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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
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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.*¹ 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.²

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.³

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.⁴

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

¹ 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

² 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>.

³ 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.

⁴ 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.

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, 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.⁵

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 1996⁶, 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 Covenant (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) 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

⁵ This section was 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).

⁶ See Committee on Human Rights of the United Nations: General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)

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.⁷

21. The Inter-Parliamentary Union during its 154th session (Paris, 26 March 1994) adopted a *Declaration on Free and Fair Elections*⁸ 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.⁹

⁷ See *Lippiatt v Electoral Registration officer*, Penwith District Council, 21 March 1996).

⁸ A new expanded edition of this Declaration is available at: <http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>.

⁹ 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.

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.

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).¹⁰

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

¹⁰ 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.

(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.

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

34. 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.

35. 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.

36. 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.¹¹ The House of Commons has also produced some standard notes on postal voting.¹² 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.

37. 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.¹³ Two aspects are important here: the application for postal voting and the returning of the postal ballot.

¹¹ 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>.

¹² 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>.

¹³ 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>.

38. 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 2000,¹⁴ 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)).

39. 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 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.¹⁵ Doubts may persist on whether checking a sample secures the accuracy of the totality of the votes.

2.2. Council of Europe standards concerning postal voting

40. 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.¹⁶

41. 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

42. 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

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

¹⁵ 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>.

¹⁶ *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.

2004, an allegation was raised denouncing postal voting fraud in the Birmingham wards of Bordesley Green and Aston.¹⁷ 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.¹⁸ 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.¹⁹

43. In 2004, the Electoral Commission called for an end to all postal voting.²⁰ In a similar vein, and after the publishing of reports on various pilot schemes, the Electoral Commission, on 2 August 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.²¹

44. 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)²², 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.

45. 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

¹⁷ 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>.

¹⁸ All these sections of the Electoral Administration Act 2006 modify the Representation of the People Act of the People 1983.

¹⁹ These offences are ruled in Section 62A of the Representation of the People Act 1983, as amended by the Electoral Administration Act 2006.

²⁰ 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>.

²¹ Information from the Electoral Commission's media centre, online: <http://www.electoralcommission.org.uk/media-centre/newsreleasereviews.cfm/news/657>.

²² *Final Report of the Working Party on Electoral Procedures* [Howarth Report], Home Office, October 1999.

3. 1. General issues

46. 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.

47. 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.²³

48. 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 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.

49. 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".²⁴

50. 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".²⁵

51. 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

²³ 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.

²⁴ *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81, Judgment of 2 March 1987, para. 54.

²⁵ 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.

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.²⁶ 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 Commission of Human Rights was dismissed as inadmissible.

52. 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.²⁷ 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.

53. 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*”.

54. 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.

55. 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.

56. 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

²⁶ *Kennedy Lindsay and other v. the United Kingdom*, Application No. 8364/78, Decision of 8 March 1979.

²⁷ *Polacco and Garafalo v. Italy*, Application No. 23450/94, Judgment of 15 September 1997. See ECHR *Gitonas and others v. Greece*, Judgment 1 July 1997, Reports 1997-IV fasc. 42 and *Py v. France*...cit.

reasons motivated the enactment of the Electoral Fraud (Northern Ireland) Act 2002 and the ulterior norms (which are exposed more in detail below).

57. 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.

58. 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.²⁸ This sustained situation motivated the enactment of the Electoral Fraud (Northern Ireland) Act 2002. However, the Parliament has conducted a study and inquiries on the same topic, the results of which are compiled in two reports of Session 2004-2005.²⁹ 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.³⁰ Within this framework, the Commission gave a commitment to monitor the impact of the Act on electoral registration and commissioned a series of registration updates focusing on various aspects of the registration process, the last of which is from 22 August 2007.³¹

59. 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

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

²⁸ 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>).

²⁹ 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>.

³⁰ 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.

³¹ 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.

61. 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

62. 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.³²

63. 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,³³ and improve the mechanism of registration of electors.

64. The Electoral Fraud (Northern Ireland) Act 2002 substituted the system of household registration in force until that moment³⁴ 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 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.

65. 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.³⁵

³² 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.

³³ See also the Explanatory notes to this Act, online: <http://www.opsi.gov.uk/ACTS/en2002/2002en13.htm>.

³⁴ 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>.

³⁵ 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).

66. 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.

67. A Chief Electoral Officer whose work is supported by the Electoral Office for Northern Ireland (EONI)³⁶ 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).

68. 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).

69. 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”.³⁷

70. 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 do 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).

71. 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 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”.³⁸

³⁶ Information of EONI is available online: <http://www.eoni.org.uk/>.

³⁷ Section 10ZB, Representation of the People Act 1983, inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006.

³⁸ 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

72. 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,³⁹ whereas related to Northern Ireland they will have effect if they are made before the final nomination date.⁴⁰

73. 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).

74. 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.

75. 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.

76. 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.

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

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.

³⁹ The elector must have notified the registration officer by the eleventh day and this becomes effective on the fifth day.

⁴⁰ It is the government's intention to allow for 11 day registration in Northern Ireland as well.

78. 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.

79. 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).

80. The overall context of Northern Ireland must also be taken into account. According to guidelines I.1 (I.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 application 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

81. 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.⁴¹ 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.

82. 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

⁴¹ 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.

satisfied with this 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.

83. The rules for returning the postal ballot in Northern Ireland are similar to the ones mentioned in para. 39. 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..."⁴² 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.

84. 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.

85. 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.

86. 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.

87. 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

⁴² Schedule 1, Rule 24, Representation of the People Act 1983, as amended by the Electoral Administration Act 2006.

Convention on Human Rights⁴³ 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.

88. 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.

89. 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.

90. 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

91. 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 fides* 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.

⁴³ 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.

92. 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.

93. 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.