

Ballot Secrecy Bill

Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Ballot Secrecy Bill (“the Bill”). The Bill was introduced in the House of Lords on 26th May 2022. This memorandum identifies the provision of the Bill that confers a power to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

Purpose and effect of the Bill

2. The purpose of the Bill is to address the issue of so-called ‘family voting’, whereby a relative goes with a voter into a polling booth, or is near the polling booth, so that the relative can control and coerce the voter to vote in a particular way.
3. The Bill’s introduction follows repeated concerns about family voting raised during the passage of the (now) Elections Act 2022 and following the recent report by Democracy Volunteers that alleges numerous instances of family voting taking place in Tower Hamlets, particularly during busy periods when polling staff are also responsible for handing out ballot papers to voters.
4. Clause 1 of the Bill introduces new section 62C of the Representation of the People Act 1983. New section 62C creates two new offences:
 - a. being with a person in a polling booth with the intention of influencing how (or if) that person casts their vote;
 - b. being near a polling booth when another person is at that polling booth, with the intention of influencing how (or if) that other person casts their vote.
5. A person convicted of a new offence may be sentenced to a term of imprisonment not exceeding 6 months or a fine or both.
6. The offences in new section 62C apply in respect of voting in polling stations at parliamentary elections across the UK and at local government elections in England. Clause 2 of the Bill also creates equivalent offences in respect of local elections in Northern Ireland and elections to the Northern Ireland Assembly.

Delegated Powers

7. There is a single power taken in the Bill, which is described below.

Clause 3 - power to make commencement regulations

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: No procedure

Context and Purpose:

8. This clause enables the provisions of the Bill to be commenced by regulations, and for such regulations to contain transitional, transitory or saving provisions.

Justification for taking the power:

9. This is a standard commencement power, needed to provide a degree of control as to when the Bill is brought into force. The new offences created by the Bill apply directly in respect of voting in polling stations at parliamentary elections across the UK, at elections to the Northern Ireland Assembly and at local elections in England and Northern Ireland. Additional secondary legislation will be required to apply the new offences in section 62C of the Representation of the People Act 1983 in respect of voting in polling stations at local referendums in England, and to create equivalent offences for voting in polling stations at police and crime commissioner elections in England and Wales, and for signing recall petitions in petition signing places in accordance with the Recall of MPs Act 2015. The power to include transitional, transitory or saving provision in connection with such commencement is also standard.
10. The additional secondary legislation will be provided in reliance upon existing delegated powers under relevant primary legislation, and consequently a degree of control is required as to the commencement of this Bill to ensure that the Bill's commencement aligns with the coming into force of this additional secondary legislation.
11. Additionally, some preparation will be required in advance of the Bill taking effect (for example, raising awareness of the new offences with polling station staff and the provision of guidance).

Justification for the procedure:

12. No parliamentary procedure is standard for a commencement power of this sort and therefore appropriate for the power in clause 3.

Department for Levelling Up, Housing and Communities

23 November 2022