general restriction on the ERO about disclosing such personal data, subject to the exceptions set out in that Part.

Part 2 – Registration of electors

6. Clauses 17 to 19 and Schedule 2 make provision to allow for more automated forms of registration, so that an ERO can register a person or alter their register entry without that person needing to make an application. Notification of that individual is required under the provision. Clauses 20 to 25 make provision for powers to pilot changes to electoral registration, including in relation to automated forms of registration, to enable these measures to be properly tested on a local level before being rolled out. Clause 37 makes amendments to the regulation making powers in Schedule 2 to the Representation of the People Act 1983 ("RPA 1983") to ensure that EROs and, in Northern Ireland, the Chief Electoral Officer, have access to the information they need.

7. Clauses 26 to 29 make provision in relation to canvass reform in Northern Ireland, including powers to pilot changes to the canvass and to implement changes to the legislation that underpins the current arrangements. This will enable the canvass in Northern Ireland to be brought into line with the canvass in the rest of the UK. Further provision is made in respect of previous divergence between the process for registration in Great Britain and Northern Ireland to bring Northern Ireland more in line with the rest of the UK.

8. This Part also includes provision relating to the seniority of EROs in England and Wales (clause 32), and to extend the length of a person's entitlement to be anonymously registered (clause 33), introduces into primary legislation a clear deadline for registering to vote before an election (currently provided for by a combination of primary and secondary legislation) (clause 34) and makes other provision about pre-election applications in Northern Ireland (clause 35). It also makes provision for termination of a person's entitlement to be registered pursuant to a declaration of local connection if they cease to meet the criteria under which they were registered (clause 30), and likewise for an overseas electors (clause 31).

9. This Part also reverses the presumption that a person is included on the edited (open) electoral register unless they opt out, so that instead they are only included if they actively opt in (clause 38). Further, under 16s will not be able to opt in to have their information included on the open register.

Part 3: Conduct of elections etc

10. Part 3 includes provision relating to conduct of elections. It makes provision as to the seniority requirements of Returning Officers ("ROs") at UK parliamentary elections in Scotland and at local elections in England (clause 40). It requires local authorities in England and Wales to provide the services of their officer to support ROs in the conduct of UK parliamentary elections (clause 39). It includes provision regarding nomination processes and requirements at UK parliamentary elections and at local elections in Northern Ireland (clauses 41 to 45). It amends voter identification requirements at UK parliamentary elections

to allow for the use of payment cards as acceptable identification for electors and proxies voting in person at polling stations (clause 48). It removes the requirement for elector's details to be called out at UK parliamentary elections and local elections in Northern Ireland (clause 47). It also makes a number of changes to provisions about absent voting in Great Britain and Northern Ireland (clause 49 and Schedule 3).

11. This Part also gives the Secretary of State the power (clause 50) to require information to be provided by specified officers (see clause 51) for the purpose of helping people understand the election, referendum or recall petition process (see clause 52). It also makes provision as to the effect of the demise of the Crown on certain elections and referendums (clause 53 and Schedule 4), and makes provision for the forms of prescribed documents used at elections and referendums to be prescribed in secondary legislation instead of primary legislation (where applicable) and more generally as to the procedure for such secondary legislation (clause 54 and Schedule 5).

Part 4: Election etc. Campaigns and political expenditure

12. Part 4 includes measures relating to election campaigns, expenses and conduct of candidates and their agents. It includes a measure to reduce, as far as possible, the requirement for candidates to publish their home addresses (clause 55). This Part provides that returns as to expenses and donation reports that are required to be provided to the RO or, for recall petitions, the petition officer, are also required to be delivered to the Electoral Commission (clause 58 and Schedule 7) and makes provision to give the Electoral Commission regulation making powers in relation to certain returns (clauses 57 and 59). It also includes provision to give the Electoral Commission responsiblity for making determinations about whether late invoices can be paid (clause 56 and Schedule 6).

13. This Part makes provision to clarify that payment of expenses other than by "money" constitutes a donation (clause 60), ban registered parties from accepting cryptoasset donations or entering into regulated transactions involving cryptoasses (clause 61) and capping donations etc. from overseas contributors (clause 62), being overseas electors and those who have recently lived overseas. Further provision, including transitional provision in relation to cryptoassets and overseas contributors, is in Schedules 9 to 12.

14. Part 4 also makes provision to require registered political parties and other regulated donees to undertake a risk assessment prior to accepting donations of a value above a certain threshold (clause 63 and Schedule 13). In addition, those below the voting age will not be permissible donors (clause 64). This Part also makes provision about requirements around donations (clause 65) and loans (Schedule 14) by companies and LLPs. The Part also includes a power to extend the effect of clauses 61, 62 and 65 to other listed regimes (clause 66).

15. A further political finance measure in this Part clarifies that, in relation to forfeiture of donations because the donor was not registered on an electoral register (and therefore not a permissible donor), it is irrelevant that the donor was eligible to be so registered (clause 67). Clause 68 makes clear that a variation to a transaction that increases the value constitutes entering a transaction. Further provision is made to amend the legislation governing political contributions made by unincorporated associations, including lowering the threshold at which such contributions and gifts made to those unincorporated associations must be reported (clause 69 and Schedule 15).

16. This Part also extends the scope of the UK digital imprint regime to require groups of third party campaigners not registered with the EC to include an imprint on certain digital material; sets out additional information to be included in imprints on campaign related print and digital material; amends the procedure for statutory guidance in relation to non-substantive revisions, and expands the EC's enforcement powers to include all imprint material (clauses 72 and 73).

Part 5 – Enforcement and the Electoral Commission

17. Part 5 of the Bill makes provision about the Electoral Commission's role in enforcing political finance offences. Clause 74 and Schedule 16 decriminalise certain offences under the Political Parties, Elections and Referendums Act 2000 ("PPERA"), giving the Electoral Commission sole responsibility for the enforcement of offences which are considered to be "administrative" in nature. These offences are those which do not involve fraud, dishonesty or obstruction. The enforcement of all offences involving fraud, dishonesty or obstruction remain the sole responsibility of the police, together with the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service, and the Public Prosecution Service for Northern Ireland. To facilitate consistent regulation across all election types, clause 77 empowers the Secretary of State to make provision in regulations that could be made by the Welsh Ministers or Scottish Ministers, with their prior consent.

18. Clause 75 and Schedule 17 provides for the Electoral Commission to be given shared responsibility, with the police and prosecution services across the UK, for offences committed in relation to donations to and expenditure by candidates, and for offences in relation to political parties, third parties and other bodies. Clause 76 lifts the restriction which stops the Electoral Commission from imposing a civil penalty that is higher than the maximum fine applicable to the offence on criminal conviction, in order for the Electoral Commission's powers to represent a more significant deterrent to offences committed.

19. This Part also includes a reciprocal information sharing gateway between the Electoral Commission and certain public authorities, and includes a power to make regulations to modify the list of public authorities.(clause 79).

Part 6 – Hostility towards candidates etc.: disqualification orders and sentencing

20. Part 6 introduces measures to address issues around intimidation. Clause 80 widens the scope of the existing disqualification order that must be imposed as part of sentencing post-conviction for violent or intimidatory offences listed in Schedule 9 to the Elections Act 2022 (“EA 2022”) where there is hostility to electoral staff (currently this is limited to candidates and campaigners and associated groups). This Part also includes the introduction of an aggravating factor to be applied in sentencing (clauses 81 and 82).

21. Clause 83 provides for existing Scottish disqualification orders, introduced by the Scottish Elections (Representation and Reform) Act 2025, which only applied to devolved Scottish offices, to also cause a person being disqualified from being elected to or holding other elected offices, and clause 84 makes further amendments.

Part 7 – General Provision

22. Part 7 contains general provision about the Bill as a whole, including powers to make commencement regulations, and to make transitional, savings and consequential provision.

**Human rights issues**

23. The Bill is considered to engage Article 1 Protocol 1 (“A1P1”), Article 3 Protocol 1 (“A3P1”) and Articles 7 and 10 of the European Convention on Human Rights (the “Convention”). This Memorandum deals only with those parts of the Bill which raise Convention issues. The remaining provisions of the Bill are considered not to engage Convention rights, or, if they do, to do so in a way in which it is clear that there is no interference.

Voting rights of 16- and 17-year-old prisoners and those detained under mental health provisions in criminal justice legislation or provisions of mental health legislation relating to criminal justice

24. A3P1 to the Convention provides: “*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure free expression of the opinion of the people in the choice of the legislature*”. It is explained as an obligation on States, but the case law of the European Court of Human Rights (“the Court”) has developed to clarify that A3P1 creates rights for individuals relating to both voting and standing as a candidate, in elections to which it applies. The latter includes elections to the House of Commons, as a legislature, and is therefore engaged by these provisions which are making changes to voting at Parliamentary elections, or recall petitions relating to membership of the House of Commons.

25. A3P1 has been held not to apply to local government elections or to referendums, so changes to the franchise for local elections, which also

determine the franchise for local referendums, or police and crime commissioner elections do not engage A3P1. A question may arise as to whether elections to the Northern Ireland Assembly engage A3P1 as there has not been a definitive case at the Court on this question, however it is considered likely that the Court would find that the Assembly is a legislature, and the same considerations will apply in respect of those elections as set out in paragraphs 26 to 62 below.

26. A wide margin of appreciation is afforded as to the type of electoral arrangements a contracting State puts in place, *Davydov v Russia* (2018) 67 E.H.R.R. 25, paragraphs 271 to 277. In particular, at paragraph 272 the Court observed that: "*Contracting States enjoy a wide margin of appreciation in imposing conditions on the right to vote and to stand for election, it is for the Court to determine in the last resort whether the requirements of [A3P1] have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate or arbitrary.*"

27. Unlike other qualified rights, A3P1 does not list the legitimate aims that an impingement can pursue. It has been accepted by the Court that a restriction on prisoners voting can in principle be in pursuit of a legitimate aim. This measure is considered to be in pursuit of the aims of "preventing crime by sanctioning the conduct of convicted prisoners" and "enhancing civic responsibility and respect for the rule of law" (*Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX, §§ 74-75, and *Scoppola v. Italy (no. 3)* ([GC], no. 126/05, 22 May 2012, § 92; most recently, *Hora v the United Kingdom*, no. 1048/20, 23/09/2025, § 111). Additionally, in relation to mental health where a person is so unwell as to merit deprivation of their liberty, or where they are considered to lack capacity such that they are subject to guardianship, the Court has concluded that restriction of voting rights can pursue the legitimate aim of ensuring that only citizens capable of assessing the consequences of their decisions and of making conscious and judicious decisions should participate in public affairs (*Alajos Kiss v. Hungary*, no. 38832/06, 20 May 2010; also *Strøbye and Rosenlind v. Denmark,* nos. 25802/18 and 27338/18, 2 February 2021). In each case, the proportionality of the measure in achieving that aim is closely scrutinised by the Court.

28. In relation to the disenfranchisement of forensic mental health patients, the aim being pursued includes not just the aims in relation to prisoners in penal institutions and other similar institutions for children, but also this additional aim.

*Hirst v UK (No. 2) and prisoner voting*

29. Section 3 and 3A RPA 1983 prohibit all prisoners held in a penal institution or in a mental hospital from voting in UK parliamentary and local elections, other

than local elections in Scotland. The Court held in *Hirst v UK (No 2)* [2005] ECHR 681, that section 3 RPA 1983 was in breach of A3P1 because of the automatic and blanket nature of that restriction. Subsequently, the UK government announced a number of administrative measures which led to:

a. eligible prisoners released on temporary licence (RoTL) being able to vote;

b. prisoners released on home detention curfew (HDC) being able to vote; and

c. a change to the warrant of committal to ensure prisoners were notified of their disenfranchisement at the time of sentencing.

30. As a result of those measures, the Committee of Ministers, which is responsible under Article 46(2) of the Convention for ensuring compliance with rulings of the Court, closed the case. In accordance with the Committee of Ministers' decision, it is the UK government's position that the current restriction on prisoners being able to vote is compliant with the Convention.

31. The expansion of the franchise to 16- and 17-year-olds will, as a consequence of the combined effect of the operation of the existing restriction in sections 3 and 3A RPA 1983 and the amendments in clause 2 of the Bill, result in convicted and detained prisoners aged 16 and 17 also being unable to vote. This therefore engages A3P1.

32. The voting ban under section 3A RPA 1983, which is not being amended by this Bill, will likewise apply to a new cohort of people (16- and 17-year-olds) who are enfranchised by clause 1. Thus, a new cohort of people, if detained under one of the relevant orders or directions could be disenfranchised by the existing legislation. A3P1 is therefore engaged by the combined effect of clause 1 and existing section 3A RPA 1983. As with adults, 16- and 17-year-olds on remand (43% of the children in custody in the year ending March 2024[1]), or released on temporary licence or home detention curfew, will be able to vote.

*Hora v UK and prisoner voting*

33. The Court recently handed down a judgment in the case of *Hora v UK*. This was the first case concerning prisoner voting rights in the UK to come before the Court since the Committee of Ministers accepted the administrative measures introduced by the government and closed the *Hirst* series of cases. In *Hora,* the Court considered a number of factors including developments in the Court's approach to this area since *Hirst* and the circumstances of the applicant in *Hora* and concluded that there was no violation of A3P1 in relation to the applicant.

[1] Chapter 6 of *Youth Justice Statistics 2023 to 2024*, published 30 January 2025, available here: [Youth Justice Statistics: 2023 to 2024 - GOV.UK]

34. The claimant in *Hora* was serving an indeterminate sentence for very serious offending and the court held that, as it was extremely unlikely that any alternative legislative regime would have allowed him to retain the right to vote, there was no violation of his rights under A3P1.

35. Consequently, it is the government's view that the Court has been clear that the disenfranchisement of offenders, and likewise forensic patients, is not to be considered in the abstract but must be limited to consideration of the specific facts that apply to an individual applicant.

*Youth offending*

36. In relation to youth justice, there are a number of factors which indicate that offenders under 18 who are detained in custody following a conviction are likely to be serious offenders in respect of whom no violation would be found regarding their disenfranchisement.

37. These factors include:

    a. the key principle present in the youth justice system of each legal jurisdiction in the UK that custody should be considered as a last resort when sentencing a young person;

    b. in England and Wales, that the most common custodial option for young people, Detention and Training Orders, is unavailable when the appropriate sentence would be less than four months;

    c. a higher likelihood that an out of court disposal will be considered as an alternative to prosecution; and

    d. enhanced consideration of a young person's particular circumstances and vulnerabilities including mandatory pre-sentence reports.

38. Since the judgment in *Hora*, it is not clear where the Court would draw the line in establishing what convictions are serious enough to warrant incarceration but not serious enough to warrant disenfranchisement. However, given the particular attention paid to the individual circumstances of the offender, and the reduced likelihood of less serious offenders receiving a custodial sentence, it is unlikely that a 16- or 17-year old would be convicted of an offence which was serious enough to warrant immediate custody, but not seriousness enough to make disenfranchisement a proportionate consequence. Therefore, the Bill is considered to be compatible with A3P1 as the bar on prisoner voting achieved by this Bill in conjunction with the existing legislation is a proportionate means of achieving a legitimate aim.

39. The government's view is therefore that the ban on prisoner voting in respect of offenders aged 16 and 17 sentenced to penal institutions and those detained in other types of secure accommodation (included in the ban by virtue of clause 2(2)) is compatible with the Convention.

*Mental health detention in a criminal justice context*

40. As a result of the Representation of the People Act 2000, the ban on civil mental health patients voting was lifted, as was the bar on remanded prisoners voting. This means there is no longer a general ban on voting for those detained under mental health legislation, nor is there a ban on voting by those who lack mental capacity for any other reason. A person detained in a mental institution for civil reasons, and those who are detained on remand, are permitted to vote at elections. The ban in section 3A RPA 1983 is therefore limited to the specific case of those who are detained for mental health and criminal justice reasons.

41. The restriction on voting rights of those who are detained under mental health legislation in association with their criminal conduct, is considered to be a proportionate means of achieving a legitimate aim for a number of reasons.

42. Some of the orders listed in section 3A RPA 1983 apply to those who are detained in hospital instead of in a prison or youth justice facility, but where they have committed an offence for which a custodial sentence would be appropriate. Others involve prisoners who are transferred to hospital during their custodial sentence. A small cohort of those disenfranchised are those who have not been convicted but who have been subject to a finding of fact (that they committed the act that constituted the offence, but that they lacked the requisite intention).

43. The vast majority of those who are disenfranchised are disenfranchised as a result of an order that is imposed post-sentencing. Given the factors described above in relation to youth justice, and the higher custodial threshold, it is likely that a child would only be sentenced where their conduct is sufficiently serious as to make their disenfranchisement proportionate.

44. There is the possibility that a small number of people may be detained under orders imposed by the criminal courts where they have been so unwell that they have not been fit to even be tried, although the courts have been clear that detention under this section "*must not be used as a routine and easy way of avoiding a potentially troublesome trial ... [it] must be inappropriate to bring him before the court at all*". (*R (Kenneally) v Crown Court at Snaresbrook, R (Kenneally) v Rampton Hospital Authority* [2002] QB 1169 (at paragraph 32)).

45. Additionally, the provisions themselves require the criminal court in question to be convinced not just on medical evidence, but "considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order". In *Kenneally* it was made clear by the Court of Appeal that this is a high bar:

*"34. It is clear from the duty imposed in section 51(6)(b) to consider "the depositions" that the court is entitled to have regard to the evidence in the case in deciding whether to make an order. In the absence of a conviction or a plea*

*of guilty, that too is a difficult task because it is impossible to know whether that evidence would have been accepted. It cannot in my view have been intended to put the court in that position, save in exceptional circumstances.*

*35. To pass sentence, even a sentence one of the objects of which is to assist the defendant, without first convicting him is a drastic step, one that should be taken only in exceptional circumstances."*

46. Therefore, a hospital order under section 51(5) MHA 1983 (and the equivalent provisions in Scottish and Northern Ireland legislation) can only be made in respect of a person who is within the criminal justice system, within the jurisdiction of a senior criminal court (Crown Court in England and Wales), and at a time where a person's mental health is even more extremely debilitated that in the cases of those who are found unfit to plead. In this context, it is highly unlikely that a person in such a condition could be said to be capable of assessing the consequences of their decisions and making conscious and judicious decisions, and therefore this is considered to be a proportionate means of pursuing this aim, as well as prevention of crime and enhancement of civic responsibility. Such an order may only be imposed in the context of a criminal trial, after serious judicial consideration of whether it is proper to make such an order, notwithstanding the absence of a hearing to determine any finding of fact.

47. It is noted that individuals detained under these orders without being subject to a limitation order, can be given temporary release under section 17 of the MHA 1983 (and equivalent legislation), in certain circumstances.

48. To the extent that Article 14 may be engaged on the grounds that being detained as a forensic patient constitutes an "other status", the government considers that the differential treatment of forensic versus civil patients is related to the conduct of such forensic patients. The orders that give rise to the disqualification under section 3A RPA 1983 can only be imposed by a criminal court, in all cases apart from orders under section 51(5) MHA 1983 (and equivalents) after a conviction or finding that the person did the act that constituted the offence, but either did not meet the *mens rea* or was not guilty by reason of insanity. The distinction between a civilly detained patient and one detained under the orders listed in section 3A RPA 1983 is their conduct, and in the government's view this justifies the difference in relation to their voting rights as compared to civilly detained patients.

49. It is considered, therefore, that disenfranchisement of 16- and 17-year-olds who are detained under criminal justice provisions of mental health legislation is a proportionate means of pursuing the legitimate aims described above, and that any differential treatment under Article 14 is justified. The government therefore considers that clause 1, taken together with the current restriction in section 3A RPA 1983, is also compatible with the Convention.

A3P1: the right to stand for election

Part 6

50. The clauses in this Part of the Bill:

    a. Extend the scope of existing disqualification order provisions in Part 5 EA 2022 to ensure that those who commit certain violent or intimidatory offences that are motivated by hostility towards electoral administrators, are also banned from office (clause 80);

    b. Ensure that the Scottish disqualification order established under Part 2 of the Scottish Elections (Representation and Reform) Act 2025 also disqualifies people from being elected to or holding elected office elsewhere in the UK (clause 83).

51. A3P1 is explained as an obligation on States, but the Court's case law has developed to clarify that this creates rights relating to both voting and standing as a candidate, at elections to the legislature. The provisions relating to disqualification from office holding are considered to engage A3P1 in relation to the "passive" element, the right to stand for election. The Court has recognised that Contracting States' margin of appreciation is wider in respect of the 'passive' right to stand for election in comparison to the 'active' right to vote (*Yumak v Turkey* (2009) 48 EHRR 61).

52. The provisions in Part 6 of the Bill do not introduce a new concept of a disqualification order, but merely expand existing legislation, Part 5 EA 2022. These also provide for the cross-application of disqualification orders from existing devolved Scottish legislation so that they disqualify a person from standing as a candidate for, or holding elected office, across the UK outside of Scotland, including devolved Welsh elections.

53. Part 5 EA 2022 provided in relation to certain offences involving violent or intimidatory conduct (listed in Schedule 9 to that Act), where the offence was motivated by hostility towards certain groups involved in the electoral process, for a court to impose a disqualification order. The disqualification order prohibits a person from standing for, or holding, a number of elected offices, including membership of the House of Commons, Senedd Cymru, Northern Ireland Assembly, and local government offices. Likewise the Scottish disqualification order, which was introduced as a bar to holding Scottish offices for those convicted of crimes of hostility towards electoral officials in Scotland, is cross-applied by this Bill to additionally disqualify offenders from the same offices as would an order made under EA 2022.

54. This therefore engages with and interferes with the right to stand for election to the legislature.

55. The extension of the Part 5 EA 2022 disqualification order to cover intimidation of electoral staff and other people associated in the delivery of elections and for the cross-application of equivalent Scottish disqualification orders, pursues a legitimate aim, namely to reduce the intimidation faced by those key participants in elections and political debate by creating a deterrent for those who seek to carry out that intimidation, thereby encouraging more people to contribute to public life. Recent research from the Electoral Commission shows a significant number of candidates in the 2024 elections – 43% of responding candidates in England at the May 2024 local elections[2]; 55% of responding candidates at the 2024 General Election - experienced some kind of abuse or intimidation. Likewise, a survey carried out by the Speaker's Conference on the security of MPs, candidates and elections also found that 52% of MPs felt unsafe and 49% experienced anxiety or depression due to threats[3].

56. There are clearly legitimate aims in ensuring that offenders who seek to intimidate those involved in the electoral process are not then subsequently (for a five year period) able to stand for electoral office after acting in a way that is harmful to the electoral process; and a further legitimate aim of protecting candidates when exercising their rights to stand. These measures are to safeguard the free exercise of the vote, and the right of other individuals to stand for election without fear of intimidation.

57. The government's view is that the measures introduced by these clauses on intimidation are proportionate to this legitimate aim and are not arbitrary. A disqualification order can only be imposed after criminal conviction, and only where it is made out that the offence was motivated by hostility towards candidates, electoral staff, or others involved in the democratic process. Further, there is discretion retained by the criminal court by which an offender is sentenced not to impose a disqualification order where that court considers it unjust to do so based upon any particular circumstances regarding the offence or the offender.

Clauses 42 and 43: requirement for prospective candidates at certain elections to provide a copy of acceptable idenitification in order to be successfully nominated as a candidate

58. Candidates will be required to provide a copy of prescribed identification documentation under amendments made by clauses 42 and 43 in order to be successfully nominated. This may arguably interfere with the right to stand for election.

59. The justification for this new requirement is to ensure that only those seriously wishing to participate in the electoral process are able to do so, and to ensure

[2] Report on the 2024 UK Parliamentary general election and the May 2024 elections.
[3] https://publications.parliament.uk/pa/cm5901/cmselect/cmspeak/570/report.html

that prospective candidates are who they claim to be. At the Speaker's Conference on the security of candidates, MPs and elections on 2 April 2025, questions were raised about whether prospective candidates should prove their identity and whether ROs should further vet the information provided by prospective candidates and agents. Discussion of the issue has been further prompted by a YouTuber who arranged for ten people, including himself, to stand under his name at various constituencies at last year's General Election. The Speaker's conference recommended that ID checks be introduced for all prospective candidates.

60. This requirement therefore pursues a legitimate aim of protecting the A3P1 rights of voters and other candidates by ensuring that all candidates are who they say they are and to reduce as far as possible the ability for mischief to be caused by those who are not actually seeking election. This is also important to ensure that electors know for whom they are voting when casting their vote for a candidate.

61. It is also considered that the measures introduced by these clauses on candidate ID are proportionate to this legitimate aim and are not arbitrary. The power to prescribe acceptable identification for these purposes can be exercised so as to ensure that there is a broad range of identification types that can be used by prospective candidates.

62. The government's view, therefore, is that any interference is a proportionate means of achieving the legitimate aim of ensuring that the electorate are able to be confident that a person standing for election is who they purport to be. This measure is considered to be compliant with the Convention.

<u>Article 10 and A1P1</u>

<u>Part 5 – campaigning measures</u>

63. The measures in Part 5 of the Bill may engage Article 10 in relation to the ability of individuals to make their opinion known by donating to political parties and other organisations, and A1P1 in relation to donors' and unincorporated associations' rights to dispose of their property (a "traditional and fundamental aspect of the right of property" *Marckx v. Belgium*, 1979, §§ 63-64). New and existing provisions relating to forfeiture and requirements to return donations will engage A1P1 in relation to the rights of the candidate or other regulated campaigner who may be ordered to forfeit or required to return donations received from impermissible donors. Some companies and LLPs that are currently permissible donors may become impermissible due to the tightening of the rules as to what constitutes a company with a UK connection.

64. A number of measures are introduced to tighten the rules on political donations. These are: requirements on parties to carry out a risk assessment and to return a donation where a risk assessment has not been undertaken on donations

over a specified threshold (clause 63); the lowering of the reporting threshold for unincorporated associations to report political contributions (clause 69) and to carry out permissibility checks on connected gifts they receive, and rules on which companies and LLPs are able to be permissible donors (based on who controls those companies/LLPs and the amount of revenue they generate) (clause 65). Further, the ban on attainers (under 16s) being permissible donors is also intended to ensure that this group cannot be exploited to funnel otherwise impermissible money into the political system (clause 64), and to protect their rights to privacy (otherwise the "know your donor" requirements would necessitate significant, otherwise private information being given to political parties about such attainers).

65. There is an argument that the cryptoasset moratorium (clause 61 and Schedules 9 and 10) does not interfere with a person's right to dispose of their property *per se*. It only prohibits them from using such assets to donate to political entities. Similarly, it does not interfere with a person's Art 10 rights to the extent that it should prevent them from making a political donation - it just means that they cannot make that donation in the form of a cryptoasset. However, to the extent that it does interfere with A1P1 or Art 10, this is a proportionate interference, justified by the legitimate aim of addressing the risks identified in the report into political finance by Philip Rycroft[4]:

> *"• The incomplete framework of regulation for cryptoassets, particularly at international level;*
>
> *• The difficulty of tracing ultimate ownership of cryptoassets;*
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> *• The proliferation of different cryptoasset vehicles, not all of which offer the same ease of traceability; and*
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> *• The advent of AI assisted technologies which allow cryptoassets to be broken down into small amounts, potentially below the threshold at which donations have to be declared.*
>
> *"[…] the Electoral Commission, and political parties themselves, simply do not yet have the capability and expertise to understand the history of cryptoassets that might find their way into the coffers of political parties.*
>
> *"[…] Taken together, this suggests that there is a risk that cryptoassets are used as the vehicle to channel foreign money into the political system in the UK. The Government needs a strategy for dealing with that risk*."

66. These clauses and schedules are to address a particular risk to the political system, and particularly the A3P1 rights of others, that has been identified in relation to cryptoassets.

[4] The Rycroft Review: Report of the independent review into countering foreign financial influence and interference in UK politics - GOV.UK

67. Clause 62 and Schedules 11 and 12 apply an annual £100,000 cap on donations from, and regulated transactions involving, overseas electors and an annual £100,000 cap for a specified period on the amount that can be donated by those who have moved to the UK. The specified period is from the date of the person's return to the UK to the end of the calendar year following that date.

68. This engages A1P1 in relation to the right of the individuals to dispose of their property by way of donating money to political parties, candidates and other regulated donees. It may also engage their Article 10 rights to the extent that this could be regarded as political speech. If this does interfere with these rights, the interference is in the general interest and necessary in a democratic society in order to ensure that political parties, candidates and other regulated donees must take responsibility for ensuring they know where donations come from, that unincorporated associations cannot be used as a vehicle for donations to facilitate foreign interference in election campaigns, and that only those donors with a genuine connection to the UK and a legitimate interest in elections in the UK can contribute financially to parties and candidates. This is in pursuit of the legitimate aim of protecting the A3P1 rights of voters against large donations from abroad creating an uneven playing field in a way that distorts the ability to ascertain the genuine opinion of the people at an election.

69. The independent Rycroft review noted:

*"Inevitably, tracing the source of funds offered by individuals living abroad is more complex than for domestic donations. This complicates the risk assessment that political parties will be obliged to undertake under the proposals in the Representation of the People Bill (the 'know your donor' clauses). Moreover, the investigatory route is also more complex for the Electoral Commission and other UK authorities if malfeasance is suspected."*

70. In particular, the difficulty of traceability and enforcement difficulties in relation to funds from those living overseas or recently overseas makes this a particular risk factor to close in pursuit of the aim of ensuring free and fair elections, protecting the A3P1 rights of others. The measure is considered proportionate given it is set at a very high level - £100,000. Single donations above £100,000 in value are uncommon in the UK political finance regime. An average of 56.6 donors per year donated over £100k in the period between 2015-2025. £100,000 can have a significant impact on campaigns, and therefore this is seen as a proportionate level at which to set a cap for all donors covered by this measure.

71. The introduction of a minimum residency period is necessary to close a clear enforcement gap in the overseas donation cap as without it, individuals could return to the UK to register specifically to avoid the imposed restriction.

72. Overseas donors who have returned to the UK will have to wait for the remainder of the calendar year in which they return, plus another calendar year,

before they are able to donate above the cap. They will have to register to vote "domestically" (i.e. not as an OE) to be able to donate, but the period is tied to their return date and not to the date of registration. For instance, a donor who returns to the UK in August 2026 will have to wait until January 2028 to be able to donate above the cap.

73. In the UK government's view, this additional period is a proportionate means of dealing with the particular risks relating to wealthy individuals living overseas, and to the extent that it engages Article 14 on the basis that UK residents who formerly lived overseas are treated differently from those who have remained resident in the UK, this is considered to be proportionate to the risk that still exists in relation to those who have recently moved to the UK.

74. An individual living overseas may have substantial financial interests, wealth structures, and economic connections established abroad which do not immediately disappear when they return to the UK. A full year provides a meaningful transition period during which we would expect those ties would diminish and UK-based economic activity can develop.

75. It constitutes a temporary restriction, and not an exclusion from the political finance system. These individuals will still be able to donate up to £100,000 a year, significantly above the average value of donation(s) made by individuals to a political party. Once the period is over, they will again be able to donate without restriction.

76. The rights of the small category of donors capable of donating over £100,000 must be weighed up against the rights of voters and candidates, who have the right under A3P1 to vote and stand (respectively) at free and fair elections to the legislature.

77. The provisions in Part 4 may be argued to interfere with the right of freedom of expression (Article 10) or property rights (A1P1) of those who wish to donate money or make other donations to show support to candidates, parties, or in favour of a particular outcome at elections, referendums or recall petitions. The rules already require that the person wishing to donate has a genuine connection with the UK, and these clauses reinforce this principle.

78. To the extent that these provisions interfere with Article 10 or A1P1, this is in the general interest and necessary in a democratic society in order to ensure that parties must take responsibility for ensuring they know where donations come from, that unincorporated associations cannot be used as a vehicle for donations to facilitate foreign interference in election campaigns, and that only those donors with a genuine connection to the UK and a legitimate interest in elections in the UK can contribute financially to parties and candidates. This is in pursuit of the legitimate aim of protecting the A3P1 rights of voters against large donations from abroad creating an uneven playing field in a way that distorts the ability to ascertain the genuine opinion of the people at an election.

Further, a permissible donor is able to donate below specified thresholds without their information being reported.

79. The Court recognised in the case of *Bowman v UK* 141/1996/760/961 (at paragraphs 42 and 43):

*"Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the* Mathieu-Mohin and Clerfayt v. Belgium *judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41–42).*

*"[…] Nonetheless, in certain circumstances the two rights may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the legislature". The Court recognises that, in striking the balance between these two rights, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (see the above-mentioned* Mathieu-Mohin and Clerfayt *judgment, pp. 23 and 24, §§ 52 and 54)".*

80. While not focusing on donations, the Court in its recent judgment in *Bradshaw and others v the United Kingdom (*at paragraphs 118 and 119) noted:

*"The State is therefore under an obligation to adopt positive measures to organise elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" (see C*ommunist Party of Russia and Others*, cited above, § 107; see also* Yumak and Sadak*, cited above, § 106).*

"[...] *in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.*"

81. A further argument for why those without a genuine UK connection should be restricted in their involvement in elections in the UK was set out in the Fifth Report of the Committee on Standards in Public Life:

*"The political parties are involved in the democratic process taking place within the United Kingdom. In particular, the parties have to submit their proposed policies to the electorate by manifestos and the governing party is chosen by popular vote. The political parties should, therefore, be confined to seeking financial support from those entitled to vote for them, subject to reasonable extensions to include UK registered companies and UK organisations and trusts. Put in its simplest form the argument is: what happens here is the concern of those who live and work here and the political parties should not be*

*entitled to fill their coffers with donations from abroad, made by persons and corporations who have no genuine stake in the country."*

82. These measures are not intended to prevent genuine free expression by individuals or legal persons, or their rights to dispose of their property but this must be balanced against the A3P1 rights of others. It is considered that these measures, to the extent that they interfere with Article 10 or A1P1 are necessary to protect the rights of others to be able to freely express their opinion in the choice of the legislature, and in the case of the attainer measure (clause 64), to protect their Article 8 rights, and are a proportionate means of achieving that aim.

Article 7 of the Convention

Clauses 81 and 82 – new statutory aggravating factor

83. Clauses 81 and 82 create a statutory aggravating factor that applies when sentencing criminal offences involving hostility to those involved in the democratic process. The offences to which the new statutory aggravating factor applies and the required element of hostility are the same as those that would lead to a disqualification order under Part 5 EA 2022. There are separate provisions to provide the aggravating factor in legal jurisdictions throughout the UK: England and Wales, the armed forces, Northern Ireland and Scotland (the latter being a restatement of an existing Scottish provision).

84. These clauses may engage Article 7 because the provision will apply to sentencing of offences after commencement that may have been committed before commencement. The maximum penalty for the offences that may be imposed before and after commencement is unaffected. In accordance with the principles in *Coeme and Others v Belgium* (2000) and *R v Uttley* [2004] UKHL 38, this does not constitute a "heavier penalty... than the one that was applicable at the time". For these reasons, the Government is satisfied that this measure is compatible with Article 7.

Transitional provision relating to cryptoasset donations and the cap on overseas contributions (Schedules 9 and 11)

85. Paragraph 2(b) of Schedule 9 and paragraph 9(2)(a) of Schedule 11 apply in respect of failure to return certain donations within a period post-commencement. That period is 30 days in the case of cryptoasset donations and 60 days, for the £100,000 cap.

86. This includes donations received on or after 25 March 2026. This relates to donations in cryptoassets and donations made by, and regulated transactions (such as loans and credit facilities) involving overseas electors and by those who were formerly resident abroad and registered as overseas electors. The

date of 25 March 2026 is the date of the announcement[5] made by the Secretary of State of the government's intention to address the issues in the Rycroft Report (cited above), and is before commencement of the legislation. Additionally, for donations made by and regulated transactions involving those who were formerly resident abroad (but not registered as overseas electors), the offence mentioned in paragraph 85 above applies in relation to those donations received on or after or transactions entered into on or after 6 July 2026. This date is the date of the government's response to the Rycroft Report[6] which set out this policy and made it reasonably foreseeable for transactions and donations from 6 July 2026.

87. These paragraphs modify the existing offences (section 56(3) and (4) PPERA) relating to failure by the recipients of such donations ("donees") to return donations (and monies received under subsequently voided regulated transactions) that are not compliant with permissibility rules, for example because they are in cryptoassets or they exceed the cap. This could be argued to engage Article 7 because the donations would have been made before commencement, however the government considers that the provisions are compatible with Article 7.

88. The offences are only prospective in nature. There will be no resulting liability for regulated donees in respect of restricted donations accepted or restricted regulated transactions immediately upon commencement of the relevant provisions of the Representation of the People Bill. Such liability will only arise where appropriate action is not taken by a regulated donee before the end of the 30-day or 60-day period after the commencement of the relevant provisions in the Bill.

89. The announcement on 25 March 2026 made it foreseeable to recipients that there would be an offence associated with failure to return donations (or monies received under voided regulated transactions). It was clear in the statement that the government would act to address the risks associated with donations in cryptoassets (by introducing a ban on donations in cryptocurrency) and capping donations from those resident overseas. The response published by the UK government on 6 July to the Rycroft report further made clear what action needed to be taken in respect of donations received from or transactions entered into with those formerly resident abroad. This ensures that regulated donees who may be affected by these provisions had sufficient warning ahead of the date of commencement of what the proposed restrictions will be, what action they should consider taking before commencement in the event that

[5] The announcement was made by Oral Statement to Parliament Foreign Financial Influence and Interference: UK Polit - Hansard - UK Parliament, a written ministerial statement Written statements - Written questions, answers and statements - UK Parliament, followed by a published letter, available here: Rycroft Review: Letter to parliamentary party representatives

[6] The Rycroft Review: HM Government Response, published 6 July 2026

Parliament agrees to these clauses, and in that scenario what further action regulated donees will then be required to take after commencement in order to avoid liability.

90. It is the UK government's position that this approach is in accordance with the principle considered by the European Court of Human Rights in *Coeme and Others v Belgium* (2000):

*"The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision" (*Coeme *paragraph 145).*

91. The act which leads to the prosecution is failure to return a donation or monies received, and that act only occurs at the end of the period which is 30 or 60 days after commencement of the relevant provisions of the Bill. The criminal act is not receipt of the donation but the failure to return the donation or monies received. It is therefore the government's view that there is no violation of Article 7.

**Ministry of Housing, Communities and Local Government**

**3 September 2026**