

BALLOT SECRECY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Ballot Secrecy Bill as brought from the House of Lords on 1st December 2022 (Bill 208).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities, with the consent of Paul Bristow 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.

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Overview of the Bill

- 1 The Bill amends existing electoral law to strengthen the secrecy of voting in polling stations at UK parliamentary elections, Northern Ireland Assembly elections, England local elections and Northern Ireland local elections. The Bill introduces two new offences in relation to a person being with or near another person in a polling booth, with the intention of influencing how that person will cast their vote.

Policy background

- 2 The Bill seeks to strengthen the secrecy of votes cast in polling stations at elections and aims to address concerns of voters being accompanied by other persons into or near polling booths and being influenced into voting in a particular way (so called ‘family voting’).
- 3 There are existing offences in the Representation of the People Act 1983 (‘RPA 1983’) and the Electoral Law Act (Northern Ireland) 1962 (‘1962 Act’) designed to safeguard the secrecy of voting and to prevent voters being subject to inappropriate or undue influence from other persons when casting their vote. Electoral law currently provides that it is an offence for a person to carry out particular activity for the purpose of inducing or compelling a voter to vote in a particular way (or refrain from voting), or to interfere with or attempt to interfere with a voter while they are voting, or to find out or attempt to find out in a polling station for whom they are about to vote or have voted.
- 4 The measures in the Bill are designed to strengthen the existing law concerning the secrecy of voting. The Bill introduces new offences to provide clarity that a voter should enter a polling booth alone when completing a ballot paper and not be accompanied by another person (unless they are a companion of a disabled voter who has made the required written declaration acting in that capacity; the presiding officer assisting the voter acting in that capacity; or a child under the voter’s supervision).
- 5 The measures will support presiding officers to challenge such behaviour in polling stations, and assist in the prosecution of cases where necessary, and support the Electoral Commission in producing guidance to Returning Officers and polling station staff on the issue.

Legal background

- 6 The law governing the proceedings of elections and the requirements placed on those running for public office is set out in a large number of statutes and orders. The RPA 1983 is the core Act dealing with the voting franchise for UK parliamentary elections and local elections in England, Wales and Scotland, as well as other rules, and the detailed procedure for conducting UK parliamentary elections. This Bill inserts new section 62C into the RPA 1983, which creates the new offences of being with a voter in a polling booth with the intention of influencing how the voter casts their vote, and of being near a polling booth when another

person is at that booth with the same intention. This is in addition to existing offences in the RPA 1983 relating to secrecy of the ballot (under section 66) and of undue influence (under section 114A, which has not yet been commenced, and section 115).

- 7 The conduct rules for Northern Ireland Assembly elections and offences in relation to those elections are set out in the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) ('the 2001 Order'). Schedule 1 to the 2001 Order applies provisions of the RPA 1983 with some modifications. The Bill amends that Schedule to apply the new offences to Northern Ireland Assembly elections.
- 8 The rules for local elections in Northern Ireland are set out in the 1962 Act. The Bill inserts a new paragraph 26A in Schedule 9 to the 1962 Act which creates the same offences as new section 62C of the RPA 1983 and also makes consequential amendments to the 1962 Act.

Territorial extent and application

- 9 Clause 3(1) and (2) set out the territorial extent of provisions of the Bill.
- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Amendment of the Representation of the People Act 1983

- 11 This clause inserts new section 62C into the RPA 1983.
- 12 Subsection (1) of new section 62C makes it an offence at UK parliamentary elections and local elections in England for a person to be with another person at a polling booth with the intention of influencing that other person to vote in a particular way or to refrain from voting.
- 13 Subsection (2) of new section 62C makes it an offence at UK parliamentary elections and local elections in England for a person to be near a polling booth when another person is at that booth with the intention of influencing that other person to vote in a particular way or to refrain from voting.
- 14 Subsection (3) of new section 62C defines certain terms and makes provision for the purposes of new section 62C. Subsection (3)(b) provides that a person helping a voter under rule 39 of the Parliamentary Election Rules, Schedule 1 to the RPA 1983, or any other legislation, is not influencing the voter to vote in a particular way or to refrain from voting. Companions or presiding officers, where they are acting in accordance with the provisions on assisting a voter will not commit the offence. Subsection (3)(c) provides that under new section 62C, a person may be near one polling booth while at a different polling booth. This means the offences will capture a person in or near a polling booth seeking to influence another voter in a different

polling booth.

- 15 Under subsection (4), those found guilty of the new summary offences will be liable to imprisonment for a term not exceeding 6 months, to a fine (which is unlimited in England and Wales, and not exceeding level 5 on the standard scale in Scotland and Northern Ireland), or to both.
- 16 Subsection (5) of new section 62C provides that section 62C does not apply to local elections in Scotland or Wales.

Clause 2: Amendment of Northern Ireland legislation

- 17 This clause creates equivalent offences for the purposes of local elections in Northern Ireland and applies new section 62C of the RPA 1983 for the purposes of elections to the Northern Ireland Assembly. Subsection (1) amends the 1962 Act to introduce equivalent offences in relation to local elections in Northern Ireland. Subsection (2) amends the 2001 Order to apply new section 62C of the RPA 1983 in relation to Northern Ireland Assembly elections.

Clause 3: Extent, commencement and short title

- 18 Subsections (1) and (2) of this clause set out the extent of the Bill. The Bill extends to England and Wales, Scotland and Northern Ireland, apart from clause 2(1), which extends to Northern Ireland only.
- 19 Subsection (3) provides that the clause comes into force on the day on which the Bill is passed.
- 20 Subsections (4) to (8) give the Secretary of State the power to commence the provisions in the Bill through subsequent commencement regulations, and make transitional, transitory or savings provisions in connection with commencement.
- 21 Subsection (9) states that the Bill may be cited as the Ballot Secrecy Act 2022.

Commencement

- 22 Clause 3 sets out that provisions in the Bill come into force on such day or days to be set by the Secretary of State in commencement regulations.

Financial implications of the Bill

- 23 The Bill is not expected to entail additional public expenditure.

Parliamentary approval for financial costs or for charges imposed

- 24 This is not applicable to the Bill.

Compatibility with the European Convention on Human Rights

- 25 This is a Private Members' Bill and the Minister is not required to give a statement of compatibility with the Human Rights Act 1998 under section 19(1)(a) of that Act.
- 26 The Department for Levelling Up, Housing and Communities has nevertheless considered the compatibility of the Bill with the ECHR. The Department considers that the Bill engages the European Convention on Human Rights, in particular Article 10 (right to freedom of expression) and Article 11 (right to freedom of peaceful assembly), and Article 14 (protection from discrimination) in conjunction with Article 3 of Protocol 1 (right to vote) ('A3P1'). The Department has concluded that the Bill is compatible with the ECHR.
- 27 The Bill introduces offences to prevent a person from influencing a voter in the exercise of the franchise. Any interference with the rights of freedom of expression or assembly of any person is in pursuit of the legitimate aim of protecting the secret and free exercise of the vote and is considered to be proportionate as the offences only prohibit conduct which is intended to interfere with the right of a voter to vote freely.
- 28 The Bill ensures that disabled voters and voters unable to read will continue to be entitled to assistance necessary to exercise their vote as set out in relevant legislation. The Bill confirms that assistance in accordance with relevant legislation does not constitute activity amounting to influencing a voter's vote under the offences. The Bill does not exclude from liability companions where they are not acting in that capacity but intend to influence that voter's vote.

Related documents

- 29 None.

Annex A - Territorial extent and application in the United Kingdom

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|-----------|--|--|---|----------------------------------|---|--|---|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clause 1 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 2 | No | No | No | No | No | Yes | No |
| Clause 3 | Yes | Yes | No | Yes | No | Yes | No |

Subject matter and legislative competence of devolved legislatures

The Bill does not give rise to devolution issues. This Bill in the first instance amends the RPA 1983, which covers UK parliamentary elections across the whole of the UK and all local elections in Great Britain (and Northern Ireland Assembly elections for those provisions of the RPA 1983 listed in Schedule 1 to the 2001 Order).

New section 62C of the RPA 1983 will apply to UK parliamentary elections and local elections in England.

The Bill also applies to Northern Ireland Assembly elections and local elections in Northern Ireland. The Bill amends the 1962 Act to introduce equivalent offences in relation to local elections in Northern Ireland. It also amends the 2001 Order to apply the new section 62C of the RPA 1983 in relation to Northern Ireland Assembly elections.

As Scottish and Welsh local elections are devolved, the Bill will not apply to those.

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