



## **Ballot Secrecy Bill [HL]**

### **HL Bill 15 of 2022–23**

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On 26 May 2022, Lord Hayward (Conservative) introduced his [Ballot Secrecy Bill \[HL\]](#) in the House of Lords. It is a private member's bill, and second reading is scheduled to take place on 15 July 2022.

The bill would amend section 60 of the Representation of the People Act 1983 to create new offences for individuals who accompany a voter to a polling booth or position themselves nearby with the intention of influencing a voter. These new offences would not apply to those under 18 years of age.

The aim of the bill is to address the issue of 'family voting', where more than one voter is present in a polling booth at the same time thereby breaching the secrecy of the ballot. The UN has said that the practice can be intended to influence or remove the choice of a voter, violating the principle of voter secrecy. It has also argued that family voting particularly affects women.

Concerns have been raised that in some areas, including the London Borough of Tower Hamlets, the practice of family voting is widespread. This issue was raised during debates in the House of Lords on the Elections Act 2022, where Lord Hayward tabled amendments aimed at tackling the issue. In response, the government argued that current legislation already prevents individuals from being accompanied in the polling booth, apart from in specific circumstances. However, it agreed to write to the Electoral Commission and Metropolitan Police Service for confirmation on the issue.

Following responses from these organisations, Lord Hayward said that concerns remained. He argued that the Electoral Commission's advice was inconsistent, and that police and electoral officers experienced difficulties in applying it. He said that this left the police in a difficult position and meant they recorded incidents of family voting rather than stopping them.

## 1. Bill provisions

The bill has one substantive clause. This would amend section 60 of the Representation of the People Act 1983 by inserting a new clause (60A). Subsection 1 of this new clause would make it an offence to:

- accompany an elector into a polling booth; or
- position near an elector inside a polling station with the intention of influencing how they cast their vote.

Subsection 2 would provide that if an individual commits an offence under subsection 1, they would be guilty of a corrupt practice under the 1983 act (section 168). This could result in imprisonment and/or a fine. If a corrupt practice is carried out by a parliamentary candidate, Erskine May explains it “may have the effect of disqualification for membership of the House of Commons”.<sup>1</sup>

Subsection 3 of the bill would mean that a person cannot commit an offence under the section if they are under 18 years of age.

Clause 2 states that the bill would apply to the whole of the UK and would come into force two months after royal assent.

## 2. Background to the bill: ‘Family voting’

### 2.1 What is ‘family voting’ and why is it problematic?

The Office for Democratic Institutions and Human Rights (ODIHR) at the Organisation for Security and Cooperation in Europe (OSCE) has defined ‘family voting’ (also known as group voting) as where more than one voter is present in a polling booth or behind a voting screen at the same time.<sup>2</sup> It noted that although the term family voting is often used, it can be the case that a group of voters are not always members of one family.

The UN has said that the practice can be a serious violation of the central principle of voter secrecy, particularly when it is carried out with the intent of influencing or removing the freedom of choice of a voter.<sup>3</sup> The UN has also highlighted how the practice often affects women:

Family voting often stops women from casting a vote of their own choice. In many situations, while the woman physically casts her own vote, she is under a strong cultural expectation to obey her husband or father and vote for the candidate or party that she has been instructed to vote for. The influence may extend to accompanying the female family members to the voting centre in order to oversee the casting of the vote (group voting) or the male family member

<sup>1</sup> UK Parliament, ‘[Erskine May: Corrupt practices at elections](#)’, 2019.

<sup>2</sup> Organisation for Security and Cooperation in Europe and Office for Democratic Institutions and Human Rights, ‘[Election observation handbook: Sixth edition](#)’, 2010, p 117.

<sup>3</sup> UN Development Programme and UN Women, ‘[Inclusive electoral processes: A guide for electoral management bodies on promoting gender equality and women’s participation](#)’, 2015, p 74.

obtaining the ballot paper on behalf of the woman (enforced proxy voting).<sup>4</sup>

## 2.2 What concerns have been raised about family voting in the UK?

Concerns about the practice of family voting were most recently considered during the parliamentary passage of the Elections Act 2022.

### Committee stage of the Elections Bill

At the Elections Bill's committee stage in March 2022, Lord Hayward tabled a probing amendment which focused on the incidence of family voting.<sup>5</sup> Commenting on the issue, he said:

Too regularly, presiding officers in polling stations are faced with a problem whereby people attempt to accompany somebody else into the polling booth, effectively to influence the casting of that ballot.<sup>6</sup>

To support this argument, Lord Hayward cited research undertaken by Democracy Volunteers, an independent election observer group, which monitored the Tower Hamlets mayoral and council elections in May 2018.<sup>7</sup> The group has monitored other elections, both domestically and internationally.<sup>8</sup>

Dr John Ault, the director of Democracy Volunteers, authored the research, and reported that:

We identified [family voting] in 58% of polling stations (74 separate occasions). As family voting, by definition, includes more than one person this means that we observed this 74 times in the 764 voters we observed. This means that over 19% of all the voters who we observed were either engaged in, or affected by, this practice.<sup>9</sup>

Dr Ault noted that in “the vast majority of cases” the practice of family voting was prevented.<sup>10</sup> However, he also argued that the findings represented an “unacceptably high level of family voting in an advanced democracy” and called for further steps to be taken to discourage and prevent it. Dr Ault added that the issue was not the fault of polling staff and commended them for being “so active in attempts to prevent it”.

Speaking to his amendment, Lord Hayward acknowledged that there would be occasions where people would need assistance and said that he had tried to allow for that. However, he also argued

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<sup>4</sup> UN Development Programme and UN Women, [‘Inclusive electoral processes: A guide for electoral management bodies on promoting gender equality and women’s participation’](#), 2015, p 74.

<sup>5</sup> UK Parliament, [‘Elections Bill: Fourth marshalled list of amendments to be moved in committee of the whole House’](#), 17 March 2022, p 15.

<sup>6</sup> [HL Hansard, 21 March 2022, col 747.](#)

<sup>7</sup> Dr John Ault, [‘Final report: Tower Hamlets mayoral and council elections May 3rd 2018’](#), 16 May 2018.

<sup>8</sup> Democracy Volunteers, [‘Reports’](#), accessed 23 June 2022.

<sup>9</sup> Dr John Ault, [‘Final report: Tower Hamlets mayoral and council elections May 3rd 2018’](#), 16 May 2018, p 7.

<sup>10</sup> Dr John Ault, [‘Final report: Tower Hamlets mayoral and council elections May 3rd 2018’](#), 16 May 2018, p 7.

that his amendment was an attempt to “tackle a problem which is quite widespread and needs clarification”.<sup>11</sup>

Responding on behalf of the government, Baroness Scott of Bybrook, a government whip, said that current legislation already prevented individuals from being accompanied in the polling booth except in specific circumstances.<sup>12</sup> She said these included being the child of a voter, a formal companion, or a member of staff. Lady Scott also noted that returning officers and their staff were responsible for ensuring these rules were upheld and that Electoral Commission guidance specifically advised staff to ensure that voters go to polling booths individually.

Lady Scott asked Lord Hayward not to press his amendment. However, she said that to acknowledge the importance of the concerns raised, the government would write to the Electoral Commission and the Metropolitan Police Service (MPS) “to confirm our common understanding of the position set out in legislation”. Lord Hayward did not push his amendment to a vote.<sup>13</sup>

### **Letter from the Electoral Commission**

On 22 March 2022, Kemi Badenoch, then minister for local government, faith and communities, wrote to the Electoral Commission and the MPS.<sup>14</sup> She asked for confirmation of their understanding of the current rules on family voting and for information on what action they were taking or could be taking to ensure these rules are enforced.

The Electoral Commission replied on 29 March 2022.<sup>15</sup> Chief Executive Bob Posner agreed with the government that “the law is clear” and said that the commission had established a consistent position:

[...] voters should not be accompanied in the polling booth except in specific defined circumstances. On this the law is clear, and the commission’s position follows the law.

He said that while the police are responsible for enforcing the law, the commission works with the police and others to prevent and detect all types of electoral fraud, including family voting.<sup>16</sup> Referring to the support provided, Mr Posner said that returning officers and their staff are given clear guidance that “voters should be supported to vote in secret and free from influence”. He said that additional steps had been taken in areas with a history of concerns about electoral integrity, such as in Tower Hamlets, where staff “have been briefed on the need for vigilance”. He also said that staff should be proactive in addressing issues such as family voting, involving the police as required. To support the police, Mr Posner said that the commission works with officers to understand the law.

Also in March 2022, Mr Posner wrote an article for the Conservative Home website following concerns raised by Councillor Peter Golds about family voting in Tower Hamlets and the guidance

<sup>11</sup> [HL Hansard, 21 March 2022, cols 747–8.](#)

<sup>12</sup> [HL Hansard, 21 March 2022, col 750.](#)

<sup>13</sup> [HL Hansard, 21 March 2022, col 759.](#)

<sup>14</sup> Department for Levelling Up, Housing and Communities, ‘[Letter from Minister Badenoch to the Electoral Commission and Metropolitan Police](#)’, 22 March 2022.

<sup>15</sup> Electoral Commission, ‘[Letter to minister for levelling up regarding secrecy of voting in polling stations](#)’, 29 March 2022.

<sup>16</sup> Electoral Commission, ‘[Letter to minister for levelling up regarding secrecy of voting in polling stations](#)’, 29 March 2022.

provided by the Electoral Commission on the issue.<sup>17</sup> In response, Mr Posner said while there had been suggestions that there was a lack of clarity on the issue, “in fact, it could not be clearer: your vote is yours alone”.

The MPS’s response to Ms Badenoch’s letter has not been made publicly available. However, Lord Hayward referred to its contents during report stage of the Elections Bill (see below).

### **Report stage of the Elections Bill**

Ahead of the first day of report stage of the Elections Bill on 6 April 2022, Lord Hayward tabled another amendment (19) aimed at ensuring the secrecy of the ballot.<sup>18</sup> It would have required the Electoral Commission to issue guidance on the steps polling staff should take to prevent anyone accompanying an elector into a polling booth, unless on ground of infirmity.

Lord Hayward said that he had tabled the amendment due to concerns about the information provided by the Electoral Commission in response to the government’s March 2022 letter.<sup>19</sup> He argued that the Electoral Commission’s guidance had not been clear and consistent, and that police officers and electoral officers experienced difficulties in applying it. He also raised concerns that the commission said it “supported” voters to vote in secret, but “not that someone should be stopped from accompanying another person”. He argued that this left the MPS in a difficult position, and that as a result the MPS said in its response to Ms Badenoch that it simply records incidents of family voting rather than stopping them. Summarising this, Lord Hayward said:

The net result is that the Metropolitan Police, when it receives complaints in relation to family voting, says, quite staggeringly, that the only people who can complain are those affected—in other words, the wives being accompanied to the polling booth. Is it really credible that complaints will be filed in those circumstance? What should actually be said—clearly, effectively and in writing from the Electoral Commission—is that this is against the law.<sup>20</sup>

Lord Hayward also referred to communication between a Tower Hamlets councillor, the Electoral Commission and the MPS which he said again highlighted his concerns.<sup>21</sup>

Responding for the government, Minister of State at the Cabinet Office Lord True acknowledged the concerns raised by Lord Hayward and said that he hoped the action taken by Ms Badenoch would provide assurance that “there is and will be a concerted effort” to ensure the integrity of elections.<sup>22</sup> In light of this, he asked Lord Hayward to withdraw his amendment.

Lord Hayward did withdraw his amendment, although he expressed hope that the Electoral Commission would rewrite certain sections of its guidance.

<sup>17</sup> Bob Posner, ‘[Let’s be clear. Family voting is not allowed. The secret ballot is protected by law](#)’, Conservative Home, 29 March 2022.

<sup>18</sup> [HL Hansard, 6 April 2022, col 2122.](#)

<sup>19</sup> [HL Hansard, 6 April 2022, col 2124.](#)

<sup>20</sup> [HL Hansard, 6 April 2022, col 2123.](#)

<sup>21</sup> [HL Hansard, 6 April 2022, cols 2124–5.](#)

<sup>22</sup> [HL Hansard, 6 April 2022, col 2126.](#)

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