

SUBMISSION

To members of the Political and Constitutional Reform Select Committee, 10 October 2011

Draft legislation on individual voter registration – pre-legislative scrutiny

Meeting to be held on 13 October 2011 at 10.00 a.m.

- **British expatriates (expats) are currently deprived of the right to register to vote in UK national elections after 15 years' residence abroad**
- **British expats continue to have close ties to the UK even after a long period of residence abroad, and a strong personal interest in the future of their country and the conduct of the government**
- **Voting rights in national elections are based on nationality, not residence, so expats cannot instead vote in the countries where they live**
- **Legislating for a time period before disenfranchisement of an arbitrary number of years serves no legitimate objective**
- **Rather than seeking to identify the “right” period of residence abroad, on the contrary there should be no time limit at all**
- **A section repealing the present legislation disenfranchising British expats after 15 years' residence abroad should be inserted into the Individual Voter Registration Bill.**

1. I write as Chairman of the British Community Committee of France, a non-partisan, not-for-profit organization which represents British residents in France, strives to provide greater visibility and a united face for the British Community in France as a whole, and investigates issues and problems in everyday life that may be encountered from time to time by British residents in France.

2. The terms “British” and “Britishness” in this paper refer to the nationality conferred on UK citizens with the right of abode in the UK under British nationality law currently in force. The terms also refer to the usually loyal and life-long identification of most British citizens, whether UK residents or expats, with their own country. Use of the terms “British” and “Britishness” is not intended in any way to exclude Northern Ireland.

3. France is host to Britain's eighth-largest British expatriate community, and the second-largest in a non-English-speaking country after Spain.

4. In this matter I speak also for British expats all over the world, pursuant to my contributions on this subject as part of the British expats' delegation to the French-organized “Europe on the Move” meeting of representatives of expat communities at the French Foreign Ministry on 30 September 2008 and the Italian-organized follow-up meeting of representatives of expat communities in the Italian Senate in Rome on 30 April 2010.

5. According to research by the IPPR, some 5.6 million British subjects live abroad. 55 per cent of all British emigrants in 2008 left the country for professional

reasons, often being sent abroad by their British employers, or working for an international organization such as the UN or OECD. Approximately a quarter are students, and around 20% are pensioners. British pensioners living abroad represent nearly 10 per cent of all British pensioners.

6. Under legislation enacted in 2002 only those may register to vote in UK national elections who have resided abroad for less than 15 years (“the 15-year rule”). This is widely resented by those British expats who are affected by it, and whose right to vote in national elections is suddenly and arbitrarily terminated after 15 years abroad, often spent working to further the interests of the UK in commercial companies or international organizations.

7. British citizens disenfranchised in this manner because of the duration of their residence abroad are in effect deprived of the right to vote at legislative elections *in general*, since national voting rights are based on nationality, not residence, and the countries where they live do not, and probably never will, allow them to vote in their own national elections.

8. While they tend not to allow non-national residents to vote, most advanced democracies and many emerging countries not only permit, but actually *encourage and facilitate* voting by their own citizens living abroad. These include the USA, Spain, France, Germany, Italy, Switzerland, Portugal, etc. etc.

9. The time limit before disenfranchisement has varied since 1985 between 5, 20 and 15 years. Each time the time limit was changed, Parliament clearly experienced difficulty in identifying what might be considered the “right” period of residence abroad before disenfranchising its own citizens. As a result, a compromise number of years was adopted in each case. It is not clear that any of these time periods corresponded to a particular legislative objective.

10. Cases pending before the Administrative Court and the European Court of Human Rights, brought against the UK and impugning current UK electoral practice where expats are concerned, if judged in favour of the applicants, would no doubt require HM Government to ensure that any new legislation setting a time limitation should not be arbitrary, but be proportionate to the objective to be attained by the legislation. A further arbitrary compromise number of years is therefore not at all desirable.

11. The present submission argues that rather than seeking to identify the “right” period of residence abroad, on the contrary there should be no time limit at all, and that overseas voters who are UK citizens, provided they fulfil all other required conditions, should continue to be able to register to vote in UK national elections without there being *any* time period after which disenfranchisement would become automatic.

12. Draft legislation on individual voter registration has been submitted to you by the Minister for Constitutional Reform, and it is our contention that such draft legislation could and should include a provision repealing those parts of the Representation of the People Act currently in force which set a time limit on overseas voter registration.

13. It is not for us to draft legislation, but it appears from the 2002 legislation that a simple text of less than 100 words could be a simple basis for repealing the 15-year rule¹.

14. If enacted, such a provision would constitute recognition by HM Government that British expats enjoy equal British citizenship and equal rights with their fellow British citizens resident in the UK. Such expats would at last *all* be able to participate fully in the democratic election of members of the legislature, rather than just some of them.

15. They would be motivated to do so not only on grounds of Britishness, but also of their continuing strong links with the home country, and their personal interests in areas such as old age pensions, taxation, their children's and grandchildren's education, health care, etc. etc.

16. In many cases British expats continue to pay income tax in the UK e.g. income tax deducted at source from public service pension payments or tax paid in respect of real estate and/or investments held in the UK. These are people with a vested interest in continuing to have a say in the legislative affairs of the Kingdom.

17. Taxation is not however a compelling argument, since most countries where British expats live have concluded a Double Taxation Convention with the UK, in effect deeming that by paying tax in the host country, they have fulfilled their fiscal obligations to their home country.

18. British expats today are able to keep themselves fully informed about issues affecting the UK through satellite TV and radio, newspapers on the Internet, etc. On the whole they care deeply about their Britishness and about what goes on in their home country. Expats show a keen interest in maintaining good relations with British Embassies and Consulates abroad. Britishness and links with Britain are expressed locally through membership of British associations and institutions abroad (see for example www.britishinfrance.com). They represent informally British values abroad and act as unofficial ambassadors of Britishness to the outside world.

19. In enacting the proposed repeal of any time limit on expats' voting rights, it would be beyond question that HM Government would be bringing the UK into line with article 20 TFEU (freedom to move to and reside in other EU member states), the numerous and repeated recommendations of the Council of Europe concerning expat voting rights (notably the Parliamentary Assembly's Resolution 1459(2005)), and the provisions on electoral rights of the European Convention on Human Rights

20. The Committee will want to explore what the risks might arise as a result of enacting the proposed submission, and how such risks might be mitigated.

¹ (based on Political Parties, Elections and Referendums Act 2000, section 141):

Abolition of qualifying period for overseas electors.

Each of the following provisions of the Representation of the People Act 1985 (as amended by the Representation of the People Act 2000), namely—

(a) section 1(3) (c) and section 1 (4) (a) (conditions to be satisfied by British citizen in order to qualify as overseas elector in relation to parliamentary election), and

(b) section 3 (3) (c) and 3 (4) (a) (conditions to be satisfied by peer in order to qualify as overseas elector in relation to European Parliamentary election),

shall be repealed.

21. In 1989 the time limit on expats' voting rights changed to 20 years, the longest period before disenfranchisement that has existed in UK law. The new time limit did not apparently cause any undesirable consequences compared with the previous time limit of only 5 years.

22. Theoretically there could be a small risk of electoral fraud if any unqualified persons were registered. However, a registration process could no doubt be devised based on the electors' British passport number, a unique, secure number issued by the Identity and Passport Service of the Home Office, which also holds information about the full identity and address of the passport holder at the time of issuance of the passport. All British expat citizens whose status is legal must hold a current British passport. In the absence of a national identity document for UK resident nationals, passport data for British expats actually provide a stronger means of proof of identity than is available for resident nationals.

23. It may be felt by some that certain long-term expats have, over time, lost their connections with the UK, and that enfranchising them might make the voter base in the relevant constituency unrepresentative (albeit very slightly). However, if such persons exist, it is highly unlikely they would be sufficiently motivated to apply to register to vote. Therefore this is hardly a risk that needs to be considered.

24. In conclusion, abolition of any time limit on the residence of expat voters abroad would:

- **bring the UK into line with the practice of other advanced democracies and with EU treaty obligations and Council of Europe recommendations,**
- **reinforce the ties of Britishness between the UK and those who are its unofficial ambassadors, and**
- **allow full participation in the democratic process of millions of British expat citizens who are motivated so to do.**

To abolish the time limit, the legislation need not be complicated, and secure registration procedures based on passport data could be devised to avoid fraud.

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