

**The proposed registration process for newly enfranchised overseas electors
if the Overseas Electors Bill passes into law.**

This paper discusses three main questions:

- **What are the detailed proposals in the Overseas Electors Bill for the registration of British citizens who were previously disenfranchised by the '15 year rule'?**
- **How easy will it be for Britons who have lived abroad for over 15 years to meet the proposed registration requirements?**
- **What potential problems arise from the proposals and how might they be overcome?**

See also the text of the [Bill and Explanatory notes here](#).

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Under current legislation (Political Parties, Elections and Referendums Act 2000), registration as an overseas elector is conditional on previous registration: a UK citizen who moves abroad can become an 'overseas elector' and vote from abroad for the first fifteen years after departure as long as they were on the electoral register before leaving. They should notify their Electoral Registration Officer (ERO) of their new address if they wish to continue being eligible to vote and they should renew this registration annually to maintain eligibility. If an individual does not notify the ERO when they move abroad but decides some years later to register, as long as this is within 15 years after departure, their previous registration can be verified because EROs are required by law to keep electoral registers for 15 years, corresponding to the time restriction of the '15 year rule'. An individual not previously registered in the UK is not currently eligible to become an overseas elector. Those who were minors when they left the UK can register if their parents were registered.

Under the proposed terms of the Overseas Electors Bill, the '15 year rule' would be abandoned, but the requirement to demonstrate a connection to the last UK constituency would be maintained for historical reasons explained in the box below. The basis for registration would however be extended from the 'previous registration condition' to include a new 'previous residence condition'.

Historical explanation of need to demonstrate constituency link:

The principle of demonstrating a connection to a particular constituency via electoral registration is one of the most fundamental principles of the British parliamentary system. This is because voting rights in the UK have been traditionally based on residence not on citizenship: the status of British citizenship was only introduced with the British Nationality Act (BNA) of 1981. The idea of granting voting rights to non-residents, introduced in 1985, was therefore highly controversial because it represented a fundamental change to the existing system; there was a strong feeling in Parliament that this should only be allowed if individuals wanting to vote could demonstrate a continued link with the UK. It was decided that the easiest way to demonstrate a continued connection was by maintaining electoral registration in the last constituency of residence before moving abroad. Overseas electors would therefore be 'assimilated' into the existing electoral system rather than forming an 'overseas constituency' as in some other European countries.

Proposal: The previous registration condition requires evidence that an applicant was previously on the electoral register in their last place of residence before leaving the UK.

Problems: This will be problematic because Electoral Registration Officers (EROs) are not legally required to keep old registers for more than 15 years. Some electoral authorities may have kept some copies of old registers if they have sufficient suitable storage space, but archives may be stored elsewhere and not easily accessible. Others may have disposed of all of them, or in a few cases they may have been destroyed by fire, flooding or other such incidents.

Acknowledging this situation, the Bill states that if previous registration condition cannot be confirmed, the previous residence condition can be used instead.

Proposal: Previous residence condition: the Bill states that in order to fulfil this condition a 'declarant' (someone applying to register) must specify the address at which they were resident and the date at which they were last resident there; they must also state that this was their last residence in the UK. There are special dispositions for those who were of no fixed abode and for Northern Ireland.

Details of the procedures for verification of identity and previous address by EROs are not spelt out in the Bill itself because they will be included in '[secondary legislation](#)' which is used to fill in the details of an Act of Parliament. They are however outlined in the [Policy Statement](#) (p.6-7) published by the Cabinet Office in October 2016, which explains that eligibility for registration by previous residence will be approved on the basis of either a) documentary evidence or b) attestation.

- a) Details of the documentary evidence requirements are listed in Annex B to the Policy Statement:

Annex B: Documentary evidence requirements

An electoral registration officer may require an overseas applicant to supply documentary evidence in order to establish their connection with their registration address. This can be either one item from list A, or two items from list B.

List A

- *Household utility bill (such as gas, electric, water or telephone).*
- *Full UK photocard driving licence with signature or 'old style' driving licence (including provisional or expired licences).*
- *Bank, building society or credit card statement, or bank or building society passbook.*
- *Local authority tax bill (eg council tax bill).*
- *Local authority rent book.*
- *Solicitor's letter confirming house purchase or land registry confirmation, or an official copy of the land register or other proof of title.*
- *HM Revenue & Customs (Inland Revenue) tax document such as a tax assessment, statement of account or notice of coding.*
- *Original notification letter from the relevant benefits agency confirming entitlement to benefits or the state pension.*
- *Pension or benefit correspondence from the Department for Work and Pensions.*
- *Instrument of a court appointment, eg probate or court-registered power of attorney.*

List B

- *Payslip.*

- *Employment document, such offer of employment or reference.*
 - *School, college or university (or UCAS) document, such as offer of a place, or confirmation of attendance.*
 - *Insurance documents, such as full insurance schedule, or letter confirming insurance cover.*
 - *Student loans company letter.*
 - *Mobile telephone bill.*
- Other evidence prescribed in guidance given by the Minister. The evidence must be dated but that date can be earlier than the date the applicant left the address concerned.*

Problem: How many people will still be in possession of any of these documents, especially having moved abroad many years before?

Proposal: b) Acknowledging this potential problem, the Bill also provides for registration through ‘attestation’ of previous residence; the details of this process are outlined not in the Bill but in the [Policy Statement](#) (p.7). This makes it clear (para 18) that an applicant who cannot provide documentary evidence as specified in Annex B, may ask another ‘qualifying elector’ (ie someone on the electoral register) to sign an attestation that the applicant was registered or resident at the relevant address. In its [Response to feedback to the policy proposals](#), it clarified (p.7, para 12) that this should be a UK-resident registered elector not another overseas elector.

Problems: The use of attestation raises a number of potential problems:

- How many new overseas applicants will still know anyone living in the UK who would have known them when they lived at that address and who would be able to testify to this?
- The use of attestation is open to potential fraud in a number of ways, as has been documented by many of the organisations submitting feedback on the Government’s Policy Statement:
 - It would be hard to verify attestations: the fact that any attester making a false statement would be liable to prosecution is unlikely to be a strong disincentive since it would be hard to imagine such cases reaching the courts.
 - Attestation might facilitate applications at more than one address since there is no requirement to produce documentary evidence: although the law states that ‘if an applicant makes two declarations that bear the same date and specify different addresses, the declarations are void’, and although it is an offence to vote twice in the same election, there is no central mechanism to check against this type of fraud.

The Government has acknowledged (para 20) “a potential risk of overseas electors trying to register at more than one address and accepts that there are operational difficulties in preventing such behaviour”.
 - The Electoral Commission (EC), Eastbourne Borough Council, and the Scottish Assessors Association (SAA) in their responses to the Policy Statement of October 2016, reported in the Government’s [Response to feedback to the policy proposals](#) (para 16), all expressed concerns that attestation would become the main route to registration for many new applicants and noted the risks of fraud associated with this option.

There are other more general problems arising from registration via previous residence:

- How many people will remember their previous address in the UK?
The [Association of Electoral Administrators \(AEA\) Response](#) to the Government Policy Statement “A democracy that works for everyone” says that ‘many people struggle even within 15 year rule to remember their actual address’ (Para 4.3.5). Those who moved around a lot from one address to another, even within the same area, will find this especially challenging.
- How many people will remember the date when they were last resident there?
Many people don’t leave the UK in one clean move, they come and go, they may leave to live in one country then return and leave again later for another country: it would be difficult for most people to remember, let alone prove a departure date.
- How could evidence be provided to prove that the address given was the *last* place of residence? Some people could be tempted to register in a constituency where they may have previously lived but which was not their *last* place of residence because their vote might carry more weight there, such as in marginal constituencies. The option of attestation might even tempt those who had never even lived there to try and register in a marginal constituency.

During the Committee Stage of the Bill, fears of this kind of fraud were one of the main drivers of Labour’s opposition to the Bill, as evidenced by MP Alex Smith’s comment in the Fourth Sitting: “We think there is a clear danger of people registering more than once. We are perhaps at risk of creating a bit of a market in where people choose to vote, because they will choose to go where their vote might have the most impact.”

The issues of multiple registration and ‘cherry-picking’ of constituency of registration have been ongoing concerns since the introduction of overseas voting rights in the 1980s, as summarised in the box below, and the current proposals do nothing to allay fears that the problems will be multiplied if the Bill passes into law in its current form.

Historical background to fears of politically motivated registration in marginal constituencies

The targeting of particular seats was raised as a potential problem in the very early discussions by the Home Office Select Committee in 1983 that examined the initial proposal to introduce voting rights for Britons living abroad: there was already an apprehension that ‘party machines will step into this situation and will start to organise it’. In the event, this was prevented by the decision that overseas electors should be registered in their previous constituencies; overseas voting was by proxy, and proxies for overseas electors were allowed a postal vote if they did not live in the same constituency as the overseas elector (Representation of the People Act 1985 p.12-13). So overseas votes could not in fact be manipulated by parties as had been suggested. However, the difficulty of establishing proof of *last* place of registration meant that the suspicion of parties ‘[plumping](#)’ marginal seats with overseas electors (considered by Labour to be mainly Tory supporters) lingered on, and Labour MP [John Smith claimed that](#) in 1992 he had lost his seat in the marginal constituency of Vale of Glamorgan as a result of ‘a small proportion of people living in other lands who had little association, if any, with my constituency’. Academic research into this claim suggested the evidence was not conclusive (P. Tether, ‘The Overseas Vote in British Politics 1982-1992’ in *Parliamentary Affairs*, Vol. 47, p.73-93).

Summary conclusions regarding registration based on previous residence

The provisions set out for registration through previous residence suggest this is a problematic route to registration, especially when up to 3m new overseas electors could be eligible, with a potentially significant impact on election outcomes. The suspicion that some overseas electors might try to 'bend the rules' is supported by evidence in the [AEA 2016 Response to the Government Policy Statement](#) (p.6, para 4.2.4) which states that "Overseas electors are registering in respect of random addresses that they're not registered at within the last 15 years, and giving us different addresses to 'try' and see if they can register in respect of those". The same report raised a number of concerns in relation to attestation along the lines outlined above.

Even if this only concerns a minority of voters, it is easy to see why the questions about last place of residence and attestation of previous residence are politically contentious, especially given the conflictual history of the politics of overseas voting (see the [History of Overseas Voting](#) page on the Britons Voting Abroad web-site). This history continues to mould party positions towards the current Bill despite its sponsor's attempts to present it as 'apolitical' and despite calls from Conservatives for the question of overseas voting to be approached as a cross-party matter.

There is arguably then a case for removing from the Bill any scope for fraudulent practices which could give weight to suspicions that political parties are seeking to exploit the Bill for electoral gains: suspected partisan interests should not be allowed to undermine the central goal of 'Votes For Life' which aims to bring electoral justice to UK non-resident citizens regardless of their political persuasion. On the other hand, anticipation of fraud by the few should not be allowed to hinder practical access to registration by the many.

Solutions to potential problems of registration?

One way of preventing fraudulent declarations might be to create a central register for newly enfranchised overseas electors; this would also help to build a more detailed statistical picture of overseas electors and their country of residence. This data, which is currently not collected at national level, could be used as a basis for future consideration of the creation of overseas constituencies, as advocated by the Liberal Democrats. The idea of a central overseas register was in fact suggested in a Labour amendment during the 4th Sitting of the Committee Stage of the Bill and there is some support for it within the Conservative Party. However, it was rejected by the Government on the grounds that a) overseas electors should not be treated differently to resident electors, and b) the idea of a central register was not in keeping with the constituency-based system of British parliamentary democracy.

Another idea might be to focus on verification of previous registration: although EROs are not required to keep registers for more than 15 years, hard copies of all old registers from 1947 onwards are held by the British Library. Registers from 1998 are kept on site but those from 1947 – 1998 are archived in a separate building off site. A dedicated service or agency for verifying old registration addresses could be created under the auspices of either the Cabinet Office, the AEA or the Electoral Commission in conjunction with the British Library and funded under the 'new burdens' doctrine which the Government proposes to use for the implementation of this Bill. This new agency would develop the most appropriate system of accessing the archived registers which could be gradually digitised as applications

are made in order to facilitate future ease of access. The onus would be on applicants to seek verification of their last registration via this agency which could then certify the relevant registration address. Applicants would then send this certification to the relevant EROs, relieving them of the onerous burden of conducting the verification process themselves.

Mass digitisation of all registers could be considered. The technical capacity for a major project like this has recently been demonstrated in the context of a project undertaken by the French Government in which the French National Library will take just six weeks to digitise over half a million pages of 'complaints' written by French citizens over the past few months during the 'Great Debate' initiated by President Macron in response to the 'yellow vest' protest movements. However, the digitisation of all past registers would be costly and might be regarded as unnecessary given that overseas electors tend to be unevenly spread across electoral authority areas.

This 'registration agency' approach to the potential problems discussed above would remove the need for registration based on previous residence, eliminating the associated difficulties of providing documentary evidence and possibilities of fraud. Any applicant not previously registered would not be eligible, as under current rules: this would be a reaffirmation of the original connection to the UK constituency, in line with parliamentary tradition as supported by the Government.

However, this would still not resolve the problem of proving 'last' place of registration or registering in more than one place, a conundrum that already exists under the present system. Two possible solutions are worth considering here:

- If the 'registration agency' system was adopted, it could be developed to include and store unique personal identifiers such as passport number or NI number and date of birth, which could be cross-referenced across different registers to prevent fraud. This would require extensive discussions regarding personal data protection and critics might see it as moving too close to the idea of a central register. However, given the possibilities for fraud acknowledged by the Government, it could offer a practical compromise. The different treatment of overseas electors could be justified on the basis of two arguments:
 - they cannot easily be prosecuted under UK laws since they live abroad.
 - their address of registration cannot be cross-checked against other UK sources in the way that visits during the Annual Canvass can verify whether a resident elector is actually living at the address declared.
- An alternative approach to preventing overseas electors from 'cherry-picking' constituencies, could be to impose a requirement for the applicant to provide to the ERO documentary evidence of some kind to support their claimed date of departure or move to another country (eg employment offer, registration document from country of residence). While this might be quite straightforward for some it would be impossible for others; it would in any case still be hard to ensure that the applicant had not returned and registered in a different UK constituency after that. It would also add to the workload of EROs.

It can be argued that the likelihood of fraud by overseas electors is no greater than for resident electors for whom there is no central system for checking unjustified double registration either (registration is allowed in more than one place for certain resident electors eg MPs who work and live in different places). However, the threat of prosecution is likely to carry more weight with a resident elector who cannot easily escape the arm of the law than with an overseas elector who lives outside the UK's territorial jurisdiction. The main cause for concern regarding *overseas* electors is the potential scale of the problem and the perception of its possible impact on election outcomes.

A final word...

Britons living abroad might feel they are being unjustifiably considered as potential fraudsters even though there is no evidence to suggest they are any more dishonest than electors in the UK. The problem remains however that the politics of overseas voting are such that British expatriates are widely viewed in the UK with suspicion and resentment, and historically, discussion of overseas voting rights has been underpinned by party politics and suspicions in the Labour Party of 'international gerrymandering' by the Conservatives. If opposition to the Bill could be diffused by the elimination or at least reduction of scope for fraudulent practices pursued for partisan gains, it could increase the chances of 'Vote For Life' becoming law.

WHAT ARE YOUR VIEWS ON THE ISSUES DISCUSSED IN THIS PAPER?

Please comment in the Discussion Forum on this site: your responses will be included in a short report to be circulated to all MPs who take an interest in this issue.

Sue Collard, March 2019