
Ballot secrecy

The Act of Parliament introducing the principle of the 'secret ballot' was passed in 1872. The principle of the secret ballot still applies. This factsheet looks at what the secret ballot means in practice, and explains the measures currently in place to balance the need for secrecy and to control fraud.

Background

Until 1872, voters announced their choice of candidate to the presiding officer who would then record it. There had been campaigns to introduce secret voting from time to time since 1832. The secret ballot was one of the demands of the Chartist movement. In 1872, the Secret Ballot Act was passed by Parliament.

As a result of the 1872 Act, every elector is entitled to mark the ballot paper without being seen by anyone else, and there are safeguards against tampering with ballot papers after they have been cast.

There are also procedures in place designed to ensure that ballot papers can be linked to individual voters after the election where fraud is alleged. Ballot papers are numbered in sequence and these ballot paper numbers are listed in a corresponding number list. When a ballot paper is allocated to a voter, the voter's electoral number is written next to the number of the ballot paper on this list. This means that allegations of fraud can be checked by identifying

suspicious ballot papers using the corresponding number list.

However, at the close of poll, the ballot papers and the corresponding number list are sealed in packets and access to them requires legal authorisation from an 'election court' as part of an investigation into allegations of electoral fraud. Election courts are specially convened and have legal powers to examine election issues. Even election courts will not authorise the inspection of ballot papers unless it is necessary for the conduct of the court hearing.

While it is therefore theoretically possible to identify who cast a particular vote, it can only be done on the orders of an election court. Further, it is an offence for anyone attending the count to try to find out how any person has voted.

Legislation

The legal authority for the current system is set out in the Parliamentary Elections Rules in Schedule 1 of the Representation of the People Act 1983. There are similar Rules for local government and

European Parliamentary elections. The principles of protecting the secrecy of the ballot have not changed significantly since the secret ballot was introduced after the Ballot Act 1872.

Secrecy in practice

There are a number of legal safeguards in place designed to secure secrecy and prevent tampering with votes:

- polling booths are shielded by screens to avoid ballot papers being seen by others
- at the close of poll, ballot boxes are sealed at the polling stations, and at the count the total number of ballot papers in the ballot boxes is checked against the total number of ballot papers issued in the polling station
- close-up photographs of ballot papers are not permitted
- after the count, all ballot papers, corresponding number lists, and other election documentation are sealed and held in secure storage for one year. They are then destroyed in a secure manner

Inspecting votes

If a case of fraud is alleged, the courts can direct that the sealed packets of ballot papers be inspected. The House of Commons can also direct the opening of the sealed packets in the case of elections to the UK Parliament.

Opening of the packets can only be ordered if the court is satisfied that a vote has been fraudulently cast and the result of the election could be

affected. The fraud might arise through 'personation' (the legal term for impersonating someone to use their vote) or bribery.

Orders to open the sealed packets are rare. There has been no case of the full vote tracing procedure being used at a Parliamentary election since 1911. However, it has occasionally been followed at local elections, where majorities are much smaller.

If a vote is found to be fraudulent, it can be subtracted from the declared election result. In certain circumstances, the discounted vote may be replaced by a valid vote.

Objections

Some people believe that the system of numbering ballot papers should be stopped. They argue that it undermines the principle of the 'secret ballot', because individual votes can be traced.

In 1997, the Electoral Reform Society and Liberty published a joint working party report entitled *Ballot secrecy*. The Electoral Reform Society considered that the existing system should be maintained due to its use in local government elections on a number of occasions to uncover fraud.

Liberty argued that the system plays little part in the prevention of personation, which should be addressed by other means, and that concerns about possible abuse of the system by state agencies outweigh other considerations. Liberty concluded that the system should be abandoned.

The Home Affairs Select Committee also considered this matter as part of its 1998 inquiry into electoral law and administration. In its findings, the Committee agreed with views expressed by Liberty. More recently, Liberty has also expressed concern that the current system breaches the European Convention on Human Rights, which has been incorporated into UK law by the Human Rights Act 1998.

Alternatives

The original reason for requiring the numbering of ballot papers was specifically to allow votes to be traced in the event of a challenge, and specifically in order to prove the offence of personation.

If vote tracing were to be prohibited, it would be necessary to try to identify alternative means of dealing with allegations of personation. One alternative would be to declare the result void and hold a fresh election. However, this would be time-consuming and costly, and difficult to justify solely on the basis of an allegation of personation.

Conclusion

In *Election 2001: the official results*, the Electoral Commission acknowledged the debate about the current arrangements for vote tracing. The UK Parliament passed the Electoral Administration Act in 2006 which made changes to some electoral procedures but maintained the principle of numbering ballot papers.

Publications

Ballot secrecy. Working party report (Electoral Reform Society/Liberty, 1997).

Electoral law and administration, fourth report (Home Affairs Select Committee, 1998).

The Electoral Commission, *Election 2001: the official results* (2001).

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