
Ballot secrecy

The Act of Parliament introducing the principle of the 'secret ballot' was first introduced 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. There are also safeguards against tampering with ballot papers after they have been cast.

However, 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 printed in books and both the ballot papers and the counterfoils are numbered. This means that allegations of fraud can be checked by matching the suspicious ballot paper with the counterfoil, on which the clerk in the polling station will have written the voter number as recorded on the electoral register.

Access to a ballot paper 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.

It is therefore theoretically possible for anyone with access to the ballot

papers to identify who cast a particular vote. However, 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. They 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;
- ballot boxes are sealed at the polling stations, and at the count the number of ballots checked against the number of counterfoils;
- at the count, close-up photographs of ballot papers are banned;
- after the count, all votes, counterfoils and other paperwork are sealed again and held in secure storage for one year. They are then destroyed.

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 Westminster 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.

The Electoral Reform Society and Liberty published a joint Working Party Report entitled '*Ballot Secrecy*' in 1997. 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 impersonation, 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 on the basis solely 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 Commission intends to consider whether any changes should be made as part of its statutory remit to review electoral law and practice. The Commission's conclusions are not expected to be published before summer 2003.

Publications

Ballot Secrecy (1997) Electoral Reform Society/Liberty Working Party Report.

Electoral Law and Administration, Fourth Report (1998) Home Affairs Select Committee.

Election 2001: The Official Results (2001) Electoral Commission.

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