



EXPLANATORY NOTES

Ballot Secrecy Act 2023

Chapter 12

£6.90

BALLOT SECRECY ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Ballot Secrecy Act 2023 which received Royal Assent on 2 May 2023 (c. 12).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act means in practice; provide background information on the development of policy; and provide additional information on how the Act affects existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Act 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 Act 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 Act 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 Act are designed to strengthen the existing law concerning the secrecy of voting. The Act 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, as per existing law, 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 Act 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 Act amends that Schedule to apply the new offences to Northern Ireland Assembly elections.

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- 8 The rules for local elections in Northern Ireland are set out in the 1962 Act. The Act 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 Section 3(1) and (2) set out the territorial extent of provisions of the Act.
- 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 Act

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

- 11 This section 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.

Section 2: Amendment of Northern Ireland legislation

- 17 This section 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.

Section 3: Extent, commencement and short title

- 18 Subsections (1) and (2) of this section set out the extent of the Act. The Act extends to England and Wales, Scotland and Northern Ireland, apart from section 2(1), which extends to Northern Ireland only.
- 19 Subsection (3) provides that the section comes into force on the day on which the Act is passed.
- 20 Subsections (4) to (8) give the Secretary of State the power to commence the provisions in the Act through subsequent commencement regulations, and make transitional, transitory or saving provisions in connection with commencement. The transitional, transitory or saving regulations may make different provision for different purposes or areas.
- 21 Subsection (9) states that the Act may be cited as the Ballot Secrecy Act 2023.

Commencement

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

Related documents

- 23 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?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1 (Amendment of the Representation of the People Act 1983)	Yes	Yes	Yes	Yes
Section 2 (Amendment of Northern Ireland legislation)	No	No	No	Yes
Section 3 (Extent, commencement and short title)	Yes	Yes	Yes	Yes

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Annex B - Hansard References

24 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	26 May 2022	Vol. 822 Col. 955
Second Reading	15 July 2022	Vol. 823 Col. 1707
Grand Committee	18 November 2022	Vol. 825 Col. 1153
Report	23 November 2022	Vol. 825 Col. 1376
Third Reading	30 November 2022	Vol. 825 Col. 1783
<i>House of Commons</i>		
Introduction	1 December 2022	1 December 2022
Second Reading	9 December 2022	Vol. 724 Col. 701
Public Bill Committee	7 March 2023	PBC 7 March 2023
Report and Third Reading	24 March 2023	Vol. 730 Col. 565
Royal Assent	2 May 2023	House of Commons Vol. 732 Col. 1
		House of Lords Vol. 829 Col. 1391

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Annex C - Progress of Bill Table

25 This Annex shows how each section of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons
Section 1 (Amendment of the Representation of the People Act 1983)	N/A	Clause 1	Clause 1	Clause 1	Clause 1
Section 2 (Amendment of Northern Ireland legislation)	N/A	Clause 2	Clause 2	Clause 2	Clause 2
Section 3 (Extent, commencement and short title)	Clause 2	Clause 3	Clause 3	Clause 3	Clause 3

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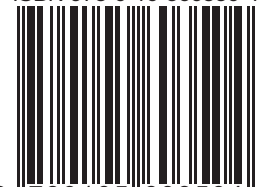
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