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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS
ON THE ELECTORAL LAW
OF THE UNITED KINGDOM**

by
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**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. The Chairman of the Committee for the honouring of the obligations and commitments of the member States of the Council of Europe, Mr Eduard Lintner informed by letter dated Strasbourg, 24 April 2007 the President of the Venice Commission, European Commission for Democracy through Law, the late lamented Mr Antonio La Pergola by letter dated Strasbourg, 24 April 2007 that this Monitoring Committee of the Parliamentary Assembly, was currently investigating an application to initiate a monitoring procedure so as to investigate electoral fraud in the United Kingdom, and that two rapporteurs had carried out a fact-finding visit to the United Kingdom. The rapporteurs had proposed to ask the Venice Commission for an opinion. The Monitoring Committee had 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 regards 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?

Introduction

2. In the case of the United Kingdom, a foremost breeding ground of democratic institutions, one needs necessarily to adopt a historical approach, in order to understand fully the reasons behind the statutes governing elections, including those concerning the registration of voters. As in most fields of law, practice more than logic drove the development of the exercise of the franchise in the British Isles.

3. Early in the last millennium the Norman Kings started summoning Parliament, ostensibly to consult about dangers to the realm, in fact to urge for contributions, rather than to share in government. The Sheriff was asked to select two representatives of the counties and boroughs. Originally, the King summoned Parliament, ostensibly to consult about dangers to the realm, in fact to urge for contributions, not to share in government. The Sheriff was asked to select two representatives of the counties and boroughs. The term used, in Latin, *elegi facias* was occasionally reverted back to the more coercive *venire facias*. Some electors would be recalcitrant at times, some electors might be too eager on other occasions. The elections were carried out during purposely called gatherings, derived from Germanic moots for the national *witangemot* of Anglo-Saxon times, with some cultural reference to the Roman *Comitiæ*. From 1265, two burgesses from each borough were summoned, alongside with two knights from each county. Boroughs were created by the Monarchy which recognised certain towns and gave them privileges and exemptions (hence franchise; *franchigie*).

4. The very first law of a constitutional nature still extant [The First Statute of Westminster, 1275, 3 Edw 1] provided for the freedom of elections, in Norman French, then still the official language: *Pur ceo q elections deivent estre fraunches, le Rey defent sour sa greve forfeiture q nul, haut home ne autre, par poer de armes ne par malice ne desturbe de fere fraûche election.* (Because the elections ought to be free, the King commands under pain of great forfeiture, that no man, high in position or other, by power of arms or by malice, should disturb the free holding of elections). More than a hundred and fifty years later, in 1430, an Act was passed (8 Henry VI Cap VII) which restricted voting rights to freeholders of property worth more than 40 shillings *per annum*. It was premised by an explanation that as the number of people at county elections had increased and people were taking part who were,

in Norman French, of *null valu*, of no value, and there had occurred homicides, riots and other violent offences during the gathering, it was imperative to call only those, who, being landowners, had more to lose if they did not conduct themselves well. The legislators seem to have learnt that free elections had necessarily to be orderly and that access to the procedures had to be limited to such as could be relied upon to behave well. The legislators seem to have learnt that free elections had necessarily to be orderly and that access to the procedures had to be limited to such as could be relied upon to behave.

5. For a very long time, the right to vote was a matter for the convening officer[sheriff or mayor] to determine, was regulated locally and differed from county to county and from borough to borough. By the 19th century, the population changes brought about by the industrial revolution had created a situation in which a major conurbation might have no representation in Parliament, whilst towns which had declined in size to mere villages still retained their seat. Great Britain had been admired and set up as model for its separation of powers in the United States and in most of Europe, but was influenced on the other hand by the spirit of liberty and substantial justice coming from revolutionary France as well as from the United States. A political movement towards righting some wrongs and making the electoral process fairer increased its momentum and culminated, first, in 1829, with the Catholic Relief Act which opened to Catholics and Dissenters, and later to Jews, the right to vote and stand for election, and then with the **Reform Act of 1832**. In a more articulate measure which rendered the electoral process fairer and more representative. That Act abolished the units known as “rotten Boroughs”, controlled by the local aristocracy, and introduced electoral registers: 168 members were unseated, sixty boroughs disfranchised, eight more members allotted to London and proportionately to the large towns in the North, such as Manchester, but the total number of members was reduced by more than sixty. The right to vote was extended, by legislation, to people who rented a household worth £10, **in fact the then middle class**, and the requirement of registration was introduced. This put the onus of proof of the entitlement to vote on the pretending registrant. As the numbers enfranchised increased considerably, it was more practicable to accept the applications at face value and subject false declarations to criminal sanctions. Rents and households were localising and registration was therefore anchored geographically. The act increased the number of entitled voters, by, between 50 to 80 percent, to 653,000 adult males. The administrative structures at that time could not be depended upon to assume the burden of taking the initiative of registration without prior application¹.

6. The Reform Bill of 1867 which was passed after considerable agitation, regulating the boundaries of the constituencies and the Courts to which recourse could be had when registration was contested. In the 1867 Reform Act, tenants (in addition to householders) in towns were given the right to vote, which in fact enfranchised most of the urban working class. In 1884 Gladstone managed to have the House of Commons, and with greater statecraft and compromise, the House of Lords, pass another Reform Act and a Redistribution Bill whereby all adult male householders and £10 lodgers, in the counties as well as the boroughs, had the same voting rights. In almost every case these adjustments to Electoral Law concerned England and Wales and separate Acts had to be passed for Scotland and Ireland. It was only in

¹ It is important to note that although the first census of the population of England and Wales was carried out in 1801 supposedly by a house-to-house enquiry, in reality, it was done by making use of the returns of baptisms and burials between 1700 and 1800, and marriages between 1754 and 1800, as supplied by the clergy. The details included the number of inhabited and uninhabited houses, the number of families occupying the former, the number of persons of each sex, and the numbers of people employed in agriculture, trade, manufacture or handicrafts. The enumerators in England and Wales were the overseers of the poor, local clergy or other substantial householders; in Scotland they were the schoolmasters. The local returns were statistical summaries only, made in a prescribed form and attested before the justices of the peace. The first abstracts and reports of the results of the census were compiled by John Rickman (1771-1840, clerk in the House of Commons). The machinery of the civil service had not as yet supplanted that of the Church and of voluntary service or of the school in Scotland. Napoleon never managed to invade Britain either by military might or by the culture of centralised administration. And the state structures in Britain arrived rather late.

1918 that the right of women (over 30) to vote and be elected was recognised and most of the property qualifications abolished. The age qualification was lowered for women to equal that of men at 21 in 1928.

7. The Representation of the People Act 1985 was aimed at enabling British Citizens resident outside the United Kingdom to qualify as "overseas electors" in the constituency for which they were last registered for a period of five years after they had left (this was subsequently changed to 20 years and is now 15 years). The Act allowed British Expatriate electors to register as overseas electors at British consular posts, starting in the summer of 1986. The Act also made British people abroad on holiday eligible to vote by postal ballot or by proxy, as well as those who were not reasonably expected to be able to be physically present at the polling station. Citizens of the Commonwealth as well as Citizens of the Republic of Ireland were given the right to register to vote at the place where they had taken up residence. The legal basis of these citizens' rights is the British Nationality Act 1981. Under the Representation of the People Act 2000, Commonwealth citizens requiring leave to enter the UK must have such leave before they qualify for inclusion on the Register. Citizens of other EU countries may vote in European Parliamentary and Local elections, according to the terms of accession.

8. The trend for the last two hundred years has been that of widening the franchise to include all those people who felt they had a stake in Great Britain, and were either residing there or kept from so doing temporarily for justifiable reasons, as in the case of members of the armed forces. British Crown servants and British Council employees could also apply to be included on the Register of Electors. In a democracy the presumption should be in favour of participation in the vote, and the United Kingdom has a long and remarkable history of extensions of the right to vote. As it happens, paradoxically, the blanket exclusion of prisoners serving their term or remanded in custody, was later and rightly found excessive by the European Court of Human Rights, in *Hirst v United Kingdom* (6.10.05).

9. One can comment however that the vote was always tied to a particular locality: a person voted in a particular place in which he /she resided, which formed part of a constituency with a seat in the House of Commons. There was no national seat or national electoral rolls. When the property qualifications had become the most important criterion for admission to the franchise, people who owned property in different counties or towns, were seen as entitled to vote in all these places, and it was only later that this anomaly was removed and one person became entitled to one vote only and in the place where that person resided. The Statutes were very particular as to the way that this residence should be determined (cfr Section 3 of the Representation of the People Act 2000, replacing Section 5 of the 1983 Act).

In substance

(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?

10. The history explains why voluntary registration has come about as the standard way of establishing the citizen's right to vote in the United Kingdom. Mere historical explanation is, however, not justification. One has to see whether this system is

- (1) just or fair;
- (2) useful or necessary;
- (3) has better alternatives.

11. The implied reasoning behind the continuation of this system is that those who have a right to vote should be expected to take the initiative to have this right recognised by registration. One may argue that this could be unfair to those who do not know their rights. The usual reply is that though the actual casting of votes may be secret, the whole electoral ritual is so public and attracts so much attention that it is difficult to imagine one connected with the United Kingdom who could not be aware of it and not conscious of the possibility of participating in it. It can also be argued that the bare fact of asking to be registered is more of an exercise of democracy as assertion by the citizen, than the automatic grant by the State to a passive citizen. Moreover the procedures for registration are simple and straightforward and present no hurdle or difficulty.

12. Given the wide open range of people with the statutory right to vote in the United Kingdom [which includes Commonwealth citizens and Republic of Ireland citizens, residing in the country, for parliamentary elections and European Union citizens for local and European Parliament elections] it would be impracticable if not absolutely impossible, to require the state machinery to register voters *mar te proprio*, without their application, especially in the case of those Commonwealth, or European citizens which do not require any permit to reside. Even so the registration officers in time were required to “canvass” annually so as to see that all those entitled were registered and those who were not, deleted.

13. Registration may have been a part of the tradition and history [one should not forget that voter registration on application is also part of the United States system], but as things evolved, it is even today the best way of ensuring that those who are entitled to vote may bring it to the notice and hence recognition by the authorities conducting the election. Indeed when residence is a qualifying criterion, one cannot abandon completely the household component, and registration with a material residence (household) involved as anchor. Localisation is also an instrument of identification.

14. It would not be irrelevant to mention the fact that so strong was the feeling in the United Kingdom against the invasion of privacy which the preparation of an electoral register compiled by the state on its own initiative would entail, that even today, when this has been overridden, the Representation of the People Act of 2000, in Section 9 provides for the 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 that these details be not published.

Conformity to Election Standards

United Nations Standards

15. 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 1996, a list of international Standards of Elections. There it was said that any conditions which applied to the exercise of the rights protected by Article 25 of the Covenant (which recognizes 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. The exercise of these rights by citizens was not to be suspended or excluded except on grounds which were established by law and which were objective and reasonable. No distinctions were to be permitted 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 referenda 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. States had to take effective measures to ensure that all persons entitled to vote would be able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. 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 (1996) 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.

16. The Inter-Parliamentary Union during its 154th session, Paris, 26 March 1994 had adopted a Declaration on Free and Fair Elections urging governments and parliaments throughout the world to be guided 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.

Code of Good Practice in Electoral Matters

17. In the Commission's own Code of Good Practice in Electoral Matters certain criteria are adopted for Electoral registers (para. I.1.2) to be considered reliable:

- 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.

18. The Code envisages that registration can either be automatic (presumably on attaining a certain age or on taking up residence) or initiated by the voter or on his/her behalf. This implies that 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. One has to see however whether the six criteria of the Code are adhered to in the United Kingdom system.

i. Is the electoral register permanent?

19. Section 9 of the 1983 Act provided that the Registration Officers [appointed for every district and London Borough under Section 8] were to 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 registers².

² 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

20. Section 10 of that Act made these Registration Officers bound to conduct an annual “canvass” to ascertain the persons entitled to be or remain registered. This provision imposed on the state a duty to ensure full registration without discarding the original reliance on the voter’s urge to register. There were established different conditions with respect to the Chief Electoral Officer for Northern Ireland’s duties and timing of the canvass.

21. Furthermore under Part 2 of the Electoral Administration Act of 2006, the legislator has imparted [through the direction of the Secretary of State] to the Electoral Registration Officers (EROs) a new more proactive direction in seeking to take steps to register eligible electors, and so ensure registers are as complete and accurate as possible.

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

22. Section 13 of the 1983 Act obliged each registration officer to publish *each year* a revised version of his registers. The annual canvass would undoubtedly turn up the need for changes [the deceased to be erased, those sentenced to prison or remitted to mental hospitals, those who come of age, new entitled residents, those who have definitively left their residence]. Section 13B of the 1983 Act (alteration of registers: pending elections) amended by Section 11 of the 2006 Act, can not be seen as too restrictive in any sense. That is, whilst an election has to be held on the basis of the last published register, an alteration comes into effect as soon as possible.

23. The Electoral Administration Act of 2006 in its Part I provides for co-ordinated on-line record of Electors. In the words of the General Note appended to the Act, *“the CORE scheme is an arrangement whereby record of information currently held only by several locally based electoral registration officers can be consolidated at one central point”*. This for the United Kingdom was a unprecedented attempt at unifying the various area registers into one centralised information pool. A CORE scheme furnishes no doubt a formidable weapon for updating the registers. It is to be used for electoral purposes, and additionally for the jury service.

iii. Electoral registers must be published.

24. Section 13 of the 1983 Act bound each registration officer to publish each year a revised version of his registers. Schedule 1 of the Representation of the People Act 2000 elaborated further that following the conclusion of the canvass conducted by a registration officer for any year the officer had to publish a revised version of both (the “full” and the “edited”) of his registers

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

(b) by such later date as regulations may prescribe. The revised versions of the registers were to 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. The registration officer could, in addition, if he thought 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.

his qualification to vote, including the relevant property. Finally after 1945 only the voters’ names and addresses were shown on the registers.

- 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.

25. A. The entitlement to be registered as parliamentary or local government elector was clearly and distinctly set out in Section 4 of the 1983, now substituted by Section 1 of the Act of 2000:

“1 Parliamentary electors

(1) A person is entitled to vote as an elector at a parliamentary election in any constituency if on the date of the poll he—

- (a) is registered in the register of parliamentary electors for that constituency;*
- (b) is not subject to any legal incapacity to vote (age apart);*
- (c) is either a Commonwealth citizen or a citizen of the Republic of Ireland; and*
- (d) is of voting age (that is, 18 years or over).*

(2) A person is not entitled to vote as an elector—

- (a) more than once in the same constituency at any parliamentary election; or*
- (b) in more than one constituency at a general election.*

2 Local government electors

(1) A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he—

- (a) is registered in the register of local government electors for that area;*
- (b) is not subject to any legal incapacity to vote (age apart);*
- (c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and*
- (d) is of voting age (that is, 18 years or over).*

(2) A person is not entitled to vote as an elector—

- (a) more than once in the same electoral area at any local government election; or*
- (b) in more than one electoral area at an ordinary election for a local government area which is not a single electoral area.”*

B. Section 8 of the 1983 Act provides that for the registration of electors there should be electoral registration officers. These officers according to Section 10A had to “determine” (in the sense of deciding upon) all applications for registration. Regulations made under the powers conferred by Section 53 of that Act provides for an appeal to the Courts :

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. Rule 3 concerns what are called "selected appeals" whereby should two or more appeals depend on the determination of a particular point of law, the judge may direct that one appeal shall be heard in the first instance as a test case, so as to avoid repetition.

C. Sections 13A and 13B which deal with the alteration of registers, in very minute detail, obviate against any precipitous and unsafe alteration on the polling date or in the immediately preceding five or six days, at the same time providing for the possible registration and then exercise of the voting right until the very last opportune moment.

Household registration versus personal registration

26. There is not doubt that in Great Britain it is "*a person (who) is entitled to be registered in the register of Parliamentary electors*" (Section 4(1) of the 1983 Act). The registration is personal. The former property qualifications have long been done away with. However the text continues "*for any constituency or part of a constituency*". Voting is local and tied to a constituency.

27. 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 or she is

- (a) resident in that constituency or part of it;
- (b) is not subject to a 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. The Second Subsection stipulated an extra requirement for Northern Ireland, that of having resided in Northern Ireland during the whole of the period of three months ending on the relevant date. It is to be noted that residence is the first stated requirement, whilst the second is the negative requirement of not being legally incapable, whilst political qualification (by citizenship) takes the third place followed by age. The fundamental premiss is that one votes where he resides: representation in parliament is local. Whilst the franchise is open to Commonwealth citizens (with further qualifications) and citizens of Ireland, it would not be wise to relinquish the strict bind of residence in a constituency. In the case of Northern Ireland, the special prerequisite of a full three months residence prior to the relevant date, was considered necessary in view of the tense internal political situation there and the temptation of swelling some areas with appropriate voters to assure results in marginal districts. In local elections and European Parliament elections, EU citizens are entitled to be registered as voters if they qualify as residents.

28. Given that the residence requirements are very precisely defined and that change of residence registration is not cumbersome, there does not seem to be any apprehension about disenfranchisement through insistence on registration. There are rules concerning servicemen and people serving abroad [as well as inmates in prisons or hospitals] which guarantee against the loss of voting rights through too slavish an adherence to the residence criterion.

B. Relative lack of personal identifiers upon registration

29. 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: six months' imprisonment or fine not exceeding the fifth level on the standard scale.

30. On the other hand one must presume that any registration officer who is asked to "determine" upon an application to register will have means of identification on the local level, even if the Statute does not specify how this should be done. One has to note Section 24(3)(3) of the 2000 Act which provides for the issue of regulations granting the registering officer these special powers:

"(3) Provisions authorising a registration officer, where—

(a) he has so required any person registered in one of his registers to give him information, or to make any declaration, for the purpose of enabling him to determine whether the person is entitled to be so registered, and

*(b) the person has not within the prescribed period complied with that requirement in a manner which the officer considers satisfactory (or at all),
to remove the person's name from the register.*

31. One may note that, for privacy considerations, there was widespread opposition to the issue of identity cards in Great Britain, for a very long time, and this misgiving was finally overcome only with the passage of the Identity Cards Act of 2006, which received the Royal assent in March of that year, after a tortuous parliamentary *iter* which lasted more than four years. This does not mean that the registration officer, through the police, no doubt, would not check the identity of an applicant. With the provision of identity cards, the task of the registration officer will be rendered easier. The system of personal numeration for electoral purposes, as well as the system of online registration [CORE] render the checking process as well as the canvass, less time consuming.

(2) Postal Voting

32. The special arrangement for voting by post was historically 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. People with physical disabilities or justified absence were gradually allowed to use these arrangements until 2000. In implementation of a recommendation by a Home Office Working Party which had been given the mandate of making suggestions as to the way to increase 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 postal votes.

33. Postal voting in the case of the British Armies still abroad in 1918 was a success because it was orderly and disciplined. Its use for persons by physical or other disabilities, which was later extended to people serving abroad or momentarily absent, presented no great danger, because the numbers involved were small. When it was opened as a general option, in a number of

experimental [trial] local elections, the whole gamut of problems, inherent in postal voting, came to the fore. Some people were still reticent, some had realised its potential for manipulation.

34. A report of the Electoral Commission of 2003 made the following recommendations:

A. To promote wider participation: replace the declaration of identity with a simpler, more effective alternative; allow registered postal voters to apply for a replacement ballot paper at any point up to 5 pm on polling day; and revise the annual registration form to include postal and proxy arrangements for overseas voters;

B. To increase public confidence in the secrecy of the vote: more rigorous checks for fraud after elections: introduce a new offence of intending fraudulently to apply for a postal or proxy vote; and giving police the power of arrest for suspected personation at any location, not just polling stations.

35. Following upon the Decision by Richard Mawrey Q.C. which found massive electoral fraud through the misuse of the postal vote in Birmingham (Aston and Bordesley) in the local elections of 2004 there was a general reappraisal of the system. It was intended to “save” postal voting, and incidentally not bar the way for progress in the introduction of E-voting; but also to further tighten the measures which render manipulation of the system by political agents less easy. The anti-fraud measures in Part 3 of the Electoral Administration Act of 2006 run in this direction. Section 14 of that Act requires the signature of the person asking for a postal ballot together with his/her date of birth, though care was taken to provide for persons who would be unable, because of disabilities, to furnish a signature, whilst Section 15 contemplates the offence of furnishing false information. Section 39 aims at obviating against *undue influence* whilst Section 40 provides for a number of delinquencies in respect of postal voting. The fact remains however that in opting for postal voting one is abandoning the “absolute” guarantee of freedom of individual choice that can be assured by a proper polling booth. During voting at home or at the work place the presence of family members and friends or even others cannot be excluded and it is difficult to define or rule out “undue” influence.

36. Section 62 A of the 2006 Act attempts to close some of the doors and windows through which fraud and manipulation can enter into the process: Its title is Offences relating to applications for postal and proxy votes

“(1) A person commits an offence if he—

(a) engages in an act specified in subsection (2) at a parliamentary or local government election, and

(b) intends, by doing so, to deprive another of an opportunity to vote or to make for himself or another a gain of a vote to which he or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—

(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);

(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote;

(c) inducing the registration officer or returning officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;

(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In subsection (1)(b), property includes any description of property.

(4) In subsection (2) a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or a proxy postal ballot paper (as the case may be).

(5) A person who commits an offence under subsection (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.

(6) This section does not apply to anything done at a local government election in Scotland."

37. Certain inherent difficulties in postal, proxy or e-voting can never be completely overcome. One may in balancing the advantages and convenience to the electors, and therefore incidentally their contribution to the overall aim of greater voter participation, with the inevitable dangers, consider that the risks to be taken, given the numbers or the rate of prevalence, are not such as to give rise to fear that the final result may be substantially effected. One doubts 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 (Published 1999), the advantages of absent voting were seen as outweighing the problems, but it was decided to test the ground experimentally in pilot projects. The Acts of 2000 and 2006 sought to circumscribe the threats of electoral fraud of some consistency by imposing criminal sanctions on some of the more evident cases of organised manipulation or abuse. The stray individual act of undue influence or corrupt practice remains very difficult to trace and punish, but would not, ultimately, given the overall numbers, be determining on the election result.

38. After the reports on various pilot schemes were published, the Electoral Commission, on the 2nd 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".

(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?

39. In Great Britain the traditional divisions of the different constituent nations (Wales, Scotland, Ireland, England) have held fast not only in Sport, but also very decidedly in legal institutions. The Electoral Laws, time and again, refer to this distinction and different Acts regulated parts of the Electoral Law in these countries. In the case of Northern Ireland the different dispositions were not merely the result of deference to historical traditions, but also a reaction to a political situation far more charged and fraught with dangers as well as temptations. Gerrymandering was not invented in Northern Ireland but political chicanery and pettifoggery in the drawing up of electoral boundaries was surely not unknown. In a notorious case, during local elections, the decidedly Irish nationalist area of Derry produced a Unionist majority through the shamefaced gerrymandering of the electoral ward. 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, the application to the European Court of Human Rights (Application 8364/78 Kennedy Lindsay and others v the United Kingdom) was dismissed as inadmissible (Decision of the 8th March 1979). When, after the Good Friday Accords considerable efforts were being expended to reinforce trust one could understand and justify the extra requirement of extent in time periods prior to an election for registration in a particular district or for the request of postal voting documents. The threat of the offsetting of lean majorities by rushes of last minute

registrations is present and it is legitimate to take extra precautions. The longer time period required does not run counter to any principle. Stability of the registers in the immediate run up to an election (say three months) does not in any way infringe the democratic principle of free and fair elections. It could safely be adopted more universally without upsetting the system itself. Though no doubt it is a *desideratum* that all obstacles to registration should be removed and registration liberally allowed until the very last day preceding the poll, yet the principle of ascertain ability when the general situation is that of a dearth of trust, should prevail in the circumstances.

40. The Constitutional History of Great Britain is illustrative of the urge to achieve greater fairness, participation and freedom, encountering an ingrained instinct for stability and conservation of traditions. Some radical changes have occurred lately [devolution to Scottish and Welsh Parliaments, Accession to the European Union, guided power sharing in Northern Ireland, reform of the House of Lords, change in the Ministry of Justice structures]. There is no doubt that further change is in the offing. It has been mooted, *mirabile dictu*, that the British Constitution could be written down.

Conclusion

41. In answer to the first query, it would seem that United Kingdom Legislation on the Electoral process, including that concerning registration does conform with the European standards, and that the identification requirements are adequate, and the position has been further strengthened with the passage of the Identity Card legislation as well as with the various measures (Centralised data and CORE) which render counter checking easier, as well as with the yearly "canvass" exercise.

42. In answer to the second query, the United Kingdom legislation goes a long way to try to defend the systems of absent voting, including postal voting, from fraud and manipulation. One has to realize however that even though this limits the damage wrought by fraud and manipulation, one still cannot exclude to possibility of undue influence or improper use. This is not solely a United Kingdom problem.

43. In answer to the third question: the special requirements for Northern Ireland are justified and fair, given the special circumstances. One hopes they will not be permanent. The power sharing has only just begun, and it is important to maintain some vigilance.

44. As a general comment one should say that as a long standing democracy the United Kingdom system has grown within it, its own instruments of self-correction, which operate against the backdrop of an ingrained generalised feeling for fairness. In this instance these instruments have been activated and are in position to continue with the ongoing process of refinement of the electoral structures. There is another deep, perhaps invincible, conviction: that the system has, on the whole "worked", producing strong majority government but providing space for alternation and change. One should on the one hand, without triggering any defensive conservative reaction, prompt further critical reappraisal of the electoral system itself, including the inherently erratic first past the post election in the constituencies, in today's more than pluralistic Great Britain. As to the voting arrangements they seem, not only to conform to the best European standards but in effect scrupulously try to achieve the highest possible levels within those standards. Even if the Legislation seems cumbrously drafted the practical implementation makes it simple and accessible.