

POSTAL VOTING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Postal Voting Bill 2018 as introduced in the House of Commons on 20 February 2018 (Bill 166).

- These Explanatory Notes have been provided by Cabinet Office, with the consent of Damien Moore MP, the member in charge of the Bill in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
- As the Bill is a Private Member's Bill, the English votes provisions in the Standing Orders of the House of Commons relating to Public Business do not apply to the Bill.

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Overview of the Bill

- 1 The Bill makes the following changes to current policy:
 - a. prohibits the handling (or harvesting, collecting or posting) of complete, incomplete, or blank postal ballot papers by candidates, party members or workers, and others, when the person concerned is acting to promote a particular outcome at a relevant election. Defined family members and carers are exempted from this prohibition. (Note that, in any event, the prohibition does not prevent people who are not seeking to promote a particular outcome at the election from assisting a voter to get their vote delivered on time);
 - b. introduces a criminal offence in relation to contravention of the above;
 - c. prohibits the handling of postal votes by people who are doing so with a corrupt intent. This captures people who are not necessarily allied to parties, or otherwise seeking to effect a particular outcome at an election, but are nevertheless acting with dishonest intent: for example, who are handling the votes of other people over whom they exercise undue influence, or intend to tamper with the vote. In this instance, family and carers are not exempt - because of the dishonest nature of their intentions;
 - d. introduces a criminal offence in relation to the contravention of the above;
 - e. introduces an ability to limit the number of electors on behalf of whom a person may hand in postal votes to a returning officer or at a polling station (such limit to be specified in secondary legislation); and
 - f. requires returning officers to notify electors if their postal vote has been rejected because of a suspected breach of (a), (c) or (e) above.
- 2 It makes no other changes to the postal voting process.

Policy background

- 3 In August 2016, Sir Eric Pickles in his role of Anti-Corruption Champion published a review into electoral fraud: Securing the Ballot. His review reported that the collection and handing in of multiple completed postal ballot packs by someone in a polling station (sometimes referred to as “postal vote harvesting”) creates the impression those ballot papers could have been tampered with or fraudulently completed, and have been put forward in bulk at the last moment in the hope that they will not be so stringently checked by returning officers.
- 4 As a result of these findings, Sir Eric Pickles recommended that a voter could only hand in postal ballot packs on behalf of another voter if:
 - a. they were a family member and/or designated carer of that voter; and
 - b. they were handing in postal votes for a maximum of two other voters.
- 5 Under the present system:
 - a. There is no statutory prohibition on political campaigners or activists handling postal votes belonging to others.
 - b. The Electoral Commission has published a Code of Conduct for Campaigners which has been agreed to by the national political parties. This Code states that campaigners should never (in relation to postal voting ballot papers): touch or handle anyone else’s ballot paper; observe voters completing their ballot paper; or handle or take any

- completed postal ballot packs from voters.
- c. Political parties and candidates can voluntarily agree to abide by the Code, but it is not legally binding.
 - d. Examples have arisen where the Code of Conduct has been intentionally contravened by some party campaigners. This activity has also been carried out by people who may not have been formally affiliated to a party but were supporters of a particular candidate. This occurred most notably in Tower Hamlets in 2014 where the outcome of the election was called into question.
- 6 Sir Eric Pickles noted that the lack of a statutory ban on the handling of postal ballots leaves scope for the integrity of postal voting to be undermined, and that if an activity should be banned, it should be done so in legislation and with a sanction.
 - 7 The Pickles review suggested that completed postal ballot packs should only be handed in on behalf of individuals of whom they are a family member or designated carer.
 - 8 The Bill introduces a limit on the number of voters any individual can hand in postal ballots on behalf of at a polling station or to a returning officer on polling day. The exact limit will be prescribed in regulations. This broadens the recommendation made by Sir Eric Pickles to aid accessibility, whilst retaining the original intention of the recommendation.
 - 9 The Postal Voting Bill has developed the two relevant recommendations from the Sir Eric Pickles report in relation to postal voting to workable solutions whilst supporting the manifesto commitment to legislate to “reform postal voting.”

Legal background

- 10 The core Act for the purposes of the legal framework relating to elections to the House of Commons is the Representation of the People Act 1983 (RPA 1983), which is the most recent consolidation act for this area of law.
 - a. UK Parliamentary elections: The rules governing the conduct and administration of postal voting in the context of the UK parliamentary elections are found in:
 - b. Schedule 1 to the Representation of the People Act 1983 (RPA 1983);
 - c. Schedule 4 to the Representation of the People Act 2000 (RPA 2000);
 - d. Part 5 of the Representation of the People (England and Wales) Regulations 2001 and the Representation of the People (Scotland) Regulations 2001; and
 - e. Representation of the People Act (NI) Regulations 2008 and the Representation of the People Act 1985.
- 11 Principal area local authority elections in England: The rules in respect of local elections in England are broadly found in the above primary legislation and consequential secondary legislation.

Territorial extent and application

- 12 This Bill applies to UK Parliamentary elections and other reserved elections in the UK.
- 13 The Bill's provisions will apply to the following reserved elections (subject to any necessary consequential changes being made in secondary legislation):
 - a. UK Parliamentary elections (subject to the below);
 - b. Principal area local authority elections (in England);
 - c. Parish, town and community council elections (in England);
 - d. Greater London Authority elections (to the London Assembly and of the London Mayor);
 - e. Mayoral elections in England; and
 - f. Police and Crime Commissioner elections (in England and Wales)
- 14 In regards to UK Parliamentary elections: Clause 1 of the Bill will apply UK wide; Clause 2 and 3 will apply GB wide.
- 15 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly and therefore no legislative consent motions (LCMs) are necessary.
- 16 At the time of writing, the conduct of local elections in Wales is a reserved matter. The Wales Act 2017, once implemented, will devolve powers in respect of the administration and conduct of local elections and Assembly elections in Wales. Police and Crime Commissioner elections in Wales remain a reserved matter.
- 17 There is a convention that Westminster will not normally legislate for matters that are within the legislative competence of any of the devolved legislatures without the consent of the legislature concerned. If amendments are made which relate to matters that fall within that convention, the consent of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly (as appropriate) will be sought for them.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Offences relating to handling postal voting documents

- 19 Clause 1 subsection (1) and (2) inserts a new section 65ZA into section 65 of the RPA 1983.
- 20 New section 65ZA will be placed after section 65 RPA 1983, creating two new electoral offences. A person will be guilty of such offences if that person either:
 - a. engages in activities for the purpose of promoting a particular outcome at a relevant election, and handles another person's postal voting documents in the course of those activities; or
 - b. corruptly handles another person's postal voting documents.
- 21 This new section follows the other existing offences in relation to tampering with nomination/ballot papers.
- 22 New section 65ZA subsection (1) and subsection (3) sets out the two situations in which an individual would be guilty of an offence under new section 65ZA.
- 23 New section 65ZA subsection (1) will capture a relatively narrow group of individuals who handle postal voting documents whilst engaging in activities with a view to promoting a particular outcome at a relevant election. This is likely to principally affect campaigners and party workers, although others promoting particular outcomes at elections will also be caught.
- 24 New section 65ZA subsection (2) creates two exemptions to this offence.
 - a. New section 65ZA subsection (2) paragraph (a) creates an exemption for family members. The individuals captured within this exemption are those currently classed as a family member in existing electoral law. It exempts a person from liability if the individual is handling the postal voting documents of his or her spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
 - b. New subsection 65ZA subsection (2) paragraph (b) creates an exemption for individuals who are handling the postal voting documents on behalf of someone for whom they provide regular care. Such care could be paid for (for example a domiciliary care worker, employed by a local provider, who was providing care; or an individual who is in receipt of any other payment in relation to their caring duties) or the sort of unpaid informal care provided by family members and others, including those receiving Carer's Allowance.
- 25 New section 65ZA subsection (3) establishes a second new offence. Where an individual corruptly handles another person's postal voting document in connection with a relevant election, they will be guilty of an offence under new section 65ZA.
- 26 New section 65ZA subsection (4) makes both the offences a "corrupt practice" under the RPA 1983. The effect of this is to bring the offences within the existing prosecution, sentencing and penalty regime for electoral offences in the 1983 Act. In line with other electoral offences, this subsection makes it clear that anyone who aids, abets, counsels or procures the commission of the offences in relation to handling postal voting documents is also guilty of a corrupt practice.
- 27 New section 65ZA subsection (5) defines some of the terms used in Clause 1. It states that a "postal voting document" means a postal ballot paper or other document issued to a person for use in connection with voting by post at that election. This includes any document, complete or incomplete, in relation to a postal vote, but does not include postal voting

application forms.

- 28 New section 65ZA subsection (5) also defines “relevant election”, applying the new provisions to UK Parliamentary elections in the United Kingdom and local elections in England. The changes made through this Bill will apply (under existing legislation) to Parish elections, town and community council elections (in England); Greater London Authority elections (to the London Assembly and of the London Mayor); Mayoral elections in England; Combined Authority Mayoral election in England; and (subject to further secondary legislation) Police and Crime Commissioner elections (in England and Wales).
- 29 There is no need for an exemption for people engaged in handling postal votes in the course of their work, such as Returning Officers and their staff or postal workers, as these people will not be handling votes for the purpose of obtaining a particular outcome at the election.
- 30 Clause 1 subsection (3) applies the existing processes in relation to the identification of a person guilty of a corrupt or illegal practice by an election court (set out in section 160 of the RPA 1983) to persons convicted of the new offences.
- 31 Subsection (4) applies the existing provisions in relation to prosecutions for corrupt practices (set out in section 168 of the RPA 1983) to persons convicted of these offences. On indictment, the person would be liable to imprisonment for a term not exceeding two years, or a fine, or both. On summary conviction, the person would be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.
- 32 Subsection (5) applies the existing provisions in relation to incapacities (set out in section 173 of the RPA 1983) to persons convicted of these offences. A person convicted of a corrupt practice is incapable of the following for five years after the date of conviction:
 - a. being registered as an elector or voting at any reserved election in the United Kingdom;
 - b. being elected to the House of Commons; or
 - c. holding any elective office.
- 33 Subsection (6) enables the changes made through this Bill to be applied to other reserved elections as noted in paragraph 13 above.

Clause 2: Restriction on handing in postal voting documents on behalf of others

- 34 Clause 2 of the Bill creates a new provision in Schedule 4 to the Representation of the People Act 2000 (RPA 2000) (absent voting in Great Britain.)
- 35 New paragraph 7ZA(1) states that a person may not hand in postal voting documents on behalf of more than the prescribed number of electors entitled to vote by post at the election. This gives the power to prescribe in regulations the maximum number of electors for whom an individual may hand in postal ballots.
- 36 It is presently envisaged that in addition to their own postal vote, an individual will be able to hand in the postal votes of up to two electors. However, this will not be finally determined until the coming into force of the relevant secondary legislation.
- 37 The individual handing in the postal voting documents on behalf of another will be able to hand in the postal votes for all the polls in which the two electors can vote.
- 38 New paragraph 7ZA(2) defines a number of terms as applied in subparagraph (1).
 - a. New subparagraph 7ZA(2) paragraph (a) defines the term “relevant election” to include parliamentary elections in Great Britain and local government elections in

England.

- b. New subparagraph 7ZA(2) paragraph (b) defines the term “postal voting document” to include a postal ballot paper or other document issued to the elector for use in connection with voting by post. The documents could be complete or incomplete. This does not cover a postal vote application form.
 - c. New subparagraph 7ZA(2) paragraph (c) describes the action to “hand in a postal voting document” as to hand it in for the purpose of returning it, therefore submitting the vote in the polling station, or to the Returning Officer or equivalent.
- 39 New subparagraph (1) contains powers to set in regulations the limit on the number of electors on behalf of whom an individual can hand in postal voting documents. Section 201 of the RPA 1983 enables powers conferred under this same Act to make regulations to be exercisable by the Secretary of State. New subparagraph (3) extends these regulation making powers to the Minister for the Cabinet Office.

Clause 3: Notification of rejected postal vote

- 40 Clause 3 amends Schedule 4 to the RPA 2000.
- 41 Clause 3 subsection (2) replaces existing subparagraph 7E(2) of Schedule 4 to the RPA 2000. It expands the list of circumstances that may give rise to a voter being notified that their postal ballot paper has been “rejected” in regulations made under the existing power in subparagraph 7E(1). Subparagraph 7E(1) provides for regulations to be made prescribing the circumstances in which a returning officer shall notify a voter that their postal ballot paper has been rejected. This amendment expands that existing power to account for the changes introduced by Clauses 1 and 2.
- 42 If the returning officer:
- a. determines in accordance with regulations that the person handing it in is committing an offence under new section 65ZA RPA 1983; or
 - b. determines in accordance with regulations that a person has breached the new rule in paragraph 7ZA, Schedule 4 RPA 2000;

the postal ballot paper will be rejected for the purposes of regulations made under the existing power in subparagraph 7E(1).

- 43 New subparagraph (2) also contains powers to prescribe in regulations the circumstances in which a registration officer may establish that a postal ballot paper should be rejected. Section 201 of the RPA 1983 enables powers conferred under this same Act to make regulations to be exercisable by the Secretary of State. New subparagraph (4) extends these regulation making powers to the Minister for the Cabinet Office.
- 44 Clause 3 subsection (3) ensures that paragraph 7F, Schedule 1 RPA 2000 retains its current scope. Paragraph 7F enables the existing regulation-making power in paragraph 7E (before amendment) to be exercised by Scottish Ministers in relation to local government elections in Scotland. Clause 3 subsection (3) ensures that this provision is not unduly amended to incorporate the new administrative powers introduced by new subparagraph (2) (described at paragraph 43 above). These new powers will be exercisable in keeping with the existing scheme of the Parliamentary Elections rules contained in the Representation of the People Acts.

Clause 4: Extent, Commencement, and short title

- 45 Clause 4 sets out the provisions relating to the extent, commencement and short title of the

Bill.

- 46 Subsection (1) provides the territorial extent of this Clause and Clause 1.
- 47 Subsection (2) provides that any amendments or repeals made by Clause 2 or Clause 3 of this Bill to other legislation has the same extent as that legislation.
- 48 Subsection (3) makes provision for Clause 1 and Clause 3 of the Bill to come into force on such day or days as may be appointed by regulations made by the Minister for the Cabinet Office or the Secretary of State.
- 49 Subsection (4) brings this Clause and Clause 2 into force on the day on which the Act is passed.
- 50 Subsection (5) makes provision for individual clauses to come into force on different days for different purposes.
- 51 Subsection (6) cites the short title of the Act.

Commencement

- 52 Clause 4 sets out that Clause 2 and Clause 4 comes into effect at Royal Assent. It also provides that the remaining clauses of the Bill come into effect on a date specified by the Minister for the Cabinet Office or the Secretary of State. The various clauses do not have to come into effect on the same date.

Financial implications of the Bill

- 53 The majority of the ongoing costs brought by the Bill will be incurred by Cabinet Office in relation to the new criminal offence created by the Bill.
- 54 The Bill is expected to incur additional public expenditure equivalent to an average of £5,182 per annum, of which £1,521 are from the judicial process, and £3,661 are from enforcement.
- 55 We expect there may be some small costs associated with communications and awareness raising campaigns run by political parties to promote the new changes.
- 56 There may be some cost associated in administrative arrangement following clause 3. This will involve the time of the returning officer and his staff in processing the rejected postal ballot papers and associated costs incurred- such as paper and postage.
- 57 Further details of the costs and benefits of the Bill's provisions are set out in the impact assessment published alongside the Bill.

Related documents

- 58 The following documents are relevant to the Bill and can be read at the stated locations:
- [Securing the Ballot – Report of Sir Eric Pickles' review into electoral fraud; Sir Eric Pickles, August 2016
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545416/eric_pickles_report_electoral_fraud.pdf
 - *A Democracy that works for everyone: a clear and secure democracy*, the Government response to the Pickles Report, 27 December 2016,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/580514/government-response-sir-eric-pickles-review-electoral-fraud.pdf

Annex A - Territorial extent and application in the United Kingdom

It is intended that the Bill’s provisions will apply to:

- a. UK Parliamentary elections (subject to point 68 below);
- b. Principal area local authority elections (in England);
- c. Parish, town and community council elections (in England);
- d. Greater London Authority elections (to the London Assembly and of the London Mayor);
- e. Mayoral elections in England; and
- f. Police and Crime Commissioner elections (in England and Wales)

Where necessary, changes will be made to secondary legislation to implement the provision for other polls.

In regards to UK Parliamentary elections, it is our intention that Clause 1 of the Bill will apply UK wide. Clause 2 and 3 will apply GB wide.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	Yes	No	No	No	No	No
Clause 4	Yes	Yes	Yes	Yes	No	No	No	No

Minor or consequential effects²

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

² References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Clause 1: Offences relating to handling postal voting documents

Subsection (3) makes a consequential amendment to section 160 of the RPA 1983 (persons reported personally guilty of corrupt or illegal practices) so as to include persons guilty of the offence within the scope of that section, thereby ensuring that incapacities are imposed on those guilty of corrupt practices apply to this offence.

Subsection (4) makes a consequential amendment to section 168 of the RPA 1983 (prosecutions for a corrupt practice) to bring the offence within the scope of subsection 168(1)(a)(i), making persons guilty of the offence liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or both.

Subsection (5) makes a consequential amendment to section 173 of the RPA 1983 (incapacities on conviction of corrupt or illegal practice) to bring those guilty of the offence within the scope of section 173 and thereby subject the incapacities applicable to those guilty of a corrupt practice under the RPA 1983.

Subsection (6) makes a consequential amendment to section 187 of the RPA 1983 (application of Act to certain local elections) as to enable the offence to apply to certain local elections.]

Clause 2: Restriction on handing in postal voting documents on behalf of others

Clause 2 inserts new section 7ZA into Schedule 4 to the RPA 2000. This enables regulations to be made prescribing how many electors a person can hand in postal voting documents to a polling station or returning officer on behalf of.

Clause 3: Notification of rejected postal vote

Clause 3 subsection (2) makes consequential amendments to paragraph 7E of Schedule 4 to the RPA 2000 to ensure that the new rules created by Clauses 1 and 2 can be taken into account in regulations prescribing the circumstances in which a returning officer shall notify a voter that their postal ballot paper has been rejected.

Clause 3 subsection (3) makes consequential amendments to paragraph 7F of Schedule 4 to the RPA 2000 to ensure that it continues to apply to the power in subparagraph 7F(1) and is not expanded to include the powers in new subparagraph 7E(2), which will be exercisable in keeping with the existing scheme for other powers contained in the Parliamentary Elections Rules.

Subject matter and legislative competence of devolved legislatures

The Bill contains no provisions that are within the competence of the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly.

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Ordered by the House of Commons to be printed, 6 June 2018

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