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Voting Systems - The Government's Proposals

(3rd revised edition)

This Paper seeks to draw together the Government's proposals for new systems of voting for the European Parliament, the Scottish Parliament, the Welsh National Assembly, the new Northern Ireland Assembly and the Greater London Authority. It discusses common themes related to those elections. It also summarises the proposals of the Jenkins Commission which has recommended an alternative system to First Past the Post so that a referendum can be held during the lifetime of this Parliament on a new voting system for the House of Commons. Finally the possibility of a new voting system for local government is briefly discussed. This Paper replaces Research Paper 98/80.

More detailed consideration of voting systems is given in Research Paper 98/112 *Voting Systems: The Jenkins Report*. This Paper is designed so that each section can be used separately as a guide to the voting procedures of the relevant institution, and so there is an unavoidable element of repetition.

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Summary of main points

The Government introduced Bills in the 1997-8 Session to create new voting systems for the European Parliament, the National Assembly for Wales and the Scottish Parliament. There are some common themes which are explored briefly in the introduction to this Paper. A closed list system is intended for the European Parliament and for the additional member aspect of the Additional Member System (AMS) proposed for the National Assembly and the Scottish Parliament. In effect electors vote for a party rather than an individual candidate. Greater attention focuses on party candidate selection procedures, and all the major parties have been reviewing their systems for the new types of elections expected in 1999. The role of MEPs, and members of the National Assembly for Wales, and the Scottish Parliament may undergo review following the introduction of party lists. In addition legislation to create the new Northern Ireland Assembly has meant that another form of PR, the Single Transferable Vote, is being used for a devolved assembly in that province.

At Second Reading of the *European Parliamentary Election Bill*, the Home Secretary promised to review the possibility of an open list system on the Belgian model, but a final decision was announced before Commons Report stage that the closed list system would be used. 84 MEPs will be elected under a Regional List System. Scotland and Wales will form one single electoral system each, and England will be divided into nine regions, each with between 4-11 MEPs. Single Transferable Vote (STV) for Northern Ireland is preserved. The Bill was finally lost after the Commons and Lords could not agree on closed and open lists. A new Bill has been introduced, which is identical to the 1997-8 one and which is discussed in Research Paper 98/102 *The European Parliamentary Elections Bill*

The Additional Member System is planned for elections to the National Assembly for Wales and the Scottish Assembly. The elector has two votes, one for a constituency MP and one for an additional member selected from party lists for a electoral region. In Wales there will be 40 constituency members and 20 additional members. In Scotland there will be 73 constituency members and 56 additional members. At present closed lists will operate for the Additional Member aspect and the Government has no plans to introduce open lists. In Northern Ireland 108 Members, 6 for each Parliamentary constituency, have been elected using STV.

The *Greater London Authority Bill* is expected to have its second reading on 14 and 15 December 1998. It will introduce an AMS system for the elections of Assembly members and Supplementary Vote (SV) will be used for the election of a Mayor for London. Elections are expected in May 2000.

The Government promised in its manifesto for the 1997 election that it would set up an independent commission to recommend an appropriate proportional voting system to First Past the Post (FPTP) for the House of Commons. A referendum would then be held to allow voters a choice between the two systems. An independent commission under Lord Jenkins was announced in December 1997, and reported in October 1998. It proposed a version of AMS, using the Alternative Vote in the constituency element and with 15-20 per cent of the seats elected on an open list system, to be known as Top-up Members. It is not yet clear when the referendum will be held. Further detail on the Jenkins report is given in Research Paper 98/112 *Voting Systems: The Jenkins Report*.

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97/114	The <i>Greater London Authority (Referendum) Bill</i> [Bill 61 of 1997-98]	06.11.97

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I Introduction

Research Paper 98/112 *Voting Systems: The Jenkins Report* provides background on the various types of voting systems in use in the world, and examines some arguments for and against each type. This Paper will concentrate on the Labour government proposals to introduce different types of electoral systems for the Scottish Parliament, the National Assembly for Wales, the European Parliament and for the Greater London Authority. The Single Transferable Vote has already been used in the new Northern Ireland Assembly. Finally the government is committed to a referendum during this Parliament on an alternative to the First Past the Post (FPTP) system for elections to the House of Commons. These commitments, apart from change for London, were foreshadowed in the Labour and Liberal Democrat Joint Consultative committee on constitutional reform which published a report on 5 March 1997, committing both parties to a range of proposals on the constitution. The introduction of different types of electoral systems which involve an elector voting for a party rather than an individual candidate has led to the need for legislation to administer the registration of parties. The *Registration of Political Parties Act* has now been passed.¹ New types of electoral systems also have led parties to review their procedures for selecting candidates.

A. Lists: Open and Closed

The Additional Member System (AMS) to be used for the Scottish Parliament, the Welsh National Assembly and the Assembly for London and the regional list system to be used for the European Parliament are different types of proportional representation (PR) systems, but there are features in common - most notably the choice between parties rather than candidates. In AMS the elector has two votes, one for a constituency member and one for a party to select 'top-up or additional' members. Attention has focused on the so-called lack of voter choice inherent in party lists, although it has to be remembered that First Past the Post (FPTP) can be described as a closed list of one; in the absence of an American style primary it is the local constituency party rather than the local electors who decide who will be the candidate in a Westminster election, and electors do not have a choice between differing wings of a party.

Since it is normally the party which orders the list of candidates, questions arise about the responsiveness of representatives who may owe their office to their position on the list. The British electoral system has so far dealt only in individual candidates and representatives, apart from elections to the Northern Ireland Forum in 1996 where a party list system was used, as explained in footnote 28. The Single Transferable Vote has been used in Northern Ireland for the election of local councillors since 1972 and for elections to the European Parliament since 1979, but this type of PR system offers voters the choice between individual candidates, rather than parties.

¹ See Research Paper 98/62 *The Registration of Political Parties Bill* for background

Such concerns have led to calls for open lists to be used for the European Parliament and for the additional member aspect of the elections in Scotland and Wales. Open lists are lists of candidates where the voter can indicate preferences for certain individuals over others. There are different types of open list systems in use in continental Europe and elsewhere, and the type used can significantly affect the outcome.

Five countries in the EU use closed lists for elections to the European Parliament²: France, Germany Greece, Portugal, Spain. All of these are national lists. The Government has proposed a closed list organised on a regional basis apart from Northern Ireland which will remain with STV. The independent Constitution Unit have argued that under a national list disaffected factions could have run as splinter parties with some electoral success. The use of relatively small regions tends to assist larger rather than smaller parties in the allocation of seats.

Six countries have lists where the candidates are ordered by the parties: Austria, Belgium Denmark, Italy, Netherlands and Sweden. In other states - Luxembourg, Finland, Italy candidate lists are unordered and are usually alphabetical. The UK would have adopted the Finnish model in its proposals for a list system for the European Parliament in 1977-8.³ In the event, FPTP was chosen by the Commons.

Another variant is the number of votes an elector is allowed. The most open system is in Luxembourg where the voter can have 6 votes, the total number of seats available, to vote for individual candidates across party lines. In systems with more ordered lists such as the Belgian one electors commonly have one vote which they can either use to endorse a particular party or to select an individual candidate. Finally the way in which votes are counted is crucial. In Austria, Belgium, Netherlands and Sweden preference votes for candidates are supplemented by party votes since the latter are seen as endorsements of the order of the list. That is, candidates at the top of the party list receive all the vote cast for a party. It is therefore harder for an individual voter to affect the overall outcome.

The independent Constitution Unit⁴ found that in countries where the lists are ordered, with party votes being allocated to candidates at the top of the list, the impact was minimal. It instanced the 1989 European elections in Belgium, where preferential voting led to only one candidate from the Socialist Party's list being elected prior to other candidates placed above him in the party list.

There are also variants of AMS where the party list can be supplemented by preferential voting for individual candidates. The main example is in Bavaria where it is used for its state elections. The voter is allowed to place a cross either against the name of an individual candidate on a party list or against the name of a party. According to an academic, Peter

² EU states do not necessarily use the same system in their domestic elections

³ see Research Paper 98/102 *The European Parliamentary Elections Bill* for details

⁴ *Elections under Regional Lists: a guide to the new system for electing MEPs* January 1998

James,⁵ most voters choose an individual candidate, and candidates standing in individual constituencies and appearing as additional members on the list stand a greater chance of being elected, even if they do not win their constituency.

B. Selection of Candidates

The process of compiling party lists focuses attention on candidate selection procedures, particularly where closed lists operate. All major political parties are examining this area in preparation for the European Parliament elections and in the elections for Scotland and Wales, and further detail is given in the individual sections of this paper. Key issues are the consultation of party members, the mechanism for ranking candidates, and measures to promote the selection of women or ethnic minority candidates. The Constitution Unit found that most parties in EU countries fall between wholly centralised systems as in France where it is determined by the party's central executive, and wholly decentralised systems as in the Austrian People's Party where candidates are chosen through primaries which include both party and non party members. In most countries candidates list are drawn up by the local and/or regional meetings of party members and submitted to national executive bodies for approval. In Finland the selection procedure is subject to statutory regulation under the Parliamentary Elections Act 1969, which stipulates that party members must have a vote in candidate selection. The Constitution Unit document⁶ summarises this legislation as follows :

- a decision on how many party candidates to put forward is taken by the constituency executive
- primaries are to be held where the number of candidates put forward exceeds the number of constituency seats (in practice, this rarely occurs)
- the nomination of candidates is by district level party branches
- the national executive has the power to appoint up to one quarter of candidates to the final list

Primaries are rarely held, and candidates are usually nominated by groups of party members and local executive bodies, rather than individual members. Nominations are then put to the parties' national executives for a final decision on which candidates should appear on the list.

There has been some concern that parties adopting twinning of constituencies or 'zipping'⁷ arrangements to promote the selection of women may be subject to legal action under sex discrimination legislation. When the Labour party tried to increase the representation of women in the House of Commons by the use of women only shortlists an industrial tribunal found that this was a breach of the *Sex Discrimination Act 1975*.⁸ The legal position remains unclear however, as the Labour party did not appeal. The Equal Opportunities Commission

⁵ *Representation* Spring/ Summer 1995 "The Free State of Bavaria: a special case"

⁶ *Elections under Regional Lists: a guide to the new system for electing MPs* January 1998

⁷ whereby a man alternates with a women in the ordering of a list of candidates

⁸ *Jepson and Dyas-Elliott v the Labour Party and others* [1996] IRLR 116

has issued a consultation document on proposed legislative amendments to the *Sex Discrimination and Equal Pay Acts*⁹ which amongst other topics asked for views on the merits of positive discrimination for women candidates, reflecting on the impact of recent judgements of the European Court of Justice relating to the *Equal Treatment Directive*:¹⁰

70. There have been two judgments of the European Court of Justice ('ECJ') about the scope of the Equal Treatment Directive in relation to measures to promote equality of opportunity in employment for men and women. In **Kalanke v. Hansestadt Bremen** (1995) the ECJ ruled that priority for promotion for women where they were under-represented was contrary to the Equal Treatment Directive. However in November 1997 in **Marschall v. Land Nordrhein Westfalen** the ECJ decided that where there are fewer women than men in a particular post in the public sector, a rule which requires that priority is given to a suitably qualified woman on promotion is not contrary to the Equal Treatment Directive provided that a suitably qualified man is guaranteed that his circumstances will be subject to objective assessment on criteria which do not discriminate against women, which could override the woman's priority. The ECJ's judgment however has no legal effect in the UK because the provision in the Directive which has been interpreted by the ECJ does not impose any legal obligation to introduce positive discrimination. Nevertheless the **Marschall** judgment represents an important, if limited, development in this area on which the EOC would welcome views.

Questions

Should the law permit positive discrimination in favour of men and women in employment?

If so, in what circumstances?

If so, should there be any limits?

Political Parties

71. Political parties are subject to the SDA as employers. They are also subject to it if they provide goods facilities and services to the public (under s.29), but there is an exception to s.29 for political parties in respect of 'any special provision for persons of one sex only in the constitution, organisation or administration by the political party' (Section 33). What is not clear is whether the SDA has any bearing on the process of selecting parliamentary candidates. This is a question which has arisen in connection with the Labour Party's all women shortlists and possible measures to create a better balance between the sexes in the new constitutional arrangements in Scotland and Wales.

72. The only decision directly on the matter is **Jepson v. The Labour Party** in 1996 where an industrial tribunal decided that single-sex shortlists for Labour party candidates were contrary to the SDA.

73. The EOC has also considered the relevance, if any, of the **Marschall** judgment on this matter (see paragraph 70 above), and come to the following view. If the selection of Parliamentary candidates comes within the scope of the SDA, as some lawyers argue, it is likely to raise issues of access to a particular profession or trade. Although there are provisions in the SDA which permit discriminatory training by employers and other organisations (sections 47 and 48) and the reservation of places for members of one sex on certain elective bodies (section 49), these provisions are very limited. They do not permit recruitment or selection with reference to sex and neither **Marschall** nor the Equal Treatment Directive changes that position.

⁹ *Equality in the 21st Century: a new approach* January 1998

¹⁰ Directive 76/207

74. If, on the other hand, the selection of Parliamentary candidates does not come within the scope of the SDA at all, as some lawyers believe, then the Equal Treatment Directive may be relevant but only if the selection of Parliamentary candidates came within its scope on which there has been no ruling.

75. If it does not, then the Directive is irrelevant. If however the selection of Parliamentary candidates is ruled to come within the scope of the Equal Treatment Directive, then the fundamental principle of the Directive would apply which is that there should be no discrimination whatsoever on the grounds of sex. However, by Article 2.4 the provisions of the Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in access to employment. This provision has been interpreted in the recent judgment of *Marschall* in the context of public sector employment as outlined in paragraph 70 above.

76. In 1993, the EOC was advised by Leading Counsel, prior to the **Jepson** decision, that single-sex shortlists for Parliamentary candidates did not contravene either the SDA or the Equal Treatment Directive. The EOC took further advice subsequent to the decisions in the **Jepson** and **Kalanke** cases (but before judgment was given in the **Marschall** case). Again the advice was that the selection of Parliamentary candidates did not fall within the scope of either the SDA or the Equal Treatment Directive.

77. It has been suggested that the legal uncertainty could be resolved by an amendment to the SDA to exclude from its scope the recruitment and selection of Parliamentary candidates. However, this does not remove the uncertainty as to whether the selection of Parliamentary candidates comes within the scope of the Equal Treatment Directive and, if so, what impact the Equal Treatment Directive would have on this.

78. The legal uncertainty in this matter can only finally be clarified by the courts. However, in view of the judgment in **Marschall** the EOC has decided to consult on the matter and views are invited on the following.

Questions

1. Do you think that positive discrimination should be permitted in favour of women in the selection of candidates by political parties for

- (a) national legislatures
- (b) the European Parliament
- (c) local/municipal legislatures?

If so, do you think there should be any limits set to the political parties' freedom in this respect, eg. for one election only?

In Belgium legislation was passed in 1994 requiring political parties to adopt quotas for women from 1999. Electoral lists for local, regional, European and federal elections will have to contain a maximum of two-thirds of people of the same sex. For elections taking place between 1995 and 1999 a three quarters quota has to be respected. Failure to respect the law means that penalties in relation to party funding apply. If the quota is unfulfilled positions reserved for women will be left blank.¹¹ This is the only EU state with a statutory quota. Both

¹¹ Tobback-Smet law 24.5.94 Loi visant a promouvoir une repartition equilibree des hommes and des femmes sur les listes de candidatures aux elections

France and Italy have attempted legislation later found to be against constitutional law as described in a publication from the Research Directorate of the European Parliament:¹²

Apart from Belgium both France and Italy have attempted to establish quotas through national legislation. In 1982, France passed a law establishing a quota of 25% female candidatures on party lists for municipal elections. However, this was legally challenged, and in September 1982, the Constitutional Council ruled that such legislation was incompatible with the principle of equality and therefore unconstitutional. In Italy, two electoral laws were implemented in 1993; the first law stated that on party lists, neither sex could be represented by more than 7.5% of all candidates. The second law established that male and female candidates would appear alternately on party lists (known as the "zipper system"). However, in 1995, the Constitutional Court declared the laws unconstitutional on the basis of violating equal treatment legislation-

New clauses¹³ were tabled to the *Scotland Bill* and the *Government of Wales Bill* at Commons committee stage to remove the scope of the sex discrimination from candidate selection. At present the government have no plans to legislate in this area. The topic was raised most recently in Commons Standing Committee stage of the *Registration of Political Parties Bill*¹⁴. The *Guardian*¹⁵ has reported a leaked cabinet committee minute from the Lord Chancellor arguing that amendments to the *Scotland Bill* to restrict the scope of the *Sex Discrimination Act 1975* would not remove the possibility of a challenge under the EC Equal Treatment Directive. This was the view set out by Henry McLeish, junior Scottish Office Minister, in debate at committee stage of the *Scotland Bill*.¹⁶ He said 'we could not guarantee that the parties would be free from challenge...The result could be a severe disruption of candidate selection procedures'.

C. Types of representative

The role of the member to be elected under a list system is as yet unclear, given the strong constituency - member link of British politics.¹⁷ New Zealand is the only state which has moved from a FPTP system to AMS, and some strains have been evident. List members and constituency members have in theory no different roles in Parliamentary and party structures, but in practice it has tended to be difficult for additional members to find a role; constituency members have been alarmed at the prospect of additional members taking up residence in

¹² *Differential impact of the electoral systems on female political representation* European Parliament Directorate General for Research March 1997

¹³ New clauses 9 and 10 *Scotland Bill* New Clause 30 *Government of Wales Bill*

¹⁴ SC Deb 23.6.98 c 68-72

¹⁵ *Guardian* 3.3.98 "Why Irvine sent Dewar plan to boost women in Scottish Parliament back to drawing board"

¹⁶ HC Deb vol 309 c 1143-1146

¹⁷ Arguably the value of the constituency link has been overestimated, since its importance can be said to force backbench MPs to concentrate on constituency work, rather than the proper scrutiny of legislation. This view is most recently associated with Michael Meadowcroft, the former Member. See Research Paper 98/112 for details

their constituency to cultivate a personal vote. There was some concern in New Zealand when a list member, Manu Alamein Kopu, defected from her party but retained her seat.¹⁸ In some legislatures a member who 'crosses the floor' is required to resign the seat.¹⁹

There is an added layer of potential tension in the AMS for Wales and Scotland as the constituencies to be used for the Parliament and the National Assembly will be the same as for Westminster, leading to two members for each constituency. The move to a regional list system for the European Parliament will also involve a new role for the MEPs, who will no longer have individual constituencies to look after, but whole regions. There will be presumably much less focus on constituency casework. The idea of different categories of MP may well lead to calls for differential pay and allowances²⁰. The issue was of importance for the Jenkins Commission whose terms of reference included the maintenance of the constituency link. One of the reasons for the choice of only 15-20 per cent Top-up Members was to avoid duplication of List Members with constituency members, with local rivalries developing. The Scottish Affairs Select Committee report *The Operation of Multi-Layer Democracy*²¹ foresaw difficulties with MSPs reaching the Scottish Parliament by two different routes. (para 79). A final consideration is the number of constituents each representative is expected to be responsible for. Greater London, with a population of over 5 million has just 25 Assembly members, who are expected to take a strategic view of policies, whereas there are 60 members of the National Assembly for Wales with 2.9m population.

D. Voting Behaviour

One of the major imponderable outcomes of electoral reform is the effect on voter behaviour. Calculations are often undertaken to illustrate the effect of certain voting systems on the outcome of elections, but these sometimes tend to assume that voter behaviour is unchanged whereas it is much more likely to be modified as a result of a new system. For example, electors may want to use their second AMS vote to choose another party, using tactical voting. This may lead parties to modify their own behaviour, by adopting electoral pacts or allied parties so that parties which had already gained their full quota of constituency seats could in some

¹⁸ see (New Zealand) *Press* 21.10.97 and *Sunday Star Times* 12.10.97 The New Zealand Procedure Committee subsequently reviewed her position in 1997, concluding that her seat had not been vacated

¹⁹ Para 23A of *Annexure 2 of the Constitution of the Republic of South Africa 1996* requires a resignation in these circumstances. The provision was designed as an interim measure to encourage party unity, and background is given in *South Africa: The Battle over the Constitution (1997)* Siri Gloppen. Similar measures are to be found in Zambia, and Trinidad and Tobago. The Opposition in New Zealand have supported a bill to require resignations from MPs crossing the floor, so far without success

²⁰ In New Zealand the Higher Salaries Commission recommended different allowances for constituency and list MPs, and considered but then rejected different rates of pay (see chapter 5 in *New Zealand Under MMP* by Jonathon Boston et al). Different allowances have now been introduced. The Government has asked the Senior Salaries Review Body to make recommendations on the pay and allowances for the Scottish Parliament Members and the terms of reference state: "no distinction is to be made between the salaries etc of members of the Scottish Parliament elected under the normal constituency system and those elected under the regional additional member system" HC Deb 27.3.98 c 345W

²¹ HC 460 1998-9

way urge supporters to vote for a sister party for the additional member ballot.²² This strategy may be of particular importance in Wales and Scotland where Labour is unlikely to gain additional seats in many electoral regions as they will receive their full share of the vote in winning so many constituency seats. A poll in the *Herald*²³ in March 1998 for example calculated that Labour would win 49 constituency seats and 6 list seats whereas the SNP would win 16 constituency seats and 33 list seats, although their share of the vote was virtually identical at 39 and 38 per cent respectively.

The Conservatives have raised the possibility of legislating to prevent split voting. They are concerned that existing parties could set up 'alter ego' parties to stand for the list only, which would go against the spirit of AMS.²⁴ In response Win Griffiths, then junior minister at the Welsh Office, said at committee stage of the *Government of Wales Bill* that this would be a cynical exploitation of the system (c 804):

Mr. Win Griffiths: I thank the right hon. Member for Devizes (Mr. Ancram) for advancing new clause 35 and the reasoning behind it. We acknowledge the points that he has made and I concede that there may be scope for collusion between and within parties to exploit the two-ballot structure of the additional member system in the manner that he described. Such cynical manipulation of the system would be an affront to the electorate and would undermine the democratic credibility of the elected body.

There is a variant of the AMS system where the elector has only one vote; the vote is used to elect both a constituency member and to vote for the party on a party list. The system is currently used in elections to the Land Parliament of North Rhine Westphalia: three quarters of the seats are constituency seats and one quarter are list seats. This variant of AMS was recommended by the Hansard Society in its 1976 report.²⁵

A Lords amendment to the *Government of Wales Bill* which allowed for only one vote so that the constituency vote was automatically translated into a party vote in the list was overturned by the Commons.²⁶ There have been a number of other Parliamentary exchanges on this topic²⁷, but the Government have no plans to alter legislation in this area.

²² see an article by Dr M Dyer *Representation* Summer 1998 "Why should Labour contest the list seats in elections for the Scottish Parliament?"

²³ *Herald* 10.3.98 "Labour's nightmare scenario"

²⁴ HC Deb vol 307 2.3.98 c 801-3

²⁵ *Report of the Hansard Commission on Electoral reform* 1976 (Republished 1998)

²⁶ HC Deb vol 316 22/7/98 c 1173

²⁷ There was an exchange in the Standing Committee of the *Registration of Political Parties Bill* SC Deb 18.6.98 c28-38

E. Election Administration

Finally, the introduction of parties into the British electoral system in a formal, legal sense will lead to a variety of changes to electoral administration, from the rules on deposits for individual candidates, to local expense limits which are based on channelling spending through candidates' election agents.²⁸ The *Registration of Political Parties Act 1998* offers parties an opportunity to register their name at Companies House, which most are expected to take up, as they will gain protection from rogue candidates appropriating their party label, and would be debarred from being allocated a party political broadcast.²⁹ The Act is a minimal measure and does not impose any requirements on the party before registration can take place. Requirements may be introduced following the Neill Committee report on party funding of October 1998.³⁰

The Neill Committee recommended the creation of an independent electoral commission which would register third parties such as trade unions or industrial lobbying groups which wished to engage in election and referendum campaign. The Commission recommended that this electoral commission should be the registrar under the *Registration of Political Parties Act*. (paras 11.5 and 11.26) The Jenkins Commission³¹ has also recommended an electoral commission without specifying whether it should take on the registration functions for parties.

The recent judgement in the *Bowman* case³² is bound to have profound implications for the current system of electoral expense limits. S75 of the *Representation of the People Act 1983* prohibits any expenditure in support of a candidate at an election (or disparaging another candidate) unless it is incurred by the candidate or election agent or other person authorised by the agent. National expenditure on the promotion of political parties is not affected. Mrs Bowman of the Society for the Protection of Unborn Children (SPUC) brought the case following her acquittal on a technicality on a charge under S75. Mrs Bowman had distributed leaflets in Halifax during the 1992 election, setting out the views of the various candidates on abortion. Mrs Bowman and SPUC complained that their right to free expression under Article 10 of the Convention was being violated. The court found that S75 operated as a total barrier to the publication of information about the stance of candidates on abortion and that the limitation of expenditure to £5 was not necessary to achieve the legitimate aim of securing equality between candidates, in view of the fact that no restrictions operated on the national or regional press or on advertisements. It concluded that the restriction was disproportionate to the aim pursued and that there had been a violation of Article 10.

²⁸ The elections in Northern Ireland for the Forum in May 1996 required electors to vote for parties rather than individual candidates. However statutory registration of parties was avoided by nominating a personal representative for each party. See Research Paper 96/52 *Northern Ireland: current political developments* for details. These elections were unique and are not likely to form a precedent for other UK elections

²⁹ for further information see Research Paper 98/62 *The Registration of Political Parties Bill*

³⁰ *The Funding of Political Parties in the United Kingdom* Committee on Standards in Public Life Fifth Report Cm 4057

³¹ *The Report of the Independent Commission on the Voting System* Cm 4090

³² *Bowman v United Kingdom (141/1996/762/959)* The text of the judgement is available via ECHR website

The Home Office is currently considering its response to the Bowman judgement. In its evidence to the Neill committee enquiry into the funding of political parties³³ the Home Office asked the committee to examine this aspect of election expenses within its wider review of party funding.³⁴

Many of these issues will be dealt with through forthcoming legislation on party funding and electoral expenses, due in draft form before the summer recess, following the Neill Committee report. However, voting for parties rather than candidates will involve some fundamental changes in the current regulatory framework. Decisions will be needed for example as to whether expenses limits will operate for a party list in a region, or for individual candidates within that list. The Home Office evidence to the Neill Committee noted the need for change:

Limits on national expenditure

33. Although limits on election expenditure have always been based on the amount (that any individual candidate can spend. with a move to list based electoral systems it will no longer be sustainable to rely simply on limits on the expenses of individual candidates. Elections in 1999 to the Scottish Parliament, National Assembly for Wales and European Parliament will all include candidates elected under a list system of proportional representation.

34. The Government is considering what new rules should be created to accommodate the new electoral systems. Options would include limiting total party expenditure. either within individual regions or nationally, and seeking to apportion national expenditure to regions. The Government will be guided in this by the recommendations of the Committee's Inquiry.

35. The European Parliamentary Elections Bill, which provides for the introduction of a regional list system for elections to the European Parliament, contains a power allowing regulations to be made governing candidates' and parties' election expenditure. It has been drafted deliberately to be as wide as possible so as not to preclude, at this stage, any of the options. Similar powers allowing for the limitation of election expenses of candidates and of registered political parties are included in the Scotland Bill and Government of Wales Bill in respect of elections to the Scottish Parliament and the National Assembly for Wales.

The Neill Committee recommendations affecting spending on forthcoming elections are set out below:

- A limit of twenty million pounds on national campaign expenditure by each political party contesting at least 600 seats (including benefits in kind) in addition to the maintenance of local limits;

³³ *Committee on Standards in Public Life* formerly known as the Nolan committee

³⁴ *Government evidence on the funding of political parties* Dep 6195 March 1998

- A lower limit proportional to the seats contested for elections to devolved assemblies, such as Scotland and Wales; £1.5m was proposed for Scotland, £600,000 for Wales and £300,000 for Northern Ireland. No specific spending limits were proposed for London, but an appropriate regime was considered;
- A national limit for expenditure on elections to the European Parliament of £3.5m, with no separate limits on individual candidates or regional areas, given the move to regional lists;
- Candidates for the constituency element of AMS would be subject to the same expenditure limits as for Westminster elections; candidates for the list should be subject to a limit which combined the total constituency limits of the constituencies contained within the region;
- Limits on spending by third party groups, such as pressure groups, which would have to register if they wished to incur expenses on elections or referendums. Limits would also apply for elections to devolved assemblies and for the European Parliament;
- A revision of Schedule 3 of the *Representation of the People Act 1983* so that it contains a full and up-to-date list of items of expenditure which should be declared by candidates at the local level;
- An independent electoral commission which would scrutinise expenditure by each party, amongst other duties.

The Government has welcomed the Neill Report and expect to issue a draft Bill in this session, probably in the summer of 1999.³⁵ The electoral commission proposal was in general welcomed by the Home Secretary although further work would be necessary on its functions.³⁶ The Neill Committee noted that the Home Secretary had the power to limit election expenses for a general election of the European Parliament under the Act. It considered that under a closed list system spending would shift away from promoting individual candidates towards the promotion of regional lists or parties nationally, so limits for individual candidates would no longer be appropriate. (paras 10.112-113) The overall limit for each party should be £3.5m with proportional limits for third party spending.

It is also worth noting that the use of different formulae to allocate the votes in list type elections can be of great importance, although the arguments often seem technical. The choice affects the distribution of seats particularly, as in the UK, regions with small amounts of seats are used. The main choice is between the d'Hondt system or the St Lague system. Further details are available in Appendix I. At present the Government is committed to the d'Hondt system of highest averages.

The sections below set out the electoral system for each institution, as currently proposed; further sections look at the Jenkins Commission on voting systems, and proposals for local government.

³⁵ HC Deb vol 319 9.11.98 c 58

³⁶ HC Deb vol 319 9.11.98 c 55

II The European Parliament

A. Electoral System

Research Paper 98/102 *The European Parliamentary Elections Bill* contains full background to the Government's decision to introduce a new type of electoral system for elections to the European Parliament. The system proposed is a regional list system. The previous *European Parliamentary Elections Bill*³⁷ was lost at the end of the 1997-8 session. If the current bill is not passed in time for the 1999 elections to be held under its provisions the elections will be held under the usual FPTP system, with new Euro-constituency boundaries.

The total number of MEPs in the UK will remain the same at 87, (71 England, 8 Scotland, 5 Wales, 3 Northern Ireland). However European Parliament constituencies as currently known would cease to exist, except in Northern Ireland which will retain its STV voting system. Instead Scotland and Wales would form one single electoral region each and MEPs for these electoral regions would no longer have territorial constituencies, but represent the electoral region as a whole. England would be divided into nine regions based on the current Government Offices for the Regions, except for combining Merseyside and the North West. Between 4 and 11 MEPs would be returned for each English region, dependent on the electorate of the region. There would no longer be a role for the Parliamentary Boundary Commissions which are at present responsible for redistributing EP constituencies, following reviews of Parliamentary constituencies. Instead the Home Secretary would consider the number of registered electors in the year preceding the next EP election and make amendments in the number of MEPs for each region to ensure that the ratio of registered electors to MEPs is as nearly as possible the same for every electoral region in England³⁸. Thus the areas of the regions would not be under review and there would be no need for the type of redistribution carried out by the Parliamentary Boundary Commissions.

The MEPs for each region would be elected by a regional list system, under a closed list. A voter could choose either a party or an independent candidate, and it would be the responsibility of the party to submit a list of ordered candidates. The allocation of seats would be decided by the d'Hondt formula³⁹, generally considered to favour larger parties. The Home Office press release of 29 October 1997 noted that the new system would be similar to the ones used in France, Germany, Greece, Portugal and Spain for EP elections. All of these states have closed ballots where voters cannot change the order of candidates submitted by a party.

³⁷ Bill 65

³⁸ There is no provision in the Bill to make adjustments to the number of MEPs for Scotland, Wales, or Northern Ireland

³⁹ See Research Paper 98/112 *Voting Systems The Jenkins Report* for background and Appendix 1 of this Paper for examples

The d'Hondt formula used aims to allocate each seat to the party which would at that point have the highest average vote per seat. The total votes of each party are divided by the number of seats it already has plus the next seat to be allocated. Thus the party totals are divided first by 1 [0 seats plus 1] then by 2 [ie 1 seat plus 1] then by 3 [2 seats plus 1] etc. The first seat goes to the party with the largest number in the table below the next seat to the next highest number and so on.

In a 4 seat electoral region where Party A has won 430,000 votes, Party B 370,000 and Party C 200,000 the allocation would be as follows (the number of brackets indicate the order of allocation of the four seats):

	<u>Party A</u>	<u>Party B</u>	<u>Party C</u>
No. of votes cast	430,000	370,000	200,000
Divide by 1	430,000 (1)	370,000 (2)	200,000 (4)
Divide by 2	215,000 (3)	185,000	100,000
Divide by 3	143,333	123,333	66,666

Party A had the largest number of votes and gained the first seat. The second seat is awarded again to the party with the largest vote (B) and at this stage the Party C still has its total votes, whereas Party A and B's votes are divided by 2, having already won seats. However Party A vote is divided by 2 is still more than C's total vote so it gains the third seat. Party C gains the last seat.

Schedule 2 sets out the new electoral regions . A press pack issued by the Home Office on 29 October 1997 contained a sample ballot paper listing names of candidates for a particular party, but the Bill does not specify that names will appear on the paper. It is however intended that names will appear, through forthcoming secondary legislation. The Press Pack also proposed that deposits would be set at £5,000 for each list of candidates, to be forfeit if the party received less than 2.5 per cent of the vote.⁴⁰ There is nothing in the face of the Act at present which specifies the deposit; This will be dealt with by subordinate legislation, as will a new system of controlling election expenses which is at present dependent on individual agents and candidates. During the passage of the previous Bill the Government secured an amendment allowing regulations on election expenses for the general election as a whole⁴¹, and the Neill Committee⁴² recommended a single national limit of £3.5m per party with no separate regional or individual candidate limits. The Government is likely to accept these recommendations.

The new local government boundaries are not crossed but the Government Offices for the Regions areas do intersect both the boundaries of the current European Parliamentary

⁴⁰ the equivalent for Westminster is £500 and 5 per cent. An individual candidate would be expected to provide a £5,000 deposit

⁴¹ HC Deb vol 307 5.3.98 c 1244 Commons committee stage

⁴² Cm 4057 *The Funding of Political Parties in the United Kingdom* October 1998

constituencies and the proposed constituencies outlined by the Parliamentary Boundary Commission for England in its present review. The Government Offices for the Regions were established in 1994 to integrate the regional operations of four departments, Environment, Trade and Industry, Employment and Transport. From April 1997 the Government Statistical Service has adopted these GORs for the standard presentation of regional statistics for England. Although Merseyside has a separate Government Regional Office, it is often shown as part of the North West and Merseyside region for statistical purposes.⁴³ Constituencies will no longer exist in the form currently known, as MEPs would be elected for a region.

The STV system for Northern Ireland is preserved. New **section 3C**⁴⁴ sets out the **franchise**, which is based on the Parliamentary franchise (therefore including overseas voters) plus peers and nationals of other EU states who have chosen to include themselves on the register for the EP elections.⁴⁵ No changes are therefore planned for the electorate for European Parliament elections. **Candidates** may be British Irish, Commonwealth or EU citizens and peers, ministers of religion, MPs and local councillors are eligible. As in the 1978 Act, the Home Secretary sets the date of the election by order under new **section 3D**. The date of the next elections is June 1999.

Schedule 2 to the Bill provides for regulations to determine the holding of by-elections; these will be held in certain circumstances, probably when an independent was the previous incumbent of the seat, rather than on a party list or where the end of the party's list had been reached. It appears that the regulations will otherwise require the vacancy to be filled from the next eligible⁴⁶ and willing candidate on the relevant party list at the last EP election, as is the normal procedure for regional list systems abroad. There would be no provision for the list to be altered between elections, so there is the possibility that the candidates on the list would be no longer eligible to stand. It is likely that each candidate in turn would be approached by the relevant Returning Office to check eligibility; the possibility that a candidate on the list might have been subsequently been suspended by the party or have left the party will need to be considered.

According to a Parliamentary Answer⁴⁷ regulations will be made to require the Regional Returning Officer to find the first eligible and willing candidate; under the *Registration of Political Parties Act* the nominating officer of each registered party will have to signify that the candidate remains an approved candidate. These regulations have not yet been published. The Bill as currently drafted provides for the regulations on by-elections to be laid before Parliament after having been made, but does not require the regulations to be debated and/or

⁴³ Research Paper 97/67 *The New Statistical Regions* describes the new areas and provides statistical comparison between them. It contains maps indicating the regions and the new local government areas comprised within them.

⁴⁴ To the *European Parliament Elections Act 1978*

⁴⁵ See Research Paper no. 94/23 *Votes and Seats for European Parliamentary Elections* for background on EU electors

⁴⁶ the candidate will need to meet the requirements of electoral law, in terms of age, citizenship etc

⁴⁷ HC Deb vol 313 8.6.98c 436W

approved by Parliament. The regulations for by-elections under the 1978 Act currently do not require Parliamentary approval, but those regulations simply dealt with the date of the election.⁴⁸

During the Second Reading debate concerns were expressed about the decision to use closed lists, rather than open list systems used by Austria, Denmark, Belgium, Finland, Luxembourg, Italy, Netherlands and Sweden, as well as the opportunity to vote preferentially under STV in Northern Ireland and the Republic of Ireland. The Home Secretary, Jack Straw, said that he was prepared to listen to the arguments presented by the Liberal Democrats and Charter 88 for adopting a Belgium type system of open ordered list.⁴⁹ A final decision on open lists was announced at Report stage. (see below)

At Second Reading the Home Secretary emphasised his general opposition to proportional representation as a method of electing governments. He drew attention to the different nature of the European Parliament as a representative body with weak constituency links.⁵⁰ He also defended the use of the d'Hondt formula, in contrast to St Lague (1,3,5,7) or modified St Lague (1.4,3,5,7) as not necessarily less proportional in effect. (c 811-20). Sir Brian Mawhinney, for the Opposition, argued that the new electoral system would be significantly worse than the old, in terms of severing the link between constituent and individual MEP. Alan Beith for the Liberal Democrats, welcomed the Bill but called for an open list system. Following the debate Professor Iain McLean pointed out to the Home Office that Mr Straw had based his comments on the operation of the d'Hondt and St Lague formulas on incorrect calculations. This has been acknowledged by the Home Office.⁵¹ The use of St Lague rather than d'Hondt would appear to make the result of the election more proportional in Wales in particular, with a four party system within a small five seat region.

Professor McLean published research indicating that Wales and Northern Ireland remained over represented in terms of the number of European Parliament seats, and that the St Lague quota appeared to have been used to divide seats between English regions whereas d'Hondt was proposed for allocation of seats between parties.⁵² However the Home Office maintain that St Lague was not used for the allocations of seats between regions.⁵³ There is no mechanism in the Bill to review the number of seats allocated to each constituent part of the UK.

The Constitution Unit published a critical guide to the issues⁵⁴, providing further details on the types of closed and open list used in the rest of the EC, and their electoral impact.

⁴⁸ Schedule 1, para 3 (5)

⁴⁹ HC Deb vol 301 25.11.97 Mr Straw deposited in the Library a description of the operation of the Belgian electoral system Dep 3/5596

⁵⁰ HC Deb vol 301 25.11.97 c 804

⁵¹ HC Deb vol 304 20.1.98 c 516W

⁵² summarised in Constitution Unit *Elections under regional lists* February 1998

⁵³ HC Deb vol 304 20.1.98 c 516W

⁵⁴ *Elections Under Regional Lists: a guide to the new system for electing MEPs* January 1998

For full details on the arguments in the Bill about open and closed lists see Research Paper 98/102 *The European Parliamentary Elections Bill*.

The Home Office commissioned a study of voter opinion from National Opinion Polls which has been placed in the Library.⁵⁵ This found that voters had a very low awareness of European election procedures at present, and examined various aspects of the closed list or Belgian system, finding both that voters appreciated the Belgian variant, but were likely to express a negative reaction if the consequences of the counting procedures were not explained, that is, that party list candidates were most likely to be elected due to the weight of party votes. However the Liberal Democrats argued that the survey revealed support for open lists.⁵⁶

Jack Straw announced on 9 March that he had concluded against adopting the Belgian system.⁵⁷

European Parliament

Angela Smith: To ask the Secretary of State for the Home Department if he will make a statement on the electoral system for elections to the European Parliament.

Mr. Straw: It is fundamentally important that any voting system is appropriate to the nature and functions of the body which is being elected. On Second Reading of the European Parliamentary Elections Bill on 25 November 1997, *Official Report, column 803, 1* stated that the Government believed the regional list system set out in the Bill to be the most appropriate system for elections to the European Parliament in Great Britain. Under such a system, an elector may cast his vote in one of two ways—for a party list or for an independent candidate. However, having received separate representations from the Liberal Democrats and Charter 88, I undertook to listen to the arguments for adopting a system similar to that which operates in Belgium, whereby an elector may cast his vote in one of three ways—for a party list, for an individual candidate on a party list or for an independent candidate.

I have studied the matter very carefully. As part of the consideration process, I commissioned a study of voter opinion by National Opinion Polls, the results of which have been placed in the Library.

I have concluded that there is no advantage in adopting in Great Britain a system of the kind used in Belgium.

⁵⁵ *Attitudes to Euro-Elections and Electoral Reform* Dep 6226 March 1998

⁵⁶ Liberal Democrat News 3.3.98 "Public support for open lists should guarantee government support

⁵⁷ HC Deb vol 308 9.3.98 c 17-8W

The type of system which is in use in Belgium has some superficial attractions. An elector may express a preference for a particular candidate, rather than simply endorsing all the candidates on a party's list. However, the system suffers from a fundamental and incurable weakness, in that voters' preferences for individual candidates are not necessarily translated into electoral success.

I am placing in the Library some numerical examples to illustrate how the system works in practice. These indicate that even where votes for individual candidates amount to as much as 40 per cent. of a party's total vote, those candidates receiving the fewest individual votes can be elected while those receiving the most are not. I believe that such an outcome could lead to substantial disillusionment among the electorate following an election.

The overwhelming majority of citizens in the European Union elect their Members of the European Parliament using a system of the kind for which the Bill currently provides. This seems to me to be the most suitable one to use in a situation where (as the National Opinion Poll study demonstrated) most people vote for parties rather than individuals.

The Government are committed to fulfilling their manifesto promise to put in place a proportional voting system for elections to the European Parliament. I remain convinced that the simple regional list system in the European Parliamentary Elections Bill is the most appropriate way of delivering that commitment.

In the Lords debates on the Bill attempts to introduce either an ordered list or a completely open list were ultimately successful at third reading when an amendment to introduce an open list system on the Finnish model was passed against the Government. The Government refused to accept this amendment and the Bill was lost.⁵⁸ It has now been reintroduced in almost identical form. The names of the candidates will appear on the ballot paper; this was most recently confirmed at Lords Report Stage.⁵⁹ The Home Office has commissioned research on the form of the ballot papers to be used for the European Parliament, Scottish Parliament, Welsh National Assembly and Greater London Authority which should be published in December 1998.⁶⁰

The Constitution Unit noted that in four EC countries - Belgium, France, Luxembourg and the Netherlands- parties are deemed to be voluntary associations and do not have to register; however the groups can protect their names on the ballot paper by registering them and in France parties must deposit their statutes with a central or local authority. The Constitution Unit also pointed out that quotas or 'zipping' arrangements to increase the proportion of female candidates was relatively common, noting that the Socialist parties in Denmark, France, Spain and Sweden use zipping, and the Social Democratic Party in Germany and Austria stipulate a minimum of 40 per cent of list places for women.

⁵⁸ HL Deb vol 593 20.10.98 c 1331 see Research Paper 98/102 for further details on the passage of the Bill

⁵⁹ HL Deb vol 593 12.10.98 c 737

⁶⁰ HC Deb vol 315 6.7.98 c 346W

The creation of MEPS arguably more beholden to their party than the electorate has continued to attract criticism.⁶¹ Developments in New Zealand, where an additional member selected from a party list subsequently resigned from the party to become an independent has highlighted the problems with the lack of by-elections in list-type elections.⁶²

B. Selection of Candidates

All the parties reexamined their selection procedure for candidates to the European Parliament to adapt to a new regional list system. For the 1994 elections the Liberal Democrats used STV on a ballot of party members following an assessment procedure undertaken by the Scottish, Welsh and English parties centrally.⁶³ The electorate for selection were the members of the Party in the European Parliament constituency concerned. The Labour Party selection procedure was based on that for Parliamentary candidates, and the relevant local membership used Alternative Vote to select the candidate. The National Executive Committee retained powers to modify the procedure⁶⁴. The Conservative Party had a Standing Advisory Committee on European Candidates which assesses potential candidates, and voting by relevant local members was conducted through an exhaustive ballot. Local candidates could be added to the approved list by the Chairman of the Euro Constituency Council.⁶⁵

For the European Parliament, the Liberal Democrats have selected by balloting the party members of each of the new European regional constituencies using Single Transferable Vote; each regional list was 'zipped' so that places went alternately to male and female candidates⁶⁶ Party members voted both for the individual candidates and their ranking on the list.⁶⁷

The Conservatives allowed participation by individual party members, and details were given in its proposals for party reform *The Fresh Future*.⁶⁸ A regional selection college was established comprising Westminster constituency chairmen and regional representatives which vetted potential candidates; party members within each region are selecting candidates and ranking them in a list, following a series of rolling final selection meetings. There was no postal ballot of members. There have been press reports of poor attendance at these meetings. Names of candidates chosen can be found at the Conservative Party website.⁶⁹

⁶¹ European Journal November 1997 "1999 Euro Elections"

⁶² New Zealand Press 21.10.97 and Sunday Star Times 12.10.97

⁶³ *Constitution of the Liberal Democrats* 1994 Article 11: Parliamentary Candidates

⁶⁴ *Labour Party Rule Book* (1996) Section 4 Selection of Parliamentary Candidates

⁶⁵ *Notes on Procedure for the Selection and Adoption of Conservative Parliamentary Candidates in England, Wales and Northern Ireland* Conservative Central Office November 1994

⁶⁶ Liberal Democrat News 30.1.98 "What Euro-PR means for us campaigners now"

⁶⁷ Liberal Democrat News 14.6.98 'Tory Defectors Triumph in Lib-Dem Euro Ballot' A list of candidates is given in the press notice, available on the Liberal Democrat web site www.libdem.org.uk 17.2.98

⁶⁹ www.conservative-party.org.uk

Labour proposed⁷⁰ that each Westminster constituency would be able to nominate one male and one female candidate and these would be voted upon by one member one vote across the electoral region so that two candidates are chosen, one of each sex. These nominees would be included in a one member one vote ballot within the existing Euro-constituency, with special arrangements for including sitting MEPs. The Euro constituency party then makes 2-3 nominations to the pool of candidates, dependent on whether an existing MEP is seeking reselection. At least one of the nominees is a woman. Shortlisting then takes place at a regional level by a joint regional/national panel which selects and ranks the list. Part of the reasoning behind the proposals was to enable sitting MEPs some priority in the selection process. It is unclear how much of a base each candidate will have in individual regions under these proposals. The full candidates list was published at the annual Labour Party conference.

There were some complaints that popular candidates has been given positions too low down in the list and it was evident during the protracted debates on the 1997-8 Bill that a number of backbench Labour MPs had had concerns about some of the results of the process. In particular the selection of a candidate from England as no 3 in the Welsh list over a Welsh MEP, Joe Wilson, was commented upon in the debates.⁷¹ The movement of Glyn Ford MEP from Manchester to no 1 of the Southwest list was also noted. Martin Linton, a Labour backbencher, acknowledged: 'the system offers the Labour party more seats in the southwest, but fewer in the northwest. There was a temptation to manage the process so that we did not end up with too many of our people representing seats in the northwest and too few in the southwest.'⁷² One sitting MEP, Christine Oddy is considering legal action following her selection in what she considers an unwinnable position on the list⁷³.

An assessment by a parliamentary lobbyist suggested that the need to select more women and ethnic minorities 'clearly played a part in forcing incumbents down regional lists, for example in London' and concluded that although 12 out of the 49 MEPs who are standing again have been placed in difficult positions, 'all but 6 of the 43 well-placed candidates are sitting MEPs who cannot be simplistically categorised [as new Labour]. Therefore the party's candidate selections showed only a gentle shift to New Labour'.⁷⁴ This assessment also considered that the Conservatives selection did not see the purge of 'Europhiles' that some had expected.

⁷⁰ *Labour in Europe 1999* Labour party consultation paper 1997

⁷¹ HC Deb vol 319 10.11.98 c 228 speech by Dr John Marek

⁷² HC Deb vol 319 16.11.98 c693

⁷³ BBC News website 9.11.98 'Euro MEP threatens legal action'

⁷⁴ *The Public Affairs Newsletter* November 1998 The author was Neil Stockley

III The National Assembly for Wales

A. Electoral System

Research Paper 97/129 *The Government of Wales Bill: Devolution and the National Assembly* provides full details of the new electoral system.

The new Additional Member System for the Welsh National Assembly is set out in the *Government of Wales Act*. **Section 2** and **Schedule 1** of the bill sets out the membership of the Assembly and provides for an assembly of 60, one member elected from each of the 40 Parliamentary constituencies named **Assembly constituencies** and 20 additional members from the five existing European Parliamentary constituencies, now named **Assembly electoral regions**. The White Paper⁷⁵ in Annex C provided exemplifications. The Government resisted pressure from the Liberal Democrats and others to increase the number of seats to make the National Assembly more proportional; in Scotland, the split is 73 (57 per cent) constituency members and 56 additional members. (43 per cent). The Liberal Democrats favoured increasing the number of seats to 70-80, which they argued would also increase the number of members available to sit on committees⁷⁶ and offer more chance of representing all sections of the community. Democratic Audit found that an increase of five more additional members would "significantly increase the proportionality of the overall election outcome".⁷⁷ It also found that the Welsh system could easily leave marked disparities in representation amongst the parties uncorrected, to the benefit of both Labour and Conservative and the disadvantage of Liberal Democrats and Plaid Cymru (especially in South Wales) (p18).

The calculations for the AMS are set out in Sections 4 and 6. **Section 4** gives electors two votes, one for the constituency and one for the electoral region. The ballot paper will therefore have two parts. Constituency members are elected under first past the post and then under **Section 6** the number of electoral region votes are added together for each registered party (or independent candidate) and the additional seats allocated according to share of the vote. The four additional members for each electoral region are identified by calculating the number of constituency seats won by each party in the region, and dividing the number of each party's party list votes by the number of constituency seats won by that party plus one. The party with the highest number of votes after that calculation gains the first additional member. The calculation is then repeated for the second to fourth additional members, but dividing the number of constituency seats plus one and plus additional member seats allocated in previous rounds. This is a straightforward application of the d'Hondt formula. Appendix I gives a simple example of the calculations using this formula.

⁷⁵ *A Voice for Wales* Cm 3718 July 1997

⁷⁶ see Welsh Grand committee 18.11.97

⁷⁷ *Devolution Votes: PR Votes in Scotland and Wales* Democratic Audit Paper no 12 September 1997

Therefore a party which won 30 per cent of the vote, which had already won 30 per cent of the seats available in the region in terms of constituency seats would win no more additional seats. A party which won considerable numbers of votes in the electoral region but had not achieved a constituency seat would be compensated with additional members in proportion to vote share. Parties which had won more constituency seats than their proportion of the share of the vote would justify do not lose their constituency seats. There is no formal threshold or level of support which a party must achieve to be allocated an additional member seat; nevertheless, an informal threshold will operate defined by 100 per cent, divided by the total number of seats in each electoral region (100/12) translating as nine per cent. There seems little chance of fringe parties gaining a seat under this informal threshold.

At Lords Third Reading a Conservative amendment was carried to reduce the number of votes by the elector to one so that the vote in the constituency part of the election is automatically translated into support for the relevant party in the regional aspect of the election. The Conservative spokesman Lord Mackay of Ardbrecknish argued that the amendment was necessary to ensure that 'alter ego parties' could not stand in the regional list and so gather up votes from a sister party.⁷⁸ The amendment was rejected by the Commons on 22 July⁷⁹.

Assembly members may be British, Irish or EU citizens, and may include peers and ministers of religion, local councillors and MPs (**Section 13**). Otherwise the normal disqualifications applicable to MPs⁸⁰ under Section 1(1) of the *House of Commons Disqualification Act 1975* and to local councillors will broadly apply. (**Section 12**) Lords Lieutenants, lieutenants and High Sheriff are disqualified from representing an area in which they hold office. (**Section 12(4)**) An Order in Council may make provision for additional disqualifications. It is intended that this Order will list membership of public bodies as disqualifying offices; the current list under the 1975 Act is not necessarily appropriate for the Assembly. A Lords amendment to prohibit Ministers of the Crown from being Assembly Members was overturned by the Commons.⁸¹ It is expected that the deposit will be £500 per candidate in the constituency element and £500 per party in the list element.

The Act provides for parties to be registered under relevant statutory procedures (**Section 4(8)**) but it is the *Registration of Political Parties Act* which will set out the details of the registration process. Any registered political party may submit a list not exceeding 12 persons to the Regional Returning Officer. Independent candidates will be able to form a 'party' and submit lists, provided it is properly registered. Candidates can only be on one regional list. Individuals may also stand as candidates for a single electoral region, but only if they are not candidates on a list submitted by a registered party, or standing as a constituency candidate for a registered party (**Section 5**).

⁷⁸ HL Deb vol 187 15.7.98 c 259-276

⁷⁹ HC Deb vol 316 c 1173

⁸⁰ see *Parliamentary Practice* (21st ed 1989) chapter 3 for details

⁸¹ HC Deb c 1187

The introduction of a system of party registration required for this Act, as well as for the European Parliamentary Elections Bill and the *Scotland Act* will mean that a new system of maximum election expenditure will need to be developed. The Home Secretary has said that powers will be used under the *Government of Wales Act* to cap national spending for the 1999 elections.⁸²

By election procedures are set out in **Section 8**. By elections will only be held when there is a vacancy in an Assembly Constituency seat (**Section 8(1)-(2)**) where a simple First Past The Post system will be used, and no by election will be held where a vacancy exists within 3 months preceding a full election of the Assembly. If a vacancy occurs for an Assembly electoral region the Regional Returning Office will notify the presiding officer of the name of the next highest eligible⁸³ candidate on the relevant party list. The list applicable is that submitted for the full election. However, the regional returning officer must establish that the candidate is

"willing to serve" as an Assembly member, so the candidate may decline the seat. Government amendments at Lords Committee stage established that a regional returning officer will be required to pass over the name of a candidate if the relevant party notifies him that a candidate, having left the party, should no longer be considered eligible.⁸⁴

The **franchise (Section 10)** is as expected, those eligible to vote in local government elections, that is the Parliamentary franchise minus overseas voters, plus peers and EU nationals who fulfil the residency requirements.⁸⁵ Electors will not be able to vote in more than one electoral region or Assembly constituency at a full [ordinary] election. More detailed provisions on the conduct of elections will be made under **Section 11**, including regulations on election expenses, and combining polls, and will draw on existing regulations governing the conduct of parliamentary, European parliamentary, or local government elections. Part III of the *Representation of the People Act 1983*⁸⁶ will apply to disputed elections (**Section 11(5)**). Regional returning officers will be designated to organise the election (**Section 11(6)**) so there is no provision for an independent electoral Commission to supervise the conduct of the election.

The Parliamentary Boundary Commission for Wales will be required under **Schedule 1** to review Assembly electoral regions whenever it recommends alterations affecting Parliamentary constituencies in Wales. The Commission is required to have regard to rules set out in para. 8 of Schedule 1: briefly that Assembly constituencies should be wholly included in one Assembly electoral region, and that the ratio of electoral seats to the Assembly constituency seats will remain at 1:2, so that the total number of electoral region seats will be as close as possible to half of the number of constituency seats. The schedule also ensures that the number of electoral regions seats should be divided equally between

⁸² HC Deb vol 319 9.11.98 c 54

⁸³ in terms of electoral law

⁸⁴ HL Deb vol 589 11.5.98 c 916

⁸⁵ for background see Appendix to Research Paper 97/92 *Scotland and Devolution*

⁸⁶ election petitions and courts

individual electoral regions; one fifth of the total number of electoral region seats should be given to each electoral region, or as nearly as possible to one fifth.

Schedule 1 provides for the PBC to publish its provisional recommendations, take into account representations, and hold local inquiries in line with its usual procedures for reviews into Parliamentary constituencies. Such procedures will not be necessary where the PBC is merely recommending changes in the number of seats for an electoral Region, and the proposed or revised number of seats for the Regions is divisible by five. An Order in Council will give effect to the PBC's recommendations, in line with usual procedures for the redistribution of Parliamentary seats.⁸⁷

The Assembly will be subject to fixed term elections, held every four years on the first Thursday in May, subject to modification for a month either way by the Secretary of State in line with his current powers in relation to Local Government elections. Elections for community councils may be postponed for three months where the Assembly poll would otherwise be held on the same day. An order has been proposed to move the next community council elections from 6 May to 10 June 1999.⁸⁸

At Committee stage of the Bill the Liberal Democrats proposed amendments to substitute the Single Transferable Vote for AMS, supported by Plaid Cymru, arguing against voting systems which required electors to vote for parties.⁸⁹ The Conservatives introduced amendments to replace AMS with First Past the Post arguing that the constituency/Member link was of prime importance. (c 892-896) Denzil Davies and John Marek expressed concern about the closed list aspect of AMS and asked for the open list variant used in Bavaria to be considered. (c896-900) In response Win Griffiths, for the Government, said that AMS had been endorsed in the September referendum (c 904).

The Liberal Democrats, supported by Plaid Cymru also proposed amendments to increase the number of members to 70, by adding 10 additional members⁹⁰. Ted Rowlands raised concerns about the role of the additional members, and possible overlap between Westminster MPs and Assembly constituency members given the coincidence of constituency boundaries. (c 1024-1030). In response Win Griffiths argued that with the passing of time conflicts would diminish as relationships develop within parties. (c 1051) The ballot paper was not set out in the Act, but a draft order has now been made⁹¹, and the names of the candidates will appear on the ballot paper.⁹²

⁸⁷ See Research Paper 95/74 *The Parliamentary Boundary Review for England*

⁸⁸ HC Deb vol 318 26.10.98 c 6W

⁸⁹ HC Deb vol 304 c 881-889

⁹⁰ HC Deb vol 304 c 1018

⁹¹ draft *The National Assembly for Wales (Representation of the People) Order*

⁹² HL Deb vol 594 c 513

B. Selection of Candidates

The Conservatives outlined in their document *The Fresh Future* proposals for selection of candidates based on their procedures for European Parliament candidates. A regional selection college interviews prospective candidates and draws up an approved list; party members then select candidates and rank them in a series of rolling final selection meetings. Candidates for the list are required to stand also for a constituency seat, apart from those who fill the last four places, as there will not be sufficient constituency seats for all list candidates. Selection for the constituencies has been completed and the selection for the lists is being finalised in November. Rod Richards, the former Member, has been elected party leader in Wales.

Labour Party produced proposals to twin constituencies for the selection of candidates so that one man and one woman would be selected for the two constituencies. A selection board appointed by the Welsh interviewed prospective candidates for an all-Wales list of candidates to be drawn upon by the constituency parties. Constituencies are twinned so that a shortlist is drawn up of two men and two women for both constituencies. The joint shortlist was then put to the combined membership of the two constituency parties. All individual members were eligible to vote, including by postal ballot. Each member would vote for one woman and one man on separate ballot papers using a preferential vote (1,2,3,4). The count would use an eliminating ballot and the votes for the women and men candidates will be counted separately. The female candidate and the male candidate with the highest vote in the ballot would be the two successful candidates for the paired constituencies. It is proposed that the choice of which of the two constituencies each candidate will contest will be decided by agreement between the successful candidates and the chairs of the constituency parties.⁹³ Following some disquiet from Welsh Labour party members the twinning proposals underwent further consideration.⁹⁴ A final decision was made at the Welsh Labour party conference in May where delegates voted by 51 per cent to support the policy. There are press reports that a legal challenge to the twinning policy will be made.⁹⁵

Final decisions on the ordering of lists for the additional member aspects will be taken after the selection of constituency candidates but the candidates will be taken from the all Wales list. Presumably the list will be drawn up to represent all types of area- urban and rural- within each region. As part of the pack on candidates for the Assembly the Labour party have introduced a requirement that candidates show evidence of their commitment to devolution. Initially, three Welsh Labour MPs applied to be a candidate for the Assembly - Ron Davies, Rhodri Morgan and Gareth Thomas.⁹⁶ The resignation of Ron Davies as Secretary of State for Wales has meant a new election for leader of the Welsh Labour party, and Alun Michael the new Welsh Secretary has been accepted as a candidate for the Assembly as has

⁹³ Wales Labour party *Selection procedures for the Welsh Assembly* 1998

⁹⁴ *Guardian* 13.3.98 "Equality plan for assembly hits trouble"

⁹⁵ *Western Mail* 21.7.98 'Labour to be sued over plans for elections' see also *Western Mail* 1.12.98 'Anti twinning taking Labour to High Court'

⁹⁶ *Western Mail* 7.4.98 "Gareth Thomas wants to swap Westminster seat for Cardiff"

Paul Flynn⁹⁷. The electoral college to be used for the leadership election is expected to announce the result on February 20 1999.

The Welsh Liberal Democrats have finalised their procedures for selecting candidates; there is an approved list of candidates, and each shortlist will have gender equality. Each constituency selects its choice and this process is nearly complete. The next stage are the regional lists where the ranking will also be carried out through one member one vote using a computer system to calculate the result. A full list will be available in December 1998.

Plaid Cymru has a national panel to vet candidates and constituencies will select candidates from this list by the end of July. Once constituency candidates were selected the national executive examined the gender balance to redress any imbalance and a selection conference was held for each of the regional electoral areas on a one member one vote basis; each member voted separately for male and female candidates using STV. The gender order was determined by the national executive committee.⁹⁸ Dafydd Wigley, Ieuan Wyn Jones and Lord Elis-Thomas are among those who have been selected. A final list is now available.

IV The Scottish Parliament

A. Electoral System

Research Paper 98/1 *The Scotland Bill: Devolution and Scotland's Parliament* gives full background to the new electoral system.

The Additional Member System is also to be used for election to the Scottish Parliament as set out in the Scotland Bill. The provisions are unchanged from the White Paper⁹⁹ proposals for **AMS** with 73 Members for individual constituencies - one for each Scottish constituency and one each for Orkney and Shetland - with 56 additional Members - 7 from each of the eight new European constituencies set out in the *European Parliamentary Constituencies (Scotland) Order 1996*.¹⁰⁰ (**Section 1**) The European constituencies will no longer exist once the *European Parliamentary Elections Bill* is passed¹⁰¹ and so these areas will be known as regions (in Wales electoral regions), but will retain the same boundaries for the present.

Section 2 provides for elections to take place every four years, unless the Presiding Officer proposes an earlier or later dissolution within one month of the four years. The first election is expected to be in 1999 but Section 2(1) enables the Secretary of State appoint the day by day, and it may or may not coincide with local government elections on the first Thursday in May. Donald Dewar has announced that 6 May is the intended date for the first election.¹⁰²

⁹⁷ *Western Mail* 1.12.98 'Worry over high hopes for Assembly'

⁹⁸ Plaid Cymru *Procedure for the selection of Assembly candidates* 29.11.97

⁹⁹ *Scotland's Parliament, Scotland's Right* Cm 3658 July 1997

¹⁰⁰ that is, not the European constituencies used for the 1994 European elections.

¹⁰¹ for details see Research Paper 98/102 *The European Parliamentary Elections Bill*

¹⁰² Scottish Office Press Release 21.12.97 "500 days until Scottish Parliament elections"

Thereafter elections are to be held on a four yearly cycle on the first Thursday in May; local government elections are on a three year cycle and so elections will only rarely coincide.¹⁰³ **Section 3** provides for earlier dissolution if Parliament so resolves on a two thirds majority or where the Parliament cannot agree on a First Minister under Section 43.

The calculations for the **AMS** are set out in **Section 5-8**. **Section 5** provides for a list of candidates to be submitted by a registered political party and for independents to stand for a region as long as it is an individual region and the candidate does not appear on a party list and has not been elected for a constituency seat. Independents will also be able to form a group to contest a region but they would first need to register as a party. Section 5 gives the elector two votes, one for a constituency member and one for the region. The calculations are set out in Sections 6 and 7. Firstly the constituency members are selected through the usual First Past the Post, then the total number of regional votes for each party and independent candidate is counted in the individual regions and additional seats allocated according to share of the vote. The seven additional members for each region are identified by calculating the number of constituency seats won by each party in the region, and dividing the number of each party's list votes by the number of constituency seats plus one. The party with the highest number of votes after that calculation gains the first additional member. The calculation is then repeated for the second to the seventh additional member, but dividing the number of constituency seats plus one and plus additional member seats allocated in previous rounds. This is a straightforward application of the D'Hondt formula, and mirrors the provision for Wales, except that there is a greater proportion of additional members. See Appendix 1 for a simple example of the d'Hondt system in operation.

A party which won 30 per cent of the vote, which had already won 30 per cent of seats in the region in terms of constituency seats would win no more additional seats. A party which had won considerable numbers of votes but had not achieved a constituency seat, because its candidates had come second or third, would be compensated with additional members in proportion to its vote share. Parties which had achieved more constituency seats than their proportion of the share of the vote would justify will not however lose their seats.

An example of how the system would work has been given by the *Campaign for a Scottish Parliament* website:¹⁰⁴:

Example 1 - Lothians

“

This Euro region comprises 9 individual constituencies (6 in Edinburgh, the two West Lothian seats and Midlothian) plus the 7 additional members to be elected from the lists, producing a total representation of 16 in the Scottish Parliament.

In 1992 Labour won 7 of the individual seats. Its total vote in the Euro region of 37.74% entitled it to a total of 7 of the 16 seats representing Lothians. Labour would therefore not have anyone elected from its list of additional candidates for the Lothians but would hold on to the seven elected in the individual constituencies.

¹⁰³ *Local Government etc (Scotland) Act 1994, s.5*

¹⁰⁴ <http://www.cybersurf.co.uk/cscoparl/briefing> *10 Electing Scotland's Parliament*

The Conservatives won 2 of the individual constituencies but their overall vote of 27.30% entitles them to a total of 4 of the 16 available seats. The Conservatives would therefore have the top 2 people on their list of seven elected, bringing their total representation in Lothians up to 4.

The SNP failed to have anyone elected in an individual constituency, but their overall vote of almost 19% entitles them to three of the 16 available seats. Therefore the top 3 people on the SNP list of seven would be elected.

Like the SNP, the Liberal Democrats failed to have anyone elected in an individual constituency but their overall vote entitles them to 2 of the 16 seats available. Therefore the top 2 people on the Liberal Democrat list would be elected.

The total result for the 16 seats representing Lothians would then be:

Labour	7 MSPs	all elected in individual constituencies
Conservative	4 MSPs	2 in individual constituencies
SNP	3 MSPs	all from the list
Lib Dem	2 MSPs	both elected from the list

No formal threshold - level of support - which a party must win to achieve is proposed in the Bill, but Democratic Audit ¹⁰⁵ note that an informal threshold will operate, this is defined by 100 per cent divided by the overall number of seats in each Region (100/15) effectively a threshold of over six per cent. Democratic Audit also note that Scotland's AMS system is much more proportional than Wales, with 43 per cent of elected members being additional members against 33 per cent for Wales. The choice of the D'Hondt formula, rather than the St Lague formula may tend to favour larger parties.

Section 86 of the Bill repeals Rule 1(2) (Scotland to have not less than 71 constituencies) of Schedule 2 to the *Parliamentary Constituencies Act 1986*. It is important to note that if the Parliamentary Boundary Commission for Scotland reduce the number of Westminster constituencies in Scotland this will also affect the overall number of constituencies for the Scottish Parliament. However separate constituencies for the Shetlands and the Orkneys are specifically provided for in Schedule 1 so these two sets of islands are guaranteed separate seats each for the Scottish parliament, even after a reduction of seats for the rest of Scotland.

Sections 9-10 set out provisions for **vacancies in regional and constituency seats**. By elections will only be held when there is a vacancy in an constituency seat where a simple First Past The Post system will be used, and no by election will be held where a vacancy exists within 3 months preceding a full election of the Parliament. If a vacancy occurs for a regional seat the regional returning officer will notify the Parliament's Presiding Officer of the name of the next highest eligible¹⁰⁶ candidate on the relevant party list. The list applicable is that submitted for the full election which has a maximum of 12 names. However, the regional returning officer must establish that the candidate is "willing to serve" as an Parliament member, so the candidate may decline the seat. Note that it is the candidate who

¹⁰⁵ Democratic Audit *Devolution Votes* 1997 p 9

¹⁰⁶ in terms of electoral law

decides on his availability, not the registered party (although the party may wish to influence the decision). There is no provision for alternative procedures to come into play if the relevant candidate is no longer a member of the registered party. If there is no eligible candidate left on the list the seat is left vacant until the next full election. At Lords Committee stage the Government did not introduce similar amendments as in the *Government of Wales Bill* to ensure that remaining candidates were still members of the relevant parties. However the Government Minister, Lord Sewel, said that the intention was to deal with the matter through orders made under **Section 12** (power to make provision for elections)¹⁰⁷ and the relevant order would be subject to affirmative resolution. He stressed that the order would not allow political parties a general power of veto over candidates on the list.

Section 11 deals with the **franchise** and is, as expected, confined to those eligible to vote in local government elections, that is, British and Commonwealth citizens and EU nationals who fulfil the residency requirements, but minus overseas voters eligible to vote in Parliamentary elections. This is the same franchise as for the referendum in September 1997.¹⁰⁸ Voters will not be able to vote in more than one constituency or in more than one region.

More detailed provisions about the conduct of elections will be made under **Section 12**, as well as procedures for questioning elections, dealing with registration of electors, combinations of polls and limitation of election expenses. The clause provides that existing legislation or rules made under the Representation of the People Acts may be applied for these purposes. The question of the deposit is expected to be dealt with using powers under this clause; as yet there is no official indication of the amount of the deposit, whether for constituency or for regional MPs.

Members of the Scottish Parliament may be British, Irish, Commonwealth or EU citizens under **Sections 15-16** and may include peers, ministers of religion, Members of the Westminster Parliament and local councillors. Otherwise the normal disqualifications applicable to Westminster MPs under s.1 of the *House of Commons Disqualification Act 1975* will apply. There is provision for an Order in Council to make further disqualification and it is intended that this Order will list membership of public bodies as disqualifying offices; the current list under the 1975 Act is not necessarily appropriate. It is also intended to apply the disqualification for senior local government officials. At Lords Third Reading the Government secured an amendment to disqualify Ministers of the Crown from membership of the Scottish Executive. This is in contrast to Wales where there is no such prohibition.

Schedule 1 defines both the constituencies and the regions. It provides for the boundaries to be altered following a future review of Westminster constituencies by the Parliamentary Boundary Commission for Scotland. When the commission undertake a review, it will also be required to include within its report recommendations for alterations in the regions and in the number of members returned for each region following the rules set out in paragraph 7: Constituencies must fall wholly within a region, but in addition, if the number of constituency seats is reduced there must be a proportionate reduction in the number of regional seats so

¹⁰⁷ HL Deb vol 592 14.7.98 c 214

¹⁰⁸ for background see Appendix to Research Paper 97/92 *Scotland and Devolution*

that the ratio of 56 to 73 is maintained as far as possible. Thus if the number of constituency seats fell to 60, the number of regional seats would also need to be reduced to 46 to maintain that ratio, giving a Scottish Parliament of 106 members. If the number of constituency seats fell to 57 the number of regional seats would be 44 giving a total of 101.¹⁰⁹ The Commission is required to ensure that each region receives the same number of seats but where this is not possible, since the number of regions has to be maintained as eight, it will ensure that the number of seats will not differ by more than 1. Thus for illustration, if there were to be 46 seats, some of the regions would have 6 seats and some 5 seats.

The usual Commission procedure with regard to provisional recommendations and local inquiries would apply. Any changes in the number of constituencies, to be implemented by Order in Council under the *Parliamentary Constituencies Act 1986*¹¹⁰, would not come into effect until the dissolution of the Parliament. The Scottish Parliament will not be able to determine its own composition.

Professor John Curtice has argued that although the Bill will initially reduce the number of Scottish MPs at Westminster and therefore at the Scottish Parliament¹¹¹, following the first review of Westminster seats by the Parliamentary Boundary Commission, numbers of seats at the Scottish Parliament will gradually increase once more as the commission reverts to existing rules which take as a starting point the number of constituencies already in existence in Scotland.¹¹²

There were press reports that the Government had considered options to stabilise the number of MSPs at 129 following a reduction of numbers of Westminster seats, perhaps by creating more additional members.¹¹³ Other press reports stated that Donald Dewar had been overruled by Tony Blair who had insisted that the number of seats at Holyrood should be the same as for Westminster. At Lords Committee stage Lord Sewel, for the Government, rejected amendments to preserve 129 MEPs noting 'After thinking long and hard on these matters, the Government have concluded that the balance of advantage lies with maintaining the link between Westminster and the Scottish parliament constituencies. We gave careful consideration to the arguments advanced for breaking the link but have concluded that the disadvantages outweigh the advantages.'¹¹⁴ At Lords Third Reading an amendment was carried against the Government preserving the number of MSPs at 129.¹¹⁵ This was reversed

¹⁰⁹ *Scotsman* 22.12.97 "Anger at plan to cut MSPs" reported that Mr Dewar had indicated privately that the number of MSPs was likely to be reduced to 112. The final number will be decided by the Parliamentary Boundary Commission, which is independent of the government. There has been some concern at the prospect in the reduction of numbers of MSPs expressed by the SNP

¹¹⁰ The Parliamentary Boundary Commission for Scotland is governed by powers which are to be reserved under Schedule 5

¹¹¹ The issue of Westminster representation for Scotland is discussed in Research Papers 98/1 and 98/3

¹¹² Professor Curtice's arguments are summarised in *Scotsman* 14.2.98 "The flaws that mean that bill has to be changed". His arguments are fully developed in a forthcoming article in *Representation* April 1998

¹¹³ *Scotsman* 7.4.98 "Tories, SNP unite to attack MSP 'U turn'"

¹¹⁴ HL Deb vol 592 8.7.98 c 1336

¹¹⁵ HL Deb vol 593 22.10.98 c 1607

in the Commons.¹¹⁶ There were unsuccessful amendments to ensure the Western Isles would always be a separate constituency.¹¹⁷

The Jenkins Report recommended fixing the number of MPs at Westminster at its present level of 659 and undertaking a redistribution of seats to allow for 15-20 per cent of seats to become Top-up seats (99-132 seats). It also recommended an overhaul of boundary commission practice and procedure to rectify the over-representation of Scotland and Wales and to move to a single electoral quota for the UK. These recommendations, if implemented, would have the effect of reducing further the number of constituency seats for Westminster, and therefore the number of MSPs.

During Committee stage of the *Scotland Bill* the Conservatives proposed amendments to remove AMS in favour of FPTP, arguing that the creation of two classes of members was a dangerous innovation.¹¹⁸ The Conservatives also supported amendments to introduce an open list for the additional member aspect of the election, proposed by the Liberal Democrats. Dennis Canavan also proposed amendments to create an open list so that the names of all candidates would appear on the ballot paper. He argued that voters in Europe had learnt to master long lists and big ballot papers, and that at the very least Michael Ancram's suggestion should be adopted, that the names of the candidates for each party should be displayed in a prominent place in the polling station (c 425-426). In response Henry McLeish, for the Government, argued that the purpose of the additional member was to reduce the imbalance of the current FPTP and that the list would be scrutinised very closely. Once elected, a regional member would have the same rights and responsibilities as any other member, and amendments for open lists would make the poll too confusing for voters, who in any case had the chance to vote for an individual member in the constituency part of the ballot (c 440-445). He made clear that it was not intended that individual candidates names would appear on the ballot paper, although lists might be displayed in the polling stations (c 441). At Lords Report stage the minister stated that the Government was 'moving towards' having the names of candidates on the ballot paper.¹¹⁹ At Third Reading the Government produced drafts of possible ballot papers.¹²⁰ For the Government, Lord Sewel said that the order setting out the form of the ballot paper would be brought forward around Christmas (col 513).

The deposit for the elections is to be £500 per candidate in the constituency element of the election and £500 per list. Individual candidates standing in the list will also pay £500.¹²¹ To ensure a return of the deposit candidates need to gain 5 per cent of the vote.

¹¹⁶ HC Deb vol 319 11.11.98 c 403

¹¹⁷ HL Deb vol 1 594 9.11.98 c 594 and earlier debates at Report stage

¹¹⁸ HC Deb vol 305 c 413 -419

¹¹⁹ HL Deb vol 592 22.10.98 c 1652

¹²⁰ HL Deb vol 594 9.11.98 c 511 see letter to Lord Mackay of Ardbrecknish 4.11.98 from Lord Sewel, with drafts

¹²¹ *Scottish Office PN* 30.6.98 'Uniform Deposit Level for Scottish Parliament Elections'

In October the Secretary of State announced a publicity campaign to explain the new voting system to the electorate. There was concern that the second vote element of the ballot paper would not be understood. The SNP protested, on the basis that the Government was planning the campaign to alert Labour voters to the fact that the party list vote was vital.¹²²

B. Selection of Candidates

The Conservatives in Scotland issued a consultation document¹²³ in December 1997 which recommended that there should be an approved panel of candidates, and that only candidates successful in securing nominations for one of the 73 constituencies should be eligible for the regional list. A joint consultative committee has been established to operate on a regional basis to identify the ordering of the list, which examines each region in turn, augmented by the chairmen of the local constituency association to prevent control being exercised by the centre. There has been some criticism in the press that the Conservatives will not field sufficient candidates by restricting themselves to those selected by constituency associations.¹²⁴ Former MPs Lord James Douglas Hamilton and Phil Gallie have been selected as candidates and all constituency candidates are being selected through a series of rolling selection meetings expected to end in December.¹²⁵ The regional list selection will be completed by February 1999.

Approved candidates for the Liberal Democrats will be able to apply for both constituency and region seats, but regional candidates have been selected first, constituency by constituency through a ballot of the members, including postal votes.¹²⁶ The full list was announced on 6 July 1998. There have been press reports that the party has had difficulty in attracting female candidates to stand in rural seats.¹²⁷ There are proposals to allow a special committee to order the additional member list to offset gender imbalance.¹²⁸ Latest details of the candidates who have been selected are given on the Scottish Liberal Democrat website.¹²⁹

The Labour party set up a panel of 20 to vet candidates, made up of five members of the UK executive, five from the Scottish executive, five senior figures from the Scottish party and five independent experts who did not have a formal vote to advise on areas such as personnel management. It is planned to twin constituencies so that at a joint selection meeting a man and a woman will be selected. Constituency selection procedures began in the spring of 1998. Donald Dewar, Henry McLeish, Sam Galbraith, Lord Sewel, Malcolm Chisholm, Ian Davidson, Michael Connarty, John McAllion and Dennis Canavan applied to become

¹²² *Scotland on Sunday* 11.10.98 'Taxpayers to find £2m for election war'

¹²³ Strathclyde Commission *Made in Scotland; the way forward for the Scottish Conservatives and Unionists* December 1997

¹²⁴ *Scotsman* 28.1.98 'Tories must learn from Labour'

¹²⁵ *Scotsman* 9.3.98 'Scots Tories turn backs on Holyrood elections'

¹²⁶ Scottish Liberal Democrats *Selecting a First Past the Post PSPC* 14.1.98

¹²⁷ *Scotsman* 16.3.98 'Lib Dems struggling to attract women candidates'

¹²⁸ *Scotsman* 28.3.98 'Grass roots revolt over gender plan'

¹²⁹ www.scotlibdem.org.uk

candidates. ¹³⁰ There have been press suggestions that a loyalty test applied but this has been denied by the Labour party.¹³¹ Ian Davidson and Dennis Canavan did not pass the selection interview, and other prominent Labour Party figures in the devolution campaign were unsuccessful, such as Mark Lazarowicz and Esther Robertson. The interview process was attacked as flawed.¹³² 167 candidates were selected (including 69 women) constituencies have been twinned and the next process is selection for the regional list. Dennis Canavan has announced that he will stand as an independent and has been warned by Alex Rowley, General Secretary of the Scottish Labour Party, that he risked expulsion.¹³³ Constituency selection is expected to be completed in December.

The Scottish National Party finalised its candidate selection at a special conference in June 1998. A list of approved candidates was issued, including all six SNP MPs. There are 175 candidates, with female candidates making up just over one third.¹³⁴ These sought nominations in individual constituencies by the end of September, and at regional conferences delegates will then decide on the ordering of the list.

V Northern Ireland Assembly

As part of the *Belfast Agreement*¹³⁵ concluded on Good Friday 10 April 1998 a new Assembly for Northern Ireland was created, to be elected using the Single Transferable Vote (STV). STV is already in use for local elections in Northern Ireland and for elections to the European Parliament in the province. See Appendix IV for a worked example of how votes are counted under STV.

STV requires electors to vote for a single candidate, irrespective of the number of seats to be filled in the constituency, but to indicate preferences for the other candidates. A candidate is elected as soon as he reaches the electoral quotient computed according to a particular quotient, known as the Droop Quotient:
$$\left[\frac{\text{votes}}{\text{seats} + 1} + 1 \right]$$

The additional votes he obtains are then redistributed to the other candidates on the basis of the second choices expressed by electors. The same operation is carried out in the case of the candidates who are placed last and who are eliminated. If there are still seats to be filled after the second count, the process continues. It is widely used in present and former Commonwealth countries such as Malta and Australia and it was almost adopted in the UK after the First World

¹³⁰ *Scotsman* 16.1.98 "London handed key role in picking Labour list for Scottish parliament"

¹³¹ *Financial Times* 6.3.98 ""Scots dissent on Blairite lists *Herald* 26.3.98 "Labour axes 200 from MSP candidates' list"

¹³² *Scotsman* 30.6.98 'Labour MPs turn on party over Holyrood selection' *Scotsman* 23.6.98 'Mistrial by interview'

¹³³ *BBC News* 11.11.98 'Labour MP to stand as independent'

¹³⁴ *Scotsman* 17.6.98 'Salmond heralds 'broad talent' of Holyrood' list.

¹³⁵ *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 The Agreement is explained in Research Paper 98/57 *Northern Ireland: Political Developments Since 1972*

War, following the recommendations of a Speaker's Conference in 1917. It was used for multi-member university seats from 1918-45.¹³⁶

There are 108 seats in the new Assembly, with six seats allocated to each of the 18 Parliamentary constituencies in Northern Ireland. The *Northern Ireland (Elections) Act 1998* set out the rules governing elections to the Assembly. EU citizens, peers, members of the Irish Seneadd,¹³⁷ are eligible for membership, but otherwise the disqualifications applicable to membership of the Commons including those in the *House of Commons Disqualification Act 1975* apply under s4.¹³⁸ This includes prisoners detained or unlawfully at large serving sentences of more than one year for an offence. The electorate used was the local electorate (s2(2)) and the Secretary of State was given the power to make provision for the filling of vacancies by order(s3). There will be no by-elections, instead there will be substitutions taken from a list of three provided by each candidate at the time of his nomination.¹³⁹ The deposit was set at £150, and s93 of the *Representation of the People Act 1983* was disapplied.¹⁴⁰ The *New Northern Ireland Assembly (Elections) Order 1998*¹⁴¹ set out the detailed amendments of electoral law for the purposes of the 25 June elections.

Second and subsequent preference votes were seen as crucial in the election of a number of Assembly members, particularly in the allocation of the fifth and sixth seats in each Parliamentary constituency¹⁴². The major political parties put forward candidates in each Parliamentary constituency, but minor parties restricted their candidates to maximise their vote.¹⁴³

¹³⁶ for further background see Research Paper 98/112 *Voting Systems: The Jenkins Report*

¹³⁷ Seamus Mallon brought a case to the European Court of Human Rights, following his disqualification from the Northern Ireland Assembly in 1982 on the grounds that he was a member of the Seneadd. The Commission found against him and the case went no further. See *M v UK* Appl 10316/83 37 D & R 110,116. NB Members of the Dail remain ineligible for membership of the Assembly under s(1)(e) of the *Northern Ireland Assembly Disqualification Act 1975* (membership of non Commonwealth) legislature

¹³⁸ The *Elected Authorities (Northern Ireland) Act 1989 s8(2)* enabled the Secretary of State to bring into force the disqualification of a person from the Assembly who was found to have acted in breach of the terms of a declaration against terrorism as determined by s7 of that Act. There is no provision in the Agreement for an equivalent disqualification. Under the *Northern Ireland Act*, the disqualification provisions are changed slightly so that those in the *Northern Ireland Assembly Disqualification Act 1975* apply. There is no prohibition of dual mandates

¹³⁹ paras 6 and Schedule 1 of the *New Northern Ireland Assembly (Elections) Act Order 1998 SI no 1287*

¹⁴⁰ this section prevents the broadcasting of material on an individual constituency if any of the candidates refuses consent

¹⁴¹ SI no 1287/1998

¹⁴² *Irish Times* 2.6.98 'Vote Transfers to determine who wins in Poll'

¹⁴³ *Financial Times* 4.6.98 'Old habits may die hard in Ulster polling booths'

Results of the elections are given in Appendix 4 to this Paper by first preferences and constituencies. The number of seats gained per party was as follows:

	Number	%
UUP	28	25.9%
SDLP	24	22.2%
DUP	20	18.5%
SF	18	16.7%
Alliance	6	5.6%
UKUP	5	4.6%
	Number	%
Independent Unionists	3	2.8%
PUP	2	1.9%
Womens Coalition	2	1.9%
Total	108	100%

The SDLP gained the highest percentage of first preference votes at 21.96 per cent for the first time in a Northern Ireland election, with the UUP following at 21.26 per cent. The SDLP received 22.22 per cent of the seats and the UUP 25.93 per cent, illustrating the importance of vote transfers and the fact that seats are grouped in constituencies. The commentators Colin Rallings and Michael Thrasher have noted that the DUP candidates got the top position in 7 out of 18 constituencies¹⁴⁴ and have claimed that this illustrates how another electoral system such as First Past the Post would have produced very different results.¹⁴⁵ Pro Agreement parties won 75 per cent of the vote overall and hold 80 seats.

Under the d'Hondt formula to be used under the *Agreement* for the allocation of positions in the executive the UUP and SDLP are expected to receive 3 posts each, and Sinn Fein and the DUP two posts each. The appointments have not yet been made however. *Notes on Clauses* to the Bill give a worked example of the operation of the d'Hondt formula. **(Section 15)** A letter was also placed in the Lords Library giving further details

Under the cross community provisions in the *Agreement*¹⁴⁶ a block of 30 members is required to have a decision designated as 'key'. Pro-Agreement commentators have predicted that the DUP would need dissidents from the UUP to achieve this figure. David Trimble and Seamus Mallon were jointly elected First Minister and Deputy First Minister on a cross community vote at the Assembly's first meeting on 1 July 1998; Sinn Fein abstained and there were 61 votes in favour out of 88 members voting; there were 24 nationalist votes and 30 unionist votes (representing 52.6 per cent of those unionists voting) in favour.

¹⁴⁴ that is the DUP candidate received the most votes in the first count

¹⁴⁵ *Local Government Chronicle* 3.7.98 "Transferring allegiances"

¹⁴⁶ for details see Research Paper 98/76 *The Northern Ireland Bill: Implementing the Belfast Agreement*

The *Northern Ireland Act* repeals the *Northern Ireland (Elections) Act 1998* in its entirety and reproduces the provisions in Part IV of the Bill. The Assembly is no longer to be known as the New Northern Ireland Assembly once it takes up its powers under the Act.

Section 24(1) provides for fixed-term elections to the new Assembly on a four year cycle on the first Thursday in May, as for the National Assembly of Wales. The date of the next election is set at 1 May 2003. There were provisions for an Order in Council bringing forward the date of an election if the First and Deputy First Minister resigned and no other person could carry out their functions. The power to dissolve the Assembly was criticised by David Trimble in Committee¹⁴⁷ as undermining the democratic process, noting that there was no equivalent power for Scotland or Wales. In response the junior minister, Paul Murphy, said that the government would reconsider the issue over the summer recess.¹⁴⁸ In the Lords Committee stage the provisions were modified to bring them into line with equivalent provisions in the *Scotland Act* so that dissolution could only occur on a majority of two thirds of all Assembly members (not just those voting). In response to concerns that this would give Westminster insufficient powers should the political settlement in Northern Ireland break down, the junior minister, Lord Dubs, said that they were not planning for failure, and that the Westminster Parliament would be able to use its general authority, preserved in the Bill, to legislate for the UK if the settlement broke down.¹⁴⁹

The question of by elections came under renewed scrutiny in the Commons committee stage. The *New Northern Ireland Assembly (Elections) Order 1998* remains in force under **Section 26(6)** and **Schedule 14** of the Bill and if a vacancy occurred it would be filled by a substitute from the list provided by each candidate in 25 June election. However the junior minister, Paul Murphy, said that although substitution would be continued in order to preserve proportionality, further consultations would take place to deal with problems where no substitute was available and to take account of the registration of parties.¹⁵⁰

VI The Greater London Authority

For full details see Research Paper 98/118 *The Greater London Authority Bill: Electoral and Constitutional Aspects*

A. Electoral System

Clauses One and Two of the *Greater London Authority Bill* establish the Greater London Authority as consisting of both the Mayor of London and the London Assembly, with 25 members. 14 of these members are to be constituency members representing London areas, and 11 to represent the whole of Greater London and to be elected from a party list. The Authority is to be a body corporate.

¹⁴⁷ HC Deb vol 316 24.7.98 c 1353-55

¹⁴⁸ HC Deb c 1359

¹⁴⁹ HL Deb vol 594 10.11.98 c 643

¹⁵⁰ c 1371

The Mayor and the Assembly members will be elected at the same election (**Clause 2(7)**) and will take place on a date appointed by the Secretary of State initially (**Clause 3(1)**) but then on the first Thursday in May on a four yearly cycle. There are provisions to modify the date and the assumption of office of the Mayor and Assembly by order. (**Clause 3(5-6)**). It is expected that the first election will be held in May 2000, although there has been no official announcement as yet of the date. There are no term limits for the Mayor or Assembly members in line with proposals in the White Paper that there be none.

The **franchise** to be used will be the local government franchise, as applied under **Clause 17** and **Schedule 3**. This is in line with the franchise for the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It means that peers and EU citizens who meet the residency requirements can vote, but not British citizens who are overseas electors for the purposes of Westminster elections. The franchise in the City of London will be confined to those resident there i.e. those occupying rateable land over £10 per annum qualified to vote at municipal elections in the City but not resident will not be able to vote in the referendum.¹⁵¹

Each elector will therefore have to cast three votes: one for the Mayor using the Supplementary Vote (SV) system (see below) one for the constituency member to represent the local area and one for the list which will be used to select the 14 London wide members. Under **Clause 4(1)(C)** these will be known as London votes. There is likely to be two ballot papers - one for the Mayor and one for the Assembly, whether constituency or London wide, although the form of the ballot paper will be set out in subordinate legislation and is not specified in the Bill. A brief explanation of the electoral systems to be used is given below.

Elections for the Mayor

As foreshadowed in the White Paper *A Mayor and Assembly for London*.¹⁵² SV will be used,¹⁵³ but the voter will simply mark his first and second choice with a cross, rather than numbering the ballot paper. There will no requirement to enter a second choice, if the elector prefers not to. There may be problems with the operation of SV however if significant

¹⁵¹ The bulk of office premises in the City are occupied by limited companies which pay rates but do not have a vote. The *Representation of the People Act 1969* abolished the business franchise for local government elections and so business voters did not have a separate vote for GLC elections. The City carried out consultations on proposals to alter the franchise to include corporate bodies within the franchise. Details are contained in its booklet *Improving the City's Franchise (1997)* This booklet proposes linking voting entitlement to the size of a business, so that additional votes could be gained according to the rateable value of the property of the business. In its policy document *Road to the Manifesto: a Voice for London (1996)* the Labour Party stated that the City Corporation's "present electoral arrangements cannot be defended and must be changed." The Green Paper made it clear that there were no proposals to abolish the City Corporation and stated that the Government looked forward to detailed discussions with the Corporation in autumn 1997 over Corporation proposals on its franchise. (paras 1.10-1.11) The *Financial Times* 27.7.98 'Corporation of London reforms electoral process' reported that the Government had decided not to include reforms to the City franchise in the Greater London Authority Bill and that the City would need to promote private legislation to implement planned changes. The *City of London (Ward Elections) Bill* has now been deposited. Its provisions are outlined in *Voting for a World Class City (1998)* by the Corporation of London

¹⁵² Cm 3897

¹⁵³ In the unlikely event of there being only two candidates, a simple First Past The Post system would be used

numbers of voters do not enter a second preference, as sufficient votes will not transfer between candidates. It was partly for this reason that Australia requires its electors to enter all the preferences under its Alternative Vote system. The mechanics of the SV are set out in Part I of **Schedule 2**. If one candidate receives more than half of all the first preference votes he is elected. If no candidate achieves this, all but the two candidates with the highest first preference votes are eliminated (unless three candidates share the same number in which case all three are retained). The ballot papers of the eliminated candidates are then examined to allocate the second preference votes to the remaining candidates, and the candidate with the most votes, whether first or second preference, is the winner. A dead heat would be settled by lot.

There is likely to be some further debate on the choice of SV rather than AV for the election of the Mayor; the Electoral Reform Society claim that AV would be more appropriate, arguing that it reduces the need for tactical voting and allows electors to express their true preferences. On the other hand, if there were large numbers of candidates electors might not express preferences beyond the first two or three anyway, or the 'weak' preferences of voters for less popular candidates might have a disproportionate effect on the result, as noted by a report by Dunleavy and Margetts¹⁵⁴ which advised on the appropriate voting systems.

Election of Assembly Constituency Members

This is to be conducted under First Past the Post, or the simple majority system as referred to in the Bill (**Clause 4(4)**). No candidate may stand for more than one Assembly area and the Mayor cannot also be a constituency member. (**Clause 4(9-10)**). There is no prohibition on constituency candidates also standing for the lists. The Government have therefore decided not to experiment with the Jenkins Commission proposal for AV Plus instead of AMS, which would have involved the use of AV for the constituency part of the election. The Electoral Reform Society have suggested that the London elections could have served as a trial run to test the practicalities of the Jenkins proposals.¹⁵⁵

The Assembly areas were announced by the Local Government Commission on 30 November 1998, and there is to be one member for each of the fourteen areas, which to be specified by name in orders made by the Secretary of State (**Clause 2(4)**). The Secretary of State will make an order under this clause giving effect to the recommendations of the Local Government Commission made under s7 of the *Greater London Authority (Referendum) Act 1998*. The Secretary of State has power to make modifications to the recommendations, but none are envisaged at present. **Schedule 1** provides for changes to Assembly constituencies following reviews by the Local Government Commission under s13(1) or s15(6) of the *Local Government Act 1992*. The rationale is to align the Assembly constituencies with changes in boundaries to any or all of the London boroughs. Under para 2 the Secretary of State has

¹⁵⁴ Regret to the Government office for London: Electing the London Mayor and the London Assembly Professor Dunleavy, and Helen Margetts 20.1.98

¹⁵⁵ Electoral Reform Society *Parliamentary Brief: The Electoral System for the Greater London Authority* December 1998

power at any time to direct the Commission to carry out a comprehensive review of Assembly constituencies; the review would be governed by rules set out in para 7.

The Commission would be under an obligation to publish a draft report for consultation, and is subject to further direction from the Secretary of State, on similar lines to its duties under the 1992 Act.

Elections for London members

14 London members are to be selected through a party list system similar to that contained in the *European Parliamentary Elections Bill*. The elector would vote either for a registered¹⁵⁶ party or for an independent candidate - the so-called closed list system. Under Part II of **Schedule 2** each party will submit a list to the London returning officer consisting of not more than 25 candidates. (The list would also be used for selecting substitutes, instead of by-elections). Individual, non-party candidates cannot stand if they are also on a party list or if he is the candidate of any registered party to be the Mayor or a constituency member. The parties will order the list and the voters will have no opportunity to record a personal preference for a particular candidate of that party. This is the form of Additional Member System enacted for the Scottish Parliament and the Welsh National Assembly, but the use of closed lists is not in line with the recommendations of the Jenkins Commission¹⁵⁷ on electoral reform. The issue of closed lists came to the fore in the disagreements between the Lords and Commons at the close of the 1997-8 session.¹⁵⁸

However in the debates on AMS in the *Scotland Bill* and the *Government of Wales Bill* the Conservatives were more concerned with the issue of 'alter ego' parties and in the Lords the *Government of Wales Bill* was amended to allow the elector only one vote. This amendment was later overturned by the Commons (see above). The debate over open and closed lists may not be so intense as with the proposals for the European Parliament because the elector under AMS has the opportunity to cast a vote for an individual candidate in the constituency part of the election. However, the Scottish Affairs select committee report on the operation of multi-layer democracy referred to the open list version of AMS used in Bavaria and considered that 'an open list would be more in keeping with the principle of trusting the people and giving them the maximum choice'. (para 91)¹⁵⁹

The allocation of seats is governed by the D'Hondt formula also used for elections under AMS for the Scottish Parliament and the Welsh Assembly, and it is also the quota used for allocating seats in the *European Parliamentary Elections Bill*. The seats are allocated in a corrective fashion to ensure that each party receives seats equal to its percentage share of the vote. Therefore the number of constituency seats has to be calculated first, and the seats won by each party in the constituencies are taken into account when the all-London seats are

¹⁵⁶ for further background see Research Paper 98/62 *The Registration of Political Parties Bill*

¹⁵⁷ *The Report of the Independent Commission on the Voting System* Cm 4090 October 1998 see Research Paper 98/112 *Voting Systems: The Jenkins Report* for further details

¹⁵⁸ see Research Paper 98/102 *The European Parliamentary Elections Bill* for background on the arguments

¹⁵⁹ Scottish Affairs Select Committee *The Operation of Multi-Layer Democracy* HC 460 1997-8

allocated. A party which won 30 per cent of the vote would therefore receive 30 per cent of the seats, whether constituency or London seats. Parties which win more constituency seats than their share of the vote would justify do not lose these seats however.

In contrast to Scotland and Wales, there is a formal **threshold** in para 7. There is to be power for the Secretary of State to set out by order a prescribed percentage of total vote which a party must reach to be allocated a seat. If this percentage is not reached the party is disregarded for the purpose of allocations of seat under d'Hondt. The prescribed percentage may not be greater than five per cent, and part of the motive may be concern about extremist parties gaining a seat. However the Green Party, which polled 2.9 per cent across London in the 1998 local elections may be caught by the threshold. Other parties (including the BNP) polled a total of 2.7 per cent on a 34.1 per cent turnout.¹⁶⁰. Potential new parties which might have promoted sectional interests, such as ethnic minorities or those with particular environmental concerns may also be affected. Calculations suggest that the overall percentage of the vote needed to obtain a list seat is around the 3-4 per cent level, and if there are several small parties some might have been able to obtain a seat with less than this percentage. New parties would also have to register with the Registrar of Companies under the *Registration of Political Parties Act 1998*. The extra requirements on parties to register may discourage more informal groups from contesting the elections. The registration process is expected to begin early in 1999 with the registration of political parties already represented in Parliament.

The Bill does not give any detail on the nomination procedure, but it is likely that a greater number than the usual 10 electors may be required for the nominations for London wide members. The White Paper proposed a set number of electors to be required for nomination to the constituencies, without giving any further details.(para 4.24) Small parties are likely to argue that requiring registered voters in each constituency area to nominate a London wide candidate would be a fairer way of ensuring democratic legitimacy than using formal thresholds.

Vacancies

Members can resign under **Clause 6** or their seat is deemed vacant if they fail to attend meetings for six consecutive months, except if their absence is due to Crown employment in connection with war or emergencies. **Clause 7** deals with vacancies due to disqualification. By-elections would be held after 35 days where a vacancy occurs among the constituency members, but a vacancy for a London (or list) member would be filled by substitution from the first available candidate on the party list, unless the party notify the Greater London returning officer that the candidate is no longer a member of that party. Vacancies caused by individual non-party members are to be left unfilled (**Clauses 10-11**). Vacancies for constituency members which occur less than six months from the date of the next full elections would be left unfilled. All these provisions are similar to those contained in the *Scotland Act 1998* and *Government of Wales Act 1998*.

¹⁶⁰ source: *Local Elections Handbook 1998* Colin Rallings and Michael Thrasher

There is provision in **Clauses 12 -16** for a separate election for a **Mayor** to be held should a vacancy occur through resignation, non-attendance, disqualification or otherwise. No election would be held if there were less than six months to the full election of the Authority. Otherwise, the election would be held 35 days after the vacancy occurs. However, there are provisions in **Clause 30** and **Schedule 4** for the Deputy Mayor to act where there is a vacancy or the Mayor is temporarily incapacitated. **Schedule 4** considerably limits the functions of the Deputy Mayor when he is acting in the place of the Mayor.

Qualification of members and mayor

Qualification follows a similar pattern as for local government elections, with British, Commonwealth, Irish or EU citizens eligible who are 21 or over, as long as a residency qualification can be met set out in **Clause 19(4)**.

The relevant day is defined as the day of nomination as candidate (including on a party list), and day of the poll in **Clause 19(8)**. This follows the standard requirements for local authority councillors set out in s79 of the *Local Government Act 1972*. The qualification requirement applies to the Mayor and both types of Assembly member. Apart from the form of election, the Bill does not attempt to differentiate the role of the constituency member from the London-wide member.

Since the local government model is followed, peers are eligible, but not staff employed by the Authority, bankrupts, those convicted less than five years ago of an offence carrying a 3 month imprisonment sentence, and those disqualified for electoral offences or financial irregularities under s17-18 of the *Audit Commission Act 1998*. The Secretary of State may designate by order a list of offices and appointments the holders of which would be disqualified from the office of Mayor or member. No detail is yet available on the contents of the order. The White Paper proposed that MPs and councillors should not be disqualified, but considered that political parties would wish to devise rules on dual mandates.

Under **Clause 57** the usual 'twin-tracking' procedures set out in s1-2 of the *Local Government and Housing Act 1989* would apply, disqualifying holders of politically restricted posts in local authorities from becoming candidates for the Assembly or from being members of Transport for London, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority. A recent challenge to the twin tracking rules heard in September 1998 before the European Court of Human Rights was not successful.¹⁶¹ This will not apply to the Mayor's two special advisers appointed under **Clause 56(1)(a)** who will be able to stand for election to a local authority. Up to ten further persons appointed as advisers under **Clause 56(1)(b)** will be able to be members of Transport for London and the London Development Agency on an unpaid basis. Generally, political advisers employed by local authorities are caught by the twin-tracking provisions and political advisers employed by government ministers are required to resign before standing for Parliament under the terms of

¹⁶¹ Application no 65/1997/849/1056 2nd September 1998

their model contract. This clause may undergo some amendment in later proceedings as there were no explicit proposals to exempt special advisers in the White Paper.

Officers of London boroughs who are employed under the direction of committees or sub-committees whose members included the Mayor or those appointed by the Mayor would also be disqualified. This may have potentially wide implications, given the number of joint boards or committees in London boroughs at present (**Clause 20**). It does however follow the model of s80 of the *Local Government Act 1972* which disqualifies employees of joint committees where appointments are made by the relevant authority. S92 of the *Local Government Act 1972* will be applied for proceedings for disqualification of members (**Clause 22**).

Finally, the Mayor and the members of the Assembly are to be required to make a declaration of acceptance of office in a form prescribed by order by the Secretary of State (**Clause 23**). Once again, this follows precedents for local councillors contained in s83 of the *Local Government Act 1972*. The declaration of acceptance of office is set out in the *Local Elections (Principal Areas) (Declaration of Acceptance of Office) Order 1990*¹⁶². Significant changes to the formula of the declaration of acceptance are expected following proposals in the White Paper *Modern Local Government: In Touch with the People*¹⁶³ for the existing National Code of Local Government Conduct to be replaced by new local codes incorporating *The General Principles of Conduct*. A draft Bill is expected this session which will contain further detail.

Election expenses

The Bill does not contain any detail about the system of election expenses to be used. The White Paper noted that there would need to be a limit on the amount of spending on election campaigns, and stated that the legislation establishing the GLA would set the level of those expenses after consultation with the Association of London Government. Final decisions would be taken once the Neill Committee had reported (paras 4.21-2). There is no direct comparison which can be used for assessing the expenses level for the election of an executive official such as the Mayor for London. In the event, the Neill Committee did not offer any detailed guidance, beyond recommending that 'an appropriate limit for London would include constituency limits and a London wide limit similar to those we have proposed for Scotland, Wales and Northern Ireland. The London-wide limit would cover all spending by political parties for both Mayoral and Assembly elections. Third party limits... would also be required.' (para 10.105). Third party limits is a reference to campaigns by pressure groups and others in support of a particular political party. No details are yet available on the question of **deposits** for candidates, whether for Mayor or Assembly member.

¹⁶² SI no 932

¹⁶³ Cm 4014 July 1998

B. Selection of Candidates

Procedures for the selection of candidates have not yet been discussed in detail by the major political parties, although the Conservatives have proposed that every party member in London would be entitled to take part in a Primary election to choose the Conservative candidate for mayor.¹⁶⁴ There is press interest in the possible candidature of Lord Archer:- there is speculation that although the Conservatives will not block his candidature, unease remains about his status as an official candidate¹⁶⁵. The Greater London Labour party has voted for a system of approved candidates and this has been interpreted by the press as an attempt to ensure that Ken Livingstone is not selected.¹⁶⁶ Mr Livingstone has responded by inviting London Labour Party members to conduct a 'write-in' of his name, when presented with alternatives.¹⁶⁷ The London Liberal Democrats issued rules for the Assembly members and mayoral selection in September 1998.¹⁶⁸ Selection will be on an OMOV basis once a list of approved candidates had been issued; counting will be conducted using STV. There will be a separate shortlist for the mayoral candidate, expected to be announced by spring 1999.

VII The House of Commons – The Jenkins Commission

A. Background

In 1990, following a vote at annual conference, the Labour Party set up the Working Party on Electoral Systems chaired by Professor Raymond Plant (now Lord Plant) a professor of politics at Southampton University. The working party produced an initial document *Democracy, Representation and Elections* in 1991 which identified relevant issues and discussed alternative voting systems without coming to any specific conclusions. The working party then produced a shorter interim report for the party conference in 1992, following the general election, which incorporated a statement recommending the Additional Member System for the Scottish Parliament, previously agreed by the National Executive Committee before the election.¹⁶⁹

The final report was published in April 1993¹⁷⁰ and recommended by a narrow majority the Supplementary Vote for the Commons. It also recommended regional list systems for a second chamber replacing the Lords and for the European Parliament. The Supplementary Vote is a form of Alternative Vote proposed by Dale Campbell Savours, where voters indicated their first and second choice, and any candidate with more than 50 per cent of first choice votes is elected;

¹⁶⁴ *The Fresh Future: The Conservative Party Renewed* February 1998 p 23

¹⁶⁵ *Sunday Telegraph* 15.11.98 'Archer to ditch Tories in London contest'

¹⁶⁶ *Guardian* 11.11.98 'Livingstone suffers mayoral setback'

¹⁶⁷ *Guardian* 12.11.98 'Livingstone raises stakes'

¹⁶⁸ London Liberal Democrats *Rules for GLA and Mayor Selections*

¹⁶⁹ *Second interim report of the working party on electoral systems*

¹⁷⁰ *Report of the working party on electoral systems (1993)*

if no candidate achieves this, all but the top two candidates are eliminated and the second preference votes are then added to the first preference ones.

During the 1992 election Labour policy was neutral on electoral reform,¹⁷¹ and Neil Kinnock refused to indicate his views in case it would prejudice the outcome of the Plant inquiry.¹⁷² Immediately after the NEC had considered the final Plant Report the new leader, John Smith, made a public statement¹⁷³ committing the Labour Party to a referendum on the future of the electoral system for Westminster in the first Parliament of a Labour government. John Smith indicated that he was personally unconvinced of the merits of electoral reform. The policy was endorsed at the 1993 conference by a narrow margin and reaffirmed by Tony Blair in 1994 when party leader and subsequently in policy documents.¹⁷⁴

Tony Blair remained unpersuaded of the virtues of PR for the Commons.¹⁷⁵

The report of the Labour/Liberal Democrat Joint Consultative on Constitutional Reform¹⁷⁶ committed both parties to a referendum on the electoral system for Westminster in the first term of a new Parliament, preceded by an electoral commission which would recommend the appropriate proportional alternative to First Past the Post.¹⁷⁷

Electoral Systems

54. There has, throughout this century, been debate about the use of the first past the post electoral system for elections. Liberal Democrats have a long standing policy in favour of proportional representation. The Labour Party's Plant commission considered the electoral systems for elections to the House of Commons, devolved assemblies and the European Parliament.

¹⁷¹ on which see the *British General Election of 1992* ed. D Butler and D Kavanagh pp 129-30

¹⁷² in December 1992 he confirmed that he supported PR but was not specific as to the form [television interview David Dimbleby]

¹⁷³ Press Release 'Statement by Rt Hon John Smith QC MP Leader of the Labour Party, in response to the Plant Committee Inquiry into Electoral Systems'.

¹⁷⁴ *New Labour, New Life for Britain* (p 29) July 1996, *New Politics New Britain* September 1996 *New Labour: Leading Britain into the Future* January 1997. The timing for the referendum was not given. See also Tony Blair's John Smith Memorial Lecture 7.2.96 p 13

¹⁷⁵ *Economist* 14.9.96 "Blair on the constitution"

¹⁷⁶ 5.3.97

¹⁷⁷ This proposed electoral commission was designed to deal only with a proposed PR system and should not be confused with proposals for an electoral commission to take over the administration of elections from the Home Office and Scottish Office. See the independent Constitution Unit briefing no 11 *Establishing an electoral commission* 1997. The second part of the Plant Commission's final report in 1993 looked at electoral processes and recommended the establishment of an electoral commission to administer elections: this work was endorsed by the Conference in 1993. The Labour Party policy document *A New Agenda for Democracy* 1993 included a commitment to establish an electoral commission to review and update electoral procedures, such as a rolling register of electors. This type of commission was not however mentioned in the 1997 Labour party manifesto. A Home Office working party under the junior minister George Howarth is currently looking at improvements to electoral administration and the Home Affairs Select Committee has recommended an electoral commission in its report on Electoral Law and Administration (HC 768 1997-8) Most influentially, the Neill Committee has recommended an electoral commission to oversee new party funding and electoral expenses controls.

55. Both parties are committed to the use of proportional electoral systems for the Scottish Parliament and the Welsh Assembly.

56. Both parties believe that a referendum on the system for elections to the House of Commons should be held within the first term of a new Parliament.

57. Both parties are also agreed that the referendum should be a single question offering a straight choice between first past the post and one specific proportional alternative.

58. A commission on voting systems for the Westminster Parliament should be appointed early in the next parliament to recommend the appropriate proportional alternative to the first past the post system. Among the factors to be considered by the commission would be the likelihood that the system proposed would command broad consensus among proponents of proportional representation. The commission would be asked to report within twelve months of its establishment.

59. Legislation to hold the referendum would then be proposed and the choice placed before the people. This proposal would allow the crucial question of how our government is elected to be decided by the people themselves.

The independent Constitution Unit commented in its briefing *Changing the Electoral System*¹⁷⁸ that "no one should underestimate the difficulty of identifying a single reform option. This is a highly political exercise; and some of those involved in the electoral reform movement are most unlikely to sink their differences. The Government will risk being denounced for having predetermined the outcome, through the terms of reference given to the commission, and by the people chosen to serve on it. The definition of the commission's task, its status and its membership, will be crucially important to the credibility of the exercise." The Constitution Unit briefing considered terms of reference, status and membership of the proposed commission, amongst other aspects. It also recommended that the referendum should be conducted by an independent commission,¹⁷⁹ probably a full electoral commission,¹⁸⁰ separate from the earlier advisory commission on the appropriate PR system.

The Labour manifesto for the general election¹⁸¹ stated "We are committed to a referendum on the voting system for the House of Commons. An independent commission on voting systems will be appointed early to recommend a proportional alternative to the first-past-the-post system" (p 33).

On 22 July 1997 a new Cabinet consultative committee was announced, with membership to include leading Liberal Democrats.¹⁸² One of the first topics under discussion was expected to be the electoral commission.. There were press reports that the Labour Government would favour

¹⁷⁸ Briefing no 10.1997

¹⁷⁹ See the *Report of the Commission on the conduct of referendums* 1996 (Electoral Reform Society and Constitution Unit) and background in Research Paper 97/10 *Referendum: Recent Proposals*

¹⁸⁰ see above footnote 7

¹⁸¹ *New Labour because Britain deserves better* April 1997

¹⁸² *Times* 23.7.97 "Ashdown welcomes Lib Dem role on Cabinet committee"

the Alternative Vote as the option for the electorate in the referendum . Peter Hain, a junior Welsh Office Minister, favoured the Alternative Vote in an article for the *Times* in October 1997.¹⁸³ Robert Maclennan, a key member of the pre-election Joint Consultative Committee, argued that AV was not a proportional system and noted that Labour's manifesto had committed itself to a commission to choose a proportional alternative to the first-past-the-post system.¹⁸⁴ A study by Democratic Audit¹⁸⁵ has found that using AV or the Supplementary Vote would have given Labour an even larger majority in the 1997 general election. STV would still have given Labour a 44 seat majority and only AMS would have denied them a straightforward majority.

On 1 December details of the Independent Commission on the Voting System were announced in a Written Answer:¹⁸⁶

Gillian Merron: To ask the Secretary of State for the Home Department if he will make a statement on the Independent Commission on Voting Systems.

Mr. Straw: My right hon. Friend the Prime Minister has today appointed Lord Jenkins of Hillhead to be the Chairman of the Independent Commission on the Voting System. The other members will be Lord Alexander of Weedon, Lady Gould of Potternewton, Sir John Chilcot and Mr. David Lipsey.

The Commission's terms of reference will be:

"The Commission shall be free to consider and recommend any appropriate system or combination of systems in recommending an alternative to the present system for Parliamentary elections to be put before the people in the Government's referendum.

The Commission shall observe the requirement for broad proportionality. the need for stable government, an extension of voter choice and the maintenance of a link between hon. Members and geographical constituencies. The Commission will begin its work early in the new year and has been asked to report within twelve months.

Press reports indicated that the terms of reference were considered by Labour to include AV¹⁸⁷, and floated the idea of a system mixing AV and AMS as a possible preferred option for the Committee. Robert Maclennan had suggested that such a mixed system might be the preferred solution.¹⁸⁸ This is generally known as AV plus.

¹⁸³ *Times* 23.10.97 "We vote for the sensible alternative" *Independent* 2.12.97 "Beginning of the end for first past the post"

¹⁸⁴ *Times* 20.10.97 "Spelling out the voting alternative"

¹⁸⁵ *Making votes count: how Britain would have voted in the 1990s under alternative electoral systems* by Patrick Dunleavy et al October 1997

¹⁸⁶ HC Deb vol 302 1.12.97 c 57-8W

¹⁸⁷ *Guardian* 1.12.97 "Blair sets PR ball rolling"

¹⁸⁸ *Independent* 27.11.97 "What can happen when opposing parties co-operate: voting reform"

The Jenkins Commission called for reasoned submissions from as wide a range of people as possible, by the end of February 1998.¹⁸⁹ It held a series of public meetings to hear representations.¹⁹⁰ These meetings have not produced large audiences, and have ranged from 10 in Belfast to 300 in London.¹⁹¹ The Labour party, Liberal Democrats and Conservatives have submitted evidence to the Commission, along with other political parties and pressure groups on both sides of the debate. The Liberal Democrats maintained their preference for STV. The Labour evidence did not commit itself to one particular system, but noted the advantages of factors generally thought to favour FPTP or AV such as the constituency link and the danger of giving too much power to smaller parties. The Conservatives complained that the Commission ought to have wider terms of reference to enable it to consider FPTP as well as PR systems and used an argue that any referendum ought to be held after detailed legislation on a new voting system. These arguments were repeated in an Opposition day debate on 2 June 1998¹⁹² and in a subsequent debate on the Jenkins Report on 5 November 1998.¹⁹³

The Labour Party and the Liberal Democrats issued a new constitutional declaration on 11 June 1998, drawn up by the joint cabinet committee, confirming plans for a referendums on voting systems. It stated ' we see the work being done by the Jenkins Commission in proposing a voting system which observes the requirement for broad proportionality, the need for stable government, voter choice and the maintenance of links between MPs and constituents, as helping to give the British people the opportunity to decide in a referendum how they want the House of Commons to be elected'.¹⁹⁴ No timescale was mentioned for the referendum. The Liberal Democrats have called for the implementation of voting reform before the next election and for the size of the Commons to be reduced to 500 MPs in a new policy paper on the Constitution.¹⁹⁵ A new campaign *Make Votes Count* was launched on 2 June to campaign for a yes vote.

B. The Jenkins Report -Summary

Research Paper 98/102 *Voting Systems- The Jenkins Report* gives the full background on the Jenkins recommendations and a summary only is offered here.

The report was published on 29 October 1998.¹⁹⁶ It recommended a mixed system which it described as either limited AMS or AV Top Up. 80-85 per cent of the House of Commons would continue to be made up of constituency members, but elected by AV. (Lord Alexander, a Conservative, dissented from this aspect and preferred FPTP for the

¹⁸⁹ Home Office Press Notice 19.1.98 "Your say in choosing a method of voting"

¹⁹⁰ *Financial Times* 11.3.98 "Mission to move minds in the vote reform debate"

¹⁹¹ HL Deb 7.7.98 c 124W

¹⁹² HC Deb vol 313 2.6.98 c 171-267

¹⁹³ HC Deb vol 318 5.11.98 c 1036

¹⁹⁴ *Liberal Democrat News* 19.6.98 'Four principles for UK reforms'

¹⁹⁵ *Policy Review Commission Report Constitutional Affairs* July 1998

¹⁹⁶ *The Report of the Independent Commission on the Voting System* Cm 4090

constituency elections). To the Commission, AV alone was unacceptable, because of the danger of disproportionality, as at the 1997 election, and so another 15-20 per cent of MPs would be elected through lists using small top up areas, based on city or county boundaries. The list would be open and would be small, with only a couple of names submitted by each party. Voters would have two votes, for the constituency and one for the top-up, therefore allowing for split ticket voting. A review of boundaries would need to be undertaken by the Parliamentary Boundary Commissions, along with changes to the existing Redistribution Rules, to allow for a single UK electoral quota. This would have the effect of reducing the number of seats awarded to Scotland and Wales.¹⁹⁷

Finally, the Commission recommended a neutral, publicly funded education programme before any referendum on electoral change, on the lines recommended by the Neill Committee¹⁹⁸ into party funding and election expenditure. It also called for an independent electoral commission to have oversight of electoral administration. The recommendations and conclusions were set out as follows:

1. The Commission's central recommendation is that the best alternative for Britain to the existing First Past The Post system is a two-vote mixed system which can be described as either limited AMS or AV Top-up. The majority of MPs (80 to 85%) would continue to be elected on an individual constituency basis, with the remainder elected on a corrective Top-up basis which would significantly reduce the disproportionality and the geographical divisiveness which are inherent in FPTP.
2. Within this mixed system the constituency members should be elected by the Alternative Vote. On its own AV would be unacceptable because of the danger that in anything like present circumstances it might increase rather than reduce disproportionality and might do so in a way which is unfair to the Conservative party. With the corrective mechanism in operation, however, its advantages of increasing voter choice and of ensuring that in practice all constituency members (as opposed to little more than half in recent elections) have majority support in their own constituencies become persuasive. Lord Alexander would, however, prefer to retain FPTP for constituency elections for the reasons outlined in the attached note.
3. The Commission recommends that this system should be implemented throughout the United Kingdom.
4. The Commission recommends that the second vote determining the allocation of Top-up members should allow the voter the choice of either a vote for a party or for an individual candidate from the lists put forward by parties. They should therefore be what are commonly called open rather than closed lists.
5. The Commission recommends that, in the interests of local accountability and providing additional members with a broad constituency link, additional members should be elected using small Top-up areas. The Commission recommends the areas most appropriate for this purpose are the 'preserved' counties and equivalently sized metropolitan districts in

¹⁹⁷ see Research Paper 95/74 *The Parliamentary Boundary Review for England* for background

¹⁹⁸ *Committee on Standards in Public Life* October 1998

England. In Scotland and Wales, we see no reason to depart from the units which are used for the return of additional members to the Parliament in Scotland and to the Assembly in Wales with respectively eight and five Top-up areas. In Northern Ireland there should be two Top-up areas each returning two members. In England the Top-up members would therefore in effect be either county or city-wide members from 65 different areas.

6. The Commission recommends that the Top-up members should be allocated correctively, that is on the basis of the second vote and taking into account the number of constituency seats gained by each party in each respective area, according to the following method:

- the number of second votes cast for each party will be counted and divided by the number of constituency MPs plus one gained by each party in each area;
- the party with the highest number of second votes after this calculation will be allocated the first Top-up member;
- any second additional member for an area will be allocated using the same method but adjusting to the fact that one party will already have gained a Top-up member.

7. The Commission recommends that the proportion of Top-up members needed for broad proportionality without imposing a coalition habit on the country should be between 15% and 20%. A decision on the exact proportion of Top-up members should be governed by the considerations set out in paragraphs 151-154 of this report, which relate to other changes in the pipeline such as the reduction in the number of Scottish seats and the work of the Boundary Commissions.

8. The Commission recommends that the allocation of Top-up seats to areas should ensure that the ratio of constituency to Top-up members is, as far as is practicable, equal in the four constituent nations of the United Kingdom. The allocation of Top-up members to the areas within each of those parts should ensure that each area has at least one Top-up member with the remainder being allocated to those areas with the greatest number of electors. For the reasons outlined in paragraph 142 Northern Ireland should have two Top-up members in two Top-up areas.

9. The Commission recommends that the right to put forward candidates for Top-up member seats should be limited to those parties which have candidates standing for election in at least half of the constituencies within the the Top-up area.

10. The Commission stresses that all members of the House of Commons whether elected from constituencies or as Top-up members should have equal status in Westminster.

11. The Commission recommends that Top-up member vacancies, which are unlikely to be more than two or three a parliament, should be filled by the candidate next on the list of the party holding the seat. If there is no available person the seat should remain vacant until the next general election. Constituency vacancies would of course be filled by the normal by-election procedure.

12. The Commission believes that changes to the existing Rules for the Redistribution of Seats (Schedule 2 to the Parliamentary Constituencies Act 1986) will be integral to the successful implementation of the new system. Bias should be reduced by the use of a single

electoral quota for the United Kingdom; and the Boundary Commissions should be given a statutory power to take account of population movement and thus help to keep the result of their work more up-to-date.

Secondary Recommendations

13. The Commission recommends that there should be a properly planned publicly-funded but neutrally-conducted education programme to prepare voters for the decision they will be required to make in the referendum.

14. The Commission concludes that the education programme and oversight of referendums generally should fall to an independent commission. This role would fall naturally to an Electoral Commission.

15. The Commission recommends that an independent Electoral Commission should be established to advise Parliament on and have oversight of electoral administration and related matters.

16. The Commission recommends that the Government should put in place arrangements to review the new system after, say, two general elections.

17. The Commission recommends that substantial further changes should not be made without a second referendum.

Professor Patrick Dunleavy and Dr Helen Margetts published a report on the same day summarising their statistical modelling for the Commission and offering estimates of how the parties would have fared under the Jenkins scheme in the 1997 election.¹⁹⁹

Legislation to hold a referendum will be necessary now that the Commission has reported, and it is unclear when the referendum will take place. Jack Straw described himself as perfectly "relaxed" about the prospect of the Alternative Vote. In 2 June 1998 Opposition Day debate Mr Straw said 'the plan is that the referendum should take place well before the next election...if there were a vote for change in the referendum further primary legislation would be required to introduce the new electoral system. Depending on the nature of the new system extensive redrawing of electoral boundaries might also be required. These factors will determine whether any new system could be in place for the next general election(c200)

There was a favourable reaction to the report on its publication from the Liberal Democrats and a hostile one from the Conservatives. Paddy Ashdown has been reported as being prepared to accept a referendum after the next general election.²⁰⁰ The Conservatives issued an immediate rebuttal of the proposals, arguing that the Commission contained no supporter of the FPTP system, that AV Plus was not in use anywhere in the world, and that coalitions prevented firm government and installed minor parties in permanent power.²⁰¹ The Home

¹⁹⁹ *The Performance of the Commission's Schemes for a New Electoral System* 1998

²⁰⁰ *Guardian* 2.11.98 'Ashdown gives Blair time to win PR support'

²⁰¹ *A Guide to the Jenkins Report: Background, Conclusions, Implications* Conservative Policy Forum 1998

Secretary, Jack Straw, issued a statement noting that no decisions had been taken as to the timing of the referendum, and that extensive redrawing of the constituency boundaries would be required. The impact of the Neill Committee conclusions would also have to be studied. He also noted that the wider constitutional context would have to be considered.²⁰²

In an adjournment debate on Jenkins on November 5, Mr Straw adopted a sceptical tone, insisting that the Government need not make an early decision and that the recommendations of the Neill Committee on referendums needed to be absorbed before one could be held²⁰³ However there have been press reports that the Prime Minister has indicated that a referendum before the election remains an option.²⁰⁴ In a Parliamentary Answer the Prime Minister said that a date had not been decided and that it should be held at the earliest moment that it was sensible to do so. He did not commit the Government to holding a referendum before the next general election.²⁰⁵

There has been relatively little discussion as yet as to whether collective responsibility will apply for the Cabinet and junior ministers or whether individual members of the government will be able to campaign on different sides, as in the 1975 referendum on membership of the EEC.²⁰⁶ One article has suggested that it will be suspended for the referendum campaign.²⁰⁷

VIII Local Government

There has been increasing debate about the desirability of introducing proportional representation for local government. The Single Transferable Vote (STV) has been used for local elections in Northern Ireland since 1973 and is broadly supported by all the major political parties there.

The Commission for Local Democracy, an independent pressure group supported the Single Transferable Vote (STV) as one of its recommendations in 1995:²⁰⁸

3.19 In Europe it appears that countries which use a system of proportional representation in voting at local elections secure a higher turnout. Britain appears to get none of these advantages of proportional representation, while experiencing precisely the uncertain "coalition government" on local councils so deplored by opponents of such electoral reform. Rallings and Thrasher pointed out in research conducted for the Electoral Reform Society in 1991 that the English and Welsh counties and districts show little correlation between the parties in power and the party preference of their voters. In Plymouth in 1987 the Conservatives won an absolute majority on the council with just 38% of the vote. In the London Borough of Islington in 1990 Labour polled 48.9% of the vote and won all but three

²⁰² Home Office PN 29.10.98 ' Government Response to the Report of the Independent Commission on the Voting System

²⁰³ HC Deb vol 318 5.11.98 c 1036

²⁰⁴ *Guardian* 10.11.98 'Blair moves to reassure Lib Dems on PR vote pledge'

²⁰⁵ HC Deb vol 319 11.11.98 c 201W

²⁰⁶ see Research Paper 96/55 *The Collective Responsibility of Ministers: an outline of the issues* section V

²⁰⁷ *Financial Times* 5.11.98 'Ministers to have free say on PR Referendum'

²⁰⁸ *Taking charge: the rebirth of local democracy*

of the seats. In the London Borough of Richmond in the same election the Liberal Democrats won 92% of the seats with 46.4% of the votes.

3.20 Rallings and Thrasher also point out that there is a wide variety in the size of electoral wards. In London in 1986 some three-member wards had electorates of 13,233 while others had electorates of just 4,419. In shire districts some rural wards had as few as 279 electors whereas urban authorities had up to 6,191 electors still in single-member wards. Such gross disparities do mean that some votes are more equal than others.

The Commission supported the introduction of STV on the model used for local government in Northern Ireland More recently Andrew Adonis and Stephen Twigg have outlined the arguments for STV in multi member wards.²⁰⁹:

The consultation paper issued by the DETR²¹⁰ entitled *Modernising local government: local democracy and community leadership*²¹¹ downplayed the potential of PR as a means of revitalising local government:

VOTING SYSTEMS

3.45 The tradition in this country is for there to be a close link between constituency representatives and the citizens they represent. Our local government voting system delivers just this result with each councillor being elected by the citizens of the ward or electoral district which he or she represents. We believe that such close links between councillors and people are vital to ensuring councils engage effectively with their local communities.

3.46 However, in some parts of the country there is virtually one party rule with few, if any, opposition members on a council. Some argue that local democracy does not operate as effectively as it might in such situations, and that this can lead to councils becoming complacent and incompetent. Others say that the problem is not with the democratic system.

3.47 The Government believes that changes to the voting system are not a panacea for the current weaknesses in local government. Reforms to the electoral, political, and consultation arrangements discussed elsewhere in this document are of greater importance and urgency. These are the Government's priority and we will therefore seek to carry forward the programme described in this paper which we believe will result in councils more effectively engaging with and leading their communities

The consultation paper for Welsh local government considered the option of annual elections as a way of revitalising interest in local elections but did not look at the case for PR in detail.²¹² Hilary Armstrong told the Labour local government conference that PR was off the agenda for the foreseeable future, and did not envisage looking at PR in this Parliament.²¹³

²⁰⁹ *The cross we bear - electoral reform for local government* Fabian Society 1997

²¹⁰ Department of the Environment, Transport and the Regions

²¹¹ February 1998

²¹² *Modernising local government in Wales; local democracy and community leadership* March 1998 Welsh Office

²¹³ LGC Net 5.2.98 "Armstrong: Old Members 'should stand aside'"

The White Paper *Modern Local Government: In Touch with the People*²¹⁴ published in July 1998 proposed a system of moving towards annual elections as a means of revitalising local democracy. There would be elections by thirds in all unitary councils in future, including London boroughs. Electoral reform was considered briefly, but there are no immediate plans for its introduction, except for the possibility of using the Supplementary Vote for the election of directly elected mayors:

Voting systems

4.24 As the Government explained in its consultation paper on local democracy and community leadership, the tradition in this country is for there to be a close link between constituency representatives and those they represent. Our local government voting system delivers just this result, with each councillor being elected by the people of the ward or electoral district which he or she represents. Close links between councillors and the people they represent are vital to ensuring councils engage effectively with their local communities.

4.25 This voting system can sometimes result in virtual one-party rule. Some authorities with an overwhelming majority for one party can be extremely effective and responsive to the needs of those they serve. But this situation can also lead to councils becoming complacent and out of touch.

4.26 The Government does not propose to change the local government voting system other than the possible introduction of the supplementary vote for the election of directly elected mayors. It does not view changes to the voting system as a panacea for the current weaknesses in local government. Local government modernisation is more fundamental than simply changing how people cast their vote. The Government favours a wider and more radical reform programme, encompassing electoral arrangements, political management, finance, service provision and consultation as set out in this White Paper.

4.27 However, the Government has established an Independent Commission on Voting Systems, chaired by Lord Jenkins of Hillhead, to recommend an alternative to the first-past-the-post system for elections to the Westminster Parliament. Once this Commission has reported, and the people have decided which alternative they prefer, the Government will wish to assess the implications for local government.

The SV is to be used for elections for the Mayor for London and the White Paper considered that it was simple and easy to use and could result in a clear winner:

3.37 Under the SV system voters simply mark the ballot paper using an 'X', as is usual in other elections. The ballot paper has separate columns in which voters may register their first and second choices. Voters are not required to vote twice if they do not wish to do so.

²¹⁴ Cm 4014

3.38 Counting under the SV system is also simple. Assuming there are more than two candidates, voters' first preferences are counted and if one candidate gets 50% or more of the vote, he or she is elected. If no candidate polls 50% of the vote, all of the candidates are eliminated from the ballot except the two who received the highest number of votes. The second preferences on the ballot papers of the eliminated candidates are then examined and any second votes which have been cast for the remaining candidates are awarded to them. Whoever has the most votes at the end of that process is declared the winner.

SV is a modified version of the Alternative Vote used in elections in Australia. It was the preferred option of the Labour Party's Plant Commission on electoral reform in 1993 for the House of Commons. Its supporters favour it above the Alternative Vote as it restricts the voter to two preferences so as to prevent the very weak preferences at the bottom of the ordering scale influencing the result unduly. On the other hand the votes of those using both votes for eliminated candidates are 'wasted'. A version is used in Presidential elections for Sri Lanka. The Dunleavy report,²¹⁵ which was prepared for the DETR on possible electoral systems for London, noted that the "SV elimination method favours the existing major parties (Conservatives and Labour)..but the second preferences of Liberal Democrats and other voters will be critically important in determining the final result." (para 2.24) Vernon Bogdanor has argued that SV can have capricious effects in a four party system.²¹⁶

Pressure to introduce proportional representation, most commonly in the form of the Single Transferable Vote, has been felt intermittently in the twentieth century. Following the 1910 Royal Commission²¹⁷ which suggested that it be tried for municipal elections Keith-Lucas notes that a Bill to allow local authorities to adopt the system if they wanted to was passed three times by the Lords but defeated in the Commons in 1923, despite support from the London County Council.²¹⁸ Interest thereafter waned, with the Maud Committee²¹⁹ dismissing PR as unsuitable and inappropriate if not adopted for Parliament. It was introduced for Northern Ireland local elections in 1972 however.

The academics Rallings and Thrasher²²⁰ noted the spectacular instances of parties winning many more seats than their share of vote:

ELECTORAL UNFAIRNESS

Many councils in Britain are demonstrably unrepresentative of their local electorate. Such a fact sits uneasily with a system that was intended to be democratic in the sense of reflecting the wishes and needs of the population. Over the years there have been

²¹⁵ *Report to the Government Office for London: Electing the London Mayor and the London Assembly* Professor Dunleavy and Dr Helen Margetts 20.1.98

²¹⁶ *Power and the People* 1998 p69

²¹⁷ Cd 5163

²¹⁸ *A History of Local Government in the Twentieth Century* p22 Further detail is given in *Proportional Representation* 1992 by Jennifer Hart pp216-7

²¹⁹ *Management of Local Government* 1967 para 335

²²⁰ *Local Elections in Britain* (1997) Colin Rallings, Michael Thrasher

some spectacular instances of parties winning many more seats than their share of the poll could possibly justify. One of the principal reasons for an electoral imbalance arises when a single party achieves a sizeable share of the overall vote. Some of the worst examples of this occur amongst the metropolitan boroughs where the Labour party, particularly in recent years, has exercised a strong grip. Knowsley, for example, has become virtually a one-party authority through a combination of the operation of the electoral system followed by an understandable decline in party competition. In the mid-1970s a majority of wards were contested by the three main parties.

Although the Conservatives enjoyed a reasonable level of support this was rarely translated into seats. In 1978 the party won some 43 per cent of the vote across the borough but for that it was rewarded with just 2 seats out of a total of 14. Despite winning one in twelve votes cast the Liberals went away empty-handed in terms of seats. From that time onwards the opposition to Labour has all but evaporated within the borough. In 1990 Conservative candidates contested just 8 out of 21 wards; less than 40 per cent of Knowsley's electorate was able to vote for a Conservative if they so wished, The Liberal Democrats for their part had been reduced to fighting in just three wards. Most seats went to Labour without need of an election. This is, of course, not the fault of the Labour party but rather of an electoral system which rewards only winners. The collapse in Conservative local government Support since 1992 has only served to exacerbate the problem, In 1995 the Conservatives won no seats at all in 17 metropolitan councils, including Tameside where their vote was in excess of 20 per cent.

Neither is the problem restricted to Labour strongholds amongst the metropolitan boroughs. In Bracknell Forest, for example, the Conservatives won 54 per cent of the vote at the 1987 local elections and took all 40 seats. The London borough elections of 1990 produced some similarly striking examples of electoral unfairness. In Islington, Labour polled 48.9 per cent of the vote and won all but 4 of that borough's wards. In Richmond on Thames, the Liberal Democrats, so often the victims of the present electoral system, won 92 per cent of the seats with 46.4 per cent of the vote.

The introduction of more proportional representation would be likely to make a substantial difference to the pattern of party control of local authorities. If seats won had been proportional to votes cast in the metropolitan district elections (where elections are by thirds) from 1994 to 1996, for example, as many as ten councils which in fact were Labour controlled in 1996 would have had no overall control. Overall in the metropolitan districts, Labour would have had some 500 seats fewer than in reality, the Conservatives 300 more and the Liberal Democrats 120 more. These were years in which Labour had conspicuous success in local elections. In the 1994 elections in Greater London, a proportional system would have led to ten Labour, three Conservative and two Liberal Democrat boroughs having no overall control; Labour would have won 230 seats fewer, the Conservatives 60 more and the Liberal Democrats nearly 100 more.²²¹

²²¹ In the calculations underlying these estimates, other parties have been lumped together which has the effect of exaggerating the number of seats they would win under a proportional system. This section has been written by Rob Clements

In the county council elections of 1993,²²² a proportional system would have meant nine Labour, one Conservative and one Liberal Democrat council having no overall control. Labour would have won nearly 190 seats fewer than they did, while the Conservatives would have won 120 more and the Liberal Democrats 40 more.

There are indications of growing interest in PR in English local government, despite reported opposition from the Deputy Prime Minister John Prescott to support from the no. 10 Policy Unit.²²³ The Local Government Association has cautiously supported PR as a way of increasing turnout in local elections, commenting 'careful consideration could also be given to the case for introducing an element of proportionality into local elections'.²²⁴

Rallings and Thrasher noted that there was no evidence that the electoral system is biased for or against any particular party, citing the Conservative record in 1977, when it received 75 per cent of seats in English county council elections with 58 per cent of the vote, and in 1993 31 per cent of the seats on a 36 per cent share of the vote. They concluded:

A PROGRAMME OF REFORM?

The arguments for introducing some form of proportional representation for local government surely mirror those used in Northern Ireland, where protection of minorities is uppermost, rather than those adopted by proponents of PR for the UK parliament, where equality of representation is the driving force. The simple point is that in many parts of the country there are perpetual minorities unable either to vote their party into power locally or even to obtain a fair representation of their opinion on the council. Accountability currently fails by allowing too many local parties to believe they will enjoy a permanent majority on the council regardless of the quality of services they deliver. Such an atmosphere leads to complacency by the governing party, disillusion on the part of the hopelessly under-represented and outnumbered opposition, and encourages apathy amongst the electorate.

As we saw in Chapter 4 local electoral turnout in Britain is the lowest of any European Union nation. One characteristic which our better-participating partners share is a system of election enshrining a degree of proportionality. Local turnout among them can rival the 75 per cent plus level expected in British general elections. Such a figure in Britain is remarkable in individual wards and unheard of across an entire local authority. Even in the politically charged 'poll tax' election of 1990, average turnout across the country was just 48 per cent. Electors are more reluctant to turn out and vote in local elections the less they feel their vote has a chance of affecting the result in their own ward or local authority. Many electors in safe seats simply prefer to stay at home. A system which ensured that each vote was of equal worth in determining the outcome must surely encourage higher turnouts (Blais and Carty 1990).

Just as 'first past the post' under certain conditions dampens the electorate's enthusiasm it can also have an impact on political parties. This is shown to best effect in the campaigning tactics embraced by the Liberal Democrats, which have

²²² These include elections to councils that were subsequently abolished and replaced by unitary authorities.

²²³ *Financial Times* 25.7.98 'Prescott resists pressure for local poll vote reform'

²²⁴ *Local Government Association* Making a Difference : A White Paper for Local Government July 1998 p 10

resulted in that party deliberately turning its back on some wards deemed as out of reach. As the costs of mounting local election campaigns rise, more local parties may feel the need to trim their presence and other parties' safe wards will be the first affected. Indeed, during their recent period of local electoral unpopularity, the Conservatives have also put forward fewer candidates in hopeless wards - contesting 30 fewer metropolitan and 300 fewer district wards in 1995 than in 1991. Such actions, of course, deprive electors of choice and depress turnout among committed supporters of the parties not represented.

One suggestion for increasing the accountability of councils to their electorates and perhaps encouraging greater participation is the introduction of annual elections for at least a third of each council. Certainly such a reform would concentrate elected members' minds on the likely electoral reaction to policies. But this system already exists in the metropolitan areas and across a large slice of the English shires, and whilst it may discourage excesses of policy, it does not in itself make local authorities any more representative. Indeed, it is frequently the case that although the electorate may wish to express displeasure with the ruling party, the party's numerical majority is larger than the number of seats it has to defend in any one year. In 1996, for example, the Labour majority on 24 of the 30 metropolitan boroughs which the party controlled was sufficient for the party to retain office even if it won no seats at all in the elections for those authorities. Unless councillors were to be made to seek re-election each year or wards with very large numbers of electors and councillors were to become the order of the day, annual elections would seem to imply a single member being elected on each occasion. Under such circumstances only the alternative vote system would prove practical and even that would not guarantee a better degree of representativeness than at present (Bogdanor 1984).

A more proportional system would require multiple-member seats, such as already exist in London and many of the English and Welsh shire districts. Sacrificing annual elections on grounds of practicality, at least three compensating benefits might be reaped. First, voters might be encouraged to pick and choose among candidates from the same party to a greater extent than they do currently. Second, there is some evidence from other countries that the representation of women, who currently comprise just over a quarter of all councillors in Britain, and minority groups is improved wherever parties have the opportunity to field multiple candidates in the same seat. Third, and most important, the parties winning seats in say three-, four- or five-member wards would be a more accurate reflection of the way the votes had been cast.

They favoured STV as the electoral system for local government, and argued that fears about minority administrations were misplaced given that coalitions in local government had become common under First Past the Post- with one in ten authorities having a formal coalition in 1995 with a further four in ten in some form of power-sharing arrangement.²²⁵

A new report from the independent Constitution Unit considered that PR would make councillors more responsive to the needs of their electorate, but would be unlikely to significantly increase turnout STV would be incompatible with the proposal in the White Paper for annual elections, because it would require too large an increase in ward size if one third of

²²⁵ *Policy and Politics 1995 ' Coalitions in Britain: Administrative Formation in Hung Councils'*

councillors had to be elected annually. Serious consideration of the case for local government should therefore be made before annual elections were introduced. If SV were to be used for mayors, it would presumably limit the choices of PR systems for the council, as voters might be confused by radically different ballot papers.

There are suggestions that the Scottish Parliament may introduce PR for local elections in Scotland.²²⁶ The Commission on Local Government and the Scottish Parliament, which was appointed by the Secretary of State for Scotland, issued a consultation paper on the future of local government under the Scottish Parliament which included comments on the low turnout at local elections:²²⁷

Local Democracy

11 The legitimacy of local government depends on the ballot box. It is the fact of being elected that principally distinguishes a local authority from a quango or other agency. And yet the turnout at local elections is notoriously very low - lower than in most European countries, and much lower than at a British general election.

12 There are a number of possible reasons for this, each of which may contribute something to the effect.

13 One factor may be the administrative arrangements for registration and voting how, when and where people are able to vote. These arrangements are largely the same for local elections as for general elections: they cannot therefore entirely account for low turnouts at local elections., but they may be a contributory factor to low turnouts.

Q2 We invite comments on the present election arrangements and suggestions as to how they might be made more voter-friendly.

14 A factor which has been thought significant is that in some areas people may feel that their vote is worthless because of the dominance of a single party. This raises questions about the present system of election, ie first-past-the-post. Under the devolution legislation, elections to the Scottish Parliament will be partly by a system of proportional representation. Proportional representation is also being introduced for the elections to the European Parliament. Meantime, elections to Westminster will continue under the present system of first-past-the-post, at least until the Jenkins Commission has reported. After devolution, the voting system for local government elections in Scotland does not immediately change; but it will be within the power of the Scottish Parliament to legislate in due course for a different system, if it thinks fit.

²²⁶ see *Proportional Representation and Local Democracy* by Mark Lazarowicz Centre for Scottish Public Policy January 1998

²²⁷ *The Commission on Local Government and the Scottish Parliament Consultation Paper no 1* April 1998

The Commission issued a second report²²⁸ which continued the positive tone:

115. We found substantial and widespread support for the view that a move to some form of proportional representation (PR) would be beneficial for local government. It was seen as especially desirable in councils where one party has an overwhelming dominance which does not in fact reflect the proportion of the total vote given to it. We have taken into account too that the Scottish Parliament will be elected, in part, by a PR system. For these two main reasons, we are minded to recommend to the Scottish Parliament that a form of PR be introduced for local government elections.

116. There remains however the question of which system of PR would be best. We do not attempt a full analysis of the various systems here; but note only that the alternatives will need to be examined with some care. The differences among the various PR systems are as substantial as the difference between them all and first-past-the-post. What is necessary, in choosing a system of election, is to be clear about the criteria that it must meet. Amongst those which have been suggested to us are –

- Maintenance of a link between councillor and ward;
- A more proportionate result, ie one where the number of seats won by a party is more proportionate to the total votes cast for it; and
- A fair chance for independents to be elected, bearing in mind that the tradition of independent councillors is still strong in some areas.

117. A note on various systems, and some commentary on them, is in the Appendix to this paper. We invite views on the criteria which should be applied, and their relative weight; and on the various voting systems as means to achieving them.

It is due to present its final report to the First Minister of the Scottish Parliament, when that person takes office.

²²⁸ *The Commission on Local Government and the Scottish Parliament Consultation Paper 2*

Appendix 1: Proportional Representation Formulae

The formulae used in allocating seats is seen as a technical issue, but it is important to appreciate that the use of a particular formula can affect the distribution of seats to individual parties, particularly the one or two in an electoral region. Since the Government proposed to use the d'Hondt divisor for the European Parliament, National Assembly for Wales and the Scottish Parliament the Appendix concentrates on explaining its operation. List PR can be classified into highest averages (divisor) and largest remainder(quota) system, such as the Droop quota. D'Hondt is a highest average method, as is St Lague. The purpose of d'Hondt can be said to be to find a quota which will allow the allocation of all available seats in the first allocation and to disregard all remainders. Under St Lague for each quota of votes that a party has won, one seat is awarded and all remaining votes of half a quota or more are also honoured. The difference is explained in more detail in an extract from *Electoral Systems and Party Systems*.²²⁹

The pure Sainte-Laguë formula can be interpreted in a similar way. Its quota is twice the last of the 'averages' to which a seat is awarded. For each quota of votes that a party has won, it is awarded one seat, and all remaining votes of half a quota or more are also honoured. If all remainders were so honoured, a strong bias in favour of the small parties would result-just as the d'Hondt rule of ignoring all remainders entails a bias against the small parties. By setting a boundary of half a quota above which remainders do, and below which they do not, qualify for a seat, Sainte-Laguë treats all parties in an even-handed manner. However, the modified Sainte-Laguë deviates from this high degree of proportionality by raising the first divisor from 1 to 1.4 and thereby making it more difficult for small parties to win their first seats. The formula operates almost like d'Hondt as far as a party winning its first seat is concerned, because the distance from 1.4 to 3 is proportionally nearly the same as the distance from 1 to 2; if the first divisor were 1.5, the first-seat procedure would be exactly like d'Hondt. But for winning seats thereafter, modified Sainte-Laguë works like pure Sainte-Laguë.

An example of the operation of d'Hondt is taken from a recent Home Office circular.²³⁰

ANNEX

Set out below is an example of how the d'Hondt divisor might work in a seven seat region where one million votes are cast:

Stage 1

Labour (total)	380 000
Conservative (total)	300 000

²²⁹ *Electoral Systems and Party Systems: a study of twenty seven democracies 1945-90* by Arend Lijphart p 157

²³⁰ Home Office Circular RPA 418 9.2.98

Liberal Democrat (total)	180 000
Independent candidate	140 000

The first seat is allocated to the candidate at the top of the Labour list.

Stage 2

Labour (divided by 2)	190 000
Conservative	300 000
Liberal Democrat	180 000
Independent candidate	140 000

The second seat is allocated to candidate at the top of the Conservative list.

Stage 3

Labour (divided by 2)	190 000
Conservative (divided by 2)	150 000
Liberal Democrat	180 000
Independent Candidate	140 000

The third seat is allocated to the candidate in second place on the Labour list.

Stage 4

Labour (divided by 3)	126 666
Conservative (divided by 2)	150 000
Liberal Democrat	180 000
Independent candidate	140 000

The fourth seat is allocated to the candidate at the top of the Liberal Democrat list.

Stage 5

Labour (divided by 3)	126 666
Conservative (divided by 2)	150 000
Liberal Democrat (divided by 2)	90 000
Independent candidate	140 000

The fifth seat is allocated to the candidate in second place on the Conservative list

Stage 6

Labour (divided by 3)	126 666
Conservative (divided by 3)	100 000
Liberal Democrat (divided by 2)	90 000
Independent candidate	140 000

The sixth seat is allocated to the-independent candidate.Stage 7

Labour (divided by 3)	126 666
Conservative (divided by 3)	100 000
Liberal Democrat (divided by 2)	90 000

The seventh seat is allocated to the candidate in third place on the Labour list

An example of the difference which using alternative formulae can make is given in the following two tables:²³¹

TABLE A.1. Illustrative examples of the operation of two highest averages formulas in a six-member district with four parties

Seats allocated using D'Hondt divisors of 1, 2, 3, 4, etc.

Party	Votes				Total seats
	(v)	v/1	v/2	v/3	
A	41,000	41,000 (1)	20,500 (3)	13,667 (6)	3
B	29,000	29,000 (2)	14,500 (5)	9,667	2
C	17,000	17,000 (4)	8,500		1
D	13,000	13,000			0

TOTAL 100,000

Seats allocated using modified Sainte-Laguë divisors of 1.4, 3, 5, 7, etc.

Party	Votes				Total seats
	(v)	v/1.4	v/3	V/5	
A	41,000	29,286 (1)	13,667 (3)	8,200	2
B	29,000	20,714 (2)	9,667 (5)	5,800	2
C	17,000	12,143 (4)	5,667		1
D	13,000	9,286 (6)			1

TOTAL 100,000

Note: The order in which seats are awarded sequentially to parties is indicated by the numbers in parentheses.

²³¹ from Appendix A of *Electoral Systems and Party Systems* by Arend Lijphart

Appendix 2: Estimated European, Scottish and Welsh Results

Table 1 European Parliament
Notional allocation of seats on basis of 1997 General Election results by Electoral Region

	Con	Lab	LD	SNP/PC	Other	Total
% of votes						
East Midlands	34.9%	47.8%	13.6%	..	3.7%	100.0%
Eastern	39.5%	38.6%	17.1%	..	4.8%	100.0%
London	31.2%	49.5%	14.6%	..	4.7%	100.0%
North East	19.8%	64.0%	12.6%	..	3.6%	100.0%
North West	27.6%	53.6%	14.5%	..	4.4%	100.0%
South East	41.9%	29.1%	23.3%	..	5.7%	100.0%
South West	36.7%	26.4%	31.3%	..	5.5%	100.0%
West Midlands	33.7%	47.0%	13.8%	..	5.5%	100.0%
Yorkshire & The Humber	28.0%	51.9%	16.0%	..	4.1%	100.0%
England	33.7%	43.5%	17.9%	..	4.8%	100.0%
Wales	19.6%	54.7%	12.4%	9.9%	3.4%	100.0%
Scotland	17.5%	45.6%	13.0%	22.1%	1.9%	100.0%
Great Britain	31.5%	44.3%	17.2%	2.6%	4.5%	100.0%
Seats won under proposed system						
East Midlands	2	3	1	0	0	6
Eastern	4	3	1	0	0	8
London	3	6	1	0	0	10
North East	1	3	0	0	0	4
North West	3	6	1	0	0	10
South East	5	3	3	0	0	11
South West	3	2	2	0	0	7
West Midlands	3	4	1	0	0	8
Yorkshire & The Humber	2	4	1	0	0	7
England	26	34	11	0	0	71
Wales	1	4	0	0	0	5
Scotland	1	4	1	2	0	8
Great Britain	28	42	12	2	0	84
Share of seats (%)						
England	37%	48%	15%	0%	0%	100%
Wales	20%	80%	0%	0%	0%	100%
Scotland	13%	50%	13%	25%	0%	100%
Great Britain	33%	50%	14%	2%	0%	100%

Sources: House of Commons Library Elections Data on disk

Table 2

Scottish Parliament under AMS assuming 1997 general election result (a)

	Con	Lab	LDem	SNP	Other	Total
<i>Votes cast:</i>						
Central Scotland	41,583	236,667	20,624	93,291	6,527	398,692
Glasgow	27,366	193,427	23,352	61,633	14,677	320,455
Highlands and Islands	37,206	61,974	63,362	61,189	5,421	229,152
Lothians	73,363	175,354	56,957	70,353	5,719	381,746
Mid Scotland and Fife	77,495	146,988	46,436	92,901	3,660	367,480
North East Scotland	82,079	113,021	69,164	95,503	6,362	366,129
South of Scotland	86,769	166,354	51,312	73,110	6,147	383,692
West of Scotland	67,198	189,565	34,155	73,570	4,914	369,402
Scotland	493,059	1,283,350	365,362	621,550	53,427	2,816,748
<i>Seats won on first-past-the-post basis:</i>						
Central Scotland	0	10	0	0	0	10
Glasgow	0	10	0	0	0	10
Highlands and Islands (b)	0	2	5	1	0	8
Lothians	0	8	1	0	0	9
Mid Scotland and Fife	0	6	1	2	0	9
North East Scotland	0	5	2	2	0	9
South of Scotland	0	6	2	1	0	9
West of Scotland	0	9	0	0	0	9
Scotland	0	56	11	6	0	73
<i>Seats won on additional basis:</i>						
Central Scotland	2	1	0	4	0	7
Glasgow	1	2	1	3	0	7
Highlands and Islands	2	2	0	3	0	7
Lothians	3	0	1	3	0	7
Mid Scotland and Fife	3	1	1	2	0	7
North East Scotland	4	0	1	2	0	7
South of Scotland	4	1	0	2	0	7
West of Scotland	3	0	1	3	0	7
Scotland	22	7	5	22	0	56
<i>Total seats won:</i>						
Central Scotland	2	11	0	4	0	17
Glasgow	1	12	1	3	0	17
Highlands and Islands (b)	2	4	5	4	0	15
Lothians	3	8	2	3	0	16
Mid Scotland and Fife	3	7	2	4	0	16
North East Scotland	4	5	3	4	0	16
South of Scotland	4	7	2	3	0	16
West of Scotland	3	9	1	3	0	16
Scotland	22	63	16	28	0	129
Share of seats	17.1%	48.8%	12.4%	21.7%	0.0%	100.0%
Share of votes	17.5%	45.6%	13.0%	22.1%	1.9%	100.0%
Seats if exactly proportionate	23	59	17	28	2 (d)	129
<i>Change from current system</i>	<i>1</i>	<i>-4</i>	<i>1</i>	<i>0</i>	<i>2</i>	<i>0</i>
Index of Proportionality (c)	97.2%					

Notes: (a) assumes votes cast in both first-past-the-post and additional member sections were as in 1997 general election (no other constituency-level data available on which to base estimates); uses d'Hondt system.

(b) assumes both Orkney and Shetland won by LDem in first-past-the-post section.

(c) calculated as 100 minus the sum of the difference between each party's % of seats and % of votes (divided by 2); in an electoral system where each party received exactly the same share of seats as votes, this would equal 100.

(d) the Referendum Party would have won 1 seat, but many small parties would not be entitled to any seats, even in a strictly proportionate system (the quota at the last General Election would have been 21,800 -- votes cast divided by 129 seats plus 1).

Sources: House of Commons Library Elections database & Rallings and Thrasher *Britain Votes 6*

Boundary Commission for Scotland *Second Supplementary Report of the European Parliamentary Constituencies* (Cm 3289)

Table 3

Welsh Assembly under AMS assuming 1997 general election result

	Con	Lab	LDem	PC	Other	Total
<i>Votes cast:</i>						
North Wales	85,554	166,144	41,517	49,904	10,765	353,884
Mid & West Wales	63,769	116,151	56,479	61,777	9,378	307,554
South Wales West	42,178	184,464	30,090	15,969	8,313	281,014
South Wales Central	70,502	201,900	41,037	19,382	14,615	347,436
South Wales East	55,142	218,276	30,897	13,998	11,861	330,174
Wales	317,145	886,935	200,020	161,030	54,932	1,620,062
<i>Seats won on first-past-the-post basis:</i>						
North Wales	0	7	0	2	0	9
Mid & West Wales	0	4	2	2	0	8
South Wales West	0	7	0	0	0	7
South Wales Central	0	8	0	0	0	8
South Wales East	0	8	0	0	0	8
Wales	0	34	2	4	0	40
<i>Seats won on additional basis:</i>						
North Wales	3	0	1	0	0	4
Mid & West Wales	3	1	0	0	0	4
South Wales West	2	1	1	0	0	4
South Wales Central	3	0	1	0	0	4
South Wales East	2	1	1	0	0	4
Wales	13	3	4	0	0	20
<i>Total seats won:</i>						
North Wales	3	7	1	2	0	13
Mid & West Wales	3	5	2	2	0	12
South Wales West	2	8	1	0	0	11
South Wales Central	3	8	1	0	0	12
South Wales East	2	9	1	0	0	12
Wales	13	37	6	4	0	60
Share of seats (%)	21.7%	61.7%	10.0%	6.7%	0.0%	100.0%
Share of votes (%)	19.6%	54.7%	12.3%	9.9%	3.4%	100.0%
Seats if exactly proportionate	12	33	7	6	2 (c)	60
<i>Change from current system</i>	<i>-1</i>	<i>-4</i>	<i>1</i>	<i>2</i>	<i>2</i>	<i>0</i>
Index of Proportionality (b)	91.0					

Notes: (a) assumes votes cast in both first-past-the-post and additional member sections were as in 1997 general election (no other constituency-level data available on which to base estimates).

(b) calculated as 100 minus the sum of the difference between each party's % of seats and % of votes (divided by 2); in an electoral system where each party received exactly the same share of seats as votes, the index would equal 100.

(c) the Referendum Party would have won 1 and possibly 2 seats, but many small parties would not be entitled to any seats, even in a strictly proportionate system (the quota at the last General Election would have been just under 27,000 votes (votes cast divided by 60 seats, plus one).

Sources: House of Commons Library Elections database
"A Voice for Wales" (Cm 3718), Annex C

Appendix 3: Estimated London Results

Estimated results of Greater London Authority elections based on 1998 London Borough election results

	Electorate	Share of vote ^(a)					
		Con	Lab	LDem	Green	Ind	Other
Barnet and Camden	363,027	32.8%	41.3%	19.0%	5.7%	0.5%	0.6%
Bexley and Bromley	394,106	48.2%	18.7%	32.1%	0.6%	0.0%	0.4%
Brent and Harrow	326,254	34.0%	43.3%	19.1%	1.0%	0.6%	2.0%
City & East	390,500	12.6%	56.9%	17.9%		4.2%	8.4%
Croydon and Sutton	358,131	40.2%	31.0%	26.3%	1.0%	0.5%	1.0%
Ealing and Hillingdon	389,339	36.2%	41.8%	13.7%	3.0%	0.5%	4.7%
Enfield and Haringey	348,335	30.1%	49.5%	14.2%	4.2%	0.6%	1.5%
Greenwich and Lewisham	328,656	24.2%	55.9%	13.3%	3.6%	1.1%	1.9%
Havering and Redbridge	355,131	33.6%	38.0%	12.9%	0.1%	1.1%	14.3%
Lambeth and Southwark	344,001	15.4%	43.1%	31.6%	7.1%	1.3%	1.6%
Merton and Wandsworth	331,181	43.3%	38.0%	11.9%	5.3%	0.2%	1.4%
North East	392,722	17.2%	41.0%	32.4%	7.8%	0.5%	1.2%
South West	383,579	33.8%	31.9%	31.5%	1.0%	1.1%	0.7%
West Central	340,000	47.3%	38.7%	12.2%	0.3%	1.2%	0.3%
Constituency seats		5	9				
London seats ^(b)		4	2	5			
Total seats		9	11	5			
Share of seats		36.0%	44.0%	20.0%			
Estimated share of vote		32.3%	40.1%	21.0%	2.9%	0.9%	2.8%

(a) Uses estimated share of vote and turnout to arrive at a figure for number of votes cast in each constituency. The winning party is shown in bold type

(b) Calculated using D'Hondt method

Local Elections Handbook 1998, Rallings and Thrasher

This gives estimated outcomes for the results of Greater London Authority elections based on the May 1998 London Borough elections. It assumes that first and second votes were cast for the same party.

Labour would have won nine of the fourteen constituency seats but only two of the eleven London-wide top-up seats. The last top-up seat was won with a d'Hondt score of around 62,300 votes or 3.6% of the total. This is the number of votes that would have been required by a party without any seats to gain a seat on the basis of a d'Hondt distribution. However, they would not have been awarded the seat if the prescribed percentage for the minimum share of vote was set at 5%.

Appendix 4: Single Transferable Vote - how it works

This example is based on a BBC website on the Northern Ireland Assembly elections.

The simplest way to explain how STV works is to demonstrate it.

This sequence of pages shows how the results might turn out in a fictional election, using a very simplified version of the STV rules used on June 25.

To be elected a candidate must reach a minimum number of votes. That's called the quota.

The quota being (in a six member seat) the fewest votes a candidate needs to be certain of being in the top six. This is calculated by dividing the number of votes cast by seven, then adding a vote.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote 8,923

Candidate	Party
Allen	UUP
Casey	SDLP
Hamilton	DUP
Hennessey	SF
Higgins	UUP
Lynch	SDLP
McIntosh	UUP
Ross	DUP
White	PUP
Young	All

First Count

First preference votes for Higgins and Lynch take them above the quota so they are elected. Now their surplus votes need to be reallocated..

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Candidate	Party	1st Preference Vote	
Allen	UUP	7,457	
Cassey	SDLP	6,346	
Hamilton	DUP	8,161	
Hennessey	SF	4,973	
Higgins	UUP	12,192	Elected
Lynch	SDLP	10,824	Elected
McIntosh	UUP	5,591	
Ross	DUP	3,962	
White	PUP	1,147	
Young	All	1,806	

Second Count

The second count is the stage where Higgins' and Lynch's surplus votes are reallocated.

First, lets look at what happens to Higgins' surplus:

How many are there? Easy, it's the total of first preference votes minus the quota.

That's 12,192 (1st pref) - 8,923 (qu) =3,269 (surplus)

How are those 3,269 votes divided between the other candidates? Not so easy. All his 12,192 ballot papers are examined to see what the proportion of 2nd preference support there is for each of the others. In this example we are assuming that most stay with the party (UUP) and virtually all find it difficult to cross the party divide.

12,192 votes have to be re-weighted to equal 3,269. 3,269 divided by 12,192=0.2681. So Allen, who got 42.8% of Higgins' 2nd preferences, gets 42.8% of the surplus 3,269 votes. This can be calculated as (5,218 x 0.2681) votes= 1,399. This is then repeated for all the other candidates for the rest of Higgins' 2nd preferences.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Higgins	UUP	Elected
Lynch	SDLP	Elected

Higgins Voters 2nd Preferences

		2 nd pref	%	2 nd pref Re-weighted to total, 3,269
Allen	UUP	5,218	42.8	1,399
Casey	SDLP	175	1.4	47
Hamilton	DUP	816	6.7	219
Hennessey	SF	0	-	-
McIntosh	UUP	4,408	36.2	1,182
Ross	DUP	693	5.7	186
White	PUP	462	3.8	124
No preference		18		4
Young	All	402	3.3	108
Total		12,192		3,269

We now repeat the process for Lynch's 2nd preferences

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Higgins	UUP	Elected
Lynch	SDLP	Elected

Lynch Voters 2nd Preferences

		2 nd pref	%	2 nd pref Re-weighted to total 1,901
Allen	UUP	91	0.8	16
Casey	SDLP	10,015	92.5	1,759
Hamilton	DUP	-	-	-
Hennessey	SF	490	4.5	86
McIntosh	UUP	97	0.9	17
Ross	DUP	-	-	-
White	PUP	-	-	-
Young	All	131	1.2	23
Total		10,824		1,901

Continuing the Second Count

Add in the second preferences to the first preference votes to see if anyone has reached the quota to be elected.

The running total for each candidate is their 1st Preference Votes plus Higgins' 2nd preferences plus Lynch's 2nd preferences.

With no-one reaching the quota on second preferences both Young and White are eliminated because even added together their votes don't reach the third from bottom candidate. This means that 3208 votes are available to be redistributed in the 3rd count.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Higgins UUP Elected
Lynch SDLP Elected

Transfer of surplus votes

Candidate	Party	Running	Total	
Allen	UUP	7,457+1,399+16	= 8,872	
Casey	SDLP	6,346+47+1,759	= 8,152	
Hamilton	DUP	8,161+219+0	= 8,380	
Hennessey	SF	4,973+0+86	= 5,059	
McIntosh	UUP	5,591+1,182+17	= 6,790	
Ross	DUP	3,962+186+0	= 4,148	
White	PUP	1,147+124+0	= 1,271	Eliminated
Young	All	1,806+108+23	= 1,937	Eliminated

Third count

The second
preference votes
from White go to:

Allen	138
Casey	2
Hamilton	674
Hennessey	-
McIntosh	89
Ross	368

The second
preference votes
from Young go to:

Allen	872
Casey	329
Hamilton	38
Hennessey	5
McIntosh	629
Ross	64

Allen and Hamilton are elected because they now exceed the quota. No-one is eliminated because if all the surplus votes from Alien and Hamilton were to go to the bottom candidate (Ross) they would be more than enough for him to catch the next to bottom.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Higgins	UUP	Elected		
Lynch	SDLP	Elected		
			Running Total +	
Candidate	Party		Transfer of eliminated votes	
Allen	UUP	8,872+138+872	= 9,882	Elected
Casey	SDLP	8,152+2+329	= 8,483	
Hamilton	DUP	8,380+674+38	= 9,092	Elected
Hennessey	SF	5,059+0+5	= 5,064	
McIntosh	UUP	6,790+89+629	= 7,508	
Ross	DUP	4,148+368+64	= 4,580	
White	PUP	Eliminated		
Young	All	Eliminated		

The Fourth Count

Allen and Hamilton's ballot papers are examined to see where their voters' next preferences should go.

Distribution of Allen's preferences
959 surplus votes to be transferred:

Casey	113
Hennessey	2
McIntosh	651
Ross	193

Distribution of Hamilton's preferences
169 surplus votes to be transferred:

Casey	-
Hennessey	-
McIntosh	34
Ross	135

No-one has reached the quota with this re-allocation, so the bottom remaining candidate, Ross, will be eliminated.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Candidate	Party	
Higgins	UUP	Elected
Lynch	SDLP	Elected
Allen	UUP	Elected
Hamilton	DUP	Elected

Running total after redistribution of Allen and Hamilton's surplus votes

Candidate	Party		
Casey	SDLP	8,483+98	= 8,581
Hennessey	SF	5,064+2	= 5,066
McIntosh	UUP	7,508+685	= 8,193
Ross	DUP	4,580+328	= 4,908
White	PUP		Eliminated
Young	All		Eliminated

Fifth Count

Ross's preferences go 2,976 to the remaining unionist, McIntosh, and the rest are unallocated. These votes are sufficient for McIntosh to be elected.

McIntosh's surplus is insufficient to enable Hennessey to catch Casey. Hennessey is now the bottom candidate and is eliminated. His votes don't need to be examined in a 6th count to see if there are enough votes to get Casey over the quota, because Casey is the last candidate left, and so he takes the sixth and last seat.

Whiteside East 10 candidates - 62,459 votes cast - 6 seats to be filled

Quota to be elected = [total votes divided by (6+1)] + 1 vote = 8,923

Higgins	UUP	Elected
Lynch	SDLP	Elected
Allen	UUP	Elected
Hamilton	DUP	Elected

Transfer of votes from eliminated Ross

Candidate	Party			
Casey	SDLP	8,581+0	= 8,581	Elected
Hennessey	SF	5,066+0	= 5,066	Eliminated
		8,193 +		
McIntosh	UUP	2,976	= 11,169	Elected
White	PUP			Eliminated
Young	All			Eliminated

Taken from BBC News website http://news.bbc.co.uk/hi/english/static/events/northern_ireland/stv/default.htm

Appendix 5: New Electoral Systems in the United Kingdom

	Scottish Parliament	Welsh Parliament	European Parliament	Northern Ireland Assembly	London Mayor	London Assembly
Franchise	Local	Local	Parliamentary and peers and EU citizens	Local	Local	Local
System	AMS	AMS	Regional list (STV in Northern Ireland)	STV	SV	AMS
No. of seats	Constituency 73 list 56 Total 129	Constituency 40 list 20 Total 60	71 England (9 regions) 8 Scotland 5 Wales 3 Northern Ireland	108 (6 seats for each of 18 Parliamentary constituencies)	1	Constituency 14 list 11 Total 25
Date of Election	6 May 1999	6 May 1999	10 June 1999	22 May 1998	4 May 2000	4 May 2000
Deposit	£500 per candidate in constituency £500 per list 5 per cent threshold	£500 per candidate in constituency £500 per list 5 per cent threshold	£5,000 per list 2.5 per cent threshold	£150 per candidate 5 per cent threshold	n/a	n/a