

AS/Mon (2007) 38

Application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom

Opinion for the Bureau of the Assembly prepared by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mrs Herta Däubler-Gmelin (Germany, Socialist Group) and Mrs Urszula Gacek (Poland, Group of the European People's Party)

Decision

1. On 28 June 2006, Mr Wilshire and others tabled, through a motion for a resolution, an application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom (Doc 10993 (2006)). In their application, the authors allege that the growing body of evidence that absent voting fraud is taken place in the United Kingdom, would warrant the initiation of a monitoring procedure by the Assembly.
2. In conformity with the Rules of Procedure of the Assembly, and in particular Resolution 1115 (1997) as amended by Resolution 1431 (2005), this motion was referred for opinion to the Monitoring Committee by the Bureau on 2 October 2006. The Monitoring Committee, at its meeting on 16 October 2006, then appointed Ms Herta Däubler-Gmelin (Germany, SOC) and Ms Ursula Gacek (Poland, EPP/CD) as co-rapporteurs for the United Kingdom and authorised them to carry out a fact finding visit to the country, which took place from 26 to 28 February 2007.
3. From the findings of the rapporteurs, it is clear that the electoral system in Great Britain is open to electoral fraud. This vulnerability is mainly the result of the, rather arcane, system of voter registration without personal identifiers. It was exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the electoral code in 2006. The 2006 changes to the electoral code enhanced the security of the postal voting arrangements, but other shortcomings and vulnerabilities remain. Together with numerous British experts we strongly recommend to eliminate those.
4. Despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the people of the United Kingdom. On these grounds, it can not be argued that the United Kingdom has fallen short on honouring its democratic commitments to the Council of Europe and we can therefore not recommend opening a monitoring procedure with respect to the United Kingdom.
5. It should be stressed however, that the United Kingdom delivers democratic elections despite the vulnerabilities in its electoral system. These vulnerabilities could easily affect the overall democratic nature of future elections in Great Britain. The Monitoring Committee should, in its periodic reports on the honouring of commitments by member states, pay special attention to electoral issues in the United Kingdom and, if the vulnerabilities noted are found to undermine the overall democratic nature of future elections in Great Britain, apply to initiate a Monitoring procedure with respect to the United Kingdom.

Introduction

1. On 28 June 2006, Mr Wilshire and others tabled, through a motion for a resolution, an application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom (Doc 10993 (2006)). In their application the authors allege that the growing body of evidence that absent voting fraud is taken place in the United Kingdom would warrant the initiation of a monitoring procedure by the Assembly.

2. According to Resolution 1115 (1997), as amended by Resolution 1431 (2005) , an application to initiate a monitoring procedure - which may originate, *inter alia*, from a motion for resolution or recommendation tabled by not less than ten members of the Assembly, representing at least five national delegations and two political groups - is to be considered by the Monitoring Committee which, after the appointment of two co-rapporteurs and after carrying out the necessary investigations, will prepare a written opinion for the Bureau. This opinion should contain a draft decision to open, or not to open, a monitoring procedure. If both the Monitoring Committee and the Bureau of the Assembly agree to open the monitoring procedure, or if they take divergent positions, the written opinion adopted by the Monitoring Committee shall be transformed into a report containing a draft resolution which will be included for debate in the agenda and order of business of the next Assembly part-session. If both the Monitoring Committee and the Bureau of the Assembly agree that there is no need to open a monitoring procedure, such decision shall be recorded in the Progress report of the Bureau and the Standing Committee, subject to confirmation by a vote of the Assembly during the discussion of the Progress Report.

3. Subsequently, at its meeting on 16 October 2006 the Monitoring Committee appointed Ms Herta Däubler-Gmelin (Germany, SOC) and Ms Ursula Gacek (Poland, EPP/CD) as co-rapporteurs for the United Kingdom and authorised them to carry out a fact finding visit to the country.

4. The fact finding visit took place from 26 to 28 February 2007 and was organised in close co-operation with the National Delegation of the United Kingdom to the Parliamentary Assembly of the Council of Europe. The rapporteurs wish to thank the National Delegation of the United Kingdom, and the British authorities, for their co-operation and support extended to the rapporteurs in carrying out their task. They also wish to thank the Delegation for having provided them with a detailed response end of May 2007 to supplementary questions they had put in April 2007.

5. It should be noted that, although the motion for a resolution calls for the opening of a monitoring procedure "to investigate electoral fraud in the United Kingdom", Resolution 1115 (1997), as amended, does not allow for the opening of partial monitoring procedures on specific issues for a given country. Consequently, if the Assembly were to decide on the opening of a monitoring procedure with respect to the United Kingdom, this would entail a full-fledged monitoring procedure in respect of the honouring of obligations by the United Kingdom as a member state of the Council of Europe. For the rapporteurs this raises the threshold for their assessment: they need to ascertain that electoral fraud, and the vulnerability of the British electoral system to fraud and malpractice, would warrant the opening of a full fledged monitoring procedure.

Background

6. Postal voting has been part of the British electoral system since 1918. However, before the changes in the Representation of the People Act in 2000, postal voting was limited to persons who could justify their reason for not being able to vote in person at the polling station, either due to absence from the country or for occupational, health or similar reasons. However, concerned about the falling voter turnout, especially in local and European elections, the government started looking for mechanisms that would improve the voter turnout and make it easier for people to vote. As a result, postal voting on demand was introduced¹ with the changes to the Representation of the People Act in 2000. Since the introduction of postal voting on demand, it is no longer necessary to give a valid reason for applying for a postal vote and the application and voting procedures for postal voting were simplified. In addition, it is now not only possible to apply for a postal vote for a specific election, but also for a definite and even indefinite period of time.

7. In addition to introducing postal voting on demand, the changes to the Representation of the Peoples Act in 2000 also included provisions that allow local authorities to pilot a range of electoral arrangements to increase voter turnout at local and European elections, including electronic voting and all postal elections.

¹ Except in Northern Ireland.

8. As a result of the introduction of postal voting on demand, the percentage of voters that voted by post increased significantly. In the 2001 general elections nearly 4% of the voters were issued with a postal vote. This was nearly a doubling of the figure for the 1997 general elections. In the European Parliament Elections in 2004 this figure rose to 8.9%² and for the 2005 general elections to 12.1% of the electorate.

9. In 2003 and 2004, the Electoral Commission³ issued two reports that, *inter alia*, analysed the postal voting arrangements in the United Kingdom⁴. While acknowledging that the postal voting on demand arrangements may have positively affected the voter turnout, it also noted that the large increase in postal voting could make the arrangements more open for abuse. The Electoral Commission therefore recommended the government to introduce a series of measures that would enhance the security of postal voting.

10. In April 2005, a judgment was delivered in a case of electoral fraud in two Wards in Birmingham City Council, which stated that the evidence of electoral fraud encountered would “*disgrace a banana republic*”. This Judgment did much to form the public perception with regard to the vulnerability to fraud of the postal voting system, and was a watershed as far as the public confidence in the electoral system was concerned. The judgement is discussed in detail later in the report.

11. Possibly also as a result of the heightened awareness after the Birmingham judgement, several other cases of electoral fraud were investigated by the Police in 2005 and 2006, such as in Tower Hamlet, Blackburn and Coventry. Although all these cases concern electoral fraud during local elections, the rapporteurs were informed by the Crown Prosecution Service that they are currently investigating a case of electoral fraud committed during the Parliamentary elections.

12. The exact scale of electoral fraud during elections in Great Britain is subject to considerable political debate. On the one side, the minister responsible for the Department for Constitutional Affairs stated in March 2006 that “... everyone agrees that electoral fraud is very rare”. On the other side, Sir Alistair Graham, Chairman of the Committee on Standards in Public Life stated in February 2007 that “Electoral fraud is a real and potent threat to our society”. This controversy is also compounded by the fact that no serious research, either by the authorities or academics, has been taken place into this matter⁵, and that electoral fraud, by nature, goes undetected if successful. However, there is no doubt that electoral fraud occurred during elections in the United Kingdom⁶, and there is also no doubt that the public perception of the safety of the postal voting arrangements has suffered as a result of the cases of electoral fraud that recently have come to light. Addressing the public perception regarding electoral fraud and the resulting diminishing public confidence in the electoral system is an important objective in itself. In this respect, it should be noted that the public perception that fraud was endemic in elections in Northern Ireland, was one of the main reasons for the adoption of the Electoral Fraud Act (Northern Ireland) in 2002. This act will be discussed in more detail later on in this report.

13. In response to the vulnerabilities encountered with respect to the postal voting arrangements, and following recommendations from, *inter alia*, the Electoral Commission, the government adopted a series of measures to combat electoral fraud and to enhance the safety of the postal voting arrangements. These measures were adopted in 2006 and were in force during the 2007 local elections. However, the main recommendation by the Electoral Commission, to change the voter registration system, was not implemented by the authorities.

14. During the fact finding visit, it became clear to the rapporteurs that one of the main underlying problems that affect the vulnerability of the electoral system, and especially the postal voting arrangements, is the voter registration system that is in use in Great Britain. Taking into account the particularities of the voters’ registration system, the Monitoring Committee, on recommendation of the rapporteurs, decided in April 2007 to ask for an opinion of the Venice Commission on the compatibility of the registration system and postal voting arrangements with Council of Europe standards.

² The electoral Commission, *Delivering Democracy (August 2004)*, pages 13-14, para. 2.12

³ The electoral Commission is an independent body reviewing, and advising the government on the electoral arrangements in the United Kingdom. It is not responsible for the conduct of the elections itself.

⁴ *Voting for Change: an electoral law modernisation programme* (June 2003) and *Delivering Democracy? The future of postal voting* (August 2004)

⁵ In its 2007 review of the Electoral Commission, the Committee on Standards in Public Life recommended that the Electoral Commission should undertake detailed research into the scale of electoral fraud in the United Kingdom.

⁶ The review of the Electoral Commission by the Commission on Standards in Public Life lists 43 cases of electoral fraud, involving representatives of a wide range of parties, investigated, or still being investigated by the police for the period 2001 – 2007.

15. In their meetings with the rapporteurs, government representatives argued that the vulnerabilities of the postal voting arrangements were satisfactorily addressed with the changes in the electoral legislation in 2006. The rapporteurs therefore decided to wait with the issuing of this report till after the local elections in 2007, in order to assess the effect of the changes in the legislation.

The Birmingham Case

16. In a judgement delivered on 4 April 2005, the elections in the Bordesley Green and Aston Wards of the Birmingham City Council were set aside as a result of widespread electoral fraud, mostly involving postal voting. In his very comprehensive judgement, Election Commissioner Richard Mawrey QC, laid out in succinct detail, not only the manner in which this fraud had been committed, but also the vulnerability of the British electoral system itself. His judgement received a fair deal of media attention, not only because of the severity of fraud committed, but also, or especially, as a result of his damning conclusions that *“the evidence of electoral fraud [...] would disgrace a banana republic”* and that *“... there are no systems to deal realistically with fraud, and there never have been. Until there are, fraud will continue unabated”*⁷. As such, his judgement, and the media attention it received, did to a large extent help shape the public perception with regard to the vulnerability of the electoral system, and especially the postal voting arrangements, in Great Britain.

17. The judgment of Richard Mawrey provides a good insight in the vulnerabilities of the electoral system and in particular the postal voting arrangements, in Great Britain. As a number of references to the judgment are made in this report, we would like to summarise this case to some detail.

18. Birmingham, the largest local authority in England and Wales, is a metropolitan district with 120 city councillors which are elected in 40 Wards (election districts), 3 councillors for each Ward. In metropolitan districts city councillors retire in thirds, which results in yearly elections for one seat in each Ward⁸. In 2003, following an electoral review, the number of Wards in Birmingham was increased from 39 to 40 and the Ward boundaries were redrawn. Therefore, in the 2004 local elections, all seats in the Birmingham City Council were up for election. At a very late stage, the government announced that the 2005 European Parliament elections would coincide with the local elections. The combination of full City Council and European elections on the same day put considerable pressure on the election administration.

19. In Birmingham, approximately 33% of the population come from ethnic minority communities, and a large number of persons in these communities do not speak English as their mother tongue. Before 2004, the Birmingham City Council was controlled by the Labour Party. Labour's control over the city council had become precarious, especially as a result of the United Kingdom's involvement in the Iraq war, which was highly unpopular among the relatively large Muslim community in Birmingham. It was therefore generally expected that the Labour Party would have difficulties in maintaining its support in predominantly Muslim Wards⁹.

20. In 2001, when postal voting was introduced approximately 7.000 postal votes were issued in Birmingham. This number rose considerably in 2002 when approximately 20.000, and in 2003 when approximately 28.000, postal votes were requested. However, in 2004, and against expectations, more than 70.000 postal vote applications were received for the local elections in Birmingham, over 40.000 of which during the last two weeks before the official deadline for applications on 2 June 2004. The increase in postal vote applications was not evenly spread over the different Wards. In the Bordesley Green and Aston Wards, where the Election Petitions were filed, the number of postal vote applications rose by 900% and 1000% respectively. This exponential increase in postal vote applications overwhelmed the election administration and legal procedures for the treatment of postal votes were not, or only partially, adhered to. As mentioned in the judgement, the pressure on the election administration would have been even greater if the Returning Officer would have actually been charged with checking the validity of postal votes and postal vote applications¹⁰.

⁷ Judgment of Judge Richard Mawrey QC in the matter of a local government election for the Bordesley Green ward of Birmingham City Council held on 10 June 2004 and in the matter of a local government election for the Aston ward of Birmingham City Council held on 10 June 2004, paras 716 and 717

⁸ As city councilors are elected for a four year term, no elections take place each fourth year (fallow year).

⁹ Richard Mawrey QC, para 226

¹⁰ Idem, para 250.

21. The election administration, expecting some problems, took a series of measures to counter the risk of personation¹¹ at the polling stations. What they did not expect however, was the large number of voters showing up at the polling stations only to discover that they had been added to the postal voters list and were therefore ineligible to vote at the polling station.

22. When the results were announced, it appeared that the turnout in the Bordesley Green ward had increased by more than 100% in comparison to the 2003 elections and in the Aston ward by more than 350 %! More surprising was the fact that in both Wards, which are predominantly Muslim in make-up, the results showed a large swing of votes in favour of the Labour candidates, despite the general discontent with Labour's involvement in the Iraq war. In addition, it turned out that the number of postal votes cast had greatly exceeded the number of votes cast in the polling stations in these Wards¹². These results seemed to confirm expectations of opposition parties that the Labour candidates had defrauded the elections in these wards and Election Petitions were filed against their results.

23. In the case of the Bordesley Green Ward, the Election Petition alleged that the Labour candidates had obtained a large number of blank ballot papers which they used to personate legitimate voters and that the candidates had obtained and altered completed ballot papers. In the case of the Aston Ward, the Election Petition alleged that the Labour candidates had obtained a large number of blank ballot papers which they used to personate legitimate voters; that the candidates had obtained and altered completed ballot papers; that the candidates had been caught vote rigging and that there had been instances of bribery and undue influence. In both petitions it was also alleged that the Returning Officer had failed to properly conduct the elections. Due to their similarities it was decided to hear both cases simultaneously.

24. As a result of the evidence presented at the trial, the Election Commissioner, Richard Mawrey QC, judged it proven beyond doubt that in Bordesley Green large scale electoral fraud had been committed through: falsified signatures on postal vote applications and Declarations of Identity¹³; postal votes that were cast in the name of voters who had not applied for a postal vote; postal votes that had been cast in the name of voters who had not received their postal ballot pack; altered ballot papers; and theft of postal ballot packs.

25. While he could not give an exact figure for the fraudulent ballots cast, based on the evidence before him the Election Commissioner estimated that it could not have been less than 1.500 and probably well over 2000 votes, which would mean well over a third of the votes cast for the Labour candidates¹⁴. Taking into account that the difference in votes between the lowest vote for a labour and highest vote for a opposition candidate was less than 500, the Election Commissioner considered it proven that the electoral fraud committed had changed the outcome of the elections in the Bordesley Green Ward, and this election was subsequently declared void in respect of all three seats.

26. In the Aston Ward, police officers were directed to a warehouse on the eve of the elections, after receiving a telephone call that Labour councillors were rigging ballot papers there. When they arrived at the warehouse, they found a number of persons, including the three labour candidates, in possession of a large number of opened postal ballot packs. After initially believing the excuse given for the presence of the ballot packs at the warehouse, the police officers returned later to compound the ballot papers and other election materials. Inexplicably, the completed ballot papers were later handed over to an election officer who accepted them as valid ballots. Based on other evidence given, Judge Mawrey considered it proven that the Labour candidates at the warehouse were either falsifying postal ballots and/or examining postal ballots with the aim to alter or destroy those that were not cast in their favour.

27. In addition to the fraud encountered at the warehouse, it was proven, on the basis of evidence provided by a court appointed handwriting expert that a large number of Declarations of Identity had been signed by the same persons and were thus falsified. On a considerable number of them the handwriting was identified as belonging to one of the Labour candidates who had witnessed the Declarations of Identity using a number of different names. In addition, in a significant number of cases the voter signature on the Declaration of Identity did not match the signature on the corresponding postal ballot application forms.

28. While he could not give an exact figure for the fraudulent ballots cast, based on the evidence before him the Election Commissioner estimated that it could not have been less than 1.000 votes. Taking into account that the number of votes between the last person elected and the first person not elected – numbers

¹¹ Fraudulently assuming someone else's identity

¹² Richard Mawrey QC, paras 283 – 295.

¹³ A declaration stating that the ballot has been returned by the legitimate voter that applied for the postal vote.

¹⁴ Richard Mawrey QC, para 419

three and four on the list – was 514, the Election Commissioner considered it proven that the electoral fraud committed had changed the outcome of the elections in the Aston Ward, and this election was subsequently declared void in respect of all three seats¹⁵.

29. In both the Bordesley Green and Aston petitions, it was also alleged that the Returning Officer had failed to properly conduct the elections. For an election to be set aside as a result of a Returning Officer failing to properly conduct the election, it must be proven that the election in question was substantially not conducted according to the law, and that this act changed the results of the elections. In both cases, the Election Commissioner considered that, despite breaches of the Electoral Code, the conduct of the election was overall in line with legal provisions. In addition the breaches of the law that took place, did not affect the outcome of these elections. In both petitions the case against the Returning Officer was therefore dismissed.

Voter Registration

30. The United Kingdom uses an active system of voter registration: voters need to register, or to be registered, in order to be added to the voters' list. The responsibility for electoral registration in England and Wales lies with the Electoral Registration Officers appointed by each local authority. In Scotland, electoral registration is the responsibility of Assessors employed by the Joint Valuation Boards. In Northern Ireland, the voters' registers are centrally maintained by the Chief Electoral Officer¹⁶. In Great Britain, all voters' registers are maintained by local authorities and no central national voters' register exists.

31. The electoral lists are compiled on a yearly basis using a system of household registration. Under this system, a yearly canvas takes place for which each household is sent a canvassing form. It is the responsibility of each head of a household to return this form, with the names of each resident in his or her household who is eligible, or considered eligible to vote, added.

32. The concept of a "household" seems to coincide with individual registered residential properties. However, multi occupancy households, such as student dormitories and caring homes for the elderly, are also considered to be single households for the purpose of voter registration.

33. The onus for the, correct, registration of the members of a household is on the head of that household. While registration itself is not compulsory, not returning the yearly canvas form, or knowingly providing incorrect information on this form, is an offence punishable with a fine of £1000. However, to the knowledge of your rapporteurs, this sanction is very rarely applied especially in the case of not returning the yearly canvas form.

34. The electoral register contains only the names of the voters and the address where they reside. No other information that could help correctly identifying a person, so-called personal identifiers, such as date of birth or signature, is recorded on the electoral register.

35. Since 2001, it is possible for a voter to register, or amend their details, on an individual basis outside the yearly canvas, which is called "rolling registration". Voters' registers are updated on a monthly basis taking into information received from the rolling registration process. Until the adoption of the Electoral Administration Act in 2006, the deadline to register was some six weeks in advance of an election. The Electoral Administration Act moved the deadline for registration to 11 days before the close of the poll.

36. Till the adoption of the Electoral Administration Act 2006, it was not an offence to provide false information on the rolling registration form¹⁷.

37. Registration officers have only limited powers to check the validity of the information provided on the household and rolling registration forms and are under no statutory obligation to do so. They have the power to inspect other records held by their local authority and check any register of birth and deaths. However, they do not have the authority to conduct checks outside their local authority. In addition, the information

¹⁵ *Idem*, paras 525, 526 and 532

¹⁶ In Northern Ireland the arrangements for the administration of elections are different from the rest of the United Kingdom. This is especially true, after the adoption of the Electoral Fraud (Northern Ireland) Act in 2002, for voter registration and arrangements for postal voting. The specific case of Northern Ireland will be discussed in a separate chapter. Unless otherwise mentioned, the arrangements for voter registration and postal voting as described are applicable for Great Britain only.

¹⁷ The Electoral Administration Act 2006 brings supplying false information on the rolling registration form in line with supplying false information on the annual canvas form, by creating a new offence for "knowingly supplying false information on an election registration form".

available to them often pertains only to the heads of households. Moreover, the absence of personal identifiers on the voters' lists makes the checking of the validity of the information provided all but impossible. In practice, the information provided on the registration forms is therefore generally accepted on face value.

38. The difficulty of checking information is further complicated by the fact that no civil registry exists in the United Kingdom, neither on the national, nor local, level. In absence of a true civil register, the voters' lists in practice function as *de facto* civil registers. Registration on the voters' list is often necessary to open a bank account, to obtain credit or to apply for social services.

39. The constituency boundaries are based on the number of registered voters in order to ensure the principle of equal weight of each vote.

40. In order to ensure that no voter will be disenfranchised due to failure by a head of household to return the canvassing form, a system of "carrying forward" is used. Under this system, entries on the voters register are carried forward for one year, even if no new registration information is received. While this may prevent the accidental deregistration as a result of failure to return a canvas form, it potentially allows for deceased persons, or persons who moved to another local authority without informing the Registration Officer, to be erroneously maintained on the voters' register. In addition, a number of interlocutors informed the rapporteurs that in practice names on the register are carried forwards for more than one year.

41. In this respect, it is important to note that registration of the same person on multiple voters' lists is not only possible, but legally allowed. A voter is allowed to vote in the elections for several local authorities as long as that voter has a legal residence in those localities. However, it is illegal for a voter to vote more than once in a national election.

42. The voters' list is published for public inspection and made available to political parties and candidates. In addition, an edited version of the voters' list is made available for sale to commercial organisations. Voters have the possibility to opt out of the version made available for sale, hence the name edited register. However, under household registration, they depend on the head of the household to indicate the wish to opt out of the edited version, which may be problematic in multi-occupancy households.

43. The law allows any citizen to file an objection to an entry on the voters' list they deem fraudulent or otherwise incorrect. Election Registration Officers are obliged to investigate any objections raised. However, as noted by The Electoral Commission: "*Electoral Registration Officers report that the current process for objections to registration applications has become largely unworkable, particularly since the introduction of monthly alterations as a result of rolling registration applications. Few, if any, objections to registration are ever received.*"¹⁸

Postal Voting

44. With the introduction of postal voting on demand, voters in Great Britain¹⁹ no longer need a valid reason to apply for a postal vote. In addition voters can now apply for a postal vote for a specific election, for a definite period of time, and even for an indefinite period of time (a so-called permanent postal vote).

45. In order to obtain a postal vote, a voter must apply to be added to the absent voters' list. This list contains two sub-sections, one for proxy, and one for postal voters. In the application the applicant must give the following obligatory information: full name; the address where the applicant is registered, the address where the postal vote should be sent to, and a statement whether the application is for a specific election, a definite period of time, or an indefinite period of time. In addition, since the 2006 changes in the electoral legislation, an applicant must now provide a date of birth, a signature²⁰, as well as a reason for the postal ballot to be redirected to another address than where the applicant is registered on the voters' list.

46. While an official form to apply for an absent vote exists, there is no obligation for an applicant to use this form. An application can be made in any format as long as it contains the required information mentioned above. In addition, the law does not specify how the application should be returned to the Registration

¹⁸ The electoral Commission, *Securing the Vote (May 2005)*, page 27, para 4.14

¹⁹ Postal voting on demand was not introduced in Northern Ireland, where a valid reason must still be given to apply for a postal vote. See also the section on Northern Ireland.

²⁰ Although it was originally foreseen that the requirements to provide personal identifiers for postal voting would be implemented in all of Great Britain, the government decided to delay the implementation of these provisions in Scotland until after the 3 May 2007 local elections.

Officer. It is common practise for parties and candidates to devise their own application forms and to collect the completed forms for delivery to the Registration Officer.

47. While a reason must be given for redirection of the postal vote to another address than where the applicant is registered, the law does not specify what a valid reason for redirection would be. A justification such as "because it is more convenient for me" seems therefore to be a perfectly valid reason for redirection of a postal vote. In practice, Registration Officers will have to accept any request for redirection of a postal vote as long as any form of, not overly frivolous²¹, justification is given. The usefulness of this provision as a mechanism to counter electoral fraud is therefore highly questionable.

48. The application for a postal vote needs to be signed by the voter and a date of birth should be given. However, as already mentioned, no signature or date of birth are required for, or recorded on, the voters' list. Without the possibility to compare the signature and date of birth on the application with a signature and date of birth on the voters' register, this information can not be used to provide positive verification of the identity of the applicant. However, the signature and date of birth can be used during an election to check that the postal ballot was returned by the same person that made the application for the postal ballot.

49. It should be noted that until the adoption of the 2006 Electoral Administration Act, it was not an electoral offence to falsely apply for a postal vote²². However, it was already an offence to fraudulently cast a vote on someone else's behalf.

50. The Electoral Administration Act of 2006 moved the deadline for applying for a postal vote back from 5 to 11 days before the date of an election. The original deadline of 5 days had proven to be problematically short for the election administration to check the validity of a postal vote application, mail the postal ballot pack to the voter and allow sufficient time for the voter to return the ballot, especially if a large number of applications were received close to the deadline²³.

51. Mostly as a measure to counter fraudulent applications, an acknowledgement of receipt of the application, as well as a written confirmation of all decisions on the application, is sent to the voter on the address where the voter is registered in the voters' list. Until 2006 this was done "where practicable", but following recommendations of the Electoral Commission this was made mandatory with the 2006 amendments to the Representation of the People (England and Wales) Regulations

52. Voters who have requested a postal ballot or proxy vote are entered on the absent voters' lists which are available to the registered candidates for an election.

53. Each voter who applied for a postal vote will receive before Election Day a postal ballot pack consisting of the ballot paper; an envelop for the ballot paper, a security statement and a freepost envelope to return the ballot and security statement to the Returning Officer. These ballot packs are dispatched by normal mail in clearly marked envelopes. It was mentioned in the judgment in the Birmingham case that the fact that the ballot packs are clearly marked as such may have facilitated their theft.

54. The completed ballot and accompanying security statement need to be returned to the Returning Officer before the closing of the polls on Election Day. However, the law does not specify how this ballot has to be returned to the Returning officer. It is therefore perfectly legal, and indeed customary, for party and candidate representatives to collect the completed ballot packs in order to return them to the Returning Officer. Although it is illegal to handle the ballot papers before they are sealed in the ballot envelop, the fact that completed ballot packs can be legally handled by persons who do not have an official reason to do so, seriously undermines the principle of the secrecy of the vote.

55. The handling of completed ballot packs by persons who have no statutory reason to do so is all the more of concern due to the rules governing the validity of a cast ballot, which are drawn widely to avoid mistakenly disenfranchising voters. As long as the ballot does not contain any writing or marks that can identify a voter, the ballot will be valid as long as the will of the voter can be detected. More controversially,

²¹ The rapporteurs would hope that a justification such as "*Because I want candidate X to fill out my ballot paper*" would lead to the rejection of the request for re-direction of the postal vote.

²² The 2006 Electoral Administration Act makes falsely applying for a postal or proxy vote an offence in line with personation, punishable with up to two years in prison, a fine not exceeding £5000 and being prevented from being registered to vote, or standing as a candidate, for five years.

²³ See also para 35 of the Judgment of Judge Richard Mawrey QC.

this means that any altered ballot will be accepted by the Returning Officer as long as it shows a clear vote for a candidate and no more votes than the election permits²⁴.

56. Upon receipt of the ballot packs, the ballot envelopes are opened and the security statements are examined by the election commissions. In addition, with the 2006 changes in the election legislation the election officials should now check at least 20% of the security statements against the original application forms. Specialised software has been developed to assist with the comparison of the signatures on the security statement and application form. The new verification requirements are time consuming and led to considerable delays in the counting of the votes and the announcement of the election results during the local and regional elections in 2007.

57. All ballot papers in the United Kingdom have a serial number which, upon issuing, is linked to the voter's entry on the voters' register. There are strict legal provisions for matching a ballot to a voter after the ballot has been cast. In general this can only be done by a court order, for example in the framework of an election petition, to prove alleged electoral fraud²⁵. The exception to this is when a voter requests a replacement ballot (see below). The serial number of the ballot is also printed on the ballot envelope and on the security statement. After the checking of the security statement, the serial number on the ballot envelope is compared against the serial number on the security statement. If the serial numbers match, the security statement is set aside and the ballot is taken from the ballot envelope and entered into a ballot box. The ballot boxes are then brought to the Counting Centres for the ballots to be counted in conjunction with the normal ballot papers on Election Day.

58. Before the 2006 changes to the electoral legislation, voters who showed up in a polling station and found that a postal ballot had been requested in their name, or voters who had otherwise not received or lost their postal ballot, were prohibited from voting and thus disenfranchised. The 2006 amendments to the Representation of the People (England and Wales) Regulations now allow voters to request a replacement postal ballot up to 17:00 on Election Day, after they have given proof of their identity. The replacement ballot will void the original postal ballot if cast. The original ballot can be traced, if cast, with the help of the serial numbers on the ballot paper²⁶.

Northern Ireland

59. In order to overcome electoral fraud, especially impersonation and similar abuses, which was widely perceived to be widespread in Northern Ireland, the Electoral Fraud Act (Northern Ireland) was adopted in 2002.

60. While it was generally perceived that electoral fraud was a major problem in Northern Ireland²⁷, and while all sides of the political divide acknowledged the existence of electoral fraud, it should be noted that there are no official statistics to support these perceptions²⁸. Only a limited number of election petitions, and few, if any, successful prosecutions for electoral fraud were recorded in Northern Ireland in the years before the legislation was enacted. However, the government rightfully concluded that addressing the perceptions of fraud is a valuable objective in its own right, especially if it serves to maintain high public confidence in the electoral process itself.

61. The 2002 Electoral Fraud (Northern Ireland) Act constituted a significant change to the election legislation and election processes in Northern Ireland. *Inter alia*, it changed the system of voter registration in Northern Ireland, introduced personal identifiers - and provided the electoral administration with the means to check them -, changed the regulations for absent voting and introduced new electoral offences in Northern Ireland.

62. The Act abolished household registration and introduced a system of individual registration in Northern Ireland. It is now the individual responsibility, and legal requirement, for each citizen over 18 years of age to complete an annual registration form. In addition, the system of carrying forward, whereby entries

²⁴ Richard Mawrey QC, para 67.

²⁵ The use of serial numbers on ballot papers that can be matched to a voter raises some concerns regarding the secrecy of the vote. However, if all election procedures are implemented fully according to legal requirements, sufficient safeguards exist to protect the secrecy of the vote. The use of non human readable bar codes on the ballots, instead of serial numbers would be an additional safeguard in this respect.

²⁶ It is clear of course that this procedure could protract the vote count in the event that a large number of ballots need to be retrieved.

²⁷ "Vote early, vote often"

²⁸ The electoral Commission, research report: *The Electoral Fraud Northern Ireland Act*, page 27, para 2.32.

on the voters register are carried forward for one year if no new registration information has been received, was abolished in Northern Ireland.

63. In order to be entered on the voters' list a person needs to provide the following personal identifiers in addition to their name and address: signature, date of birth, national insurance number (or an signed declaration that the person never had a national insurance number) and details of any other addresses where the voter has applied to be registered. In the event not all of this information is provided on the registration form, or if the registration officer is not satisfied by the information provided, the applicant will not be entered in the voters' register.

64. In order to verify the personal identifiers given, the Act empowered the Chief Electoral Officer²⁹ to verify the national insurance number with the Social Security Agency. In addition, the Social Security Agency may also give any date of birth, gender, address and other name pertaining to the national insurance number.

65. Since the adoption of the 2002 Electoral Fraud (Northern Ireland) Act, a voter in Northern Ireland has to present a photo ID in order to vote. Valid photographic identification in this respect is a valid British or EU passport, a UK photographic Drivers licence or a Translink Senior SmartPass³⁰. Voters who possess none of the aforementioned identity papers can request a special Electoral Identity Card which is provided free of charge.

66. Postal voting on demand was not introduced in Northern Ireland. Voters in Northern Ireland still need to provide a valid reason to obtain a postal vote. In addition, persons applying for an absent vote (postal or proxy vote) need to provide their date of birth, national insurance number and signature. These details are checked against the information contained in the voters register.

67. The 2002 Electoral Fraud (Northern Ireland) Act made it an offence to knowingly provide false information on an election registration form and allows presiding officers in a polling station to ask a third statutory question³¹: "what is your date of birth". The answer to this question is then checked against the information contained in the voters' register.

68. As a result of the introduction of the individual voter registration system, the number of persons on the voters' list dropped by approximately 120,000, or around 10%, in relation to the last voters list compiled under the household registration system. There was therefore concern that a large number of voters had been disenfranchised as a result of the introduction of the individual registration system. However, although acknowledging that a number of eligible voters may have been dropped from the voters list³², the Electoral Commission, in its assessment of the impact of the 2002 Electoral Fraud (Northern Ireland) Act³³, concluded that the abolition of the carrying forward principle and the removal of other inflationary factors had resulted in far more accurate voters register in Northern Ireland. In addition to the abolition of the carrying forward, the removal of multiple registrations, former residents and potentially fraudulent entries may have contributed significantly to the drop in registered voters.

69. As a result of the initial drop in registration, the government enacted the Electoral Registration Act 2005 which, as a one time measure, ordered the reinsertion of names removed as a result of the introduction of the individual voter registration system. However, in order to be able to vote personal identifiers still need to be recorded in the voters register. Citizens who did not provide this information before the deadline set in the Act, were removed from the voters register in conformity with the general provisions in the Registration Act³⁴. In addition, the Northern Ireland (Miscellaneous Provisions) Act 2006 replaced the annual canvass with

²⁹ In contrast to Great Britain, Northern Ireland has a central election administration headed by the Chief Electoral Officer.

³⁰ A pass that offers free travelling on public transport for senior citizens residing in Northern Ireland. Proof of identity, age and residence must be given to obtain a Translink Senior SmartPass.

³¹ The law allows the presiding officers in Great Britain only to ask two questions to a person wishing to vote: "Are you Mr/s XXX" and "Have you already voted in these elections"

³² the Electoral Commission noted that the individual registration system may have had a negative impact on disadvantaged, hard to reach and marginalised groups

³³ The electoral Commission, *research report: The Electoral Fraud Northern Ireland Act*

³⁴ The entitlement of the electors of Northern Ireland to remain in the register terminates if: a) in the annual canvass their form does not contain the additional information of Section 10 (4A) (signature; date of birth; national insurance number or the voter makes a statement that he does not have one; a statement that he has been resident in Northern Ireland for the requisite three-month period before 15 October in the year in question; and to state any other address in the UK in respect); or b) if the registration officer "determines that the elector was not entitled to be registered in respect of that

a system of continuous registration, supplemented by a canvass organised every 10 years or as deemed necessary by the Chief Electoral Officer.

70. In the absence of official statistical data on electoral fraud in Northern Ireland before and after the adoption of the 2002 Electoral Fraud (Northern Ireland Act), it is impossible to assess the impact of the Act on electoral fraud in Northern Ireland. However, public opinion research³⁵ shows that in the public perception the adoption of the Act contributed to a reduction in electoral fraud in Northern Ireland and significantly improved public confidence in the electoral system.

2006 Changes to the Electoral Code

71. In 2006, the Electoral Administration Act and several amendments to Representation of the People (England and Wales) Regulations were adopted. The new legislation contains several provisions that aim to address some of the vulnerabilities and shortcomings in the electoral process that became apparent after the introduction of postal voting on demand.

72. The amendments to the Representation of the People (England and Wales) Regulations, *inter alia*, moved the deadline for the application for a postal vote from 6 to 11 days before polling day and made it mandatory for the registration officers to confirm in writing, to the registered address of the voter, the receipt of an application for a postal vote, as well as all decisions that are made regarding this application. In addition, the amendments make replacement postal ballot papers available, on proof of identity, up to 17:00 hours on Election Day, to those voters who claim either not to have applied for a postal vote, but who are on the absent voters' list, or for voters who claim not to have received their postal ballot. Furthermore, the amended regulations now require that voters give a reason to have their postal vote redirected to another address than the one on which they are registered in the voters' list.

73. The Electoral Administration Act, *inter alia*, made it an offence to falsely apply for a postal vote or to knowingly provide false information on a rolling registration form, and introduced provisions that require voters to provide personal identifiers, in the form of a signature and date of birth, on both the application for an postal vote and the security statement that accompanies the postal ballot. The law makes it mandatory for Returning Officers to check the personal identifiers on at least 20% of the returned security statements against the corresponding application for a postal vote.³⁶ In addition, the Act moved the deadline for voter registration for all elections to 11 days before the closing of the poll and requires that voters sign the voters' register upon receipt of a ballot in the polling station³⁷.

74. However, most notable is what was not included in the changes to the electoral legislation. Despite explicit recommendations from many experts, including the Electoral Commission and the Commission on Standards in Public Life, the government decided not to introduce a system of individual registration with personal identifiers, and decided to maintain the system of carrying forward names on the voters' list for one year if no new registration information has been given.

Election Petitions

75. Elections may be challenged by the losing candidate or four electors of the constituency (ward) in an Election Petition. An election can only be challenged in an Election Petition on the grounds of undue election, undue return or on the ground that the person whose election is questioned was disqualified at the time of election.

76. An election can be set aside via an Election Petition on grounds of undue election, when it is proven that corrupt or illegal practises on behalf of any candidate (whether elected or not) have so extensively prevailed that it can be reasonably supposed that they have affected the result of the election. An election can also be set aside on grounds of undue return, if any acts or omissions of the Returning Officer, or any person with official duties in relation to the election, resulted in the election to be conducted in a manner that

address or that he has ceased to be resident at that address or has otherwise ceased to satisfy the conditions for registration set out in section 4 above" (Venice Commission – CDL(2007)035, para 69)

³⁵ The electoral Commission, *research report: The Electoral Fraud Northern Ireland Act*, page 6

³⁶ The government decided, at a late stage, not to implement the provisions requiring the collection of personal identifiers for postal voting for the local and regional elections in Scotland on 3 May 2007.

³⁷ This provision was not implemented during the 2007 local and regional elections in Great Britain as the law did not contain any sanctions if someone refused to sign.

was substantially not according to the law and that these acts or omissions affected the results of the election³⁸.

77. It is important to note that it is not only necessary to prove that electoral fraud was committed or that the elections were substantially not conducted according to the law, but also that this affected the outcome of the election. The latter considerably raises the bar for filing an Election Petition.

78. If an Election Petition is successful, the challenged election is set aside and the candidate who committed the corrupt or illegal practices, or whose agents committed them, is deprived of his vote and can not stand for any elective office for a period of five years in the case of corrupt, and for three years in case of illegal, practices.

79. Election Petitions are in effect a civil action which is governed by Civil Procedure rules and the burden of proof is on the petitioner. In addition, Election Petitions, as private legal actions, are potentially costly for the petitioner. A fee of £ 180 is payable upon filing of the petition, and security for the costs must be tendered. Election Petitions need to follow a prescribed legal form, as a result of which legal assistance is normally needed to file a petition³⁹.

80. As a result of the costs involved, the nature of an Election Petition and the need to prove that the alleged electoral fraud changed the outcome of an election, very few Election Petitions are brought, and even fewer are brought to a successful conclusion. As a result, the usefulness of Election Petitions as a means to police electoral fraud was questioned by Judge Richard Mawrey in his report to the High Court of Justice: *"The election petition is both inadequate and inappropriate as a method of controlling fraud. For electoral probity to be policed by what are, in effect, private civil law actions brought at the expense of the litigant, cannot be acceptable."*⁴⁰

81. Most forms of electoral fraud and abuse are criminal offences under the Election Code as well as general criminal law. Any electoral stakeholder or member of the public with strong suspicions that electoral fraud is or has been committed can therefore file a complaint with the police. Establishing proof of electoral fraud is difficult and the police was reportedly initially reluctant and insufficiently trained to investigate allegations of electoral fraud that were brought to them. However, from their meetings with the police and Crown Prosecution Service, the rapporteurs have the impression that, as a result of the recent developments, the police is considering electoral fraud as one of its priorities and that sufficient resources have been set aside for investigating electoral fraud as well as for the training of the police forces in this subject.

82. In this respect it should be noted that only an Election Petition can set aside an election. A conviction of an election offence will not void an election, although, if convicted him or herself, an elected candidate will have to vacate his office.

83. A Returning Officer has no duty, and indeed no statutory power, to investigate electoral offences.

Vulnerability of the Registration and Postal Voting on Demand System in the UK

84. It does not take an experienced election observer, or election fraudster, to see that the combination of the household registration system without personal identifiers and the postal vote on demand arrangements make the election system in Great Britain very vulnerable to electoral fraud. The 2006 changes to the electoral law only partially addressed this vulnerability.

85. The main underlying weakness of the electoral system in the Great Britain is the current household registration system without personal identifiers. This system makes it extremely easy to add bogus characters to the voters' lists⁴¹. All a head of household has to do is to add a number of names on the yearly canvas form. The Registration Officers have only limited power to check these names and the absence of

³⁸ Representation of the People Act 1983, s 48, 120, 123, 164

³⁹ A 2005 petition by the Respect party challenging the general election result in a Birmingham constituency was later withdrawn after the petitioner failed to secure legal aid

⁴⁰ Richard Mawrey QC, Report to the High Court of Justice in the matter of the Representation of the People Act 1983 and in the matter of a local government election for the Bordesley Green ward of the Birmingham City Council held on 10th June 2004, para 24.

⁴¹ This could be either fictitious characters, or existing persons who, with or without their knowledge, are fraudulently registered in multiple localities.

personal identifiers makes any checking of these names an all but impossible task. Therefore, as long as the names on the registration form are not overly frivolous⁴², and the number of bogus entries is not unrealistically large in comparison to the residency in question⁴³, all names will be *de facto* accepted on face value and added to the voters' list.

86. The absence of a civil register at local or national level not only hinders the checking of applications for the voters' register, it actually provides an incentive for fraudulent applications. As mentioned before, the voters register functions as a *de facto* civil registry. Registration on the voters' lists is often necessary to open a bank account, to obtain credit or to apply for social services. Therefore, bogus registrations may be made to facilitate other fraudulent activities such as credit card and social security fraud, and may be the start of the creation of a false identity. While the underlying reasons for such a false registration may not be to commit electoral fraud, it is quite possible that they are used for voting, in order to give more depth and credibility to these false identities.

87. Multiple voting inside polling stations itself is necessary only possible on a limited scale. There is a considerable risk that the polling station staff, or party and candidate witnesses, would recognise that a person tried to cast more than one vote for an election. However, the current arrangements for postal voting provide an easy means, and the required anonymity, to do so on a large scale.

88. The requirement for a signature and date of birth on the postal vote application and security statement does nothing to prevent electoral fraud by means of bogus entries in the voters' register. All a potential fraudster has to do is to keep track of, and match, the false signatures and dates of birth on both forms, in order to successfully cast a ballot in the name of a bogus character. However, these provisions will, to a large extent, prevent the use of fraudulently obtained postal ballot papers of legitimate voters who have applied for a postal vote.

89. It is recognised that it would require a considerable degree of premeditation and organisation on behalf of a party or candidate to change the outcome of an election in their favour by means of bogus entries on the voters' lists. However, this vulnerability, and hence the opportunity, very much exists. Equally worrisome, electoral fraud committed in this manner is very difficult to detect.

90. None of the 2006 changes in the Electoral Code addresses the above mentioned opportunity for electoral fraud by means of bogus entries on the voters' list.

91. The fact that a person is legally allowed to be registered on the voters' lists in more than one locality offers another opening for electoral fraud. Although it is illegal to vote more than once in the same national election, the onus on not doing so is completely on the voter itself. While it would be physically difficult to vote in person in multiple polling stations in different localities, the postal vote arrangements make it childishly simple to do so, and equally difficult to detect. It may be difficult to change the outcome of an election in this manner, but it runs counter to the principle of "one person – one vote".

92. Before the adoption of the amendments to the Representation of the People (England and Wales) Regulations in 2006, falsely applying for a postal vote in the name of an otherwise legitimate voter provided a wide avenue for electoral fraud, especially taking into consideration the ease with which a postal vote can be redirected to another address. A fraudulent application⁴⁴, and request for redirection, of a postal vote could not only be used to cast a fraudulent ballot in someone else's name, but could also be used to prevent a legitimate voter from casting a ballot for another candidate. Before the changes in the electoral legislation, a person in whose name a postal ballot was falsely requested had no possibility to obtain a replacement ballot and was effectively disenfranchised to vote. Moreover, only via an Election Petition would it be possible to prevent the fraudulently cast postal ballot from being counted.

93. The new provisions in the electoral code that allow a voter to request a replacement ballot do prevent the disenfranchisement of voters in the manner described above. In addition, the provisions ensure that the fraudulent votes will be cancelled⁴⁵. The new provisions that make it mandatory for the Registration

⁴² The rapporteurs heard several anecdotal allegations of names of cartoon characters and domestic animals such as race horses and dogs appearing on the voters' register. Although the chance that any of these would appear in a polling station is extremely slim, theoretically nothing could stop someone from requesting, and casting, a postal ballot in their name.

⁴³ It should be remembered this could be multi-occupancy households such as dormitories and care homes, which would allow a relatively large number of bogus entries go undetected.

⁴⁴ Falsely applying for a postal ballot was before 2006 not an electoral offence in itself.

⁴⁵ On the condition of course that a replacement ballot was requested and cast.

Officers to confirm in writing, to the registered address of the voter, the receipt of an application for a postal vote, will help a voter to detect when a fraudulent request for a postal vote in their name is being made⁴⁶.

94. The abovementioned provisions have to a large extent addressed the vulnerability of electoral fraud by means of falsely applying for a postal ballot in the name of a legitimate voter. However, these measures are not completely failsafe and some concerns about their implementation remain, especially if a large number of applications for a postal vote are received at the very last moment as was the case in Birmingham for the local elections in 2004. In this event, it would seem that voters would have only very limited time to react to a false application, or it could result in the confirmation and postal ballot pack being mailed at the same time. In such case, only a request for a replacement ballot, which the voter may very well not be able to make, would prevent the fraudulent postal vote from being cast.

95. It is important to note that most of the cases of electoral fraud that have recently come to light, took place in areas with large communities of people for whom English is not their mother tongue, and who therefore may have limited understanding of formal English. If only sent out in English, a significant number of people in those communities may not understand the contents of the mandatory written confirmation messages, therewith reducing the effectiveness of those messages as a means to counter fraudulent applications for a postal vote.

96. The provisions to obtain a replacement postal ballot, in combination with the requirement for the provision and matching of personal identifiers on postal vote applications and security statements, have, to a large extent, also foreclosed the possibility of using stolen uncompleted postal ballot packs, as was the case during the 2004 local elections in Birmingham.

97. The legal provisions that allow third persons, such as party and candidate representatives to collect postal vote applications open another possibility for electoral fraud and undue influence. While the rapporteurs sympathise with efforts that encourage citizens to vote, they would like to emphasise that the option of not wanting to vote is also a democratic right. The hoarding of postal vote applications by party and candidate activists could, even unwillingly, be construed as social pressure by the voter, which, as such, is a form of undue influence.

98. More problematic in relation to the vulnerability to electoral fraud, is the legal possibility for third persons, such as party and candidate representatives to collect complete postal ballots in order to bring them to the Returning Officer. As mentioned, any handling of completed ballot papers by persons who do not have an official obligation to do so runs counter to the principle of the secrecy of the vote. The possibility to obtain completed ballot papers makes it childishly simple for any person to fraudulently alter the vote, especially in the light of the surprisingly lax rules governing altered ballot papers.

99. The legal provisions that allow an altered ballot paper being treated as valid as long as the ballot shows the clear intention of the voter are an invitation to electoral fraud. Any alteration should cause a ballot to be considered spoilt. The possibility that a voter accidentally invalidates his vote is clearly outweighed by the immense opportunity for abuse. As mentioned by Judge Richard Mawrey in his report to the High Court of Justice: *"If any alteration on a ballot paper caused it to be treated as a "spoilt" ballot paper and rejected, many of the Birmingham frauds would have been frustrated"*⁴⁷.

100. The possibility for undue influence, especially among vulnerable groups in society, is always a serious risk with regard to postal voting. However, this risk is inherent to any form of voting that takes place outside the confinements of a polling station, and is not unique to the United Kingdom.

The 2007 Elections in Scotland and Wales.

⁴⁶ In his judgment, Richard Mawrey QC, makes the point that, based on the evidence in the case, most people disregard the confirmation and treat it as "another piece of paper from the Council" (para 42). The rapporteurs can only partially support that position. The authorities are right in presupposing that the citizens should be interested in what happens in their name, especially if it concerns such an important issue as an election. Furthermore, failing that, it is hard to see how the authorities could legislate against such voter apathy. It does prove the point however that written confirmations are not failsafe and that only the inclusion of personal identifiers in the electoral register will completely foreclose the possibility of successful fraudulent postal vote applications.

⁴⁷ Richard Mawrey QC, Report to the High Court of Justice in the matter of the Representation of the People Act 1983 and in the matter of a local government election for the Bordesley Green ward of the Birmingham City Council held on 10th June 2004, para 20

101. On 3 May 2007 local government elections were held in England and Scotland. In addition, on the same date, elections to the Scottish Parliament and National Assembly in Wales were organised. They were the first elections to be governed by the election legislation as adopted in 2006. However, the requirement for voters to sign the voters' register upon receipt of a ballot in the polling station was not introduced for these elections as the law did not contain a sanction if someone refused to sign. In addition, the government decided to delay till after these elections the implementation in Scotland of the provisions for personal identifiers for absent voting. The delays in implementation weakened, to an extent, the anti-fraud measures contained in the 2006 legislation for these elections.

102. These elections were overshadowed by the controversy over spoilt ballot papers and the operation of the electronic counting system during the Scottish Parliament elections. The Scottish Parliament is elected according to a mixed electoral system. Voters vote for regional members via a closed party lists system and for constituency members via a first-past-the-post system. In addition, the local authorities were elected for the first time via a, by all accounts complicated, system of Single Transferable Vote (STV), in which voters rank the candidates in order of preference. In addition, it was decided to combine the regional and constituency ballots on the same ballot paper. As a result of the confusion resulting from the use of different voting systems, as well as the use of a single ballot paper for both constituency and regional members, the number of spoilt ballot papers exceeded 140,000, implying the disenfranchisement of a considerable part of the Scottish electorate.

103. In 2004, the Secretary of State for Scotland set up the Commission on Boundary Differences and Voting Systems, also known as the Arbuthnott Commission. The Commission's task was to, *inter alia*, look at the impact of the use of different voting systems for elections in Scotland. In its report, the Arbuthnott Commission recommended that the elections for the Scottish Parliament and local government elections should not be organised on the same day. However, although recommending revisions, the Commission endorsed both the mixed electoral system for the elections to the Scottish Parliament, as well as the use of STV for the local government elections⁴⁸. Moreover, the Electoral Commission engaged the private firm Cragg Ross Dawson to conduct a public opinion research on the design of the ballot paper to be used at the elections for the Scottish Parliament. In its report, Cragg, Ross and Dawson concluded that there was an overall preference among the public for a combined ballot paper. In addition, although concluding that separate ballot papers would be less likely to give rise to mistakes, no serious objections were found with regard to the use of a combined ballot paper⁴⁹.

104. The organisation of multiple elections on the same date is not uncommon in Europe and, although not advisable, does not run counter to Council of Europe standards. In addition, although one can question the wisdom of using three different electoral systems, especially if one of them is a newly introduced and fairly complex, mixed electoral systems are used by other Council of Europe member states and do not preclude democratic elections. The problems encountered during the Scottish elections, despite all efforts by the authorities, seem to be mostly of technical nature, and not related to any vulnerability as such, of the British electoral system. They are therefore not of remit for this report. However, these problems do add to the public perception that something is amiss with the British electoral system, which is an important concern of the rapporteurs.

105. The preliminary data seems to indicate that the number of postal votes requested for the 2007 elections fell considerably in relation to previous elections⁵⁰. In Birmingham the total number of postal votes fell from 70,075 in 2004 to 48,135 in the 2007 elections. In the two wards that were at the centre of the Birmingham electoral fraud case, the number of postal votes fell by more than 80%. On the one hand this may indicate that the problems with the postal voting during previous elections were more serious than originally thought, on the other hand this could be an indication that the 2006 changes to the electoral code have had their intended effect. However, it was noted that, in England and Wales, the counting procedures were very protracted as a result of the new verification requirements for postal votes.

106. In its review of the local government elections in England and Wales the Electoral Commission concluded that the 2006 changes in the electoral legislation have considerably reduced both the volume and

⁴⁸ Arbuthnott Commission, Putting Citizens First: Boundaries, Voting and Representation in Scotland, summary report.

⁴⁹ Cragg Ross Dawson, Ballot Paper Designs for the Scottish Parliament Elections 2007, Qualitative Research Report, August 2006.

⁵⁰ The drop of a few percentage points in the request for a postal vote should be seen in the context of the exponential growth in postal vote applications that had been the trend for previous elections.

scale of electoral malpractices in comparison to the May 2006 elections⁵¹. While several serious allegations regarding postal and proxy fraud were still made to the police, they were not near the scale of those in previous elections such as in Birmingham in 2004, Bradford in 2005 or Tower Hamlets in 2006. Equally important, the Electoral Commission noted that the changes in legislation had served to increase the public confidence in the integrity of the electoral process.

107. In addition to the changes in the election code, the Electoral Commission also credited an increased and more pro-active role of the police forces as one of the factors contributing to the lower level of reported electoral malpractice.

108. After initial problems, mainly as a result of the short time span between the adoption of the legislation and these elections, the processes for collecting and matching the personal identifiers on the postal vote applications and security statements worked generally well and without problems. The majority of the Registration Officers decided to check the personal identifiers on well over the mandatory 20%, in most cases 100%, of the postal ballots received. Initial statistics show that on average 6% in Wales, and 4% in England, of the postal ballots returned were rejected as a result of non matching personal identifiers. While a considerable part of these mismatches may have been the result of errors in filling in the application forms and security statements, this figure is still uncomfortably high.

109. Regrettably, the report of the Electoral Commission noted that several instances were brought to the attention of the authorities where political party representatives failed to adhere to the Code of Good Conduct for the handling of election materials by political party and candidate representatives⁵². This underlines the concerns of the rapporteurs with regard to this subject.

Council of Europe standards and Commitments

110. The United Kingdom has signed and ratified Protocol 1 to the European Convention of Human Rights (ECHR). Article 3 of Protocol 1 explicitly provides for the right to free elections: "*The High Contracting Parties undertake to hold free elections at regular intervals by secret ballot, under conditions that ensure the free expression of the opinion of the people in the choice of the legislature.*"

111. In addition, the United Kingdom signed and ratified the European Charter of Local Self-Government, by which it extended the principle of free elections by secret ballot on the basis of direct, equal and universal suffrage to local authority assemblies in Great Britain⁵³.

112. As stated by the Code of Good Practice in Electoral Matters⁵⁴ of the Venice Commission of the Council of Europe, the key principles underlying democratic elections are universal, equal, free, secret and direct suffrage at regular intervals. Full adherence to these principles is what lends elections their democratic status. Within the respect for these principles each country is free to choose its own electoral system that best fits its socio-cultural, historical and practical reality.

113. Following a recommendation of the rapporteurs, the Monitoring Committee, at its meeting on 18 April 2007, decided to ask the Venice Commission's opinion on the following three questions:

- a. Is the voters' registration system in the United Kingdom in line with Council of Europe standards, given in particular the household registration as opposed to individual registration and the relative lack of personal identifiers upon registration?
- b. Is the manner in which postal voting is implemented in line with Council of Europe standards, especially with regards to the security of the vote?
- c. Is the fact that different requirements are used for one part of the country (Northern Ireland) with regard to voter registration and postal voting for the same elections, in line with Council of Europe standards?

⁵¹ The Electoral Commission, *The introduction of absent voting identifiers in England and Wales*, p 30 -31 and *Report on the local government elections in England 3 May 2007*, p 14.

⁵² The Electoral Commission, *The report on the local government elections in England 3 May 2007*, p. 13.

⁵³ European Charter on Local Self-Government, article 3.2. In a letter from the Secretary of State for Foreign and Commonwealth Affairs, dated 14 April 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, the United Kingdom informed that it considers itself bound by all the paragraphs of Part 1 of the Charter for England, Scotland and Wales.

⁵⁴ CDL-AD (2002) 23. The Code of Good Practice was adopted by the Venice Commission at its 51st and 52nd Plenary Sessions and adopted by the Parliamentary Assembly at its first part-session in 2003 (Res 1320 (2003))

114. In response to this request, the Venice Commission adopted, at its 73rd Plenary Session on 14 and 15 December 2007, an opinion on the Electoral Law of the United Kingdom (CDL-AD(2007)046). The opinion is attached as appendix 1.

115. With regard to the household registration system, the Venice Commission noted that Council of Europe standards demand that, in order to adhere to the principle of the universality of the vote, voters' registers should be permanent, published, regularly updated, and there should be an proper administrative procedure, under judicial control, to allow voters to amend incorrect inscriptions and to register in case they are missing from the voters' list. While the household registration does not run counter to these standards, the Venice Commission noted that the combination of a household registration system with the lack of personal identifiers raises serious doubts about the eventual inaccuracies of the system and the eventual fraudulent use that may stem from these. There are no means of validating registration at source and this combined with the lack of personal identifiers may question the reliability of the system⁵⁵.

116. In relation to the postal voting arrangements, the Venice Commission notes that the principle of remote and absentee voting (including postal and proxy voting) does not run counter to Council of Europe standards. However, for the postal voting arrangements to be in line with Council of Europe standards they need to preclude fraud or intimidation, prevent family voting, be based on a safe and reliable transport system and the need to ensure the secrecy of the vote. After a careful analysis of the Electoral Law, the Venice Commission concluded that the current arrangements, especially after the adoption of the 2006 amendments, strike a reasonable balance between these criteria and the legitimate goal of increasing the participation in the elections. Remote and absentee voting arrangements do have an inherent vulnerability for electoral fraud and malpractice, especially with regard to the secrecy of the vote, but this is not solely a United Kingdom problem. The current postal voting arrangements therefore do not run counter to Council of Europe standards⁵⁶.

117. In relation to the differences in the legal electoral requirements between Northern Ireland and the rest of the United Kingdom, the Venice Commission noted that it is perfectly possible and acceptable that a legal system has different norms that apply in different parts of a territory and rule the same event. However, it must respect the general principles of law, including the respect for fundamental rights, the rule of law and democratic principles, in particular the principle of equality. Article 3 of Protocol 1 of the ECHR⁵⁷ implies the "the principle of equality of treatment of all citizens in the exercise of the right to vote and their right to stand for election"⁵⁸. In a case concerning Northern Ireland, the European Court of Human Rights ruled that the application of a different electoral system in a part of the country is not contrary to Article 3 of Protocol 1 if supported by a legitimate aim and if the means proposed are not disproportional⁵⁹. In addition the principle of equality demands that they are not arbitrary. The Electoral Fraud (Northern Ireland) Act (2002) and subsequent provisions were adopted to address a wide spread concern about electoral fraud in Northern Ireland. The aim supporting the different requirements can therefore be considered fully legitimate. Moreover, the arrangements for voter registration and postal voting are in line with Council of Europe standards and do not infringe on the right to vote. They are therefore neither arbitrary nor disproportional. On that basis, the Venice Commission concluded that the differences in registration system and postal voting arrangements between Northern Ireland and the rest of the United Kingdom do not run counter to Council of Europe standards⁶⁰.

118. It should be noted that legal provisions that are in conformity with Council of Europe standards do not guarantee *per se* that the electoral process itself is in line with these standards. Governments have the responsibility to put an electoral system in place that is as robust as practically possible against malpractice and electoral fraud.

119. It is important to note in that respect that the Venice Commission concluded that the continuous individual voter registration system as used in Northern Ireland "*complies better [than the household registration system] with the principles of good practice in electoral matters and with the European electoral heritage that underlies them and it could be appropriate to extend it to Great Britain*"⁶¹. In addition, the Venice

⁵⁵ Venice Commission, Opinion on the Electoral Law of the United Kingdom, CDL-AD(2007)046, para 33.

⁵⁶ Idem, para 43

⁵⁷ "The High Contracting Parties undertake to hold free elections at regular intervals by secret ballot, under conditions that ensure the free expression of the opinion of the people in the choice of the legislature."

⁵⁸ *Mathieu-Mohin and Clerfayt v. Belgium*, (Application No 9267/81), 2 March 1987, para. 54, quoted in CDL-AD(2007)046 (Venice Commission)

⁵⁹ Decision of 8 March 1979, *Kennedy Lindsay and other v/ the United Kingdom*, Application No 8364/78. quoted in CDL-AD(2007)046 (Venice Commission)

⁶⁰ Venice Commission, Opinion on the Electoral Law of the United Kingdom, CDL-AD(2007)046.

⁶¹ Idem, para 91.

Commission considered that the rules for postal voting in Northern Ireland “*guarantee in a better way the principle of free elections, and allow the citizens exercising their right to vote by post in a more secure and confident way*”⁶² than those in Great Britain”

120. According to the opinion, the transport of postal ballots needs to be safe, reliable and protected from deliberate manipulation in order for the postal voting arrangements to be in line with Council of Europe standards⁶³. It can therefore be derived from the opinion that the handling of postal ballots and applications by persons who have no legal necessity to do so – such as party activists - is contrary to Council of Europe standards.

Conclusions and Recommendations

121. Postal Voting on Demand is an important means to counter the increasingly lower turnout at British, and indeed elections in European States, and is a preferred option for many voters. It is therefore without doubt for the rapporteurs that postal voting, as well as other arrangements for absentee voting, will continue to be an integral aspect of the British electoral system. As mentioned, absentee voting, including postal voting, does not run counter to Council of Europe standards for democratic elections, on the condition that the security of the vote is guaranteed.

122. Based upon a request by the Chairman of the Monitoring Committee, the Venice Commission adopted an opinion on the Electoral Law in the United Kingdom. This opinion concludes that the legal provisions for postal voting and household registration used in the Great Britain do not *per se* run counter to Council of Europe standards, but that the individual registration system with personal identifiers as used in Northern Ireland better complies with these standards than the household registration system used in the rest of the United Kingdom.

123. From the Venice Commission opinion it can furthermore be derived that the handling of postal ballots by third persons who have no legal necessity to do so, such as party activist, runs counter to Council of Europe standards. The rapporteurs therefore strongly recommend to the British authorities to prohibit this practice for future elections.

124. It is clear that the electoral system in Great Britain is open to electoral fraud. This vulnerability is mainly the result of the, rather arcane, system of voter registration without personal identifiers and exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the electoral code in 2006.

125. The crucial weakness of the household registration system is that it precludes the registration of personal identifiers. This, in combination with the absence of any form of civil registry, makes it childishly simple to register bogus voters on the voters’ list, and makes the verification of these lists practically impossible. While voting inside a polling station on behalf of bogus entries on the voters lists, is necessarily only possible on a limited scale, and bears a heightened chance of detection, the postal voting arrangements provide both the means and anonymity to do so without restrictions.

126. The 2006 changes to the electoral code closed many of the loopholes that allowed for the fraudulent application, redirecting, and casting of postal ballots on behalf of legitimate voters, which were an important vehicle for electoral fraud during previous elections. In addition they address the problem of disenfranchisement of these legitimate voters as a result of a fraudulent application in their name. In that respect the 2006 changes to the electoral code significantly enhanced the security of the postal voting arrangements.

127. However, none of the 2006 changes to the electoral code addressed the vulnerability of electoral fraud by means of bogus entries on the voters register. While it is recognised that it would take a considerable degree of premeditation and organisation of a candidate or party to change the outcome of an election by these means, this vulnerability continues to be very much present in the British electoral system.

128. In the light of the vulnerabilities of the electoral system, and their obvious exploitation, the rapporteurs are at loss to understand why the provisions in the Electoral Fraud (Northern Ireland) Act of

62 Idem, para 82.

63 Idem, para 40

2002⁶⁴ are not implemented across the board in the United Kingdom, especially taking into account the positive experiences with these provisions in Northern Ireland. In this respect the rapporteurs can only question the reluctance, or even refusal, of the current British government to introduce individual voter registration with personal identifiers, despite strong recommendations to the contrary by the Electoral Commission, the Committee on Standards in Public Life, as well as most other election experts.

129. The official argument that there is little statistical evidence to support the notion that electoral fraud is widespread in Great Britain is clearly not valid and does not seem to be substantiated by the recent investigations into electoral fraud. It should be noted in this context that there were equally no official statistics to support the notion that electoral fraud was rampant in Northern Ireland before the Electoral Fraud (Northern Ireland) Act was adopted in 2002. In that case the government, rightfully, concluded that countering the public perception that electoral fraud was widespread, was an important objective in its own right.

130. Equally, the argument that the introduction of an individual registration system with personal identifiers would result in a significant group of eligible voters being disenfranchised does not seem to be corroborated by the experience from Northern Ireland after individual registration was implemented in 2002⁶⁵.

131. While recognising that, within the limits of the principles that govern democratic elections, governments have the freedom to choose the electoral system that best serves the need of their country, the rapporteurs also are convinced that governments are under the obligation to ensure that the electoral system is as robust as possible. Leaving known vulnerabilities in an electoral system unaddressed runs counter to this principle. In addition, high public confidence in the electoral system is crucial for the conduct of democratic elections. It is beyond questioning that the public confidence in the electoral system in Great Britain has suffered as a result of the cases of electoral fraud that have come to light. This alone should be sufficient rationale for corrective measures.

132. The rapporteurs therefore urge the British authorities to introduce a system of individual voter registration with appropriate personal identifiers in line with the recommendations of the Electoral Commission and the Committee on Standards in Public Life. The local voters' lists should be linked to a nation wide database in order to be able to identify multiple registrations. The rapporteurs would also like to strongly recommend the British authorities to consider introducing in Great Britain the other security enhancing measures contained in the Electoral Fraud (Northern Ireland) Act of 2002, such as for instance the need to provide identification in order to vote. The regulations governing the validity of cast ballots should explicitly invalidate any altered ballots, as the current regulations that allow altered ballots to be considered valid opens an avenue for electoral fraud.

133. As an immediate measure to ensure the effectiveness of the provisions to combat electoral fraud in the 2006 electoral legislation, the rapporteurs strongly recommend that the checking of personal identifiers on 100% of the returned postal ballots is made mandatory by law in all of Great Britain before the next elections take place.

134. Despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the British people⁶⁶. It can therefore not be argued that the United Kingdom has fallen short on honouring its democratic commitments to the Council of Europe and we can therefore not recommend opening a monitoring procedure with respect of the United Kingdom.

135. It should be stressed however, that the United Kingdom delivers democratic elections despite the vulnerabilities in its electoral system. The shortcomings noted in this report could, by the same token, easily affect the overall democratic nature of elections in Great Britain. The rapporteurs would therefore recommend that the Monitoring Committee, in its periodic reports on the honouring of commitments by member states not subject to a monitoring procedure, pays special attention to electoral issues with respect of the United Kingdom. If the vulnerabilities noted in this report remain unaddressed, and are found to

⁶⁴ Except for not introducing postal voting on demand. As already mentioned, the rapporteurs are sufficiently convinced about the benefits absentee voting on demand.

⁶⁵ See also point 69 of this report. In addition, in response to a written question of the rapporteurs regarding this issue the Electoral Commission answered: *"In other words, where this problem [voters showing up in the polling stations who were not registered to vote] occurred it stemmed from having an election during the annual registration canvass, not from the 2002 reforms. Evidence that we are currently examining from the recent March 2007 elections bears this out"*

⁶⁶ This was also confirmed in the report of the Assessment Mission of the OSCE/ODIHR for the 2005 General Elections in the United Kingdom, which states: *"The United Kingdom has a long standing tradition of democratic elections, and the 5 May 2005 general election was conducted in keeping with this tradition"*

AS/Mon (2007) 38

change the overall democratic nature of elections in the United Kingdom, the Monitoring Committee should consider applying to initiate a Monitoring Procedure in respect of the United Kingdom.

Appendix 1



Strasbourg, 9 January 2008

CDL-AD(2007)046

Opinion No. 436 / 2007

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION
ON THE ELECTORAL LAW
OF THE UNITED KINGDOM

Adopted by the Council for Democratic Elections
at its 23rd meeting
(Venice, 13 December 2007)
and the Venice Commission
at its 73rd plenary session
(Venice, 14-15 December 2007)

on the basis of comments by
Mr Carlos CLOSA MONTERO (Member, Spain)
Mr Ugo MIFSUD BONNICI (Member, Malta)

TABLE OF CONTENTS

Introduction.....3
1. The voter registration system in Great Britain and its compliance with the Council of Europe Standards.....4
1.1. The voter registration system in Great Britain4
1.1.1. The household system4
1.1.2. Duty to prepare, maintain and update registers5
1.1.3. Lack of personal identifiers upon registration6
1.2. Council of Europe Standards concerning registration for elections.....6
1.3. Compliance of the United Kingdom system of electoral registration with electoral standards7
2. Postal voting in Great Britain and its compliance with the Council of Europe standards.....9
2.1. Postal voting in Great Britain.....9
2.2. Council of Europe Standards concerning postal voting 11
2.3. Compliance of the postal voting system of Great Britain with the Council of Europe standards 11
3. The different requirements of voter registration and postal voting in Northern Ireland and its compliance with the Council of Europe standards 12
3. 1. General issues 12
3.2. Specific Issues 15
3.2.1. Voter Registration 15
3.2.2. Postal voting 18
Conclusion20

Introduction

1. Mr Eduard Lintner, Chairman of the Committee for the honouring of the obligations and commitments of the member States of the Parliamentary Assembly of the Council of Europe, informed the President of the Venice Commission (European Commission for Democracy through Law) the late lamented Mr Antonio La Pergola, by letter dated 24 April 2007, that this Monitoring Committee, was currently investigating an application to initiate a monitoring procedure to investigate electoral frauds in the United Kingdom and that two rapporteurs had carried out a fact-finding visit to the United Kingdom. The rapporteurs suggested that the Venice Commission be requested to make an opinion. The Monitoring Committee decided, during its meeting of 18 April 2007, to put the following three questions to the Venice Commission:

(1) Is the voters' registration system in the United Kingdom in line with Council of Europe standards, given in particular the household registration as opposed to individual registration and the relative lack of personal identifiers upon registration?

(2) Is the manner in which postal voting is implemented in line with Council of Europe standards, especially with regard to the security of the vote?

(3) Is the fact that different requirements are used for one part of the country (Northern Ireland) with regard to voter registration and postal voting for the same elections, in line with Council of Europe standards?

2. This Opinion is based on the following:

- The European Convention on Human Rights and its Protocols in addition to the Commission and European Court of Human Rights' cases.
- The Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002) (CDL-AD(2002)023rev).
- The Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004) (CDL-AD(2004)012).
- The electoral legislation of the United Kingdom (see the next paragraph).

3. There are several statutes in the United Kingdom that regulate the electoral system, and that are relevant in the analysis of the compliance of the rules regulating the voter registration and postal voting with the standards of the Council of Europe. The most important ones are:

- Representation of the People Act 1983;
- Representation of the People Act 1985;
- Representation of the People Act 2000;
- Electoral Fraud (Northern Ireland) Act 2002;
- Electoral Administration Act 2006;
- Northern Ireland (Miscellaneous Provisions) Act 2006.

The above-mentioned legislation are partly reproduced in document CDL-EL(2007)024, which also includes the Absent voting (transitional provisions) (England and Wales) Regulations 2006.

4. A visit was made to the United Kingdom on 10 December 2007, during which a delegation of the Venice Commission met with representatives of the Electoral Commission, the Electoral Office for Northern Ireland, the Electoral Registration Officers and Returning Officer from Great Britain and the Parliamentary Undersecretary of State in the Ministry of Justice.

5. *The present Opinion was adopted by the Council for Democratic Elections at its 23rd meeting (Venice, 13 December 2007) and the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007).*

6. This Opinion will tackle each question submitted by the Monitoring Committee separately.

1. The voter registration system in Great Britain and its compliance with the Council of Europe Standards

7. The United Kingdom comprises England, Northern Ireland, Scotland and Wales. In electoral law, England, Scotland and Wales are often covered by legislation made on a Great Britain basis, and this term will be used hereafter.

8. In order to answer the first question, this section will focus on the registration system in the United Kingdom, then on Council of Europe standards on elections, and finally analyse the conformity of the former to these standards.

1.1. The voter registration system in Great Britain

9. The general requirements for voter registration according to the electoral law of the United Kingdom are settled in the Representation of the People Act of 1983, as amended, particularly in Sections 8-13D. The relevant features of the registration system are that it is a household system, that the electoral officers have specific duties in order to prepare, maintain and update the registers, and the lack of personal identifiers.

1.1.1. Household system

10. Section 4 of the 1983 Act provides that a person is entitled to be registered in the register of parliamentary electors for any constituency or part of it if, on the relevant date, he/she is:

- (a) resident in that constituency or part of it;
- (b) not subject to a legal incapacity to vote (age apart);
- (c) either a qualifying Commonwealth citizen or a citizen of the Republic of Ireland;
- (d) of voting age.

11. The Electoral Registration Officers in England, Scotland and Wales have the duty to prepare, maintain and publish a register every year. For exercising their right to vote, the individuals must be on the electoral register. The registration system is based on an annual registration form that the householder must complete on behalf of all the eligible individuals residing in each property, and then to return this form to the registration office. The forms have an "effective date of 15 October" each year. The Representation of the People Act 2000 introduced a mechanism of voluntary "rolling" (continuous) registration, by which individuals can modify their details and personal information contained in the register outside the period of annual canvass, and can also notify their eligibility to register. The main problem of the current household system is that the electors are registered by address without any personal identifier (such as date of birth, signature or national insurance number).

12. In Great Britain, the registration follows a household model: *the main way of registering continues to be through the annual canvass forms that the registration officer sends to each address, and in which the householder provides the information about the persons that live at that*

address and who are entitled to vote.⁶⁷ One person signs each canvass form. This means that only one person is responsible for the accuracy of the information of all the voters in a household.⁶⁸

1.1.2. Duty to prepare, maintain and update registers

13. Every registration office shall prepare two types of registers, a register of parliamentary electors and a register of local government electors, each of which shall contain the name of the person, his or her address and electoral number. Concerning the maintenance of the registers, Section 10 establishes the duty (subject to the prescribed exceptions) of each registration office to conduct an annual canvass in the area under their jurisdiction “for ascertaining the persons who are for the time being entitled to be, or to remain, registered in his registers”. In the case of Northern Ireland, as it will be seen below, the form and timing of the canvass are subject to strict rules.⁶⁹

14. A further related feature is the maintenance of the registers, particularly the rules referred to incorporation or elimination of electors’ entries. Based on the results of the annual canvass, the registration officers shall make the alterations in their registers in accordance with Section 10A. This Section regulates several circumstances such as entitlement to be registered and to be treated as being registered; entitlement to remain registered and termination of the entitlement to remain registered. If, as a result of a canvass, a form completed in respect of an address “specifies any person as a person who is entitled to be registered in a register” and the person has not, for the time being, been registered in respect of that address, “he shall be treated as having made, on the 15th of October in the year in question, an application for registration in the register in respect at that address”. The person already entered in a register in respect of any address, is entitled to remain registered, unless it is determined that the elector was not resident at that address as legally required, or the form was not returned in respect of that address, or for any other reason the information received is insufficient to establish whether the elector was resident at that address. In any of these cases, the registration office determines that the elector has ceased to be resident at that address or has failed to satisfy the conditions for registration, and it shall remove the person’s entry from the register.⁷⁰

15. The published version of a register that results from the annual canvass can be altered if the registration officer, on the basis of an application for registration made by a person in accordance with the prescribed requirements, determines that the person is entitled to be so registered (Section 13A of the Representation of the People Act 1983).

16. The Electoral Administration Act 2006 incorporates an additional mechanism for registration purposes (that, nonetheless, does not substitute the registers maintained by each registration office): the Co-ordinated on-line Record of Electors (the CORE scheme). In the words of the General Note appended to the Act, “*the CORE scheme is an arrangement whereby a record of information currently held only by several locally based electoral registration officers can be consolidated at one central point*”. The CORE scheme is a new tool for consolidating, at one central point, the electoral registration information that several locally based electoral registration officers currently hold. For the United Kingdom, it represents an unprecedented attempt of unifying and updating the various local registers. The CORE scheme is to be used for electoral purposes,

⁶⁷ Representation of the People Act 1983, as amended by the Representation of the People Act 2000 and by the Electoral Administration Act 2006, Sections 9: Registers of electors; 9A: Registration officers: duty to take necessary steps; 10: Maintenance of registers: [duty to conduct canvass]; 10A: Maintenance of the registers: registration of electors; 13: Publication of registers, 13A: Alteration of registers

⁶⁸ Some inaccuracies may occur, for example, the result of multiple occupancy of households, such as student residences and care homes for the elderly. See the report of the Electoral Commission on *Securing the vote*, May 2005, p. 26, available at: <http://www.electoralcommission.org.uk/templates/search/document.cfm/12944>.

⁶⁹ The canvass shall be conducted with the form prescribed for those purposes, requiring the information of section 10 (4A), and in the timing specified in section 10ZA. See para. 64 below.

⁷⁰ Other rules of general applicability concerning registration are contained in Sections 13, 13A and 13B, that regulate, respectively, the publication of registers, the alteration of registers, and the alteration of registers pending elections. See also Schedule 2 (3) of the Representation of the People Act 1983, as amended in 2000.

and additionally for the jury service. However, no orders have been made to establish a CORE scheme.

1.1.3. Lack of personal identifiers upon registration

17. The Great Britain registration system does not require any personal identifiers for registration. The traditional British respect for privacy makes the requirement of personal identifiers problematic. Whilst the Government has enacted legislation on an Identity Card in 2006, this does not automatically imply that it can be used for electoral purposes. Another example of the traditional British mistrust of public use of private information is Section 9 of the Representation of the People Act of 2000, which provides for drawing up of two electoral registers, one ("the full register") complying with the provisions of the act, and another ("the edited register") omitting the names and addresses of registered voters who have requested these details not to be published.⁷¹

18. The system relies on an individual's honesty. There is a normal general assumption that people declare the truth, which is followed by the wise provision of sanctions against those who do not. The Representation of the People Act of 1983, in Section 13D, makes it an offence for a person to provide any false information to the registration officer for any purpose connected with the registration of electors. Even a false signature [not the usual signature or one written by another person] constitutes false information. The punishment is commensurate to six months' imprisonment or a fine not exceeding the fifth level on the standard scale.

1.2. UN and Interparliamentary Union standards

19. Apart from the Council of Europe, the Human Rights Committee of the United Nations, and the Inter-Parliamentary Union have proposed standards on elections.

20. The United Nations' Human Rights Committee, which has a supervisory role under the 1966 International Covenant on Civil and Political Rights, established during its 57th session in 1996⁷², a list of international Standards for Elections. It was established that any conditions which applied to the exercise of the rights protected by Article 25 of the Covenant⁷³ would have to be based on objective and reasonable criteria. Thus, no distinction can be made between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The right to vote at elections and referendums had to be established by law and subjected only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It was unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Furthermore, states had to adopt effective measures to ensure that all persons entitled to vote would be able to exercise that right, and should facilitate registration of voters, when registration is required. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community. It is therefore sound to say that registration (on the entitled voter's initiative) is assumed to be in the Covenant a proper way of ensuring access and participation. In the *Lippiatt* case, the County Court Judge allowed the application to register of a "homeless" voter on the basis of a temporary (though of some duration) residence in a constituency, even though the applicant had no permanent home.⁷⁴

⁷¹ These sections were the government's response to a court case, the *Robertson case*, which related to data protection rights. See *R -v- City of Wakefield Metropolitan Council & another ex parte Robertson* (16 November 2001).

⁷² See UN Committee on Human Rights: *International Standards of Elections* (1996), Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1510th meeting (fifty-seventh session) (12 July 1996). Available at: http://www.osce.org/documents/odihr/1996/07/1707_en.html

⁷³ Which recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public service.

⁷⁴ See *Lippiatt v Electoral Registration officer*, Penwith District Council, 21 March 1996).

21. The Inter-Parliamentary Union during its 154th session (Paris, 26 March 1994) adopted a *Declaration on Free and Fair Elections*⁷⁵ urging governments and parliaments throughout the world to be guided by the principles and standards set out therein. In particular, it specified that states should recognise and make provision for: the right of the individual to vote, on a non-discriminatory basis, and the right of the individual to access an effective, impartial and non-discriminatory procedure for the registration of voters.

1.3. Council of Europe Standards concerning registration for elections

22. The Code of Good Practice in Electoral Matters of the Venice Commission provides some criteria to consider reliable electoral registers:

- i. Electoral registers must be permanent;
- ii. There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period;
- iii. Electoral registers must be published;
- iv. There should be an administrative procedure---subject to judicial control---or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day;
- v. A similar procedure should allow voters to have incorrect inscriptions amended;
- vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

23. The Code envisages that registration can either be automatic (presumably on reaching a certain age or on taking up residence) or initiated by the voter or on his/her behalf. This implies that even though automatic voter registration might be the general rule in many countries, there is no infringement of standards when the alternative non-automatic registration system is allowed to continue to exist, co-exist or be maintained. The next section will examine whether the United Kingdom system adheres to the six criteria of the Code.

1.4. Compliance of the Great Britain system of electoral registration with electoral standards

i. Is the electoral register permanent?

24. Section 9 of the 1983 Act provides that the Registration Officers [appointed for every district and London Borough under Section 8] shall maintain (a) a register of parliamentary electors for each constituency or part of a constituency in the area for which they would be responsible and (b) a register of local government areas or parts of local government areas for which they acted. The Section further details what should be contained in the registers.⁷⁶

25. The duty to conduct an annual canvass imposes a responsibility on the state to ensure full registration without discarding the original reliance on the voter's urge to register.

26. Furthermore, under Part 2 of the Electoral Administration Act of 2006, the legislator has given the Electoral Registration Officers (EROs) new and more proactive powers in seeking to take steps to register eligible electors, and to ensure registers are as complete and accurate as possible. Nevertheless, these powers have not been used.

⁷⁵ A new expanded edition of this Declaration is available at: <http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>.

⁷⁶ Electoral registers were traditionally made for particular constituencies and divided into polling districts. The 1918 Representation of the People Act stipulated registration of voters by streets and house number. Before that, voters' lists were alphabetical and contained in addition to the voter's residential address, information concerning his qualification to vote, including the relevant property. Finally, after 1945, only the voters' names and addresses were shown on the registers.

- ii. Are there provisions for regular up-dates, at least once a year? Where voters are not voted automatically registration must be possible over a relatively long period.

27. A revised version of the registers, as it results from the annual canvass and other modifications introduced during the year, have to be published yearly. The annual canvass would undoubtedly produce some changes in the register [the deceased to be erased, those sentenced to prison or remitted to mental hospitals, those who come to the voting age, new entitled residents, those who have definitively left their residence]. With the possibility of continuous registration during the year and after the canvass, the requirement of having long periods for registration is fulfilled. On the other hand, alterations on the published version of a register pending elections have effects for the purposes of the election only if they are made before the fifth day prior to the date of the poll (Section 13B, Representation of the People Act 1983).

- iii. Electoral registers must be published.

28. As already pointed out, Section 13 of the 1983 Act bound each registration officer to publish each year a revised version of his/her registers. Section 13 (1), as amended by Schedule 1 of the Representation of the People Act 2000, prescribes further that:

“(1) Following the conclusion of the canvass conducted by a registration officer for any year under section 10 above, the officer shall publish a revised version of both of his registers (the “full” and the “edited” one) in the following periods:

(a) by 1st December in that year; or

(b) by such later date as regulations may prescribe.

(2) The revised versions of the registers shall incorporate

(a) all the alterations which are required to be made in them as mentioned in section 10(6) above; and

(b) any alterations which are required to be made by virtue of section 13A(3) below.

(3) A registration officer may in addition, if he thinks fit, publish a revised version of either of his registers at any time between

(a) the time when the register was last published in accordance with subsection (1) above; and

(b) the time when it is due to be next so published;

and a registration officer proposing to publish a revised version of a register in accordance with this subsection must publish notice of his intention to do so by such time and in such manner as may be prescribed”.

- iv. There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day.

29. Section 53 confers power to make regulations concerning registration. Accordingly, the CCR Order 45, concerning the Representation of the People Act 1983, establishes the procedure for appealing from decisions of registration officers (Rule 2) and rules cases of selected appeals (Rule 3).⁷⁷

⁷⁷ Appeal from decision of Registration Officer. Rule 2:

(1) Where notice of appeal from a decision of a registration officer is given pursuant to regulations made under Section 53 of the said Act of 1983, the registration officer shall, within 7 days after receipt of the notice by him, forward the notice by post to the court in which the appeal is required to be brought, together with the statement mentioned in those regulations.

(2) The appeal shall be brought in the court for the district in which the qualifying premises are situated. In this paragraph ‘qualifying premises’ means the premises in respect of which –

(a) the person whose right to be registered in the register of electors is in question on the appeal is entered on the electors’ list or is registered or claims to be entitled to be registered; or

(b) the person whose right to vote by proxy or by post is in question on the appeal is or will be registered in the register of electors; or

(c) the elector whose proxy’s right to vote by post is in question on the appeal is or will be registered in the register of electors, as the case may be.

30. Sections 13A and 13B deal with the alteration of registers, and prevent their precipitous and unsafe alteration on the polling date or in the immediately preceding five days.

v. A similar procedure should allow voters to have incorrect inscriptions amended.

31. As pointed out above, since 2000, there is a possibility of a rolling registration throughout the year on an individual basis and also the possibility for individuals to amend their details as they appear on the register.

vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since the final publication of the register.

32. This guideline is meant for automatic registration systems, and since Great Britain does not have such a registration system, it does not apply.

33. At first sight, Great Britain's system does not seem to contradict these standards. However, the combination of a household registration system with the lack of personal identifiers raises serious doubts about the eventual inaccuracies of the system and the eventual fraudulent use that may stem from these. There are no means of validating registration at source and this combined with the lack of personal identifiers may question the reliability of the system (apart from the duty of Registration Officers to take reasonable steps to obtain information).

2. Postal voting in Great Britain and its compliance with the Council of Europe standards

2.1. Postal voting in Great Britain

33. Historically, the special arrangement for voting by post was the result of the large number of servicemen still abroad after the November armistice of the 1914-18 war, so as to enable them to vote in the December 1918 General Election (see the Representation of the People Act of 1918). Postal voting in the case of the British Armies still abroad in 1918 was a success because it was orderly and disciplined. People with physical disabilities or that could justify their absence were gradually allowed to use these arrangements until 2000.

(3) The respondents to the appeal shall be the registration officer and the party (if any) in whose favour the decision of the registration officer was given.

(4) On the hearing of the appeal –

(a) the statement forwarded to the court by the registration officer and any document containing information furnished to the court by the registration officer pursuant to the regulations mentioned in paragraph (1) shall be admissible as evidence of the facts stated therein; and

(b) the judge shall have power to draw all inferences of fact which might have been drawn by the registration officer and to give any decision and make any order which ought to have been given or made by the registration officer.

(5) A respondent to an appeal other than the registration officer shall not be liable for or entitled to costs, unless he appears before the court in support of the decision of the registration officer.

Selected appeals: Rule 3

(1) Where two or more appeals to which rule 2 relates involve the same point of law, the judge may direct that one appeal shall be heard in the first instance as a test case and thereupon the court shall send a notice of the direction to the parties to the selected appeal and the parties to the other appeals.

(2) If within 7 days after service of such notice on him any party to an appeal other than the selected appeal gives notice to the court that he desires the appeal to which he is a party to be heard –

(a) the appeal shall be heard after the selected appeal is disposed of;

(b) the court shall give the parties to the appeal notice of the day on which it will be heard;

(c) the party giving notice under this paragraph shall not be entitled to receive any costs occasioned by the separate hearing of the appeal to which he is a party, unless the judge otherwise orders.

(3) If no notice is given under paragraph (2) within the time limited –

(a) the decision on the selected appeal shall bind the parties to each other appeal without prejudice to their right to appeal to the Court of Appeal;

(b) an order similar to the order in the selected appeal shall be made in each other appeal without further hearing;

(c) the party to each other appeal who is in the same interest as the unsuccessful party to the selected appeal shall be liable for the costs of the selected appeal in the same manner and to the same extent as the unsuccessful party to that appeal and an order directing him to pay such costs may be made and enforced accordingly.

34. By implementing a recommendation by a Home Office Working Party, which had been given the mandate of making suggestions as to the way of increasing trust in the democratic process and participation in elections, both national and local, Section 10 of the Representation of the People Act 2000, gave the Secretary of State discretion, after consulting the Electoral Commission, to approve schemes (pilot schemes) in particular local government elections, for the use of only postal votes, with no polling stations. At the same time, postal voting became unrestricted in Great Britain – that is that no justification has to be made for voting by mail. This is known as ‘postal voting on demand’. When it was opened as a general option, the whole gamut of problems inherent in postal voting came to the fore. Some people were still reticent and some had realised its potential for manipulation. The use of ‘all postal voting’ in some electoral trials exacerbated the situation.

35. As for electoral registration, the issue of absent voting has also been a matter of concern over recent years. The Electoral Commission began reviewing the law and practice of absent voting in Great Britain in November 2001, in order to identify problems of fraud, secrecy and administration, among others.⁷⁸ The House of Commons has also produced some standard notes on postal voting.⁷⁹ The amendments of the absent voting rules should try, mainly, to balance the tension between, on the one hand, promoting electoral participation, and on the other, protecting the democratic process and individual votes, by introducing security measures and building public confidence.

36. The United Kingdom has two forms of absent voting: postal voting and proxy voting. This report will focus only on postal voting as one form of absent or remote voting, and on postal voting on demand, that is, requested by the elector.⁸⁰ Two aspects are important here: the application for postal voting and the returning of the postal ballot.

37. The manner of applying for postal voting in parliamentary elections in the United Kingdom is ruled by Section 12 and Schedule 4 of the Representation of the People Act 2000,⁸¹ as amended in 2006. The main change in the postal voting system was the collection of personal identifiers (signature and date of birth) for the application of postal voting. In general, both in the cases of absent voting at elections for a definite or an indefinite period and absent voting for a particular election, the registration officer shall grant the application to vote by post if (a) he/she is satisfied that the applicant is or will be registered in the register of parliamentary electors, local government electors or both (as the case may be), and (b) the application contains the applicant’s signature and date of birth and meets the prescribed requirements (Sch. 4, para. 3(1), 4(1)). The registration officer shall keep a postal voters’ list of those whose application to vote by post at the election has been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent (Sch. 4, para. 5(1)).

38. The rules for returning the ballot are in Schedule 1 of the Representation of the People Act 1983, particularly under rules 24, 31A and 45, also amended in 2006. For the postal ballot to be valid, it must be returned with a postal voting statement that contains the signature of the elector and his/her date of birth. If the postal ballot is duly returned together with the postal voting statement, the returning officer shall mark the name of the person in the postal voters’ list. The

⁷⁸ Electoral Commission, *Absent Voting in Great Britain: report and recommendations*, 25 March 2003, online: <http://www.electoralcommission.org.uk/templates/search/document.cfm/7240>. See also the document of the Electoral Commission *Delivering democracy? The future of postal voting*, last update 5 April 2005, online: <http://www.electoralcommission.org.uk/templates/search/document.cfm/10935>.

⁷⁹ See the following standard note from the House of Commons Library: *Postal Voting and Electoral Fraud*, SN/PC/3667, last updated 16 May 2007, online: <http://www.parliament.uk/commons/lib/research/notes/snpc-03667.pdf>; *Postal Voting: New Regulations requiring the provision of Personal Identifiers*, SN/PC/4325, last updated 25 April 2007, online: <http://www.parliament.uk/commons/lib/research/notes/snpc-04325.pdf>.

⁸⁰ An all-postal election is one where all eligible electors are sent their ballot paper by post and may vote by post. This modality of voting has been implemented in pilot regions in the United Kingdom for local government elections and for the European Parliamentary elections. See the Standard Note *All-postal voting*, SN/PC/2882, last updated 30 March 2004, online: <http://www.parliament.uk/commons/lib/research/notes/snpc-02882.pdf>.

⁸¹ The text in force of this Schedule was amended by Section 14 of the Electoral Administration Act 2006.

returning officer must verify that the signature and date of birth match those in their record, at present for at least a minimum of 20% of returned postal voting statements.⁸² Doubts may persist on whether checking a sample secures the accuracy of the totality of the votes.

Comment: More information on the checking of identifiers is in the Electoral Commission report on identifiers. You may wish to consider how the 20% rule fits with CoE standards.

2.2. Council of Europe standards concerning postal voting

39. According to the report of the Venice Commission on remote and electronic voting, remote voting, defined as “voting outside the premises where voting takes place in general”, is in principle permitted. Moreover, it is a common electoral procedure in a great number of the member states of the Council of Europe, even if there is a considerable diversity between these systems and it is difficult to identify shared or common standards. Remote voting can take place in a controlled or supervised environment, or in an uncontrolled or non-supervised environment.⁸³

40. In order to determine the compatibility of a certain system of remote or absent voting with the standards of the Council of Europe, we need to see in detail if the legislation guarantees measures to avoid fraud or intimidation and prevents family voting, if the conditions of the national postal service are safe and reliable (i.e. if it is protected from deliberate manipulation and it operates correctly), and if the secrecy of the vote is secured. These conclusions can be reached by analysing the guideline I.3.2. of the Code of Good Practice in Electoral Matters, and the corresponding paragraph 38 of its explanatory report. Besides the need of an appropriate legislation, the compatibility will depend on the implementation of postal voting and the particular technical and social conditions of the country or area where it applies.

2.3. Compliance of the postal voting system of Great Britain with the Council of Europe standards

41. Problems of fraud in postal voting have produced concern in recent years in the United Kingdom and even motivated a number of changes in the legislation. In the local election of 2004, an allegation was raised denouncing postal voting fraud in the Birmingham wards of Bordesley Green and Aston.⁸⁴ Following the Decision by Richard Mawrey Q.C. on this case, which found massive electoral fraud through the misuse of the postal vote in Birmingham, there was a general reappraisal of the system. The intention was to “save” postal voting, and incidentally not to impede the introduction of e-voting. At the same time, stricter measures, which render manipulation of the system by political agents difficult, were introduced. Thus, the Electoral Administration Act of 2006 introduces several measures in this direction.⁸⁵ First, Section 14 of that Act introduces personal identifiers for postal voting (i.e. signature and date of birth). Second, Section 15 rules offences as to false registration of information. Third, Section 39 introduces changes in the offences of undue influence. Fourth, Section 40 prescribes offences relating to applications for postal and proxy votes.⁸⁶

42. In 2004, the Electoral Commission called for an end to all postal voting.⁸⁷ In a similar vein, and after the publishing of reports on various pilot schemes, the Electoral Commission, on 2 August

⁸² Electoral Commission, *The introduction of absent voting identifiers in England and Wales. The Electoral Commission evaluation*, July 2007, online: <http://www.electoralcommission.org.uk/templates/search/document.cfm/19967>.

⁸³ *Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe*, Doc. CDL-AD(2004)012, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004), Paragraphs 23-24, and 47.

⁸⁴ See the Judgment of Commissioner Mawrey QC, handed down on Monday 4th April 2005 in the matters of Local Government elections for the Bordesley Green and Aston Wards of the Birmingham City Council both held on 10th June 2004, online: <http://www.hmcourts-service.gov.uk/cms/2384.htm>

⁸⁵ All these sections of the Electoral Administration Act 2006 modify the Representation of the People Act 1983.

⁸⁶ These offences are ruled in Section 62A of the Representation of the People Act 1983, as amended by the Electoral Administration Act 2006.

⁸⁷ Electoral Commission *Delivering democracy? The future of postal voting*, last update 5 April 2005, online: <http://www.electoralcommission.org.uk/templates/search/document.cfm/10935>.

2007, called for an end to trials of telephone and internet voting until the Government had set out a strategy for modernising the electoral system and made it more secure.⁸⁸

43. Certain inherent difficulties in postal, proxy or e-voting can never be completely overcome. The advantage and convenience to the electors, and therefore incidentally their contribution to the overall aim of greater voter participation, have to be balanced with the inevitable dangers and risks of these absent voting systems. One may doubt whether *de minimis* should be applied in electoral matters *a priori*. That is a political decision to be taken by each individual country. One realises, however, that if voting takes place in an unsupervised context, it is virtually impossible to guarantee that it will be carried out in secret, and that lack of secrecy constitutes a serious violation of the principles of freedom and fairness that govern elections in democratic states. This applies to proxy, postal or e-voting, that is, to all variations of absent voting. It seems that in Great Britain, after the Howarth Report (1999)⁸⁹, the advantages of absent voting were seen as outweighing the disadvantages. The Acts of 2000 and 2006 sought to circumscribe the threats of major electoral frauds by imposing criminal sanctions on some of the more evident cases of organised manipulation or abuse. However, the stray individual act of undue influence or corrupt practice remains very difficult to trace and punish. Apart from *bona fide* attitude by citizens, the threat of sanctions seems to be the most effective measure to prevent fraud and to guarantee accuracy of postal voting.

44. Again, the lack of personal identifiers may be a source of inaccuracies and this, combined with the reduced number of checks (i.e. 20%) may eventually create some base for electoral fraud.

3. The different requirements of voter registration and postal voting in Northern Ireland and its compliance with the Council of Europe standards

3.1. General issues

44. In the United Kingdom the traditional divisions of the different constituent nations (Wales, Scotland, Northern Ireland, and England) find expression in legal institutions. The Electoral Laws, time and again, refer to this distinction. In the case of Northern Ireland the different provisions were not merely the result of deference to historical traditions, but also a reaction to a tense political situation.

45. It must be underlined that the reason for the Parliamentary Assembly's inquiry is the different regulation and electoral requirements used in one part of the country as compared to the requirements applied to the other parts of the country in one and the same election procedure.⁹⁰

46. In general terms, it is perfectly possible and acceptable that a legal system has different norms that apply in different parts of its territory and that rule the same event. However, when the legislator chooses this option, it must respect the general principles of law: fundamental rights, the rule of law, and the democratic principles. The principle of equality is particularly relevant in this case. The general principle of equality of all persons before the law is enforced through the corollary general prohibition of discrimination, as settled in Article 14 of the European Convention on Human Rights and its Protocol No. 12. These principles taken together mean that the States

⁸⁸ Information from the Electoral Commission's media centre, online: <http://www.electoralcommission.org.uk/media-centre/newsreleasereviews.cfm/news/657>.

⁸⁹ *Final Report of the Working Party on Electoral Procedures* [Howarth Report], Home Office, October 1999.

⁹⁰ The requirements of electoral law with respect to local government elections and to the elections to the Assemblies of Ireland, Scotland, and Wales differ. Thus, for example, there are some common rules applicable to England and Wales as well as Northern Ireland in ss. 35-40 of the Representation of the People Act 1983. Furthermore, some specific legislation has been enacted in Northern Ireland and in Scotland to regulate local government elections. Among the relevant legislation that rule local government elections in Northern Ireland, one can mention the Electoral Law Act (Northern Ireland) 1962; The Local Government Act (Northern Ireland) 1972; The Local Elections (Northern Ireland) Order 1985 - No. 454 with its amending orders; Political Parties, Elections and Referendums Act 2000; Electoral Fraud (Northern Ireland) Act 2002. Recently, the Parliament has approved special provisions regarding Absent Voting in Local Government Elections for Scotland, through The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007.

cannot adopt discriminatory measures or differences between citizens, unless those measures are reasonable and tend to promote full and effective equality. In other words, the difference should be justified. Thus, if the legislation establishes different requirements for exercising an individual right, for instance the right to vote, the differences should be reasonably justified, or else, held as arbitrary and discriminatory.

47. The European Court of Human Rights has interpreted the principle of free elections of Article 3 of Protocol No. 1 of the European Convention on Human Rights in relation to the principle of equality. According to the Court, the expression “under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature” implies “the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election”.⁹¹

48. The European Court of Human Rights has also clearly declared that the rights set out in Article 3 of Protocol No. 1 are not absolute, but may be subject to limitations. Since Article 3 recognises them without setting them forth in express form, let alone defining them, there is room for “implied limitations”.⁹²

49. Taken together, the possibility of establishing limitations and/or conditions to the exercise of rights and the principle of equality, national legislation introducing limitations or creating different situations should satisfy the implicit criteria inspiring that principle: reasonableness, justifiability and non arbitrariness. On this line, in a case concerning Northern Ireland, the European Commission on Human Rights held that the application of a particular electoral system to a part of the country is not contrary to Article 3 if sustained by objective and reasonable justification and the means proposed are not disproportionate.⁹³ More specifically, when elections for the European Parliament were introduced, the Single Transferable Vote system of Proportional Representation was adopted for Northern Ireland so as to ensure that the minority would not be totally deprived of representation. When this differentiation from the rest of the United Kingdom was contested (where a different form of proportional representation is now used), the application to the European Court of Human Rights was dismissed as inadmissible.

50. Building on this case, the European Commission on Human Rights later refined the principles governing the scrutiny of the elements of an electoral system. Whilst states have a wide margin of appreciation on the introduction of conditions to voting rights, these conditions must satisfy the following criteria: they do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; they must pursue a legitimate aim and the means must be proportional.⁹⁴ Both cases referred to (*Lindsay*, and *Polacco and Garafalo*) are slightly different in their facts; the first refers to the use of a single transferable vote for the EP elections in Northern Ireland, the latter to the registration requirements for the regional elections in Trentino-Alto Adige. The principles, however, are general enough so as to inspire the examination of other elements of an electoral system.

51. The legitimate aim pursued in both cases (*Lindsay*, and *Polacco and Garafalo*), generally stated was the protection of a minority. In both cases, the Commission argued that “*any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*”.

⁹¹ *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81, Judgment of 2 March 1987, para. 54.

⁹² ECHR Case *Py v. France*, Application no. 66289/01 Judgment of 11 January 2005. This case follows the Case *Labita v. Italy* [GC] No. 26772/95 § 201 ECHR 2000-IV.

⁹³ *Kennedy Lindsay and other v. the United Kingdom*, Application No. 8364/78, Decision of 8 March 1979.

⁹⁴ *Polacco and Garafalo v. Italy*, Application No. 23450/94, Judgment of 15 September 1997. See ECHR *Gitonas and others v. Greece*, Judgement 1 July 1997, Reports 1997-IV fasc. 42 and *Py v. France*...cit.

52. Hence, the legitimate aim pursued renders acceptable an element of differentiation, which *prima facie* might be perceived as contrary to the equality principle. This aim must be assessed coherently in the context of the United Kingdom electoral legislation and the differences introduced.

53. The sovereign United Kingdom Parliament can pass legislation on electoral matters, that is one of the issues in which it has reserved powers to legislate (except for Scottish local elections). In other words, it is a political and legal decision of Westminster to enact laws that settle different requirements for voter registration and postal voting applicable to different parts of the territory. In the case under study, the different requirements for electors to register and to vote by post, and, in this way, the different requisites for the citizens to exercise the right to vote are based on a territorial criterion. Electors living in different places of the United Kingdom must observe different standards for voting in the same parliamentary election. In the case of Northern Ireland, the electoral system has been tailored to adapt to historical circumstances: political conflicts within Northern Ireland; social perception of electoral fraud as a significant problem inside this territory; distrust of the system of absent voting; and problems of persistent fraud and lack of transparency in past elections.

54. The reasons that justified the introduction of tighter controls and requisites to voter registration and absent voting - that, in short, consist of providing several personal identifiers both for individual registration or individual application to vote by post - were the perception of high levels of fraud, the inaccuracy of the registers and the insecurity of postal voting. These reasons motivated the enactment of the Electoral Fraud (Northern Ireland) Act 2002 and the ulterior norms (which are exposed more in detail below).

55. Fighting electoral fraud is no doubt a legitimate aim that may warrant measures of differentiation within an electoral system. Measures adopted in fighting electoral fraud guarantee the equality among citizens (by removing non legitimated expressions of opinion) and improve the electoral process on the whole. In general terms, it may be concluded that the United Kingdom authorities pursue a legitimate aim when enacting these provisions. A different question, which will be discussed in more detail below, refers to the proportionality of the measure.

56. Moreover, the enactment of these measures complies with an additional criterion regulating the principle of equality: non arbitrariness. This means that the logical connection between the legitimate aim pursued and the measures proposed can be imputed to a careful study of the facts and a perusal of the available means. In the case under review, the measures cannot be considered arbitrary at all, since they result from a detailed process of fact finding and adjustment of legislation. Thus, the United Kingdom Government and Parliament have been concerned with the existence of electoral fraud in Northern Ireland in the last years. In 2001, the Government reviewed the situation and made a number of recommendations in order to improve the legislation and the measures to combat fraud.⁹⁵ This sustained situation motivated the enactment of the Electoral Fraud (Northern Ireland) Act 2002. However, the Parliament has conducted a study and inquires on the same topic, the results of which are compiled in two reports of Session 2004-2005.⁹⁶ Finally, the Electoral Commission has also followed the electoral reforms in Northern Ireland, its effects and its consequences, especially the voter registration decline, due both to people not responding to the canvass and people never being registered.⁹⁷ Within this framework, the Commission gave a commitment to monitor the impact of the Act on electoral registration and

⁹⁵ Government's White Paper *Combating Electoral Fraud in Northern Ireland (Cm. 5080)*, Presented to Parliament by the Secretary of State for Northern Ireland by Command of Her Majesty, March 2001 (online: <http://www.archive.official-documents.co.uk/document/cm50/5080/5080.htm>).

⁹⁶ House of Commons, Northern Ireland Affairs Committee, *Electoral Registration in Northern Ireland*, First Report of Session 2004-05, and Second Special Report of Session 2004-05. Both can be consulted online: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/cmniaf.htm>. See also the recent report about electoral registration of the House of Commons, *Speakers Committee - Second Report 2007*. Session 2006-2007, online: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmspeak/997/99702.htm>.

⁹⁷ A further concern, linked with the drop on the electors admitted to vote in Northern Ireland, is the duty of the electors to produce a specified form of photographic identification at polling stations before being issued with a ballot paper.

commissioned a series of registration updates focusing on various aspects of the registration process, the last of which is from 22 August 2007.⁹⁸

57. Therefore, the existence of differences in the regulation of registration and postal voting in Northern Ireland are reasonably justified by the particular historical and socio-political circumstances of this part of the United Kingdom. Thus, different regulations *per se* do not violate the standards of the Council of Europe. A different question to be scrutinised is whether the specific requirements do not contravene the principle of proportionality.

3.2. Specific Issues

58. The different requirements and particularities in the United Kingdom electoral legislation for Northern Ireland concern both voter registration and postal voting.

59. The aim of the scrutiny is twofold: firstly, it aims at contrasting these provisions with the standards of the Council of Europe. It may happen that, even if they prescribe more exigent requisites, they adjust better to the general directives in order to prevent fraud, ensure secret voting, and maintain accurate and complete electoral registers for the electors to exercise their right to vote. The characteristics of the electoral registers and the minimum requirements for postal voting, as established by the Code on Good Practice of Electoral Matters, will be taken into account in the analysis of this perspective below. Secondly, it will be pondered whether the requirements are proportionate.

3.2.1. Voter Registration

60. Despite the system described above (see paragraphs 9-12) Northern Ireland has special rules for registration of voters that regulate:

- A system of individual registration, providing the personal data required
 - The duty of the Chief Electoral Officer to conduct a canvass according to the timing settled by the Act, rather than each year as in Great Britain;
 - The additional information that the voter must provide in order to be included in the register;
 - The relevant registration objectives;
 - The alteration of registers pending elections;
 - The electoral identity card.⁹⁹

61. The special rules are a result of the amendments introduced both by the Electoral Fraud (Northern Ireland) 2002 and the Northern Ireland (Miscellaneous Provisions) Act 2006, acts that sought to reduce the electoral fraud, make the system more transparent,¹⁰⁰ and improve the mechanism of registration of electors.

62. The Electoral Fraud (Northern Ireland) Act 2002 substituted the system of household registration in force until that moment¹⁰¹ with an individual registration system, whereby eligible electors have to complete an individual registration form on an annual basis. There was not, then, an automatic system for first registration nor for re-registering each year on the basis of the register

⁹⁸ Research from the Electoral Commission examining key aspects of the electoral registration system in Northern Ireland, online: <http://www.electoralcommission.org.uk/templates/search/document.cfm/20223>. The Reports were undertaken by PricewaterhouseCoopers on the Commission's behalf.

⁹⁹ One of the photographic identifications accepted at the polling stations is the electoral identity card for Northern Ireland electors, regulated by Section 13C of the Representation of the People Act 1983. Due to the tradition of Northern Ireland citizens of carrying personal identifiers for historical reasons, the introduction of a photographic identifier seems more natural in this context than in the rest of the United Kingdom.

¹⁰⁰ See also the Explanatory notes to this Act, online: <http://www.opsi.gov.uk/ACTS/en2002/2002en13.htm>.

¹⁰¹ Formerly, one member of a household could register all eligible persons living there. More information can be consulted on the webpage of the Electoral Commission, online: <http://www.electoralcommission.org.uk/your-area/registrationresearch.cfm>.

of the previous year, but it was necessary both for people never being registered and for people already registered to complete annually a registration form and present it to the electoral office.

63. The problems generated by the Electoral Fraud (Northern Ireland) Act 2002 pushed the Government to enact the Electoral Registration (Northern Ireland) Act 2005, which ordered the reinsertion into the electoral register of names previously removed. Thus, this Act reinstated electors onto the register who had been previously registered, but chose not to re-register, as a transitional measure. For achieving this task, the later Act set up temporary amendments in Subsection 7 of Section 10A.¹⁰²

64. Further amendments concerning registration were introduced by the Northern Ireland (Miscellaneous Provisions) Act 2006. This Act removed the requirement for an annual canvass and fixed dates for the preparation of the register by the electoral officer. Instead of the system of annual canvass, the Act implements a system of continuous registration based on individual registration, in which the electors will register once and will need to re-register only if their details change. Every 10 years, or as deemed necessary, the Chief Electoral Officer will undertake a canvass.

65. A Chief Electoral Officer whose work is supported by the Electoral Office for Northern Ireland (EONI)¹⁰³ administers the electoral system in Northern Ireland. The Chief Electoral Officer is both the registration officer and the returning officer for each constituency (Sections 8(4) and 26(1) of the Representation of the People Act 1983).

66. The application form for the registration of an individual elector in Northern Ireland includes the signature of the person, the date of birth of each such person, his/her national insurance number or the statement that he/she does not have one, a statement of whether or not he/she has been resident in Northern Ireland for the whole of the three-month period ending on the date of the application, and any other address in the United Kingdom in respect of which he/she is or has applied to be registered (Section 10A (1A) of the Representation of the People Act 1983).

67. The relevant registration objectives of the Northern Ireland system of registrations are to secure, so far as reasonably practicable, "(a) that every person who is entitled to be registered in a register is registered in it, (b) that no person who is not entitled to be registered in a register is registered in it, and (c) that none of the required information relating to any person registered in a register is false".¹⁰⁴

68. In order to achieve the relevant registration objectives, the Chief Electoral Officer can collect personal information through the canvass, such as: (a) the person's name; (b) the person's qualifying address; (c) the person's date of birth; (d) subject to some exceptions, the person's signature; (e) the person's national insurance number or a statement that he/she does not have one (Section 10ZB (4) Representation of the People Act 1983). The additional personal data gathered in the registration process does not appear on the published register of electors. However, it will be used to check the identity of the voters when they apply to absent voting (by post or proxy), or can be used in the polling station, before receiving the ballot (for example, the staff could ask the date of birth should they have some concern as to the identity of the elector).

69. The entitlement of the electors of Northern Ireland to remain in the register terminates if: a) at a canvass their form does not contain the additional information of Section 10 (4A) (signature; date of birth; national insurance number or the voter makes a statement that he/she does not have one; a statement that he/she has been resident in Northern Ireland for the requisite three-month period before 15 October in the year in question; and to state any other address in the United Kingdom in

¹⁰² The Electoral Registration (Northern Ireland) Act 2005 temporarily substitutes Subsection (7) for a period of 12 months beginning on the day on which it was passed, that is, from 24.02.2005 to 24.02.2006, and introduces, with the same temporal limits, Subsections (7A) and (7B).

¹⁰³ Information of EONI is available online: <http://www.eoni.org.uk/>.

¹⁰⁴ Section 10ZB, Representation of the People Act 1983, inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006.

this respect); or b) if the registration officer “determines that the elector was not entitled to be registered in respect of that address or that he/she has ceased to be resident at that address or has otherwise ceased to satisfy the conditions for registration set out in Section 4 above”.¹⁰⁵

70. The alteration of the registers pending elections follows different rules in the case of parliamentary elections in Northern Ireland (Section 13BA). One important difference with respect to the general rules of Section 13B is the time-limit to alter the registers pending elections, since the general rule is that the changes will have effect if they are made before the eleventh day prior to the date of the poll,¹⁰⁶ whereas related to Northern Ireland they will have effect if they are made before the final nomination date.¹⁰⁷

71. The Chief Electoral Officer must publish each year a revised version of his/her registers, incorporating the alterations made in them. If there is a canvass that year, the register shall be published “during the period starting with the end of the canvass in that year and ending with 1st December in that year or such later date as may be prescribed”. If there is no canvass, it shall be published “on 1st December in that year or by such later date as may be prescribed”. In addition, the registration officer can publish at any time in between a revised version of the register (Section 13, Representation of the People Act 1983).

72. Relating to electoral registers, guideline I.1.2. of the Code of Good Practices in Electoral Matters recommends that they should be permanent, regularly up-dated and published. Additionally, there should be an administrative or judicial procedure allowing for the registration of a voter who was not registered or to amend incorrect inscriptions. If the eligible electors need to register to vote, then the procedure of registration, the maintenance of the registers, their amendment, and more broadly, their completeness and accuracy are key ingredients in guaranteeing universal suffrage and in carrying out democratic elections. The explanatory report, in its paragraph 7, adds a few directives to the general framework.

73. Comparing the registration system of Northern Ireland with these standards, we can conclude that the former is in accordance with the latter. There is a permanent register of parliamentary electors kept by the Chief Electoral Officer. This register is regularly up-dated, since amendments and new electors can be incorporated in the register when requested throughout the year, and thus, allowing registration for a long period (with the restrictions in case of amendments pending elections). The electoral law also prescribes that a revised version of the register must be published once a year. There is as well a simple administrative procedure before the Chief Electoral Officer for correcting the inaccuracies of the registers, for removing unjustified entries, and for incorporating electors entitled to register. In addition, Sections 56 and 58 of the Representation of the People Act 1983 establish a procedure of registration of appeals before the respective county court. Finally, the closing of the register pending elections in the case of Northern Ireland is in accordance with the standards as amendments are accepted until the final nomination day, which is a reasonable period.

74. However, the continuous registration system based on individual registration - implemented through the different amendments in the last five years – also meets the standards of the Council of Europe. It enables the electors to register personally through a registration application form, for which they need to provide the personal information requested. Some of this information will be used at the polling station for checking the identity of the elector. It also permits to delete errors and to introduce changes, e.g. change of address, when needed.

¹⁰⁵ Section 10A (5A) of the Representation of the People Act 1983. For the general rules, see para. 14 above. According to Section 4, in the case of Northern Ireland, a person is entitled to be registered in the register of parliamentary electors for any constituency if, on the relevant date (normally, the date of the application) he (a) is resident in the constituency or that part of it; (b) is not subject to any legal incapacity to vote (age apart); (c) is either a qualifying Commonwealth citizen or a citizen of the Republic of Ireland; (d) is of voting age; (e) he has been resident in Northern Ireland during the whole of the period of three months ending on the relevant date.

¹⁰⁶ The elector must have notified the registration officer by the eleventh day and this becomes effective on the fifth day.

¹⁰⁷ It is the government's intention to allow for 11 day registration in Northern Ireland as well.

75. In summary, the rules that regulate the electoral registers and registration procedure in Northern Ireland are in line with the Council of Europe standards.

76. Moreover, the right to vote of citizens of Northern Ireland is not affected by this different registration system, because the more exigent requirements are not an obstacle for the elector to exercise his/her right; they consist merely in giving some extra personal data at the very moment when they apply to register. The fact that these data are used for identifying the elector in the polling station or in the postal voting system reduces the possibility of impersonation and double registration. However, the problems of inaccuracies of the registers derived from the household registration system are reduced by this individual registration system. Finally, the equality between citizens residing in Northern Ireland and the rest of the territory of the United Kingdom is not undermined, because the differentiation is not arbitrary but supported by a notorious and persistent electoral fraud practice in that part of the territory in the past.

77. Regarding this point, it is important to recall the guidelines and explanatory report of the Code of Good Practice in Electoral Matters about the meaning of the right to free elections: it includes the freedom of voters to express their wishes and combating electoral fraud. If it is considered that the aim of the voter registration system is to remove the existing electoral fraud and to prevent it in future elections, then it can be concluded that the means used to achieve this legitimate aim, i.e. the settlement of an individual registration system, which requires personal data, and the incorporation of the possibility of continuous registration and amendments of the registers, are proportionate. This proportionality derives from the fact that the measure is suitable, necessary, tends towards the protection of the right to vote, and it does not affect the principle of equality, since the difference of requirements is reasonably justified by the particular circumstances of Northern Ireland. Additionally, electors have measures of redress following the procedures described above (para. 11).

78. The overall context of Northern Ireland must also be taken into account. According to guidelines I.1 (1.1. c) of the Code of Good Practices in Electoral Matters, a residence requirement may be imposed solely for local or regional elections, but should not exceed six months. The three month residence requirement does not run counter to these standards in terms of length, and does not in any way infringe the democratic principle of free and fair elections. Its applications to general elections may be considered justified by the overall context and situation of Northern Ireland, in which a very porous border has historically allowed movement of citizens between countries and the right to vote at all elections was given to Irish citizens.

3.2.2. Postal voting

79. The Electoral Fraud (Northern Ireland) Act 2002 introduced modifications in the Representation of the People Act 1985 (Sections 5-11 and Schedule 2), that have effects in the case of absent voting (by post or by proxy) only in parliamentary elections in Northern Ireland.¹⁰⁸ An elector is entitled to vote by post if he/she appears on the absent voters list for the election. In this situation, he/she is eligible for an absent vote for an indefinite period or for a particular election. The eligibility depends on two types of requirements: that the elector is or will be registered as service voter or that he/she cannot be reasonably expected to go to the polling station for one of the circumstances contemplated by the law (blindness or physical incapacity, nature of his/her occupation, and sea or air travellers, etc.). The system of 'postal voting on demand' was not extended to Northern Ireland.

80. Applications to vote by post must be signed and state an applicant's date of birth and national insurance number (or state that he/she does not have one). The signature, date of birth and national insurance number on the application must correspond with the information provided to the Chief Electoral Officer on registration. If the Chief Electoral Officer is not satisfied with this

¹⁰⁸ Provision for absent voting at local government elections are contained in Part I of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 (S.I. 1985/454), as substituted by Schedule 2 to the Local Elections (Northern Ireland) (Amendment) Order 1987 (S.I. 1987/168) and other amendments.

correspondence, he/she may refuse to grant an absent vote application. The differences between this application to vote by post in Northern Ireland and the one described above (para. 36 ff) for the rest of the United Kingdom are: 1) a further information is requested (the national insurance number or the statement that he/she does not have one); 2) that the information provided when applying to vote by post is checked against the information already available at the Electoral Office (since the voter has to be registered and this information is a requirement to register); 3) the fact that the electoral officer strictly controls that the information corresponds with the one that appears on the register; and 4) the need to have a suitable reason for voting by post.

81. The rules for returning the postal ballot in Northern Ireland are similar to the ones mentioned in para. 38. In this case, those entitled to vote by post must return the ballot paper and the declaration of identity in the prescribed form, together with the two envelopes issued by the returning officer (in this case, the same Chief Electoral Officer). The prescribed form shall include, as in the case of postal voting for an election held in England and Wales or Scotland, "provision for the form to be signed and for stating the date of birth of the elector...".¹⁰⁹ The elector must put the completed ballot inside the ballot paper envelope and seal it, and put the completed declaration of identity and the sealed ballot paper envelope inside the return envelope.

82. In Northern Ireland, the postal ballot shall be taken to be duly returned when a) it is returned in the proper envelope and in the proper time-limit, and is accompanied by the declaration of identity duly signed, and (b) that declaration of identity states the date of birth of the elector and the returning officer is satisfied that the date stated corresponds with the date supplied as the date of the elector's birth in the register. The declaration of identity referred shall be taken not to be duly signed unless the returning officer is satisfied that the signature on the declaration corresponds with the signature supplied as the elector's signature on the register (Rule 45, Schedule 1, Representation of the People Act 1983). All postal votes in Northern Ireland are checked for the correct signature and date of birth, rather than the 20% minimum checked in Great Britain.

83. After the postal ballot is taken to be duly returned, the returning officer shall mix the postal ballot papers with the ballot papers from at least one ballot box before counting them (Rule 45 (1A) (a), Schedule 1, Representation of the People Act 1983). This is also the case in Great Britain.

84. Postal voting in Northern Ireland is of a non-supervised type. The amendments to this system, introduced in 2002 and 2006, aimed at eliminating fraud, since the elector eligible to vote by post must complete an application form with personal information, which will be checked with the one available on the registers. The claims about fraud in this kind of remote voting do not seem to have been directed, however, towards the security or reliability of the postal service. Thus, the postal voting system seems to fit with the provisions of the Council of Europe in order to avoid fraud both at the level of applications and voters' lists, and at the level of the postal service.

85. The declaration of identity that the elector must return together with the postal ballot to the electoral office also aims to prevent electoral abuses, as the electoral officer has to check that the elector appears on the postal voting list and that his/her identity and personal data correspond with the information held in the registers. However, the principles of secrecy of vote and freedom of expression of Article 3 of Protocol 1 to and Article 10 of the European Convention on Human Rights¹¹⁰ are not undermined, given that the ballot paper is inside a separate sealed envelope, and then placed in the return envelope together with the declaration of identity. The latter is checked with the information available in the registers and the postal voting list. Then, the postal ballots are mixed with the ballots of at least one ballot box in the polling station, and afterwards opened and counted.

¹⁰⁹ Schedule 1, Rule 24, Representation of the People Act 1983, as amended by the Electoral Administration Act 2006.

¹¹⁰ Article 3 of Protocol 1 states: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". This Article, together with the one that establishes freedom of expression, guarantee to citizens the exercise of their right to vote in secret and expressing freely their political opinion. These are core principles in order to carry out fully democratic elections.

86. Connecting these previous ideas, we can say that some important measures were introduced in the application for the postal voting system in Northern Ireland, particularly to eliminate and avoid fraudulent voting. The returning system also seems to prevent abuses and to be in line with the principle of secret suffrage.

87. The mechanism of postal voting in Northern Ireland protects the secrecy and effective exercise of the right to vote when the elector is not expected to go to the polling station and for that reason applies to vote by post. The legitimate aim pursued by the specific requirements concerning postal voting is to avoid the abuses that this mechanism of voting produced in the past, and to make sure that the person who applies for the postal ballot and returns it is really the registered elector. In order to reach this aim, the Northern Ireland legislation requires the elector to use an application form provided by the electoral officer that asks for personal data, and to return the postal ballot with a declaration of identity to be checked with the information available at the electoral officer's. This additional personal data required is a proportionate means for preventing electoral fraud, and does not obstruct the exercise of the right to vote by post.

88. On the other hand, the system of postal voting in force in Great Britain is somewhat similar to the one of Northern Ireland, since the amendments introduced in 2006. One difference is that the individual application in Northern Ireland also requires the national insurance number or the statement that the elector does not have one, and the fact that for Northern Ireland, for the postal ballot to be valid the registration officer must, and not just can, check the data and the signature against the information available in the electoral office. In Great Britain, only 20% of returned postal votes are checked for correct personal identifiers. Therefore, these minor differences in the rules of postal voting in Northern Ireland can not be considered to affect the equal treatment of their citizens with respect to the rest of the citizens of the United Kingdom; on the contrary, these rules of postal voting guarantee in a better way the principle of free elections, and allow the citizens exercising their right to vote by post in a more secure and confident way.

Conclusion

89. In response to the first query (relating to the voters' registration system), the introduction of a rolling registration system throughout the year in addition to the annual canvass is a positive measure for both increasing participation in elections and for the accuracy of registers. Regarding the household system, due to the fact that this system can lead to inaccuracies and problems of securing the exercise of the individual right to vote, the Venice Commission would suggest that Great Britain should advance towards an individual registration system. On the other hand, the lack of personal identifiers, and the fact that the system relies on a general belief on the *bona fide* of citizens may eventually be a source of inaccuracies from which other vices could eventually flow. The use of more accurate personal identifiers is strongly advised. Sanctions are an ex-post mechanism linked to punishing behaviour, but by themselves, sanctions cannot secure accuracy.

90. In response to the second query (relating to postal voting), the United Kingdom legislation goes a long way to try to defend the systems of absent voting, including postal voting, from fraud and manipulation. The improvements made in this sense with the introduction of personal identifiers in the postal voting statement are welcomed. However, some effort is still pending related to the verification of the personal data provided by the postal voting statement. The extension of the right to vote by post on demand, where no reason is required, has to go together with effective anti-fraud measures. In this respect, the cross checking of 20% of the votes as a precautionary measure raises questions about its reliability.

91. In answer to the third question (relating to the differences in legislation between Great Britain and Northern Ireland): the special requirements for Northern Ireland are justified and fair, given the special circumstances. In summary, the legislation in force in Northern Ireland establishes tighter controls for securing the right to secret and free vote that cannot be considered as an obstacle for the exercise of this right, but as measures that intend to reduce fraud and abuses, and to guarantee democratic elections. The differences between the electoral legislation applicable to

Northern Ireland and the rest of the United Kingdom referred to registration of voters and postal voting are the result of a number of amendments introduced by Parliament in order to tackle problems of inaccuracies of the registers and electoral fraud. These abuses, which were linked with particular social and political circumstances of Northern Ireland, were of deep concern within the Government, the Parliament itself, and other British public authorities (e.g. the Electoral Commission). The aim of the Electoral Fraud (Northern Ireland) Act 2002, the Northern Ireland (Miscellaneous Provisions) Act 2006, and the Electoral Administration Act 2006 was precisely to include anti-fraud measures to prevent electoral abuses that could be generated through registration or postal voting. The arguments exposed above support the opinion that *the difference in the electoral system* is not, *per se*, against the standards of democratic elections and human rights that bind the member states of the Council of Europe. In this particular case, moreover, the different requirements are reasonably justified by the special historical circumstances of Northern Ireland and by the importance both of preventing fraud and improving the social perception of elections as the cornerstone mechanisms for the good functioning of democracy. Concerning *the specific requirements* for Northern Ireland implemented by the electoral law, it can be affirmed that they are also in accordance with the standards of the Council of Europe. Even more, we could say that they adjust better to them than the ones that operate in the rest of the United Kingdom concerning parliamentary elections, especially in relation with registration. Thus, the continuous individual registration system complies better with the principles of good practice in electoral matters and with the European electoral heritage that underlies them and it could be appropriate to extend it to Great Britain. The same is true about the postal voting system, on the other hand, it establishes a procedure of application, returning and checking of identity and personal data by the electoral officer that tend to make this electoral mechanism more secure and transparent. In other words, the legislation in force in Northern Ireland establishes tighter controls for securing the right to secret and free vote that cannot be considered as an obstacle for the exercise of this right, but as measures that intend to reduce fraud and abuses, and to guarantee democratic elections. Given these stronger controls, British authorities should perhaps ascertain whether the continuation of circumstances that called for “justified” absent voting (in opposition to ‘on demand’ absent voting applied in Great Britain) still remain in Northern Ireland. If not, the authorities should then explain why the different treatment of absent voting in Great Britain and Northern Ireland still remains justifiable and acceptable.

Appendix 2

**Programme of the fact-finding visit to the United Kingdom
(26-28 February 2007)**

Co-rapporteurs: Mrs Herta DÄUBLER-GMELIN (Germany, SOC)
Mrs Urszula GACEK (Poland, EPP/CD)

Secretariat: Mrs Caroline RAVAUD, Head of the Secretariat of the Monitoring Committee

Monday, 26 February

- 10.30 – 11.20 Meeting with Mr David MONKS, Chairman of SOLACE and Chief Executive of Huntingdonshire County Council
- 11.30 – 12.30 Seminar: *Postal Voting – Review of 2006 Elections*. Speakers:
- Dr Michael PINTO-DUSCHINSKY
 - Mr Chris SOLICH, Stevenage Borough Council
 - Ms Kate SULLIVAN, Electoral Commission
- 12.30 – 14.00 Working lunch with representatives of the Electoral Commission:
- Mr Sam YOUNGER, Chair
 - Mr Andrew SCALLAN, Director of Electoral Administration and Boundaries
 - Ms Kate SULLIVAN, Head of Electoral Administration
- 14.15 – 15.15 Meeting with officials from the Department for Constitutional Affairs:
- Mr John SILLS, Head of Electoral Policy Division
 - Mr Tony BELLRINGER, Head of the Conduct of Elections Branch
 - Mr Paul DOCKER, Head of Electoral Modernisation Branch
 - Ms Nancy HEY, Head of Electoral Registration Branch
- 15.30 – 16.30 Meeting with representatives of the Association of Electoral Administrators:
- Mr John TURNER, Chairman
 - Mr Bill CRAWFORD, Executive Director
 - Mr John OWEN, Training Manager and Elections Officer at Birmingham City Council
- 17.00 – 18.00 Meeting with Sir Alastair GRAHAM, Chairman, Committee of Standards in Public Life, and Mr Peter HAWTHORNE, Assistant Secretary

Tuesday, 27 February

- 8.00 – 8.45 Breakfast briefing by Mr Livio ZILLI, Researcher, Amnesty International
- 9.00 – 10.00 Meeting with Detective Inspector Faz AHMED, Special Prosecution Units, Metropolitan Police
- 10.15 – 11.00 Meeting with Mr Ken RITCHIE, Chief Executive, Electoral Reform Society

AS/Mon (2007) 38

- 11.30 – 12.15 Meeting with Ms Bridget PRENTICE MP, Parliamentary Under-Secretary of State, Department for Constitutional Affairs
- 12.35 – 14.00 Lunch hosted by Mr Tony LLOYD MP, Leader of the UK Delegation to the COE, with Mr Humfrey MALINS MP (Conservative); and Mr Mike HANCOCK MP (Lib Dem)
- 14.15 – 15.15 Meeting with Mr Oliver HEALD MP, Shadow Secretary of State for Constitutional Affairs, and Mr David WILSHIRE MP, Conservative Party
- 15.15 – 16.15 Meeting with Mr Simon ORME, Crown Prosecution Service
- 16.30 – 17.30 Meeting with Judge Richard MAWREY QC

Wednesday, 28 February

- 09.00 – 10.30 Meeting with Dr Michael PINTO-DUSCHINSKY