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The Representation of the People Bill

Bill 2 of 1999-2000

This Paper examines the various provisions of the Bill, due to be debated on second reading on 30 November. The Bill introduces a system of rolling registration for electoral register, and allows electors to opt out of the version of the register which is sold to commercial interests. There are a number of changes to enable certain groups of electors to register more easily, and provisions allowing absent voting on demand. There are also provisions to assist electors with disabilities. The Bill gives legislative underpinning to a series of pilot project to be run in the local elections of May 2000, which will allow experiments with voting procedures. A new offence of making false statements with regard to names and addresses of candidates in nomination papers is introduced. The Bill does not deal with party funding or election expenditure. Instead, this will be the subject of a forthcoming bill.

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Summary of main points

There has been long standing concern about the need to update a number of electoral procedures, which date from a period when the population was less mobile than now. In particular, inclusion on the electoral register is dependent on residence at an address on a single qualifying date each year. The report from the Home Affairs Select Committee *Electoral Law and Administration* in 1997-8 addressed many of the issues, and consultation papers from the Department for the Environment, Transport and the Regions made proposals designed to increase turnout at local elections. A working party under the then junior Home Office minister George Howarth produced a final report in October 1999 which recommended change in a number of areas.

The *Representation of the People Bill* implements the Howarth recommendations. In particular the Bill deals with:

- Amendments to the franchise, making it easier for homeless people, psychiatric patients and remand prisoners to register to vote
- The introduction of a system of rolling registration to replace the annual register
- A new right for electors to decide whether their details should appear on the commercially available register
- The authorisation of pilot schemes on when, where and how to vote for local government elections in May 2000, with powers given to the Home Secretary to extend pilot schemes to parliamentary elections nationally
- Extension of absent postal voting so that it is available on demand
- Assistance for electors with disabilities
- A new offence of knowingly making a false statement about a candidate's name and address. This proposal was not considered by the Howarth working party

The creation of an electoral commission is expected in the forthcoming *Political Parties, Elections and Referendums Bill* and was also the subject of a recommendation from the Howarth working party. The Commission will have a role in updating electoral law and practice. An appendix provides details of its proposed powers and structure.

CONTENTS

I	Introduction	7
II	The Howarth Working Party Report	11
	A. The <i>Representation of the People Bill</i>	13
III	Registration and the franchise	14
	A. Background	14
	B. The Bill	16
IV	Rolling Registration	18
	A. Background	18
	B. Electoral registration and turnout	19
	C. The Bill	23
V	Sale of the Electoral Register	26
	A. Background: The Current Law	26
	B. The Howarth Working Party	27
	1. Against the Sale of the Electoral Register	28
	2. In Favour of the Sale of the Register	29
	3. The Working Party's Recommendations	30
	4. The Mechanics of the New Arrangements	31
	C. The Bill	33
VI	Pilot Schemes for Alternative Voting	34
	A. Background	34
	B. The Bill	37
VII	Absent Voting	38
	A. Background	38

B.	The Bill	40
VIII	Assistance with voting for persons with disabilities	42
A.	Background	42
B.	The Bill	44
IX	False Statements about Candidates' Names and Addresses	44
Appendix 1	The Electoral Commission	46
1.	Introduction	46
2.	An electoral commission and the regulation of referendums	49
3.	The Draft Bill Proposals	50
4.	Boundary Commissions	52
5.	Other functions	53
6.	The Constitution of the Commission	53
7.	Future Workload of the Commission	55
Appendix 2	Turnout in local elections in the UK	56

I Introduction

For some time there has been concern about the relevance of the current law governing electoral administration to modern conditions. The system of annual registration has drawbacks when applied to an increasingly mobile population, and the requirement to vote in person at a particular polling station dates from a time when centralised databases of voters did not exist.

The Hansard Society Commission on Election Campaigns *Agenda for Change*¹ noted that a review of Britain's electoral arrangements was long overdue and that current laws on electoral administration dated largely from 1918. It made a number of recommendations to update electoral law, and to devote greater resources to registration and it called for an independent Electoral Commission to supervise and streamline arrangements for elections, taking over responsibility from the small constitutional unit in the Home Office. Many of these arguments were repeated in *The Case for an Electoral Commission* in a King Hall Paper for the Hansard Society in 1998. An electoral commission is expected in the forthcoming *Political Parties, Elections and Referendums Bill*, following a draft bill published in the summer of 1999.² For further details on the powers and structure of the electoral commission see Appendix A.

Following the 1997 general election there were renewed calls for an overhaul of electoral administration and a new working party was set up under George Howarth, junior minister at the Home Office with responsibility for elections. This reported on progress in August 1998³ and recommended the adoption of two packages of proposals:

This significant body of work has been carried forward in a spirit of co-operation and with strong degree of consensus. While there is still a large amount to be done the Working Party took the view at its meeting this week that sufficient progress has been made in a number areas to justify recommending the adoption now of two packages of proposals.

The two packages build in particular, but not exclusively, on the consideration of the response to the DETR consultation exercise. The first package, which does not require legislation provides for the consolidation, development and enhancement of guidance and advice in the areas of

maximising electoral registration and encouraging voter participation;

flexibility and good practice in the use of official poll cards;

co-ordination of publicity activity;

consolidation and improving advice on disability issues; and a commitment to progressively review and simplify electoral forms

¹ September 1991

² *The Funding of Political Parties in the United Kingdom* Cm 4413 July 1999

³ *Working Party on Electoral Procedures: Interim Report* August 1998

We propose to produce and distribute material on each of these issues during the summer and early autumn.

Almost every other part of the electoral process is prescribed in statute. Changes can only be made following amending legislation, which in most cases would be primary legislation. The second package of proposals which the Working Party has recommended involves a commitment (subject to suitable legislative opportunities) to

introduce a system of rolling electoral registration;
provide for the introduction of polling aids for the disabled; and

allow the Secretary of State to approve pilot schemes to explore alternative electoral procedures including

- voting anywhere in an electoral area
- mobile polling
- early voting
- changes to voting hours/days
- all postal ballots
- electronic voting

The Home Affairs Select Committee published a report *Electoral Law and Administration*⁴ in September 1998, which called for an overhaul of electoral law and the introduction of rolling registration.

The Department for the Environment, Transport and the Regions was enthusiastic about a possible increase in turnout once electoral administration had been updated. The Green Paper *Modernising Local Government: Local Democracy and Community Leadership*⁵ had expressed concern about turnout in British local elections:

ENABLING MORE PEOPLE TO VOTE

3.10 Elections are the prime way in which the political will of a community is expressed on the policies and services which will directly affect their daily lives. The more people vote, the greater the democratic legitimacy of the actions taken by those elected. Participation in elections is therefore both crucial to, and a good barometer of, the health of democracy.

3.11 It has been estimated that there are between two and four million people absent from the electoral register. These are people who take no part at all in decisions which affect them. But even amongst those who are registered, turnout in local government elections in Great Britain is at the bottom of the European Union league table and below turnout in almost all industrialised nations. A number of seats are uncontested. A few local authority by-elections in recent years have achieved turnouts of only 10%

⁴ HC 768 1997-8

⁵ February 1998

or less and there have been cases where such a turnout has led to a change in the political control of the authority concerned.

The Green Paper considered ways to improve the completeness of the electoral register, including the possibility of anonymous registration and of creating a rolling register which would allow names to be deleted or added at any time. It also criticised as inflexible the requirement on voters to attend local polling stations to cast their vote and suggested that people could vote at any polling station in their council area, or that mobile polling stations could operate in supermarkets, workplaces etc. It also raised the possibility of voting in advance, changing the day of voting to the weekend, or allowing postal voting on demand. Electronic voting was discussed as a possibility, following precedents in the Netherlands. Other strategies such as redesign of the polling card and improving publicity were considered but the Green Paper noted that it was not inclined to pursue the option of compulsory voting.

Finally the Green Paper noted that changes to the voting system were not a panacea for current weaknesses in local government, while acknowledging that the First Past the Post voting system could sometimes lead to virtual one party rule in some areas (paras 3.45-7).

The White Paper *Modern Local Government: In Touch with the People*⁶ noted that the majority of responses to the Green Paper welcomed new initiatives with over 80 per cent supporting early voting and electronic voting, and 90 per cent a move to rolling registration. The government would 'work with expert practitioners to consolidate, develop and improve guidance to reflect best practice':

4.19 The Home Office Working Party on Electoral Procedures, including representatives of local government, central government and the political parties, has considered these responses. In the light of the responses and the advice of the Working Party, the Government has concluded that it should work with expert practitioners to consolidate, develop and improve guidance to reflect current best practice on:

maximising registration; encouraging voter participation in elections - particularly among the young; improving access for people with disabilities; improving the effectiveness of the official poll card; and the role of publicity in achieving many of these objectives.

4.20 The Government will also legislate to enable councils to experiment in the way local elections are conducted. Such experiments could include:

electronic voting; mobile polling stations; voting at any polling station in the authority, or for example, at specified places in a nearby authority; voting in different hours, on different days, or over a number of days; entire elections by postal vote; changes in the procedures for postal voting; and electronic or mechanical counting of votes.

⁶ Cm 4014 July 1998

4.21 The Government must safeguard the integrity of elections and ensure that any experiments do not lead to an increase in electoral fraud. Experiments would therefore have to be sanctioned by the Government. In some cases it would work directly with chosen councils to develop the rules for an experiment. In all cases it will be important that potential local voters have full confidence in the change being piloted - for example, electronic voting.

The White Paper saw rolling registration as suitable for introduction on a national scale and stated: 'The government will therefore develop proposals for a move to rolling registration and to allow aids to assist disabled people to vote in polling stations'. It would also review other aspects of electoral administration (para 4.23). The Command Paper *Local Leadership, Local Choice*,⁷ which proposed new forms of internal management for local authorities, did not consider this area.

There are no proposals at present to introduce proportional representation (PR) for local government elections apart from the possibility of using the Supplementary Vote system in choosing directly elected mayors.⁸ Research Paper 99/46 *Local Elections – Proposals for Reform* looks at the various proposals to introduce PR and the potential impact on the political control of local authorities. A report from the independent Constitution Unit considered that PR would make local councillors more responsive to the needs of their electorate, but would be unlikely to increase turnout.⁹

PR for local elections in Scotland is under active consideration at present. The conduct of local elections has been devolved. The Commission on Local Government and the Scottish Parliament (the McIntosh Commission), which was appointed by the Secretary of State for Scotland, issued a consultation paper on the future of local government after devolution which included comments on the low turnout at local elections.¹⁰ The Commission issued a second report¹¹ which adopted a positive tone towards electoral reform. The final report of June 1999¹² recommended its adoption for the next council elections in 2002, but recommended further study on the most appropriate system. The coalition agreement between Labour and Liberal Democrats promised that there would be progress on electoral reform for local government.¹³ A consultation paper issued by the Scottish Executive in September floated the idea of directly elected mayors and a *Renewing Local Democracy* working party is examining different PR systems. It is due to report to the Scottish Executive in February 2000.

⁷ Cm 4298 March 1999

⁸ Research Paper 98/112 *Voting Systems: The Jenkin Commission* describes the Supplementary Vote. It is to be used for the elections for the London Mayor

⁹ *A Panacea for Local Government? The Role of PR* David Sinclair October 1998

¹⁰ *The Commission on Local Government and the Scottish Parliament Consultation Paper no 1* April 1998

¹¹ *The Commission on Local Government and the Scottish Parliament Consultation Paper no 2* November 1998

¹² *Local Government and the Scottish Parliament* June 1999

¹³ *Partnership for Scotland: An Agreement for the First Scottish Parliament* May 1999

The Government announced plans to use electronic voting in the elections for the new Greater London Authority in May 2000. The main rationale for its use was to speed up the counting process, as the additional member system (AMS) is to be used to elect the members of the Assembly, and the Supplementary Vote system for the London Mayor.¹⁴ The Local Government Association called for legislation to allow councils to pilot weekend voting and postal or telephone voting.¹⁵

II The Howarth Working Party Report

The conclusions of the Howarth working party were published in July 1999. The full report was not published until October 1999.¹⁶ For the first time, a working party to review electoral procedures following a general election has been chaired by a minister, an indication of the importance placed on the review by the Government. The working party included representatives from the three major political parties represented at Westminster, representatives of the local authority associations, responsible central government departments, returning officers and electoral administrators.

In the meantime, George Howarth had been appointed as junior minister in the Northern Ireland Office, and Mike O'Brien had been given responsibilities for electoral matters in the Home Office. A condensed summary of the report is available on the Home Office website as follows:¹⁷

The registration system

- The Home Office should issue revised and enhanced guidance for increasing the registration of young people
- The present annual register should be replaced with a system of continuous or "rolling" registration
- There would still be an annual canvass but electors should be able to make a claims when they change address
- Registration officers should be able to make deletions when electors move away, or die

Residence for electoral purposes

- Homeless people should be able to register by declaring they have a significant link with a locality

¹⁴ HC Deb 11 March 1999 vol 327 c 361. See also HL Deb 14 October 1999 vol 605 c92w for details of the electronic scanning equipment chosen

¹⁵ *Making a Difference: A White Paper for Local Government* 1998 Local Government Association p 10

¹⁶ *Final Report of the Working Party on Electoral Procedures* Home Office 1999

¹⁷ *Right to Vote Page* Home Office www.home.office.gov.uk 26 August 1999

- Voting rights should not be extended to convicted prisoners serving a sentence in custody
- Remand prisoners should remain on their original register until release or receiving a custodial sentence
- Restrictions on using psychiatric hospitals as residences for electoral registration should be removed, but patients detained as a result of criminal activity should not be allowed to register in this way
- Voluntary patients resident in a psychiatric hospital should no longer have to complete a special declaration before being registered

Sale of the register

- Electors should be able to decide whether their details appear on the commercially available register
- Electors should be given information about the commercial purposes to which such details may be put and an opt out box for each person included on the registration form
- The full register should continue to be available to electoral users, for electoral purposes only
- The full register should be available for law enforcement purposes, including controls on money laundering
- The full register should continue to be available for local scrutiny in libraries and public offices

Anonymous registration

- Further study should be given to introducing some form of registration without publication of names or addresses for those who may in some way be vulnerable

Pilot schemes

- The Home Secretary should be authorised to approve pilot schemes on when, where or how to vote eg weekend voting, mobile polling stations, electronic voting

Absent voting

- Absent postal voting should be allowed upon demand
- The application and voting procedures for absent voting should be simplified (more details are given in the complete summary of recommendations)

Assistance for those with disabilities

- Election rules should be changed to allow provision of large print posters of the ballot paper and ballot paper templates or polling aids in polling stations
- Electors who would not otherwise be able to cast their vote should be able to be assisted by a companion.
- The Home Office should introduce national minimum access standards should be introduced for finding and setting up accessible polling stations
- The Home Office should issue new and consolidated guidance on disabled access to electoral services

The Government has announced separately the future establishment of an Electoral Commission with responsibility, among other things, for voter education

The report received a general welcome. On 8 November the Government published its full response to the Home Affairs Select Committee report on *Electoral Law and Administration*.¹⁸ This response included the main recommendations of Howarth, in commenting on the report's recommendations.

A. The *Representation of the People Bill*

The Bill was published on 19 November 1999. The detailed provisions of the bill are examined in the separate parts below. The Bill makes a series of changes to the *Representation of the People Act 1983* (RPA 1983) which are outlined below. The Bill is expected to have a relatively speedy passage through both Houses, as pilot schemes authorised by the Bill are expected for May 2000 local elections.

The costs of rolling registration were set at £4-5 million in *Financial Effects of the Bill*, with the costs divided between local authority registration departments in England, Scotland and Wales.

Clauses 10 and 11, which deal with the pilot schemes, will come into force immediately after Royal Assent. The Explanatory Notes set out the extent of the Bill:

Subsections (5)-(8) deal with the Bill's geographical extent. The provisions relating to absent voting do not apply to Northern Ireland. The provisions relating to pilot schemes do not apply to Scotland or Northern Ireland. Schedule 3, which deals with registration for the purposes of local elections in Northern Ireland and mirrors clause 1 and other changes made by the Bill, applies only to Northern Ireland. The rest of the Bill applies to all of the United Kingdom

¹⁸ HC 856 1998-9

The Scottish Executive may wish to legislate for its own pilot schemes for local government elections. It may also give consent to those aspects of the Bill which impinge on devolved matters, principally the conduct of local elections, affected by the provisions on absent voting.¹⁹

The Bill may also present opportunities for amendments on a range of electoral issues; the Home Affairs Select Committee report also made recommendations relating to the franchise for overseas voters, the restrictions on ministers of religion standing as candidates, and vote tracing procedures.²⁰ In the debate on the Queen's speech Siobhan McDonagh raised the question of clergy disqualification.²¹

III Registration and the franchise

A. Background

Identification with a particular locality lies deep within the culture of British democracy. In order to be registered, electors need to demonstrate that they are resident somewhere: this can cause problems in an increasingly mobile society for those at either end of the income scale. Since the leading case (*Fox v Stirk*²²) it has been possible to convince an electoral registration officer that a voter has two residences if a considerable degree of permanence has been demonstrated.²³ The voter can then select a constituency in which to vote. No elector may vote twice in a general election and cannot vote twice for the same local authority in local elections, but a voter registered in two separate local authority areas may vote in both elections even if held on the same day; an elector could in theory vote in two parliamentary by elections if registered in both constituencies.²⁴

This is of particular relevance to students who may live in a hall of residence at term time and return to the parental home in holiday periods. The Howarth working party decided against change in this respect.²⁵

Nevertheless, we incline to the view that in the absence of any clear case law, it would be unreasonable to deprive people properly registered in two places of the right to have a voice in electing a candidate to represent their interests in each of the local councils where they live.

¹⁹ see Research Paper 99/84 *Devolution and Concordats* for details of the conventions which will apply where the UK Parliament legislates in a reserved area

²⁰ HC 768 1997-8

²¹ HC Deb 23 November 1999 vol 339 c531

²² [1970] 2 QB 463

²³ A Scottish case, *Phillips* 1973 gives an apparently contrary judgement, arguing that the entitlement to register rests only in the principal place of residence on the qualifying date. The court however accepted that each case must depend on its own facts

²⁴ see s61(2) of the RPA 1983

²⁵ para 2.5.4

The Home Affairs Select Committee in contrast recommended that electors with a continuing dual registration should be required to specify in advance the constituency or electoral area in which they intend to vote. Its concern apparently lay with the potential for block tactical voting in constituencies with a large student population.²⁶ The Howarth working party noted that there was no enthusiasm amongst its members for the declaration which would be complex to administer and could serve to discourage voting (para 2.5.6). The Government response to the select committee also did not favour the declaration.

It is people who lack a settled residence who are least likely to be registered. Although a legal case established that residence was not dependent on bricks and mortar²⁷, nor on the legal nature of occupancy, Home Office guidance on registration of rough sleepers remained cautious. While registration should merely be an administrative process for allocating voters to constituencies, it can often be seen as an additional barrier to the right to vote itself. The Howarth working party recommended that

- rough sleepers should be able to submit a Declaration of Locality to EROs
- people with no permanent address should be able to provide a contact address, such as a hostel or day centre to EROs.

Howarth also looked at the position of prisoners and psychiatric patients. Remand prisoners have the right to vote but s3(5) of the RPA 1983 provides that a penal institution cannot be regarded as a place of residence for registration purposes. Convicted but unsentenced prisoners face the same restrictions. Convicted prisoners serving a sentence in custody are disqualified from voting.²⁸

Psychiatric patients who are detained in hospitals under mental health legislation are prohibited from registering, since a psychiatric hospital may not be used as an address for registration purposes.²⁹ The Home Office issued new guidance in 1996 noting that it was not appropriate for those detained to be barred from registering elsewhere.³⁰ Under common law there are restrictions on the capacity to vote of people with a mental disorder. Voluntary patients may be able to establish sufficient residence outside the hospital to be registered at another address for electoral purposes. However they may use an alternative address only if they complete a patient's declaration without assistance. Patients' declarations were introduced in 1983,³¹ and was designed to allay fears about the possible effect on any election of the votes of a large number of patients in any particular area.

²⁶ para 121

²⁷ *Hipperson and Others v ERO for District of Newbury* [1985] QB 1060 [1985] 2 All ER

²⁸ S3 RPA 1983

²⁹ S7(1) RPA 1983. The bar on using a hospital as an address for registration was introduced by the RPA 1918. See *New Law Journal* 13 September 1996 'The Right to Vote?'

³⁰ RPA Circular 407 7 May 1996 RPA Circular 430 22 November 1999 warned local authorities to use appropriate guidance on its annual canvass forms

³¹ s7 1983 RPA. This originated as a government amendment to the *Mental Health (Amendment) Bill of 1982-3* following a series of court cases establishing the right to register for voluntary patients

A case is pending at the European Court of Human Rights regarding the lawfulness of the restriction on the use of a psychiatric hospital address.³² The Home Affairs Select Committee supported a review of the law along the lines proposed by Howarth (paras 16-17). The working party recommended that:

- remand prisoners should be able to register either at the original registration address or as 'other electors' rather than any fixed address. (The position of convicted prisoners awaiting sentence would remain unchanged)
- the prohibition on the use of mental hospitals as a registration address should be lifted, apart from patients detained by the courts in hospital in place of prison
- the requirement to complete a patient's declaration should be removed

The working party also looked at the position of service voters, and considered allowing service voters to register at their current address while on home service and to use that address for overseas postings, unless their circumstances changed. At present service voters and their spouses must apply for a service declaration, which replaces the normal registration procedure, although a service spouse may register in the relevant locality.

B. The Bill

Clause 2 disenfranchises offenders detained in psychiatric hospitals³³ as a consequence of criminal activity by inserting a new section after section 3 of the RPA 1983.

Clause 4 enables people resident in psychiatric hospitals, whether detained or voluntary to register to vote. Those barred under clause 2 remain disqualified. The requirement for voluntary patients to make a patient's declaration is removed. The existing s7 of the RPA 1983 is replaced by this new clause, which allows registration if the period spent at the hospital is sufficient to meet the definition of resident under clause 3³⁴. Such registrations will last for 12 months. The option is given for a voluntary patient to register at another address or by means of a declaration of local connection (see clause 6).

Clause 5 inserts a new section 7A into the RPA 1983 which provides that a person on remand can register in respect of the establishment in which he is held if the period he is likely to spend there is sufficient for him to be regarded as resident under clause 3. The registration will last 12 months, and will also apply to certain categories of people committed to mental

³² *Moore v UK*. For background, see *Guardian* 26 March 1997 'Out of the count' which reported Robert Moore's case

³³ The Bill uses the term 'mental hospital', presumably in reference to earlier legislation on the subject

³⁴ see Part IV of this paper for details

hospitals. The person on remand has the option to register at another address or by means of a declaration of local connection.

Clause 6 creates a new ‘declaration of local connection’ as described in the *Explanatory Notes*:

42. This clause introduces a new concept known as a declaration of local connection. It inserts new sections 7B and 7C into the Representation of the People Act 1983.

43. New *subsections 7B(1) and (2)* provide that such declarations may be made by patients in mental hospitals (other than those detained as a consequence of criminal activity), remand prisoners and the homeless.

44. New *subsections 7B(3) and (4)* require a declaration to give the declarant’s name, an address for correspondence to be sent to (or an undertaking to collect such correspondence from the electoral registration office), the date of the declaration and a statement that the declarant falls into one of the categories permitted to make a declaration of local connection and to set out the category into which the declarant falls.

45. In the case of mental patients and remand prisoners the declaration must give the name of the institution where the person is living/held on remand and the address where he would be living were he not a patient or remand prisoner or, if he cannot provide that, an address in the United Kingdom where he has lived at any time.

46. The declaration of a homeless person must give the address of, or nearest to, a place where the person spends a substantial part of his time.

47. All declarations must also state that the person conforms to nationality requirements and is 18 or (if not) state the person’s date of birth.

48. New *subsection 7B(5)* provides that a declaration of local connection made for the purpose of registration in Northern Ireland must state that the declarant has been resident in Northern Ireland for the preceding three months. This is consistent with the existing electoral law in Northern Ireland.

49. New *subsection 7B(6)* provides that declarations of local connection made for the purposes of parliamentary elections will also apply for local government elections but that those entitled to vote only in local elections (peers and EU citizens other than from the UK and Ireland) may make a declaration for the purposes of local government elections only.

50. New *subsections 7C(1) and (2)* enable a person who has made a declaration of local connection to apply for registration by treating him as being resident at the address he has given, and provide that such registration will be valid for 12 months unless cancelled or superseded.

There does not appear to be any provision restricting the number of declarations of local connection which can be made. However if a person makes more than one declaration for different addresses at the same date, those declarations are void (new clause 7B(7)). Also, once a person with a declaration is registered in the normal way, the declaration is cancelled (new clause 7C(2)).

Clause 7 repeals the provision in s12(3) and (4) of the RPA 1983 which provide that service personnel can only register by means of a service declaration and gives such personnel the option to register in the normal way if they meet the criteria in clause 3, or as overseas voters.

These new clauses extend to the United Kingdom, as the franchise is a reserved matter under devolution legislation. Most of these changes are likely to be uncontroversial and reflect reforms which have been seen as overdue. However, there may be concerns about the possibility of abuse of the new declaration of local connection, should several be completed for a particular area shortly in advance of an election. There is a cut-off date for new registration before an election, but this is not until the last day for submission of nominations of candidates, leaving time for declarations to be effective in the few days after an election is called.³⁵

IV Rolling Registration

A. Background

Registration is carried out by electoral registration officers (EROs) who are independent officials based in local authority areas, with the Home Office providing national guidance through circulars and practice notes. This system worked well in times of a stable and culturally homogeneous population, but has several drawbacks for a more varied and mobile society. Compiling the electoral register involves collecting information from every household about residents who are eligible to vote. Voting is voluntary but registration is effectively compulsory since giving false information to an ERO is an offence.³⁶

Under the RPA 1983, EROs are required to prepare and publish annually a register of electors for each constituency in their area, for parliamentary and local elections, and they have a duty 'to take reasonable steps to obtain information required' (s9(3)). This includes 'house to house or other sufficient inquiry' (s10(a)) and this will include a canvass. A statutory canvass form is provided in regulations.³⁷ A draft register (or electors' list) is published on 28 November (30 November in Northern Ireland) and the new register is published on 15 February and comes into force on 16 February.

Only those on the current annual register, which runs from 16 February each year, can vote in the relevant constituency. People who move into the constituency after the qualifying date of 10 October (or 15 September in Northern Ireland) are not added to the register but can vote in their old constituency either in person or by postal or proxy vote. It is possible to make corrections to the register after the qualifying date, but only to add or remove names of

³⁵ Day 6 for general elections, between Day 6 and 8 for parliamentary by elections *Parliamentary Election Rules* Schedule 1 of the RPA 1983

³⁶ Regulation 29, *Representation of the People Regulations 1986*

³⁷ Form A, Regulation 29, *Representation of the People Regulations 1986*

electors who were resident on the qualifying date. This is known as the claims and objections procedure.³⁸ Other provisions allow registration officers to correct mistakes (s11(1)).

The Home Affairs select committee expressed concern about the need to establish national minimum standards for the work of registration officers (para 35). The working party recommended that the Home Office prepare and issue enhanced and consolidated guidance on effective measures to maximise registration (para 2.1.5).

The electoral register is also used for jury service, and for calculating the electorate for the purposes of redistributing constituencies, as well as for certain local government grants (and it also acts as a check for residence for hire purchase, credit agreements etc).

B. Electoral registration and turnout

A combination of under-registration and relatively low turnout of those who are registered, especially among young people, means that the numbers who actually vote are considerably lower than the numbers eligible to do so. There has been increasing concern at the apparent level of alienation from mainstream political life of young people prompting a number of initiatives to promote citizenship, such as the *Advisory Group on Education for Citizenship and the Teaching of Democracy* chaired by Professor Bernard Crick, which reported in 1998.

Studies of the level of electoral registration in 1951 and 1966 found that three or four per cent of those eligible were not registered. The level of non-registration grew to 6.5 per cent by 1981 and to 7.1 per cent in 1991. These official estimates are actually underestimates as they are based on Census data which themselves underestimate the population. Taking that into account, the level of non-registration in private households in 1991 was between 7.4 per cent and 9 per cent. There is wide variation between areas and particular groups in the extent of non-registration: the proportion not registered in inner London was more than 20 per cent in 1991; men were more likely not to be registered than women; and young people, ethnic minorities, new Commonwealth citizens and those in private rented accommodation were particularly under-registered.³⁹

The limited evidence that is available suggests that the overall situation has not changed significantly since 1991, despite campaigns by the National Union of Students and others to improve registration levels especially among young people.⁴⁰

Moreover, the existence of an annual register, drawn up in the autumn but not coming into force until February, means that by the time the register has come into force, some people will have died and others will have moved from their place of registration. The register therefore becomes increasingly inaccurate. The level of non-registration at the qualifying date in

³⁸ For details see regulations 39-46 of the *Representation of the People Regulations 1986*

³⁹ Stephen Smith *Electoral registration in 1991* OPCS 1993

⁴⁰ *Electoral Statistics 1997*, Office of National Statistics

October is already higher when it comes into force in February and, by the end of its life the following February, may be twice as much.⁴¹

The Howarth working party commented:

2.2.4 It is difficult to make any accurate forecasts of the extent of the degradation of the register over the 16 months between the qualifying date for one register and the replacement of that register by publication of a subsequent one. However, we have noted the results of the validation exercise which the OPCS (now ONS) carried out following the 1991 census. That exercise identified that 9% of people in a sample had moved home in the previous year. This compared with a 10% result in a comparable sampling exercise at the 1981 census. In addition, 500,000 - 600,000 adults can be expected to die in any 12 months period.

The working party concluded that a possible 4-5m electors were affected by registration inaccuracy (para 2.25). Annex F of the working party report shows the overall trends:⁴²

ESTIMATED LEVELS OF UNDER-REGISTRATION 1983-1997

General election years shown in bold.

YEAR	PARLIAMENTARY ELECTORS (thousands) (a)	Approximate corresponding resident population from preceding year (thousands) (b)	(a) as percentage of (b)
1983	42,704	43,674	97.8
1984	42,984	43,959	97.8
1985	43,131	44,278	97.4
1986	43,393	44,590	97.3
1987	43,666	44,852	97.4
1988	43,705	45,106	96.9
1989	43,613	45,310	96.3
1990	43,663	45,512	95.9
1991	43,557	45,661	95.4
1992	43,725	45,804	95.5
1993	43,719	45,905	95.2
1994	43,787	45,985	95.2
1995	43,896	46,075	95.3
1996	43,985	46,234	95.1
1997	44,204	46,428	95.2
1998	44,296,793	46,856	94.5

⁴¹ 11% in 1981, compared with 6.5% at the qualifying date. Jean Todd & Bob Butcher *Electoral registration in 1981*, OPCS 1982

⁴² 1998 data added by Bryn Morgan, Social and General Statistics

The inaccuracies of the register, coupled with the fact that there are numerous legitimate dual entries on it, mean that calculating turnout at elections is a far from exact science. The 'official' turnout at the 1997 general election – those voting as a proportion of the number of registered electors, adjusted to take into account the number reaching the age of eighteen between the date of the register and the election – was 71.6 per cent in Great Britain. If dual registrations and those who have died or moved house are taken into account, it can be estimated that the turnout was just over 75 per cent.⁴³

There were around 4.9 million people aged 18 to 24 in Great Britain at the time of the 1997 election. It is likely that just under 4.0 million of these were on the electoral registers. Evidence from the British Election Study suggests that the level of turnout among this age group was about 85 per cent of the overall level, with the implication that only about 2.5 million in this age group actually voted.⁴⁴ It is likely, in other words, that about 40 per cent of 18 to 24 year olds in Britain did not vote in 1997.

The Labour MP Harry Barnes has campaigned for several years for the introduction of a rolling register.⁴⁵ In 1992-3 he introduced a private member's bill on the subject, having come sixth in the ballot. The bill was not successful. The Labour Party Plant Committee report also recommended a system of rolling registration in 1993.⁴⁶ The Home Affairs Select Committee recommended a rolling register, whilst warning that it should only 'go forward at a rate which can be properly supported by the technology in use by local authorities' and which commands the support of the political parties. It expressed concern about any system which would allow electors to be registered after an election had been called, in case of electoral fraud (paras 40-42).

The working party considered that a continuous or rolling register would allow changes during the year, encouraging greater turnout. The form of rolling registration chosen was as follows:

Claims and objections

2.2.10 A basic requirement of any rolling register is the ability to amend the register to reflect changed circumstances, for example a change of address. The model which we recommend is one which balances a duty on registration officers to compile and maintain a comprehensive register with a responsibility placed on the individual citizen to provide information to support that activity and a discretion to apply for any changes which he may wish to see to the register to reflect his changed circumstances. We recommend that the registration scheme should retain the present claims and objections procedure, but that this should be developed to include information necessary to prevent double registrations. Any claim received by the registration

⁴³ David Denver and Gordon hands in *Parliamentary Affairs* Volume 50, Number 4, October 1997 page 721

⁴⁴ CREST Paper no 67 *Young People, Politics and Citizenship A Disengaged Generation?* 1999

⁴⁵ see Research Paper 93/13 *Electoral Registration* for details

⁴⁶ see Research Paper 98/112 *Voting Reform: The Jenkins Proposals* for details of the Plant report

officer would only be entered onto the register after a period for public scrutiny and potential challenge, which would mean that claims received before the 15th day of one month and not requiring to be considered under objections procedure would be entered onto the register from the first day of the following month.

The working party proposed a model which would enable, but not require, electors to make claims to amend the register, and which would also allow the ERO to use local authority and other public data sources to maintain an accurate register. An annual updating exercise would still be necessary, to prevent a flood of claims in an election year, and so the working party recommended an annual audit. This would be held in the autumn (paras 2.2.12-13).

The cost of such a model was put at £4-5m, representing 10 per cent extra on the annual running costs of registration. One potential problem was the possibility of a parliamentary election or a by election held in the autumn canvass period. The working party concluded that guidance would be necessary in such circumstances (para 2.2.15). It recommended that

- The cut- off date for new registrations would be no later than the date for publication of the notice of election
- The register remain a public document, open to scrutiny and challenge, as at present
- A standardised data format should be developed and introduced

These recommendations were broadly welcomed and should help to modernise the registration process. However some potential problems with rolling registration are:

- I.T. systems will need to be compatible between local authorities, if EROs are to exchange information
- There may be two separate families registered at one address, if the family which has moved is not quickly removed from the old register
- The number of registered electors may actually shrink as the register becomes more accurate and the deceased and those no longer present are removed
- An emphasis on compulsory registration may be counterproductive in certain areas, such as inner cities with high ethnic minority populations

The Home Affairs Select Committee stated ‘we... do not think it is necessary or desirable for the state to be heavy handed in pursuing registration through the courts’ (para 52). The experience of the community charge register has acted as a deterrent to strict enforcement of national registers.

C. The Bill

Clause 1 introduces rolling registration and therefore replaces sections of the RPA 1983 which refer to an annual qualifying date. The *Explanatory Notes* set out the changes in detail:

24. *Clause 1* replaces sections 1, 2 and 4 of the Representation of the People Act 1983. Sections 1 and 2 set out who is entitled to vote but do so by reference to a single annual qualifying date. Since this Bill introduces "rolling" electoral registration this is no longer appropriate. Section 4 defines the qualifying date and will therefore be redundant in its present form.

25. *Subsection (1)* (which inserts the replacement sections 1 and 2) sets out the requirements for voting in parliamentary and local government elections. This Bill does not alter the franchise (except in relation to offenders detained in mental hospitals (see clause 2)). This subsection also re-enacts prohibitions against double voting.

26. *Subsection (2)* (which insert the replacement section 4) deals with entitlement to registration. It provides that a person is entitled to be registered if on the relevant date he is resident in the area concerned, is not subject to a legal incapacity, meets the nationality requirement and is of voting age (or will shortly attain voting age).

27. "Relevant date" is for these purposes defined (by new *section 4(6)*) as the date on which an application for registration is made or, as the case may be, the date on which an application to register in respect of a declaration of local connection or service declaration is made (declarations of local connection are introduced by clause 6).

28. The effect of these provisions is that a person may be eligible to be registered as an elector at any point in the year rather than by reference to a single annual qualifying date.

Clause 3 replaces s5 of the RPA 1985 and provides a new definition of residence for the purposes of registration, as set out in the *Explanatory Notes*:

32. *Clause 3* replaces section 5 of the Representation of the People Act 1985 and sets out the factors which registration officers must take into account when considering whether a person should be treated as resident.

33. New *section 5(2)* provides that in determining this question attention must be paid to the purpose and other circumstances as well as a person's presence or absence on the relevant date.

34. The subsection provides that a person who is staying somewhere other than on a permanent basis may be regarded as resident if he does not have a home elsewhere.

35. New *section 5(3)* (which largely replicates the existing section 5(2)) provides that temporary absence for employment reasons should not be treated as interrupting residence if the person concerned intends to resume residence within six months or the address in question is a permanent residence where the person concerned would otherwise be living.

The ERO therefore has discretion to make a decision to register a person as resident in a locality if he has no home elsewhere. It is possible to appeal to the courts against the ERO's decision. The definition of residence in s 5 currently relies on the concept of a qualifying date.

These new clauses will extend to the United Kingdom generally. No new penalties are proposed for non-registration. There will no longer be any 'draft' register to be published.

Clause 8 and Schedules 1, 2 and 3 make consequential amendments to the RPA 1983 following the introduction of rolling registration. The system of claims and objections remains in outline. In particular Schedule 1 provides for a new section 10(1) and (2): registration officers will be required to carry out an annual canvass in respect of 15 October. New section 10A(5) will give registration officers power to remove people from their registers if they are satisfied that the registration requirements are no longer met. There will also be regulations under paragraph 23(4) which will allow registration officers to remove people from the register, not having received satisfactory information. EROs will also be allowed to inspect and copy local authority records for the purpose of compiling the register.

To supplement the right of individuals to have their details added to the register throughout the year, the Howarth working party noted that⁴⁷

There are a range of local authority and other public data sources which it would be helpful to the registration officer to be able to consult in carrying out his duties under a rolling registration scheme. While we recognise a resource implication **we recommend** that registration officers should be entitled to request and receive information from local authority and other appropriate public data sources in order to allow them properly to carry out their duty of maintaining an accurate and up to date register.

The working party suggested that appropriate data sources might include council tax records, land and premises registers and, as necessary, other records such as death certificates. At present there is no general power for EROs to consult other sources of information held elsewhere within their local authority. The working party recommended that EROs should not be entitled to have access to information "where this would otherwise result in a breach of data protection or other privacy regulations".⁴⁸

Schedule 1, paragraph 23(4) of the Bill enables regulations to be made authorising EROs to inspect and copy local authority records for the purpose of compiling the register. **Paragraph 23(5)** ensures that this does not breach any existing restrictions on the use of such data, including common law rules on breach of privacy:

Provisions made under sub-paragraph (4) shall have effect despite any statutory or other restriction on the disclosure of information.

A parallel power existed under the community charge legislation, enabling the local authority officer responsible for maintaining the community charge register to obtain information from

⁴⁷ Op cit, para 2.2.11

⁴⁸ Ibid

the ERO in the same or another authority.⁴⁹ This power proved controversial, but primarily because of the strength of opposition to the community charge itself and fears that the use of information from EROs for community charge purposes would discourage people from registering to vote.⁵⁰ In order to comply with the EU *Data Protection Directive*,⁵¹ it may be necessary in future for authorities compiling lists to which EROs will have access to inform the individuals concerned that their data may be used for this purpose.

The revised versions of the parliamentary and local government registers are to be published on 1 December, or later date as provided for in regulations. In addition the registration officer may publish revised versions at any point in the year, and these versions come into effect from the day of publication.

New section 13A provides that no change to a register which takes place after the last day for submission of nominations for an election can have effect at that election. This makes no change to the existing position under s11(3). However, both the Howarth working party and the Home Affairs Select Committee recommended a cut off point at the announcement of an election.

Schedule 2 amends the law relating to overseas voters set out in RPA 1985; it largely replicates the provisions, but take account of rolling registration. The tests remain that of British citizenship and less than 20 years absence from the UK. Overseas voters must either have previously appeared on an electoral register or have lived in the UK at an address in respect of which a parent or guardian was registered. Paragraph 4 inserts a new section 3. This enables peers who are overseas to register with changes being made to reflect the fact that there is no longer a single qualifying date.

Schedule 3 makes consequential changes to the law relating to local government elections in Northern Ireland.⁵²

Schedule 5 amends the *European Parliamentary Elections Act 1978*⁵³ to reflect the fact that there will no longer be one electoral register published on 16 February. Currently this is used when the Secretary of State checks the ratio between registered electors and MEPs in each of the English electoral regions to ensure that they are as even as possible. In future the new date of 1 May in the year preceding a European election will be used.

⁴⁹ *Local Government Finance Act 1992*, Schedule 2, para 6(2), as amended by the *Local Government and Housing Act 1989*

⁵⁰ A similar power is available under the council tax legislation, but this has not attracted the same degree of criticism: *Local Government Finance Act 1992*, section 27, and the *Council Tax (Administration and Enforcement) Regulations 1992*, SI 1992/613, reg 4, as amended

⁵¹ 95/46EC. See part V(B)1 of this paper

⁵² *Elected Authorities (Northern Ireland) Act 1989*

⁵³ as amended by the *European Parliamentary Elections Act 1999*

Under the *Rules for the Redistribution of Seats* in Schedule 1 of the *Parliamentary Constituencies Act 1986*, the parliamentary boundary commissions (PBCs) use an enumeration date of 16 February to calculate the electoral quota.⁵⁴ Presumably in future reviews a new enumeration date will be chosen, as the commission have power to set the date under s5(1) of the 1986 Act.

None of these changes are likely to arouse particular controversy, as the move to a rolling register has been seen as long overdue by electoral administrators. Rolling registration will apply across the UK. There may be some concern that the English PBC is planning to begin its general review in February 2000,⁵⁵ which will mean that the electoral quota will be based on the old-style register as at 16 February 2000, rather than the greater accuracy of a rolling register.

V Sale of the Electoral Register⁵⁶

A. Background: The Current Law

For some years there have been complaints from the public that they are subjected to ‘junk mail’ because the electoral register is sold to commercial companies. Individuals cannot decide to remove themselves from the register: under Section 10 of the *Representation of the People Act 1983* there is a duty on electoral registration officers (EROs) to “have a house to house or other sufficient enquiry made as to the persons entitled to be registered”. Failure to comply with a request for information (or the giving of false information) is an offence⁵⁷. The electoral register is considered a public document, and its very availability can be seen as one of the best safeguards against the inclusion of illegible people on the register. The register is available for consultation by any member of the public (including company representatives) in any public library.

Regulation 54 of the *Representation of the People Regulations 1986*, SI 1986/1081, governs the sale of the electoral register. The sale of the electoral registers did not begin in 1986: regulation 54 consolidated earlier legislation on the subject. The sale of the register has always been seen as a way of recouping the cost of elections. The *Representation of the People Regulations 1949*, which accompanied the *Representation of the People Act 1949*, required EROs to supply copies of the register on payment (after allowing for the number of copies required for registration and other electoral purposes), and the *Registration Rules 1918* accompanying the *Registration of the People Act 1918* contained similar provision. There has been a slight change of emphasis in Regulation 54 dating from amending Regulations of 1990 (*Representation of the People (Amendment) Regulations*) which introduced a requirement on EROs that, where suitable notice is given, they must supply the number of copies requested. Previously, Regulation 54 required them to sell surplus copies if they had any, but not to *ensure* that there were surplus copies.

⁵⁴ For background on the significance of the electoral quota for redistributions, see Research Paper 95/74

⁵⁵ RPA Circular 430 22 November 1999

⁵⁶ This section was provided by Edward Wood, Parliament and Constitution Centre

⁵⁷ *Representation of the People Regulations 1983*, SI 1983/435, Reg 29

Of course the requirement to sell the electoral register predates the rise of 'junk mail', and the sale of the register now means that large numbers of commercial companies have access to the names of persons of voting age in individual households, without the consent of the individuals concerned having been sought. The advent of CD-ROMs and internet searchable software produced by firms, which may use data collected from the register, has increased the perceived problem in the last few years. The electoral register is also an important source for credit agencies checking the credit-worthiness of individuals.

In recent years data protection legislation has sought to protect the individual from unwarranted breaches of privacy by regulating the use of personal data by companies and other organisations, including the organs of the state. Under the *Data Protection Act 1984*, anyone who holds personal information about living individuals on computer is required to comply with eight data protection principles contained in the Act. The principles require that personal data must be obtained and processed fairly, and may only be used for the purposes for which they have been collected. The *Data Protection Act 1998*, which will come into force on 1 March 2000, will give effect in UK law to EU Directive 95/46EC (*the Data Protection Directive*). It will replace the *Data Protection Act 1984*, but in many instances the provisions of the new Act will be phased in over a number of years.

Under section 34 of the 1998 Act, data are exempt from a number of provisions of the Act where the data controller is obliged by law to publish the data or to make them available for public inspection. This exemption covers the electoral register and a number of other lists of personal data including the council tax register and details of shareholders held at Companies House. In addition, *recipients* of such data are regarded as having obtained the data fairly if the data was obtained from a person or organisation (such as the ERO) who is authorised or required by law to supply it.⁵⁸ Similar exemptions apply under the 1984 Act. Thus, data protection legislation can give no protection to a person who is obliged to register to vote but does not want their information to be given to commercial companies.

B. The Howarth Working Party

After the 1992 General Election the Home Office set up a working party on Electoral Registration which reported in February 1994. The working party consisted of Home Office officials and local authority representatives. It considered the sale of the register and anonymous registration. The working party were divided on the benefits of anonymous registration, and concerned about the possible infringement of copyright by commercial firms. No legislative action followed.

The Howarth working party devoted considerable attention to the sale of the electoral register. The data protection implications of the current position, and the possible effect on the level of

⁵⁸ Schedule 1, part II, para 1(2)

registration, were weighed against the concerns of the companies which use the electoral register and its usefulness for law enforcement, including measures to prevent money laundering .

1. Against the Sale of the Electoral Register

The working party's report referred to "anecdotal evidence" that the sale of the register may discourage individuals from registering, but suggested that "such research as there is indicates that [the overall impact on registration levels] may not be significant".⁵⁹ However, the working party devoted considerable attention to the data protection implications of the sale of the register. They noted the point made by the Data Protection Registrar, Elizabeth France, that technological developments have increased the salience of this issue.⁶⁰

The way in which individuals have to supply their names, addresses and, in some cases, dates of birth, once a year, on penalty of a criminal conviction, for whatever purpose someone might choose to purchase them for [...] is out of step with current Data Protection practice and law. The partial protection that individuals gained from the geographical distribution of the register, its length and format has been eroded by developments in technology.

The developments referred to by the working party included "developments in data processing and storage, the introduction of powerful software applications allowing multi-level and reverse searching, the spread of local computing and use of the Internet".

The Data Protection Registrar reported a variety of complaints about the commercial availability of the electoral register.⁶¹

- "significant numbers of complaints" about newly available searchable CD-Rom and Internet products using information taken from the register;
- general concern about an invasion into personal privacy;
- fears about risks to personal security;
- credit referencing problems
- receipt of unwanted direct sales marketing ("junk mail")

The Registrar acknowledged the exemptions relating to the electoral register which exist under domestic data protection law. However, she suggested that the current law might not meet the "intention which informs" EU Directive 95/46EC (*the Data Protection Directive*) that personal data should be obtained fairly.⁶² The Registrar suggested that for data to be obtained fairly, the individual should be made aware of:

- The identity of the data user
- The purposes for which the personal data will be used

⁵⁹ Final Report of the Working Party on Electoral Procedures, Home Office, October 1999, para 2.4.4

⁶⁰ Submission to the working party, quoted at *ibid*, para 2.4.6

⁶¹ *Ibid*, para 2.4.7

⁶² *Ibid*, para 2.4.9

- Any intended disclosures of the data to third parties.

Currently, these conditions were not met in the law governing the sale of the electronic register. In addition, the Data Protection Registrar drew the working party's attention to Council of Europe Recommendation No. R(91)10, which sets out a series of principles which ought to be observed when personal data held by public bodies is communicated to third parties.⁶³ These principles include the following requirements:

- No communication of personal data to third parties for purposes incompatible with those for which the data were collected, unless domestic law provides appropriate safeguards
- Before or at the time of collection, data subjects should be informed of the legal basis and purpose of the collection process, as well as the public interest justifying the data being made accessible to third parties
- Appropriate safeguards for those whose security and privacy are particularly threatened.

Although this Council of Europe recommendation is not binding on the United Kingdom government, the UK was party to the recommendation that the governments of member states take account of the principles.

2. In Favour of the Sale of the Register

The working party carried out a consultation exercise on commercial use of the electoral register. Responses from business acknowledged that the electoral register is only one of a variety of data sources which they use, but the register "is regarded as a key source because it provides data across a national database and over a long period, allowing it to become a key stability indicator".⁶⁴ All business sectors considered that any restriction of their access to the full register would have adverse financial implications for their business, with consequent effects on employment. The working party's report summarises the responses as follows:⁶⁵

- The direct marketing industry would suffer thousands of job losses
- "junk mailing" would increase through less accurate targeting
- the financial sector would suffer increased costs as a result of losses from bad debts
- credit would be more difficult to obtain
- competition in the credit sector would reduce and consumers would face higher interest rates
- charities would find it harder to focus fund-raising and membership campaigns

⁶³ Ibid, para 2.4.11

⁶⁴ Ibid, para 2.4.16

⁶⁵ Ibid, para 2.4.17

The Treasury and the banking sector stressed the importance of retaining access to the register for checks against money laundering. In addition, the working party noted that

The register is in practice used more widely for broad law enforcement purposes than simply as a source document for money laundering checks. No specific provision is made for special access to the register by the police or HM Customs and Excise, or by other law enforcement agencies, but the public nature of the register means that it can be and is used by these agencies.⁶⁶

3. The Working Party's Recommendations

The Howarth working party recommended that:

- **Electors should be allowed to decide whether their personal details should be included in the register made commercially available (Recommendation 12)**
- **The full register should continue to be available to electoral users, but a licensing arrangement should be agreed to ensure that its use is restricted to electoral purposes only (Recommendation 13).**

The recommendations were the result of considerable debate in the working party, which suggested that this was not an issue where there is a simple solution likely to be acceptable to all parties. The working party concluded that⁶⁷

In the wider economic interest of the United Kingdom, it would be wrong wholly to withdraw electoral registration data from use commercially.

On the other hand, the working party accepted that modern software applications which use electoral registration data mark a fundamental change in the balance of risk which sale of the register represents. In addition, it accepted the view of the Data Protection Registrar that, because of the legal considerations discussed above, no change was 'not an option'. The working party concluded:⁶⁸

The requirements of natural justice require that we should go further and allow the extension of consumer choice to the question of what registration information is sold on commercially.

⁶⁶ Ibid, para 2.4.19

⁶⁷ Ibid, para 2.4.21

⁶⁸ Ibid, para 2.4.23

This would bring the law on the sale of the register in line with the principles set out in Council of Europe Recommendation No. R(91)10 and would also be more consistent with modern data protection practice.

The working party raised briefly the related issue of whether individuals who feel at risk of being traced by ex-partners, stalkers etc should have the right to some form of “anonymous” registration which excludes their names and addresses. At present EROs have no power to allow such individuals to register without an address. The Home Affairs Committee’s report on *Electoral Law and Administration* stated:⁶⁹

We recognise the strength of the calls for a means of registering without having to reveal information which could make the elector vulnerable, and consideration should be given to developing such a system. ... We consider that any such system should allow for anonymous registration only in exceptional circumstances. (Paragraph 49).

We see no alternative to the general principle that copies of the register should be generally available, at least for electoral purposes. (Paragraph 50).

The Howarth working party did not resolve this issue, and in its response the Home Office noted that it has commissioned further study to identify the scope of the problem.⁷⁰ However, the working party suggested that giving the option of having personal details removed from the commercial version of the register might afford some additional protection to vulnerable individuals.⁷¹

After the publication of the Howarth working party’s report on 19 October 1999,⁷² the companies who stand to be affected expressed concern at the proposal to allow electors to opt out of the commercially available register. They pointed out that the people who removed themselves from the commercial register might later feel aggrieved if they were refused credit, because they were not on the register available to companies.⁷³ They also argued that restrictions to access could cost consumer credit companies more than £500m annually.⁷⁴

4. The Mechanics of the New Arrangements

The Howarth working party made the following recommendations:

- The opportunity to opt out from the commercial version of the register should be given at the time electors register [para 2.4.26]

⁶⁹ HC 768-I of 1997-98, 1.10.99, recommendations 18 and 19

⁷⁰ see also *Sunday Telegraph* 7 November 1999 ‘Dando murder prompts reform of electoral roll’

⁷¹ Op cit, para 2.4.25

⁷² HC Deb Vol 336, c434W

⁷³ *Financial Times* 20 October 1999 ‘Straw to restrict business access to vote roll’

⁷⁴ *Financial Times* 29 September 1999 ‘Warning over electoral register curbs’

- There should be a single opt out: allowing electors to make a separate decision on each of the commercial uses for which the register is or may be made available would not be practical [para 2.4.26]
- There should be a separate opting out tick box for every elector within the household [para 2.4.27]
- Detailed information should be provided to help each elector make an informed decision on whether to use the opt out, since opting out could have consequences for that individual's access to a range of commercial activities, goods or services, including access to credit [para 2.4.28]
- Where the full version of the register was made available to political parties for electoral purposes, this should be subject to licensing arrangements which would prevent them from putting it to commercial uses [para 2.4.29]
- A licensing arrangement would also provide a framework for the use of the full register for law enforcement purposes [para 2.4.30]
- The Home Office should work closely with the Data Protection Registrar in developing a suitable licensing scheme [para 2.4.30]
- The Home Office, in consultation with EROs, should recalculate appropriate fee levels for providing copies of the register, taking account of the balance of costs between the charges for the supply and paper and electronic versions [para 2.4.32]

The working party noted the request by some of the political parties that the electronic version of the full register should be made available to them free of charge in place of the current free paper copy. It considered that this was not strictly a question of electoral procedure, and recommended that this issue should be taken up by the political parties officials forum, an all-party group of officials of parties represented in the House of Commons.⁷⁵ The forum, which has been established for a number of years, enables the Home Office and representatives of the political parties to meet on an occasional basis to consider issues of electoral practice.

The working party acknowledged that its proposals might involve higher costs for those local authorities responsible for administration of the electoral register. Where EROs currently carry out a traditional door-to-door canvass (particularly in Scotland), the working party suggested that it might be necessary to change to a postal canvass, and this might have cost implications. In addition, there might be some costs involved in modifying the software systems used to produce the register and in the amount of time required to input the necessary data. The working party felt that reprogramming costs "should be relatively small", as should the inputting costs, especially where scanning rather than manual inputting via a keyboard was used. However, more

⁷⁵ Op cit, para 2.4.33

resources will be needed for electoral registration generally in order to implement the ‘rolling registration’ system introduced by **Clause 1** of the Bill.

It could be argued that the new scheme will be more difficult to administer, as in the annual canvass the head of the household will no longer be able to complete the form without consulting all members of the household. A potential problem with the new arrangements for the distribution of the register is the difficulty of enforcing licensing schemes for commercial use of the register while the full version remains publicly available in public libraries, where it can easily be photocopied or scanned, for example.

C. The Bill

Implementation of the Howarth working party’s recommendations on the sale of the electoral register requires primary legislation. **Clause 9** of the current Bill would amend Schedule 2 to the *Representation of the People Act 1983*, enabling new regulations to be made regulating the supply of the electoral register in line with the Howarth proposals. The new regulations would be able to:

- require electoral registration officers (EROs) to produce two versions of the electoral register - a complete one which will be for electoral use only, and an edited version for commercial use, omitting the names of those who have asked to have their names excluded from it
- specify how the ERO should go about finding out who wishes to opt out of the commercial version
- specify a form of words the ERO should use to explain what the edited version might be used for
- require the full register to be available for public inspection
- require EROs to supply copies of the full register to political parties either free of charge or on payment of a fee
- require EROs to supply copies of the edited register to anyone on payment of a fee
- prohibit anyone inspecting the full register from making copies of it, punishable by a fine up to level 5 on the standard scale (currently £5,000)
- prohibit political parties to whom the full register has been supplied from passing it on or using it for unauthorised (eg. commercial) purposes, punishable by a fine up to level 5 on the standard scale

VI Pilot Schemes for Alternative Voting

A. Background

The Howarth working party recommended pilot schemes of alternative voting arrangements, so that different arrangements could be tested in discrete schemes, and fully evaluated before being introduced nationally. It considered that the obvious place to start was local elections, with pilots developed in collaboration with local authorities, but coordinated centrally (paras 3.1.3-5). After considering the responses from 500 local authorities and others to the DETR consultation paper *Local Democracy and Community Leadership* the working party set out three broad categories of pilot projects:

When to vote

3.1.7 Suggestions include

changing polling hours to allow variations around the opening and closing of the poll

moving polling to an alternative weekday or weekend day or allowing voting over more than one day

opening some polling stations in the days immediately before polling day itself to allow voters to cast their votes early

3.1.8 Pilot schemes would need to take account of the implications for strict religious observers of most faiths of any move away from Thursday voting. This suggests that proposals for weekend voting would need to consider opening the polls on more than one day. There are also potentially implications for the selection of polling place locations: as an example, voting over more than one day or at weekends could increase the difficulty of obtaining suitable accommodation, but an alternative polling day might reduce the disruption to education when school accommodation is used for voting. Early voting in selected polling stations would increase the opportunity for electors to vote at a more convenient time, although not necessarily location, but could also provide much easier access for disabled voters than their traditional polling station. Early voting would also require close control over the register to prevent double voting using different polling stations and any schemes would need to consider the implications for exit polling and security of ballot papers

Where to vote

3.1.9 Pilot schemes could address a number of issues about the location of polling, including

out of area voting, allowing electors to vote in any polling station in the electoral area, or even outside it

mobile polling, taking the ballot box to identified groups of voters, for example by visiting residential and convalescent homes

3.1.10 The key considerations in preparing any schemes are likely to centre on the control of the register to prevent double voting. Possible alternatives to traditional polling stations suggested in the consultation exercise included supermarkets or shopping malls, railway stations and termini, libraries and post offices, workplaces, other public spaces. Both out of area and mobile voting potentially also raise issues for candidates' oversight of the poll.

How to vote

3.1.11 Pilot schemes might propose moving away entirely from the present paper ballot and polling station arrangements to a more remote voting system. Suggested possibilities include

all postal ballots, allowing an election to be held on the basis of postal voting only

automated voting or vote counting, replacing manual voting and vote counting with electronic polling machines or ballot paper scanners

telephone voting, using domestic telephones linked to automatic voice recognition and recording equipment at one or more central locations

electronic voting, on-line from publicly sited terminals and other access points such as digital television using the Internet

3.1.12 Pilot scheme proposals will need to consider how to safeguard the integrity of a remote voting arrangement and the resilience and effectiveness of technology supporting such solutions (including in the case of all postal ballots, the effectiveness of mailing services). Voter reaction to electronic delivery of services may also be a factor to be considered in preparing proposals. A particular consideration in evaluating the scope for rolling out more technologically based schemes is likely to be the extent to which the proposals depend upon assumptions about the technical infrastructure of local government.

3.1.13 We have found it convenient for the purposes of our report to offer examples under three broad headings of the kinds of pilot schemes which might be tested. Local authorities and their associations have made it clear to us that they would like to have the option of proposing a multi-layered approach by suggesting schemes which incorporate features of more than one type of alternative arrangement. We recognise the opportunities which such an approach could offer, but accept that it must ultimately be a matter for the Home Secretary to make such decisions, subject to the limitations of any enabling legislation which Parliament may approve.

Pilots will be organised for England and Wales, but any pilots in Scotland will be organised by the Scottish Parliament which has legislative competence over the conduct of local

authority elections.⁷⁶ The costs of the programme may well be crucial in encouraging local authorities to take part. The working party estimated that providing automated voting machines in place of polling booths across the UK - the most expensive option - would cost £300-375m. Optical scanning of paper votes would cost £50-85m across the UK for a system based on a scanner in every polling station, and £5-10m for a central count scan facility (paras 3.1.16-7). Other pilots, such as weekend voting or early voting would incur marginal increased costs only. The Home Office has not promised any central funding for pilot projects.⁷⁷

There may be more enthusiasm amongst local authorities for certain types of pilot schemes. It will be important to ensure a spread of pilots, so that their success and possible extension nationally can be properly assessed. Although automated voting may be seen as the most innovative pilot, there are doubts as to whether it will have a great impact on turnout, given that an elector has to reach the polling station to use the equipment. Early or postal voting may be a more popular choice. There may be unexpected consequences however; if early voting is adopted it makes the timing of exit polls difficult, since early publication might influence the voting intentions of those due to vote at polling stations. Mobile polling stations for residential homes perhaps present the greatest possibility of electoral fraud, unless there are clear rules in force. Universal postal voting will present a challenge for the Post Office, and will involve additional administrative costs for local authorities.

The Home Office is asking for proposals for pilots to take place in the local elections at May 2000. There may be issues for authorities where political control is vulnerable to small swings. If, for example postal voting is piloted in some wards, there could be a major impact on the result of the election. There is also a tight timescale for the pilots, and potential unwelcome publicity for local authorities where mistakes occur in implementation. A Home Office circular⁷⁸ has called for applications to be submitted by 17 January 2000, with outcomes of the applications known by 14 February 2000. The circular warned that applications by an authority to run pilots in parts of its area only would need 'to ensure that it has observed the utmost impartiality in its choice of wards and would need to demonstrate this in its application'. It is expected that a further round of pilots will be held in May 2001.

A concern expressed by pressure groups such as Charter 88 is the absence of legislation introducing proportional legislation for local government, which, it is claimed, would have a greater impact on voter turnout than the pilot projects.⁷⁹ The Mackintosh Commission has recommended its introduction in Scotland (see above).

Another unknown factor is the impact on turnout. Appendix 2 sets out turnout rates in local elections in the UK. As summarised in Research Paper 99/46 *Local Elections: Proposals for Reform*, the academics Rallings and Thrasher conclude that political controversy has a

⁷⁶ The franchise for local government elections is reserved under Head B of Schedule 5 to the *Scotland Act 1998*

⁷⁷ RPA Circular 430 states 'local authorities are responsible for meeting the costs of local elections and will be required to meet the additional costs, if any, of running pilot schemes'

⁷⁸ RPA Circular 22 November 1999

⁷⁹ *Queen's Speech 1999: Representation of the People Bill* Charter 88 Parliamentary Briefing November 1999

beneficial effect on turnout. Conversely, turnout rates in local authority areas dominated by one political party tend to be lower than average.⁸⁰

B. The Bill

Clause 10 allows the Secretary of State to make orders enabling local authorities in England and Wales to run pilot schemes of innovative electoral procedures at particular local government elections. The scheme must be approved by the Secretary of State and may take place in part or all of a local authority area. A local authority running a pilot is required to produce a report which includes statements as to whether in the authority's opinion:⁸¹

- turnout was higher than it would otherwise have been,
- voters found the new arrangements easy to use,
- the new procedures led to any increase in personation or other electoral fraud,
- the procedures led to an increase or to savings in expenditure

There are provisions to allow applications to be made before the bill receives Royal Assent, and to be treated in the same fashion as those made after that point.

Clause 11 allows the Secretary of State to make an order providing for an innovation which has been piloted to apply generally and permanently. The order is subject to the affirmative procedure and the Secretary of State is required to lay copies of the evaluation report of the relevant pilot schemes.

The order can modify or disapply any enactment and will specify the elections to which it will apply. The order must make the same provision for the whole of the UK, or if the relevant elections are held only in one part of the UK with respect for the whole of that part. However, an order relating to local government elections may exempt particular local government areas, and such an order will not be treated as hybrid for parliamentary purposes. The intention appears to be to exempt certain local authority areas which might find new arrangements difficult; the most obvious examples are areas of Wales which might not find weekend voting acceptable for religious reasons.

These are potentially far-reaching powers for the Secretary of State to amend primary legislation through orders. The relevant elections are as follows:

- (a) parliamentary elections,
- (b) elections to the European Parliament,
- (c) elections to the Scottish Parliament,
- (d) elections to the National Assembly for Wales,

⁸⁰ *Local Elections in Britain 1997* Colin Rallings and Michael Thrasher

⁸¹ *Explanatory Notes Bill 2-EN*

- (e) elections to the Northern Ireland Assembly (including the New Northern Ireland Assembly),
- (f) local government elections in England or Wales, and
- (g) local elections in Northern Ireland.

This list therefore includes parliamentary elections in Scotland and Northern Ireland, although these areas are not included in the pilots under clause 10. Power to legislate in respect of these elections is reserved to Westminster under the devolution settlement.⁸² No new primary legislation would be necessary for permanent changes to electoral procedures. It may be thought that final decisions on introducing these procedures would be better left to the new Electoral Commission, expected in the forthcoming bill on party funding and election expenditure.⁸³ However, the Commission's initial task will be to monitor the new disclosure requirements on donations to political parties, and the job of evaluating pilot schemes would presumably have been delayed. There may be an intention to transfer the Home Secretary's powers in respect of pilots to the Commission, although there is nothing on the face of the bill to allow this at present.

VII Absent Voting

A. Background

For many years there have been complaints that the current system of postal and proxy voting for those unable to vote at a polling station is complex and off-putting. The Howarth working party found that:

3.2.2 Absent votes are an integral part of the electoral landscape, but they are not currently a significant proportion of the votes cast at any election. Detailed statistics available centrally do not include proxy voters, but the table at annex N sets out the information which is available for the last 3 parliamentary general elections and 2 most recent European parliamentary elections for which data are available. We were able to identify that at the 1997 general election 1,274,209 electors were entitled to vote by absent vote, representing approximately 3% of the total electorate. We have no reason to believe that the figures at previous general elections would have been significantly different.

3.2.3 A slightly higher proportion of postal voters vote at general elections than the national turnout averages for votes cast in person at a polling station. In local and European Parliamentary elections however turnout amongst postal voters may **be much** higher, perhaps even at twice the general level. This is perhaps not surprising, as requesting an absent vote may be taken as an indication at least that the elector is aware that an election is impending and is inclined to take part. The difference in

⁸² see Research Paper 99/84 *Devolution and Concordats* for details

⁸³ see Appendix

turnout rate, although small, has led to calls for absent postal votes to be made available on demand.

3.2.4 Like the Home Affairs Committee, we have found it difficult to quantify the likely effect of such a change on take up levels. Factors which would influence demand in the United Kingdom will include the effect of such a change to rolling registration and any roll out of successful early voting pilots on a national scale. Experience in other jurisdictions is not helpful. Germany, Canada and New Zealand allow absent voting on demand. Figures for German elections to both the Bundestag and the European Parliament (1994) show that postal votes accounted for between 9% - 13 % of all votes cast. In Canada, by comparison, postal and early voting together formed only 1% of actual turnout. New Zealand operates arrangements similar to those in Canada, with similar results.

The working party also found evidence that the public found the system hard to understand, with 3-3.5% of postal votes rejected as spoiled, compared to fewer than 1% for those in a polling station at the 1997 election (para 3.2.6).

The working party recommended that

- absent postal votes should be made available on demand to cover all elections over a given period
- applications by fax for postal votes should be acceptable
- a single application should be allowed to cover all elections held on the same day
- there should be no change in the cut-off dates for ordinary and emergency absent vote applications, but it should be re-examined in the future
- the grounds for emergency applications for a postal vote should be widened to include family bereavement, illness or unforeseen business or employment reasons. Such applications should be attested by someone who can warrant the reason for the application
- Existing controls requiring declaration of identities and the return to a specified address rather than a polling station should be discontinued
- Voters should be allowed to return postal votes to any polling station serving the appropriate area, or as the returning officer directs. Such ballot papers would be placed unopened in a suitable envelope and returned to the returning officer with the ballot box
- Returning officers should be allowed to issue replacement postal ballot papers for lost or spoiled papers even where some of the original documentation is not returned, and should be able to issue a postal vote otherwise than by post

The Home Affairs Select Committee also argued for absent voting on demand, but considered that the cut-off dates for applications should be brought forward, closer to the date of election (paras 67-70).

The position in Northern Ireland was recognised as distinctive, and the working party recommended that the Secretary of State for Northern Ireland consider whether to adopt any of the recommendations there. No recommendations were made for change for proxy voting, as the working party were aware that there were a number of current police investigations being held into allegations of proxy voting abuse (para 3.2.1).

B. The Bill

Clause 12 introduces new provisions on absent voting, while preserving existing lists of absent voters held under the RPA 1985 provisions. A new Schedule 4 applies to England, Scotland and Wales for parliamentary and local government elections. Sections 5-9 of the RPA 1985 (the current legislation) will remain in force for parliamentary elections in Northern Ireland. The whole of the *Explanatory Notes* for the Schedule are reproduced below:

Paragraph 1 provides for the Schedule to have effect as if it were part of the Representation of the People Act 1983.

146. *Paragraph 2, sub-paragraphs (1) to (4)* provides that electors may vote in person, by post or by proxy. An elector entitled to vote by proxy may, however, vote in person if he gets to the polling station before his proxy.

147. *Sub-paragraph (5)* provides that police officers and others involved in the running of the election may, if they cannot get to their normal polling station, vote at any other polling station in the constituency or electoral area.

148. *Sub-paragraph (6)* provides that detained mental patients and remand prisoners must vote either by post or by proxy.

149. *Paragraph 3* sets out the conditions which must be satisfied if an application for an absent vote (for either a definite or an indefinite period) is to be granted.

150. For a postal vote (*sub-paragraph 1*) the only condition is that the person concerned must be on the electoral register and that the procedural requirements of regulations (for example, about time) are complied with. Accordingly, most of the conditions which currently apply are abolished.

151. For a proxy vote, the conditions (set out in *sub-paragraphs (2) and (3)*) are unchanged from those which apply at present. Service and overseas voters are entitled to a proxy vote, as are people who cannot get to the polling station because of a disability, by reason of their employment, or because they would have to travel by sea or air to get there.

152. *Sub-paragraphs (4) and (5)* require the registration officer to keep an up to date record of those electors whose applications for absent votes have been granted, including, as appropriate, the addresses to which postal votes are to be sent or the names and addresses of people appointed as proxies. The existing requirement that the address must be in the United Kingdom has been dropped.

153. *Sub-paragraphs (6) and (7)* set out the conditions under which a person with a postal vote may alter his choice so as to vote by proxy, and vice versa.

154. *Paragraph 4* makes similar provision in respect of absent votes at a particular election. For postal votes (*sub-paragraph (1)*) the position is the same as for postal votes for a definite or indefinite period (see paragraph 3(1)).

155. *Sub-paragraph (2)* provides that an application (from a registered elector) to vote by proxy at a particular election is to be granted if the person in question cannot reasonably be expected to vote in person on the day of the poll.

156. *Sub-paragraph (3)* allows a person who already has a postal vote to alter the address to which his ballot paper is sent or, provided he satisfies the same conditions as other proxy voters (*sub-paragraph (4)*), to vote by proxy instead. The existing requirement that the address must be in the United Kingdom has been dropped.

157. *Paragraph 5* requires the registration officer to keep, for each election, an absent voters list (*sub-paragraph (1)*) made up of two parts. The first part (*sub-paragraph (2)*) lists those who have applied for and been granted postal votes for that election, for a definite period covering the election or for an indefinite period, together with the addresses to which ballot papers are to be sent. The second part (*sub-paragraph (3)*) is a similar list in respect of proxy voters and the names and addresses of their proxies.

158. *Paragraph 6* deals with the appointment of proxies. It provides (*sub-paragraph (2)*) that an elector may only appoint one proxy at a time, that only Commonwealth citizens and citizens of the Republic of Ireland aged 18 or more may be appointed (citizens of a member state of the European Union may be appointed to vote at local government elections), and that anyone subject to a legal incapacity to vote may not be appointed (*sub-paragraphs (3) to (5)*).

159. *Sub-paragraph (6)* provides that a person may not vote as a proxy in the same constituency (or electoral area) at an election on behalf of more than two electors to whom he is not closely related.

160. *Sub-paragraph (7)* requires a registration officer to appoint as proxy, for a definite or indefinite period, the person nominated by an elector provided that the elector is on his register and his list of proxy voters and that the proxy is able and willing to take on the appointment. *Sub-paragraph (8)* makes similar provision in respect of a particular election.

161. *Sub-paragraph (10)* provides for the cancellation of a proxy's appointment by the elector, and for an appointment to cease to be in force where a new proxy is appointed or where the period for which the proxy was appointed expires.

162. *Sub-paragraph (11)* provides that unless the appointment has been cancelled or has ceased to be in force, it remains in force for the election or the definite or indefinite period for which it was made.

163. *Paragraph 7* enables a proxy to vote either in person at the polling station allotted to the elector for whom he is acting as proxy or, on application, by post (*sub-paragraphs (1) to (5)*).

164. *Sub-paragraphs (6) to (8)* require the registration officer to keep a record of proxies whose applications to vote by post for a definite or indefinite period have been granted, and to keep a special list for each particular election of proxies who have postal votes. In both cases the addresses to which their ballot papers are to be sent are also to be listed. The existing requirement that the addresses must be within the United Kingdom has been dropped.

165. *Sub-paragraph (9)* requires the registration officer to remove a person from the record of proxies with postal votes for a definite or indefinite period on application, if the proxy appointment comes to an end or if the proxy ceases to be registered as an elector.

166. *Paragraph 8* makes it an offence for anyone to make a false statement in connection with an application for an absent vote or to attest an application for an absent vote when he knows he is not authorised to do so. The offence is summary and is punishable by a fine not exceeding level 5 on the standard scale of fines.

Schedule 5 makes consequential changes to the *Parliamentary Elections Rules* set out in Schedule 1 of the RPA 1983.

These provisions are not expected to arouse much controversy, but there may be concerns about the removal of some of the conditions to be met in issuing postal votes, in case of fraud.

VIII Assistance with voting for persons with disabilities

A. Background

There have been longstanding concerns about the difficulties people with physical disability face in using polling booths to vote. The charity SCOPE conducted a surveys after 1992 and 1997 elections. The latest showed that only 6 per cent of polling stations surveyed were fully accessible and that only 20 per cent of polling stations had temporary ramping.⁸⁴ Capability Scotland also surveyed polling places in Scotland during the devolution referendum in September 1997.

Local authorities have a statutory duty to designate as polling stations locations which are accessible to the disabled, where this is practical. However, local authorities are reluctant to undertake extensive alterations to polling station locations when these are in use no more than one or two days in each year. The Home Office issued new guidelines for the European elections in June 1999, based substantially on the work of Capability Scotland. These guidelines provide check lists for Returning Officers to audit concerns on accessibility for the designation of polling places and the setting up of polling stations.⁸⁵ There is no separate funding for electoral costs in providing access. The cost of grants is met from the consolidated fund. Grants are available as a

- Contribution towards the costs of providing accessible electoral equipment- available at 80 per cent of costs
- Contribution towards the costs of providing physical access to polling stations, mainly in the form of temporary ramps-available at 50 per cent of costs

The balance is met by the local authority. There is no maximum amount which the returning officer can claim, but claims need to be accompanied by evidence of value for money considerations. Part III of the *Disability Discrimination Act 1995* places duties on those

⁸⁴ *Polls Apart 2 Summary: Disabled People and the 1997 General Election* 1997 SCOPE

⁸⁵ The guidelines are reproduced at Annex O to the Howarth working party report

providing goods, facilities or services to the public and those selling, letting or managing premises. The Act makes it unlawful for service providers, landlords and other persons to discriminate against disabled people in certain circumstances. The duties on service providers are being introduced in three stages:

- Since December 1996 it has been unlawful for service providers to treat disabled people less favourably for a reason related to their disability;
- From October 1 1999 service providers have to make ‘reasonable adjustments’ for disabled people, such as providing extra help or making changes to the way they provide their services;⁸⁶ and
- It is intended that, from 2004, service providers will also have to make ‘reasonable adjustments’ to the physical features of their premises to overcome physical barriers to access.

The duty to make ‘reasonable adjustments’ for disabled people (in force from 1 October 1999) means that a service provider may have to:

- Change a practice or policy or procedure which makes it impossible or unreasonably difficult for disabled people to make use of services;
- Provide a reasonable alternative method of making services available to disabled people where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of them;
- Provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of services.

The National Disability Council published a revised Code of Practice on Rights of Access, Goods, Facilities, Services and Premises in June 1999⁸⁷ which gives practical guidance on how to prevent discrimination against disabled people in accessing services or premises.

The Act is likely to lead to increased use of grants, as local authorities attempt to meet the Act’s requirements.

The Howarth working party made the following recommendations:

- Changes to election rules to allow large print posters of the ballot paper to be displayed, and for simple ballot paper templates to be provided in polling stations

⁸⁶ There will be no duty on landlords to make ‘reasonable adjustments’ to their properties

⁸⁷ Dep 99/1289

- Existing provisions allowing assistance to blind voters to be extended to other electors who would not otherwise be able to cast a vote
- The introduction of national minimum access standards, with new and consolidated guidance from the Home Office
- Provision to extend current grants to include grants towards the costs of providing permanent adaptations to premises used for polling purposes
- A reduction of the proportion of the grant to 50 per cent, to take account of increased applications by local authorities, with the possibility of an overall cap on expenditure of funding

B. The Bill

Clause 13 amends the parliamentary elections rules⁸⁸ to make it easier for people with disabilities to cast a vote. The *Explanatory Notes* set out the changes as follows:

82. New *rule 29(3A)* of the parliamentary elections rules provides that a returning officer must display a large print version of the ballot paper in each polling station and provide a device (the form of which will be prescribed in regulations) to assist blind and partially sighted voters.

83. Blind voters are currently entitled to be assisted to cast their vote by a companion. New *rule 39* of the parliamentary elections rules extends this facility to those with other physical disabilities and the illiterate. The existing procedures and criteria as to who may be a companion are applied.

The clause extends to the whole of the UK.

IX False Statements about Candidates' Names and Addresses

Schedule 5, para 4 introduces a new offence of knowingly making false statements as to candidates' names and addresses in nomination papers or other documents given to a returning officer. The new offence will apply to all parliamentary elections and local elections in England and Wales. The Scottish Executive may wish to introduced separate legislation for local elections in Scotland. This recommendation was not made by the Howarth working party, but appears to have arisen from concerns over the documentation supplied by British National Party (BNP) candidates in the European elections in June 1999. There were allegations that at least eight BNP candidates gave false addresses so that the party would be allocated an election broadcast.⁸⁹ It was necessary for a party to have candidates in all

⁸⁸ These are set out Schedule 1 to the RPA 1983

⁸⁹ "Straw urged to halt BNP broadcast" *Guardian* 21 May 1999 *Searchlight* June 1999 'Eurolection'

electoral regions to qualify for a broadcast, under rules devised by the broadcasting authorities.

Returning officers are not required to check the accuracy of the names and addresses submitted by candidates.⁹⁰ They may only hold a nomination paper invalid if the paper breaks the new provisions contained in the *Registration of Political Parties Act 1998* or if the particulars of the candidate or his subscribers are not as required by law, or if the candidate is disqualified by the *Representation of the People Act 1981*⁹¹

There may be difficulties in establishing whether an address can be considered 'false' if the candidate believed that he had a sufficient connection with an address for it to be used. The *Registration of Political Parties Act 1998* dealt with the registration of political party names and emblems; it was designed to solve the problem of misleading descriptions of candidates who attempted to stand under party labels which could be confused with those of established parties. However it did not deal with the position where candidates change their personal names to cause confusion.⁹² It is not clear whether this new offence will cover situations such as faced by Sir Nicholas Lyell in the 1997 election, where a rival candidate, Peter Rubery-Hayward, changed his name by deed poll and attempted to stand as Sir Nicholas Lyell.

⁹⁰ Rule 12, *Parliamentary Elections Rules* in Schedule 1 of the RPA 1983

⁹¹ Convicted prisoners sentenced to be detained for more than one year

⁹² See Research Paper 98/82 *The Registration of Political Parties Bill* for details. See also Home Affairs Select Committee report HC 768 1997-8 paras 135-138

Appendix 1 The Electoral Commission

1. Introduction

Proposals for an independent electoral commission were made in both the Neill⁹³ and the Jenkins⁹⁴ reports and have now been considered in detail by Government in its draft bill published in the consultation paper *The Funding of Political Parties in the United Kingdom*⁹⁵. Many issues need further clarification, such as its territorial scope, its relationship with the existing boundary commissions and the extent of its regulatory function.

For several years commentators on electoral administration have been calling for an election commission. Practitioners represented by the Association of Electoral Administrators have become increasingly vocal in their criticisms of the current system which relies on local authority staff following national guidance through a series of Home Office circulars. The Hansard Society report *Agenda for Change*⁹⁶ recommended a commission as a mechanism for overhauling outdated electoral law and enforcing common standards of administration. The small Constitutional Unit in the Home Office is widely perceived as under-resourced and low in profile in a department dominated by more politically controversial subjects.

There are strong constitutional arguments for the administration of elections to be supervised by an independent and impartial body and this arrangement is common in other European and Commonwealth states. The absence of major election ‘scandal’ and the reluctance to use up parliamentary time unless absolutely necessary are the most likely factors in the retention of this function by the Home Office up to now⁹⁷, but the introduction of national election finance regulation and the complexities of new electoral systems has prompted much greater interest in the production of a commission. A report by the independent ‘think-tank’ the Constitution Unit looked at the issues in some detail just before the 1997 election.⁹⁸ David Gardner of the Labour party expressed strong support for an independent commission at an electoral seminar held after the general election.⁹⁹ Dr David Butler has cogently set out the main arguments for an electoral commission in a recent Hansard publication¹⁰⁰:

- Elections are the cornerstone of democracy and should be administered by a body independent of government and of political parties which can bring together the disparate bodies currently responsible for electoral administration

⁹³ *The Funding of Political Parties in the UK* Cm 4057 October 1998

⁹⁴ *Report of the Independent Commission on the Voting System* Cm 4090 October 1998

⁹⁵ Cm 4413 July 1999

⁹⁶ 1991 The Hansard Society

⁹⁷ it is notable that it is in Northern Ireland, the only part of the UK where there have been allegations of widespread electoral fraud, that an independent office already exists

⁹⁸ *Establishing an Electoral Commission* Briefing 1997

⁹⁹ Hansard Society/ Association of Electoral Administrators Seminar June 18 1997

¹⁰⁰ *The Case for an Electoral Commission* King Hall Paper 1998

- existing electoral law does not reflect current electoral practice; it is cast in terms of local elections but general elections are fought on a national basis and the legislative framework requires modernisation:
- the introduction of new electoral systems reinforces the need for independent regulation and monitoring of new requirements such as redesigned ballot papers, counting techniques, and the registration of political parties.

The Home Affairs Select Committee's enquiry into electoral administration, which was completed in September 1998¹⁰¹ also called for an electoral commission: 'There is a strong case for establishing a single Commission to take on both current [functions from the Home Office] and any new monitoring functions. The Howarth working party also considered the question.

The real impetus however came from the publication of the Neill Committee report into party funding and election expenditure.¹⁰² The report repeated many of the concerns of the 1996 Constitution Unit report on the regulation of referendums¹⁰³, that an independent commission should regulate the conduct of referendums, but built on this by recommending an extensive regulatory system for national election expenditure, not only involving political parties, but also those third parties such as trades unions or pressure groups which spent over £25,000 in an election campaign. The Neill Committee recommended the creation of a 'totally independent and authoritative Election Commission with widespread executive and investigative powers and the right to bring cases before an election court for judgement.' It also envisaged that the commission would be responsible for administrative work connected with the regulation of election expenditure and exercise broad oversight of the conduct of elections, as well as take over the registration of political parties from Companies House. It decided against separate electoral commissions for Scotland Wales and Northern Ireland, but considered that there should be Commission offices maintained in each constituent part of the UK. No specific reference was made to the position of the Northern Ireland Chief Electoral Officer, already an independent official responsible for supervising elections there.

In effect, Neill took the existing idea of an election commission and transformed it into a much more extensive concept. Commentators have expressed fears that the regulation of electoral expenditure may deflect a new body from other urgent tasks, such as the introduction of a system of rolling registration for electors, and divert attention away from a civic education role in promoting parliamentary democracy.

¹⁰¹ *Electoral Law and Administration* Fourth Report HC 768 1997-8 para 160

¹⁰² *The Funding of Political Parties in the United Kingdom* Cm 4057 October 1998

¹⁰³ *Report of the Commission on the Conduct of Referendums* Constitution Unit

The Report of the Independent Commission on the Voting System (the Jenkins Commission¹⁰⁴) also recommended the creation of an electoral commission in order to undertake an educative role for a new electoral system and to monitor its practical effects, as well as remedying more traditional concerns about outdated and complicated nature of electoral administration legislation. The Commission did not offer any detail however on the form or scope of a commission. Neill had suggested a number of functions as follows:

71. The Commission should publish a report on the conduct and administration of each major election or referendum within 6 months of its taking place. (p 148)
72. The Commission should have the duty to advise the Government on the modernisation and revision of electoral law. The Government should consult the Commission before making or proposing any changes relating to electoral law and administration. (p 148)
73. The Commission should have the executive and investigatory powers detailed in our other recommendations [relating to election expenditure and income and expenditure of political parties and third party pressure groups]. (p 148)
74. The Commission should not be a court or have any substantial judicial power. (p 149)

The membership of the Commission would be non-party political and independent, with substantial security of tenure. The Commissioner for Public Appointments, who supervises appointments to Non Departmental Public Bodies (NDPBs) might have a role in overseeing appointments, but individual members would need to be acceptable to party leaders.¹⁰⁵ Five part-time members were proposed, with the bulk of the work carried out by a chief executive and small complement of staff. Each commission member might have responsibility for electoral arrangements in the separate parts of the UK. Neill considered it essential to secure a source of funding which protected the independence of the commission -perhaps building on the funding arrangements for the National Audit Office which are approved by the House of Commons Public Accounts Commission. A close relationship was envisaged with local Acting Returning Officers, in order to supervise more closely the return of electoral expenses for each constituency and even initiating investigations of suspected evasion of the rules.

Finally, Neill recommended that the Commission should assume the role of registrar of political parties, but considered that it might overload the Commission to also take on the work of the parliamentary boundary commissions. Here, the Jenkins report offered a contrasting approach. Jenkins recommended that the work of the four separate boundary commissions be more closely coordinated and absorbed into the responsibilities of an electoral commission. In order to implement the report's recommendation for Top-up seats a

¹⁰⁴ Cm 4090 October 1998

¹⁰⁵ rather like the role in supervising appointments to the Appointments Commission proposed in the white paper on House of Lords reform

full scale redistribution of parliamentary seats would be necessary, and the procedures for redistributing seats are widely considered to be in urgent need of overhaul¹⁰⁶. The *Scotland Act 1998* requires the Scottish boundary commission to disregard the existing statutory minimum number of seats in Scotland (72) in the next boundary review, with the effect of reducing the number of seats below that figure. Thorough reform of the rules¹⁰⁷ would be likely and appropriate in the next few years, even if the Jenkins proposals were not implemented.

The independent Constitution Unit report of 1996 and briefing of 1997¹⁰⁸ raised a number of issues about the scope and nature of an electoral commission. Critics also suggest that unless the commission has a powerful sponsor in government, any recommendations it makes for the overhaul of electoral law will remain unimplemented, as a suitable legislative slot would not be found, without political pressure for its inclusion in the government's programme. The example of the Law Commission is illustrative. Several of its draft bills have not achieved statutory form, due to lack of political interest.

2. An electoral commission and the regulation of referendums

The Neill Committee report contained more extensive recommendations about the regulation of referendums than had been expected by many commentators. It followed much of the recommendations of the 1996 report of the Commission on the Conduct of Referendums, chaired by Sir Patrick Nairne, the permanent secretary responsible for devising the rules for the conduct of the first UK referendum on membership of the EEC in 1975. A principal recommendation had been the creation of an independent body to oversee the conduct of referendums.

Neill saw a strong case for core funding for Yes and No campaigns in each referendum, and recommended that an electoral commission administer such funding, with the power to decide which organisations, if any, should be in receipt and to require audited accounts within three months of the result. Campaigning individuals or organisations intending to spend more than £25,000 would also be required to register with the Commission and to be subject to the disclosure requirements concerning donations applicable to political parties. However, there would be no overall limit on spending to monitor, unlike for elections.

Neill did not specifically recommend that the Election Commission should involve itself in the political dimension of the referendum, such as setting the question to be asked, but the overall tenor of its recommendations about the role of government in a referendum campaign would suggest that this eventuality could not be discounted. The proposal was that an Electoral Commission 'should, in an advisory capacity, keep under review the law and practice relating to referendums, and should be empowered to issue reports and make recommendations to Parliament and Government concerning them.'¹⁰⁹

¹⁰⁶ for a full discussion see Butler and McLean *Fixing the boundaries*

¹⁰⁷ currently contained in Schedule 2 of the *Parliamentary Constituencies Act 1986*

¹⁰⁸ see also *Democracy Day: Planning for Referendums on PR and Lords Reform* Constitutional Unit 1999

¹⁰⁹ Recommendation 93

The Jenkins Commission report recommended that if it were not possible to establish an electoral commission in time for the administration of a referendum on a different voting system, then a separate referendum commission should supervise its conduct and could also ‘advise on the wording of the question. The success of the referendum could depend on the question being clear, simple and not open to legal challenge.’¹¹⁰ Clearly, the nature of the question to be asked in a referendum remains deeply political and no government seems likely at present to cede control of the phrasing to an outside body.

3. The Draft Bill Proposals

In July 1999 the Government published a draft bill in a white paper, designed to implement the Neill proposals on party funding and election expenditure.¹¹¹ The paper set out in Chapter 2 the role envisaged for an independent electoral commission. The functions in relation to regulating election expenditure and party funding were given prominence:

The functions of the Electoral Commission

Regulation of controls on donations to political parties and of limits on campaign expenditure

2.4 The bedrock functions of the Electoral Commission, as recommended by the Neill Committee, will be those relating to the new regulatory framework for the reporting of donations to political parties, the ban on foreign donations and the controls on campaign expenditure at parliamentary and other elections.

2.5 In particular, the Electoral Commission will:

receive and make available for public inspection information concerning disclosable donations reported to the Commission by registered political parties;
investigate the financial affairs of political parties to ensure compliance with the rules on disclosure;
perform a similar function in relation to the prohibition on foreign funding;
receive and make available for public inspection the annual accounts of registered political parties;
receive, scrutinise and, as necessary, investigate accounts of general election expenditure by registered political parties and third parties;
receive returns, via returning officers, of individual candidates’ election expenses and investigate possible breaches of the spending limits.

These functions are described in further detail in [Chapters 3, 4 and 7](#).

2.6 As envisaged by the Neill Committee (R13), the Electoral Commission will have wide powers to call for financial information from political parties, registered third parties and referendum campaign organisations, and to enter their premises to inspect

¹¹⁰ para 168

¹¹¹ *The Funding of Political Parties in the United Kingdom* Cm 4413

and take copies of financial documents or records. Appropriate provisions are contained in clause 92 of the draft Bill.

Registration of political parties

2.7 The Neill Committee recommended that the Electoral Commission should assume the role of Registrar of Political Parties (R82). The Registration of Political Parties Act 1998, which created the office of Registrar, conferred it on the Registrar of Companies. With the establishment of the Electoral Commission, the Government agrees that it would be appropriate to bring this function within the Commission's remit. The transfer is provided for in clause 20.

Review of electoral law and practice

2.8 The draft Bill confers two statutory functions on the Electoral Commission which underpin its remit to modernise electoral law and practice. First, the Commission will be required to publish a report on the administration of each major election (R71 and clause 4(1)(a)). A 'major' election for these purposes will be: a Westminster Parliamentary general election; a European Parliamentary general election; a Scottish Parliamentary general election; an ordinary election of the National Assembly for Wales; and a Northern Ireland Assembly election. The intention is that the reports should bring to light any features of electoral law and practice, including the operation of the new reporting requirements, which seem to deserve further attention. The Commission would be expected to publish its report as soon as reasonably practical after each election (months not years), but the Government does not consider it necessary to place it under a statutory duty to do so within any specific time scale. The Commission will have a similar duty to report after each major referendum (see [Chapter 8](#)).

2.9 The second statutory function of the Electoral Commission in this area will be to keep under review in a more general way the law and practice relating to party funding, elections and referendums, and to make reports with recommendations (R72 and clause 5(1)). From time to time there may be particular aspects of electoral law which Ministers wish to see examined as a matter of priority. In such circumstances, clause 5(2) would allow the Home Secretary, or other Secretary of State, to direct the Commission to review a specified matter within a specified time-frame and to report.

2.10 Under these arrangements Ministers would remain responsible for the law on party funding and the conduct of elections and referendums but, as recommended by the Neill Committee, there would be an expectation that they would consult the Electoral Commission before proposing any changes.

2.11 In the case of secondary legislation, this expectation is given statutory effect by requiring Ministers to consult the Commission before making certain regulations or other instruments under the Representation of the People Acts 1983 and 1985 and the European Parliamentary Elections Act 1978 (clause 6(2)(a) to (e)). There is a similar requirement to consult the Commission before the delegated powers in relation to the conduct of elections are exercised under the Scotland Act 1998, Government of Wales Act 1998 and the Northern Ireland Act 1998 (clause 6(2)(f) to (h)).

2.12 Furthermore, certain delegated powers, in particular those that provide for the variations of expenditure limits at elections, will be exercisable only on a recommendation from the Commission (clauses 7 and 98). The Government has separately announced proposals for pilot schemes to test innovative voting arrangements. The Government is considering what role the Electoral Commission might play in relation to pilot schemes of this kind and in the subsequent roll-out of successfully piloted voting arrangements across the country as a whole.

The consultation paper considered that if an Electoral Commission were to be set up from scratch it would seem natural for it to deal with voter registration and the actual administration of elections. However the current arrangements whereby registration and the conduct of elections are in the hands of registration/returning officers 'command public confidence'.¹¹² A changeover would be a large administrative and legislative project which could not given priority. The paper also decided against a direct supervisory role for the Commission, which would instead be the focal point for guidance and promoting best practice (paras 2.15-2.16).

A new duty would be to promote public awareness of and participation in the political process, with links to Department of Education and Employment proposals for citizenship education.¹¹³ It is envisaged that the Commission would take over national advertising campaigns on registration and absent votes from the Home Office and Scottish Offices.

4. Boundary Commissions

Although the consultation paper provides for the eventual absorption of the four Parliamentary Boundary Commissions within the Electoral Commission, the Government plans to delay this until after the next review of parliamentary seats. A target date for transfer was given as 2005 after the completion of the review. However the legislation would contain the powers to make the transfer. There was no mention of the need to reform the *Rules for the Redistribution of Seats* contained in the *Parliamentary Constituencies Act 1986* which have been heavily criticised for internal inconsistency.¹¹⁴ The consultation paper also proposed the transfer of the functions of the Local Government Commission for England to the Electoral Commission in or around 2005. Although responsibility for local authority boundaries is a devolved subject, there is provision in the draft bill for the Election Commission to take on this function:

2.22 The review of local authority administrative boundaries is a devolved function in Scotland, Wales and Northern Ireland, as is the review of local electoral boundaries in Scotland and Wales. The arrangements for conducting such reviews are therefore a matter for the Scottish Parliament, the National Assembly for Wales and the Northern

¹¹² para 2.14 Although these officers also hold senior local government posts, they are not answerable to their parent authorities for the performance of electoral duties

¹¹³ see *The Review of the National Curriculum in England – The Secretary of State's Proposals* consultation paper. Citizenship's will be included in KS3 and 4 from 2002

¹¹⁴ see Research Paper 95/74 *The Parliamentary Boundary Review for England and Fixing the Boundaries* by David Butler and Iain McLean for details

Ireland Assembly (when the Northern Ireland Act 1998 comes into effect). It will be open to the Scottish Parliament and devolved Assemblies to decide for themselves to confer these functions on the Electoral Commission. Clause 17 of the draft Bill makes provision for the National Assembly of Wales to transfer the functions of the Local Government Boundary Commission for Wales to the Electoral Commission. Provisions will be added to the Bill as introduced to enable the Scottish Parliament and Northern Ireland Assembly to similarly confer these local boundary review functions on the Commission.

2.23 In order to undertake its boundary review functions, the Electoral Commission will be required to establish four statutory Committees, one for each constituent part of the United Kingdom (clause 12). These four Committees will exercise the functions of the four Parliamentary Boundary Commissions under the Parliamentary Constituencies Act 1986. The statutory Committee for England will additionally take on the functions of the Local Government Commission for England under Part II of the Local Government Act 1992. The proposed composition of the four statutory Committees is described in [paragraphs 2.28](#) and [2.31](#) below.

5. Other functions

A variety of other duties was proposed for the Commission, including

- Assistance to overseas governments and international organisations on electoral matters
- Assistance to the devolved administrations in respect of electoral functions
- Disbursement of policy development grants to political parties
- Conduct of referendums
- Overseeing the conduct of party political broadcasts

6. The Constitution of the Commission

The consultation paper proposed that there would be five members of the Commission initially, which would increase to nine once the boundary commissions had been absorbed. These extra members would chair the four statutory Committees of the Commission (see above). A series of arrangements were to buttress the independence of the Commission:

2.29 Electoral Commissioners will be appointed by Her Majesty The Queen. Recommendations to The Queen to appoint Commissioners will be subject to the approval of the House of Commons. The procedure will involve the House of Commons agreeing an Address to the Sovereign on a motion presented by the Prime Minister, acting with the agreement of the Chairman of the Speaker's Committee, established by clause 2 of the draft Bill. Before moving such an address, the Prime Minister will be required to consult the leaders of those political parties to which two or more sitting Members of the House of Commons belong at that time (clause 3(2)).

2.30 To meet the point about security of tenure, it is proposed that members of the Electoral Commission should be able to be appointed for a period of up to ten years and should be removable within their periods of office only on certain specified grounds, and then only with the agreement of the House of Commons (R76 and clause 3(3) and paragraph 2 of Schedule 1). The appointments will be renewable, but the

expectation will be, in line with the Commissioner for Public Appointments' guidance on appointments to public bodies, that no-one will serve for longer than ten years.

2.31 Deputy Electoral Commissioners will be appointed by the Electoral Commission to serve on the four statutory Committees responsible for discharging the Commission's functions in respect of the review of electoral boundaries. The draft Bill (clause 12) requires that there be at least three members are appointed to each Committee including the chairman, who must be an Electoral Commissioner, and two other members, who must either be Electoral Commissioners or Deputy Commissioners; the precise number of Deputy Commissioners would be subject to agreement with the Speaker's Committee. The remit of the Deputy Commissioners will be limited to the functions of the Committee to which they are appointed.

2.32 The independence of the Electoral Commission will be further buttressed by the arrangements for setting its budget, which will not be controlled by a Departmental Minister. The Commission's budget will be examined by the Speaker's Committee which will then lay the budget, with any modifications it thinks fit, before the House of Commons (R78 and paragraph 13 of Schedule 1). The Speaker's Committee will also approve, by the same process, a five-year corporate plan drawn up by the Electoral Commission.

2.33 The functions of the Speaker's Committee will closely mirror those of the Public Accounts Commission in relation to the National Audit Office. The Committee will consist of nine Members of Parliament. Three of the members will be ex-officio appointments, that is the Chairman of the Home Affairs Select Committee, the Home Secretary and a Minister responsible for local government in England. To allow for the fact that there may be more than one Minister with responsibilities for local government, the draft Bill (clause 2(3)) provides for this appointment to be made by the Prime Minister. The other six members will be Members of the House of Commons appointed by the Speaker, none of whom will be a Minister (clause 2(4)).

There were reassurances in the consultation paper that expenditure would be contained, by requiring the Speaker's Committee to have regard to advice from the Treasury. The Election Commission's remit would extend to the whole of the UK, and therefore it was expected that it would establish 'a permanent presence' in Scotland, Wales and Northern Ireland (paras 2.34-5).

The Speaker's Committee also appears to have as a model the Committee established under the *Registration of Political Parties Act 1998*¹¹⁵ to arbitrate over competing claims to the registration of party names. This Committee does not have parliamentary privilege, and does not publish minutes of its meetings.

¹¹⁵ See Research Paper 98/62 *The Registration of Political Parties Bill* for background

The future role of the Chief Electoral Officer for Northern Ireland is not entirely clear. There is no suggestion that the post be abolished, but some of the functions may transfer to the new Commission.

7. Future Workload of the Commission

The Electoral Commission would appear to have a heavy workload in order to prepare for the next general election, due by 2002. Systems would need to be established to monitor national expenditure of political parties and of 'third party' pressure groups and others, to regulate the disclosure of donations over £5000, and to supervise the work of Acting Returning Officers in receiving local returns of election expenses. Potentially difficult territorial issues may well arise with the Scottish, Welsh and Northern Ireland administrations, although parliamentary electoral law remains reserved to Westminster under the devolution settlements.¹¹⁶ The immediate priorities will therefore lie elsewhere than in formulating best practice for electoral procedures and rules for the conduct of referendums. This may be a factor in delaying government plans for referendums on both electoral reform and the single European currency. The Commission's regulatory activities may postpone development of a civic education role, despite concern about the relatively low standing of parliamentary democracy and poor turnout in local elections.

¹¹⁶ for example, the Scottish Parliament is likely to review the possibility of a new electoral system for local authorities in Scotland, and this may prompt requests for an overhaul of parliamentary electoral law

Appendix 2 Turnout in local elections in the UK

Table 1

Turnout in local elections in the UK

	Local elections								
	London boroughs	Metropolitan boroughs	English counties	English districts		English unitaries	Wales (a) (d)	Scotland (e)	Northern Ireland districts
				All out	Thirds				
1973		33	43	40	39				
1974	36							51	
1975		33							
1976		38		45	44				
1977			42					45	
1978	43	37			42			48	
1979 ^(c)		48		72	74				
1980		36			39			46	
1981			44						66
1982	44	39			42			43	
1983		42		45	46				
1984		40			40			44	
1985			42						60
1986	45	40			42			46	
1987		45		49	51				
1988		40			42			46	
1989			39				44	44	58
1990	48	46			49			46	
1991		41		48	46		53	53	
1992		33			38			41	
1993			37				39	39	56
1994	46	39			43			45	
1995		34		42	39		49	45	
1996		31			37	35			
1997 ^(c)			73	(b)		70			
1998	35	25			31	28			
1999		26		37	32	32		58	

Notes: (a) reliable estimates for Welsh authorities are not available before 1989

(b) There was one district council with all-out elections. These were for the shadow council of the reorganised Malvern Hills. The average turnout in contested wards was around 79.7%.

(c) A General Election was held on the same day as the local elections

(d) County elections in 1989 and 1993, district elections in 1991 and unitary authority elections from 1995

(e) Elections for regions and districts in 1973, regions in 1977, 1982, 1986, 1990 & 1994 and for districts in 1978, 1980, 1984, 1988 and 1992. From 1995 figures are for unitary authorities

Sources: *Local Elections in Britain, Rallings and Thrasher, Ch.4 Turnout in local elections*

Local Elections Handbooks, Rallings and Thrasher

Northern Ireland: Local Government Election Results: 1993, Gordon Lucy

Local Government Chronicle 6 August 1999, p.14

Scottish Local Government Information Unit