
RESEARCH PAPER: MANNER OF VOTING AT UK ELECTIONS

The law stated in this research paper may be in parts out of date. This paper is made available online for the benefit of those who are interested in fuller exposition of electoral law than is contained in our Consultation Paper.¹ Our definitive statement of the law is contained in that paper, however, and readers should beware that the law and citations in this paper may not be fully up to date, as our work researching electoral law commenced in 2012.

- 1.1 This research paper considers two aspects of electoral law concerning how electors vote at UK elections. The first part is concerned with in-person voting by secret ballot, and ballot paper design in general. The second part is concerned with the recently expanded methods of voting without attending at a polling station, that is, by post or through an intermediary known as a proxy.

BALLOT PAPERS AND THE SECRET BALLOT

- 1.2 The classical method of voting is in person and by secret ballot. This research paper considers in detail what the ballot means in the UK, and analyses the classical conception of the secret ballot, dating back to 1872. This is an area where the law's prescription is comprehensive, meaning that the legal material is detailed and voluminous.

Voting by ballot

- 1.3 Every set of election rules requires that votes be given by ballot, and furthermore that the ballot shall consist of a ballot paper. This classical provision dates back to the radical change in voting method brought about by the Ballot Act 1872. Whatever the etymology of the word ballot, it must be understood as a method of voting that is private and secret, in contradistinction to its predecessor – the public show of hands.
- 1.4 The ballot system is fundamental to UK elections. There is no other way of voting for public office. It is interesting to note that the UK Parliamentary election rule that requires a ballot also states that the candidate to whom the majority of votes are given is to be declared elected.² This single rule thus sets out both the voting system (first past the post) and the means of conducting a poll (the secret ballot). Incidentally, there is an equivalent election rule for principal area³ and parish and community council elections in England and Wales, which is in secondary legislation.⁴ Elsewhere, the voting system is laid down in primary legislation, in

¹ Electoral Law: A Joint Consultation Paper (9 December 2014)

² Representation of the People Act 1983, sch 1 r 18.

³ A principal area in England is a non-metropolitan county, a district or a London borough; in Wales, a county or county borough. Local Government Act 1972, ss 20 and 270.

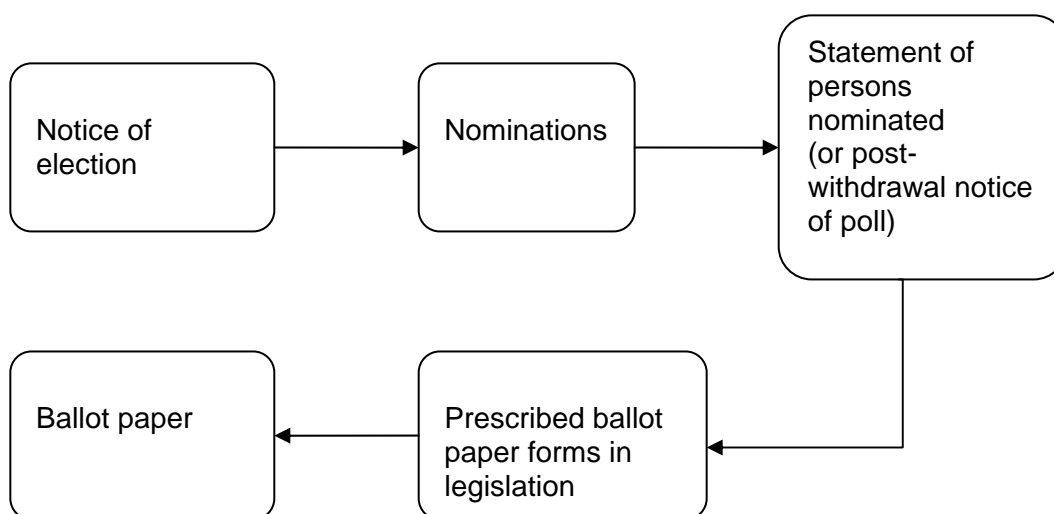
⁴ Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 15; Local Elections (Parishes and Communities) (England and Wales) Rules 2006 SI 2006 No 3305, sch 2 r 15.

line with the importance of that provision, but not the requirement of a secret ballot.⁵ Nonetheless, no election in the UK is conducted otherwise than by secret ballot.

Ballot paper content

- 1.5 The first issue we consider is the content of the ballot paper. As we noted elsewhere, the law systematically guides administrators from the nominations process to the content of the ballot paper. As for the general form and content of ballot papers, the law prescribes these in detail in election rules. The diagram below illustrates the picture generally for all UK elections.

Diagram 1: Key steps in ballot paper content



- 1.6 This approach guides the returning officer from one procedural step to the next. It is a highly formalistic process, with some divergence in the rules governing specific elections.

Contest-specific ballot paper content

Candidate name and details

- 1.7 Nomination concerns the transition from being an aspiring candidate to an entitlement to appear on the ballot paper. That process starts soon after notice of election is given. The rules require that validly nominated candidates and their

⁵ No primary legislation is required to change the voting system or method of voting for local government elections in England and Wales. The same applies to local government elections in Northern Ireland, where the voting system is found in the Electoral Law Act (Northern Ireland) 1962, sch 5 part 4. As an Act of the Northern Ireland Parliament, now defunct, that measure has the status of secondary legislation. In relation to the voting system at other elections, primary legislation specifies the voting system: European Parliamentary Elections Act 2002, ss 2 and 3; Greater London Authority Act 1999, s 4; Local Government Act 2000, s 9HC; Scotland Act 1998, s 1; Local Governance (Scotland) Act 2004 asp 9, s 2; Government of Wales Act 2006, s 6; Northern Ireland Act 1998, s 34; Police and Social Responsibility Act 2011, s 57.

details appear in a statement of persons standing nominated. This statement finally dictates which candidates appear on the ballot paper⁶

Order of names

- 1.8 The statement of persons standing nominated must set out the candidates' names in alphabetical order. The rules then state that the order in which the candidates' names will appear on the ballot paper is to be the same as in the statement of persons standing nominated. For Scottish local government elections, the rules simply state that the names on the ballot paper should appear alphabetically.
- 1.9 Where candidates are individuals, that order is alphabetical by surname. Where a commonly used surname is used, that must take precedence when determining alphabetical order. Where two candidates have identical surnames, the rules provide for alphabetical ordering by first name. At some elections, if these details are identical and both candidates use a home address form which would have the effect of the same information appearing on the ballot paper, the returning officer is empowered to amend or add to the particulars on the statement (and thus ballot paper) as they think appropriate in order to reduce the likelihood of confusion. It is not clear how that speaks to the order in which such candidates may appear on the ballot paper.⁷
- 1.10 Where an election uses a list system, the order is determined alphabetically by party name or description, followed by the surnames of any independent candidates alphabetically.

Emblems

- 1.11 One aspect of the content of the ballot paper which is not dealt with by the rules on nominations relates to the use of a party's registered emblem. These can be included on a ballot paper if an authorised party candidate so requests.

REGISTRATION OF EMBLEMS

- 1.12 Section 29 of the Political Parties, Elections and Referendums Act 2000 allows parties to request the registration of up to three emblems. The Electoral Commission registers the emblem unless in its opinion it:
 - (1) is similar to an emblem already registered;
 - (2) is obscene, offensive or such that its publication would likely be an offence;
 - (3) is likely to mislead an elector as to the effect of their vote or to contradict or hinder the understanding of any directions on voting given on the

⁶ Scottish local government elections dispense with the notion of a statement of persons nominated.

⁷ Representation of the People Act 1983 sch 1 r 14(4A); applied by Scottish Local Government Elections Order 2011 SI 2001 No 399, sch 1; Police and Crime Commissioners Elections Order 2012 SI 2012 No 1917 sch 1 r 13(8).

ballot paper or elsewhere; or

- (4) contains a prohibited word or expression.⁸

REQUESTS TO EMANATE FROM THE CANDIDATE

- 1.13 The responsibility for requesting the use of an emblem on the ballot paper in general rests with the candidate. That candidate must be authorised by the party's nominating officer to use the relevant emblem. At elections where the candidate is an individual, such as those using the first past the post voting system, they must make a request in writing to use a party emblem during the period for delivery of nomination papers.⁹ The same applies for constituency and mayoral candidates at Greater London Authority elections and constituency candidates at Scottish Parliamentary elections, who stand as individual members.¹⁰ Virtually identical provision is made for Police and Crime Commissioner elections, save that a request may also be made "on behalf" of a candidate.¹¹ It is not clear whether this wording extends to a party nominating officer.
- 1.14 Elections involving a party list are different. Where an individual is standing for the party list election, they are necessarily unaffiliated to a political party. Where the party is standing it is the party who is the candidate for election, and it is the party's nominating officer who may request the use of an emblem. This is specified in the election rules for European Parliamentary elections, for regional candidates at Scottish Parliamentary elections and elections to the National Assembly for Wales, and for elections of London Members of the Greater London Authority.¹²

⁸ The rather complex wording of some of these phrases was introduced by later amendment in order to defeat parties registering the description "Place your X here" and so on.

⁹ Representation of the People Act 1983, sch 1 rr 6A(1) and 19(2A) and (2B). Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 16; Local Elections (Parishes and Communities) (England and Wales) Rules 2006 SI 2006 No 3305, sch 2 r 16; Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, sch 1 r 18; Scottish Local Government Elections Order 2011 SSI 2011 No 399;

¹⁰ Greater London Authority Elections Rules 2007 SI 2007 No 3541, sch 1 r 17 and sch 3 r 17; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 27.

¹¹ Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 3 r 19.

¹² European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 22; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 28; National Assembly for Wales (Representation of the People) Order 2007, sch 5 r 25; Greater London Authority Elections Rules 2007 SI 2007 No 3541, sch 2 r 18.

EXCEPTIONS TO GENERAL RULE

- 1.15 The general rule is therefore that it is for the candidate to request an emblem. However, certain elections depart from this general rule. With the exception of elections to the UK Parliament, in Northern Ireland it is the party's nominating officer who must make the request for a candidate to use the emblem, even though no election takes place under a party list. In elections to the Northern Ireland Assembly rule 18 of the Parliamentary Election Rules is modified to place the responsibility for making the request on the party's nominating officer. The same applies to European Parliamentary elections in Northern Ireland and local elections in Northern Ireland. Curiously, for constituency candidates to the National Assembly for Wales, a request for an emblem must also emanate from the party nominating officer. This contrasts with other elections using the additional member voting system (elections to the GLA and Scottish Parliament), where the request must emanate from the constituency candidate who is standing, not the party. It is not clear whether a different policy has been pursued in Northern Ireland. As for National Assembly for Wales elections, the departure from the general rule seems to be an accident of drafting.

JOINT PARTY CANDIDATES' USE OF EMBLEM

- 1.16 Such divergence across elections which are materially identical is an inevitable by-product of the current election-specific approach to legislating for elections. Furthermore, the fact that party emblems are covered by election rules separately from the use of party descriptions in nomination papers has caused some well known problems. The Electoral Administration Act 2006 enabled the adoption of a candidate by two political parties. It did so by amending rule 6A of the Parliamentary Election Rules (on party descriptions in nomination papers), which is scheduled to the 1983 Act. It did not, however, also amend rule 19 to enable such a joint party candidate to use one of those parties' emblems. While the rules for other elections, which are contained in secondary legislation, could be amended by order, the solution for Parliamentary elections had to await an opportunity to pass primary legislation in the form of the Electoral Registration and Administration Act 2013.¹³

USE OF EMBLEM TO BE A MATTER OF PARTY AFFILIATION

- 1.17 The separate treatment of party description and party emblems is also questionable as a matter of principle. The current law requires a request to use a party emblem to be made by the deadline for nominations.

¹³ Representation of the People Act 1983, sch 1 rr 6A and 19; Electoral Registration and Administration Act 2013, s 20(2).

General form and content of ballot papers

- 1.18 The foregoing rules, and those governing nominations, are concerned with crystallising the content of the ballot paper specific to the particular election. Other rules, which we presently turn to, are concerned with the general form and content of ballot papers at all elections. The central aim behind these rules is to bolster the effectiveness of the secret ballot as the mechanism for voting since 1872. To that we can fairly add the further aims of clarity of voter-facing material and neutral presentation of rival candidacies.

Detailed prescription in election rules

- 1.19 After requiring the poll to be by ballot, the election rules go on to state that every ballot shall consist of a ballot paper. A prescribed form is appended to each set of election rules, determining the contents of the front and back of the paper. Detailed direction is given on printing the ballot paper, covering subjects such as instructions for voters, page layout, and the font and size of the text. For UK Parliamentary elections, where the election rules can normally only be amended by primary legislation, the Secretary of State is empowered by regulations to change the prescribed form of ballot paper, directions on printing it and consequent amendments as to guidance to voters. The table at appendix A outlines the relevant election rule and prescribed ballot paper form for each election.

Discretion to arrange ballot paper into separate columns

- 1.20 In one respect the legal direction is permissive. For UK Parliamentary elections, local government elections in England and Wales, elections in Northern Ireland for the European Parliament, Northern Ireland Assembly and local government, elections to the National Assembly for Wales, Greater London Authority elections and elections to local government in Scotland, returning officers may at their discretion arrange the ballot paper in more than one column, effectively splitting the paper into two or more sets of candidates' entries.¹⁴

¹⁴ Representation of the People Act 1983, appendix to sch 1, para 2B; Local Elections (Principal Areas) Rules 2006 SI 2006 No 3304, sch 2 pt 7; Local Elections (Parishes and Communities) Rules 2006 SI 2006 No 3305, sch 2 pt 7; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 1 pt 8 form A; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Electoral Law Act (Northern Ireland) 1962, appendix to sch 5, para 4; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 10 forms CK1 and CL1; Scottish Local Government Elections Order 2011, sch 1 pt 7 form 5; Greater London Authority Elections Rules 2007 SI 2007 No 3541, sch 10 forms 5, 6 and 7.

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- 1.21 Presumably this discretion is to be used to avoid unduly long ballot papers, although it appears to be unfettered and there is no upper limit to how many columns can be used. If the discretion is to be retained, there is an argument that it should only be used if the returning officer faces an inordinately long list of candidates. Only in such a case should the officer depart from the prescribed form. The draft Representation of the People (Ballot Paper) Regulations 2013 sets out a new prescribed form of ballot paper which omits numbering from UK Parliamentary ballot papers, while the directions on printing the ballot paper do not grant the returning officer power to rearrange it into columns. It may be that the policy is to abolish this discretion entirely. At the time of writing these Regulations are still in draft form.

Criticisms of prescriptive approach to ballot papers

- 1.22 There has been some concern about the degree of detail in the law governing ballot papers, with some calling for greater flexibility in form design which can better serve voters' best interests. Under this permissive model, legislation should prescribe key information to be included in the ballot paper while the standard design could be specified by a lead body such as the Greater London Returning Officer, the Electoral Management Board for Scotland or, as was the case in the May 2011 referendum, the Electoral Commission.¹⁵ The Electoral Commission has commented on optimal ballot paper design in the past, emphasizing the focus on the voter. Its "general design principles" are set out in appendix B.¹⁶
- 1.23 Another school of thought favours a prescriptive approach. It emphasizes the benefit of having the design of ballot papers prescribed in legislation in advance of the election. This supplies a degree of certainty which benefits administrators for pragmatic reasons. Those who favour this approach do not necessarily oppose the review and improvement of current standard forms, but consider that final designs of ballot papers should continue to be set out in legislation.
- 1.24 There is a balance to be struck between certainty and flexibility. To a significant extent different political cultures will settle on the flexible or the prescriptive approach. The flexible approach is perhaps more suitable to a centralised framework for administering elections. Such a framework does not exist across the United Kingdom, and to introduce it would be outside the scope of the reform project.

¹⁵ Electoral Commission response to Scoping Consultation Paper on Electoral Law in the United Kingdom, p 12.

¹⁶ General Design Principles. Principles concerning style and format of forms as outlined in Electoral Commission, *Making Your Mark* (2009), pp 8 to 17.

1.25 Might the flexible approach nevertheless work with our current administrative framework? There are asymmetric administrative arrangements in different jurisdictions of the UK. In England and Wales, there is a two tier hierarchy for some elections (Greater London Authority, European Parliamentary and PCC elections). The Electoral Management Board for Scotland is similarly an oversight management tier at Scottish Parliamentary and local government elections. The Chief Electoral Officer for Northern Ireland is a central administrator for elections in Northern Ireland, as is the Electoral Commission for national referendums (including according to past practice combined referendums and elections). If the flexible approach were adopted for UK elections:

- (1) different executive bodies would have design functions for the ballot papers for their respective elections; and
- (2) for some elections in England and Wales the design functions would remain with the Secretary of State, or would be given to a new executive body for those elections.

1.26 Against this institutional background, the flexible approach risks inconsistent implementation across the UK. The prescriptive approach ought in principle to ensure greater consistency. This does not prevent the use of modern design principles and user-testing. Legislative authority, including prescribing ballot papers, is vested in the UK or Scottish Parliaments depending on the devolution settlement. Whether consistent, user-tested and effective ballot paper design happens in practice thus depends on pre-legislative processes adopted by the executives. Recent developments suggest these processes are improving.

The UK Government review of voter-facing forms

1.27 The UK Government is currently undertaking a review of statutory voter-facing forms including ballot papers. The review encompasses UK Parliamentary elections, local government elections (principal areas and parish and communities) and European Parliamentary elections.

1.28 This reflects a new approach to producing forms and notices applied in the Police and Crime Commissioner elections in November 2012, after calls from electoral stakeholders for improvements to the current statutory material. We understand that Government has engaged professional designers and employed public user-testing (which included testing of bilingual material in a session held in Wales). It has consulted informally with key electoral stakeholders, and formally with the Electoral Commission.¹⁷ The draft Representation of the People (Ballot Paper) Regulations 2013 noted above set out a new prescribed form of ballot paper which reflects this new approach.

¹⁷ Under section 7(1) of the Political Parties Elections and Referendums Act 2000 the Electoral Commission must be consulted before making regulations under the 1983 Act subject to the delegated legislation provision in section 201(2) of that Act. The duty to consult applies to all the main elections in the UK, apart from the “special” category elections in Scotland.

Pilot schemes

- 1.29 This new approach may be seen as part of a wider policy to employ user testing before making changes to electoral processes. A power to test new processes is included in section 10 of the Representation of the People Act 2000, which enables local authorities to submit proposals to the Secretary of State to run pilot schemes at local elections in England and Wales. Where these are approved the Secretary of State is empowered to make provision for their implementation, including by modifying or disapplying any enactment which would otherwise apply to the election in question. This power applies generally to schemes which make different provision for:
- (1) when, where and how voting is to take place;
 - (2) how the votes cast at elections are to be counted; and
 - (3) the sending by candidates of election communications free of postage;
- 1.30 Within these areas the section specifically states that pilots may be set up to test voting at places other than polling stations and on more than one day, and for postal charges incurred in respect of the sending of candidates' election addresses by the local authority.
- 1.31 Pilots held at the May 2007 local elections tested advance voting, electronic voting over the internet and using touch telephones (which allow users to vote by pressing numbers on a telephone keypad), and electronic counting methods.¹⁸ Voting over the internet and using touch telephones obviously has an impact on our consideration of ballot paper design, as no ballot paper is used.
- 1.32 Sections 32 to 34 of the 2006 Act empower the Secretary of State to order in respect of specified local elections in England and Wales pilot trials of the inclusion of photographs of candidates on ballot papers.

The secret ballot and numbered ballot papers

- 1.33 A universal feature of the rules governing ballot papers is that they must have a number and unique identifying mark printed on the back. This provision is central to the ballot system designed in 1872. It is repeated in every election-specific rule governing the ballot paper. It requires detailed consideration.
- 1.34 Electoral law seeks to strike a balance between access to the poll and safeguarding security at the poll. As we have already mentioned, on polling day a person's entitlement to vote is predicated on their name appearing on the register of voters allocated to the polling station at which they present themselves. In Great Britain there is no identification requirement beyond answering prescribed questions. This is balanced by a vote tracing procedure which, in order to safeguard the secrecy of the poll, can only be unlocked by the courts.¹⁹ This

¹⁸ http://www.electoralcommission.org.uk/elections/modernising_elections/May2007? (last accessed 30 July 2013).

¹⁹ At UK Parliamentary elections the House of Commons also has a power to unlock the secrecy of the vote; this is discussed below at para {1.62}.

procedure turns on numbered ballot papers and the polling day process of maintaining a corresponding number list.

The Ballot Act 1872 system

- 1.35 When Parliament introduced the ballot system in 1872, a key ingredient was that the vote would be secret.²⁰ The point of moving from a show of hands to inserting a marked paper into a safe box was to keep the elector's choice secret from those who witnessed polling and the count. This would hamper the effectiveness of corruption and intimidation by making it impossible to verify how the target voted. It would be a blow to corruption of the vote no matter how subtle.²¹ At the same time, sensitive questions such as the identity of voters presenting themselves at the station were deferred to a subsequent judicial challenge mechanism.
- 1.36 This system underpins electoral administration law today. Prescribed questions can be asked and a voter who is suspected of personation may be arrested – but if they satisfactorily answer the questions, they must be allowed to cast a vote. Furthermore, this vote must be counted by the returning officer and can only be discounted by an election court. Those who seek to vote as an elector in respect of whom a ballot paper has already been issued may only cast a “tendered” vote. Such a vote cannot be counted by the returning officer, but can be counted by an election court if it concludes that the prior vote was cast by an impersonator. It is for the election court to make qualitative judgements about the right to vote and the identity of the voter. It can correct the result of an election after a “scrutiny” of the poll. Returning officers and presiding officers, on the other hand, are confined to checking that the voter appears on the list of voters derived from the register.

Absolute and qualified secrecy

- 1.37 We will examine the petitions process and scrutiny jurisdiction in detail when considering the law on legal challenge. However, the election court's role is the key to understanding the vote tracing mechanism which has been in place since 1872. The underlying principle is that the ballot must be secret at polling and the count, and generally thereafter. That secrecy is subject to the safeguard that the way that an elector has voted is capable of being ascertained in order for the election court to fulfil its scrutiny jurisdiction and correct the result of the election.
- 1.38 An alternative approach is for voting to be absolutely secret. In such a case

²⁰ The secret ballot is sometimes described as the “Australian Ballot”, and before the Ballot Act 1872 was passed there was debate, among other things, about which Australian state's model should be adopted. Absolute secrecy was the position in South Australia, Queensland and Tasmania, while secrecy was qualified in Victoria by a vote tracing mechanism sometimes described as the “cheque book ballot”. The latter approach was taken in the 1872 Act, but only after amendment in the House of Lords. For an account of the passing of the Ballot Act 1872 see C O’Leary, *The Elimination of Corrupt Practices in British Elections 1868 – 1911* (1962) Chapter 3, particularly pp 82 to 86. Debates concerning House of Lords amendments and secrecy in general can be found in Hansard HC Deb 12 July 1872 vol 212 at pp 1045 to 1048, available online at <http://hansard.millbanksystems.com/commons/1872/jul/12/consideration-of-lords-reasons> (last accessed 9 July 2013).

²¹ H F Rawlings, *Law and the Electoral Process* (1988) at p 136.

courts could only correct counting errors by the returning officer. They could not investigate the validity of a ballot paper at a scrutiny by reference to the elector who cast it nor correct the count in consequence. If impersonation or some other disqualification of electors were made out, the court could only declare the poll void and call a new election, or uphold the election. In case of an initially successful attempt at corrupting a poll, restricting the court's remedial options to invalidating the poll means that, at worst, corruption when proved results in a new poll – which might be seen as a second bite at the cherry for corrupt participants.

The functional approach to secrecy

- 1.39 The classical secret ballot in place since 1872 thus had a concept of secrecy that was entirely functional: it was introduced to prevent fraud rather than to protect any right of a voter to keep their voting habits a secret. The decision to qualify secrecy by a judicial mechanism to unlock it dates back to the balance struck between security of outcomes and secrecy of the ballot. Some criticism might be made of that particular approach based on functional grounds. Thus as regards the secret ballot, an Australian commentator has noted the unique feature – and corresponding danger – of the position in the UK.

To ensure that the ballot is secret, ballot papers should ideally bear no markings that distinguish one from another. This is not the case, oddly enough, in the United Kingdom; UK ballot papers bear a unique serial number, and if a court finds after an election that one of the voters was not entitled to vote, his or her ballot paper may be extracted from the count. A number of Commonwealth countries have based their systems on the British approach, and while breaches of the secrecy of the ballot have been rare (though not unknown), the effect of using numbered ballot papers on the perceived secrecy of the ballot is probably a greater problem than actual breaches.²²

- 1.40 Any public loss of confidence in the secrecy of their vote will hinder the efficacy of the ballot; the secret ballot will function less well to isolate the voter from external pressure if the voter thinks someone might trace the ballot paper back to them. It is thus possible to argue for or against absolute secrecy based purely on functional electoral considerations. The argument is about making the ballot system work best.

A rights-based approach to secrecy

- 1.41 The functional objection considers secrecy to be the tool for achieving free and fair elections. A distinct objection to qualified secrecy is based on a fundamental right to secrecy of the vote. The rights-based approach holds that every voter is entitled to an absolutely secret vote, there being no possibility to trace that vote back to him, by judicial means or otherwise.

THE EXAMPLE OF THE REPUBLIC OF IRELAND

²² M Maley of the Australian Electoral Commission in R Rose (ed), *International Encyclopedia of Elections* (2000), p 12.

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- 1.42 The rights-based approach is ordinarily based on a fundamental norm. One of the jurisdictions which inherited the UK vote tracing mechanism was the Republic of Ireland. The Electoral Acts 1923 and 1963 retained the counterfoil system in use by the Ballot Act 1872. Irish law was materially identical to UK Parliamentary election law. A significant difference, however, is that article 16 of the Irish Constitution states that “voting shall be by secret ballot”.
- 1.43 Qualified secrecy had been in use long before the election rules were challenged as unconstitutional. By a bare majority, the Supreme Court of Ireland in *McMahon v The Attorney General* [1972] IR 69 upheld the challenge. The majority, led by Ó'Dálaigh CJ, used a rights-based approach to interpret “secret ballot” to mean absolutely secret.

The pattern of the Act of 1872 was accepted uncritically in 1923. The framers of the Act of 1872 had consciously rejected a system of absolute secrecy for one of limited secrecy. Limited secrecy is not secrecy: it is something less than secrecy...

[T]he constitution speaks of voting by secret ballot. The fundamental question is: secret to whom? In my opinion there can be only one plain and logical answer to that question. The answer is: secret to the voter... In my opinion the Constitution therefore requires that nothing shall be done which would make it possible to violate that secrecy...

to my mind, the conclusion is inevitable that any contrivance or method by which the ballot can be identified and the voter exposed is unauthorised, and no legislative enactment can give it the force of law, under our constitution, be the same for the purpose of contest in a court of justice or for any other purpose²³

- 1.44 The majority's reasoning turned on its interpretation of the constitutional protection of the secret ballot. It affirmed the first instance judgment of Pringle J, whose reasoning was more functional. He doubted that absolute secrecy would undermine the prosecution of impersonators, and decided that the scrutiny jurisdiction of the courts was expendable. In a close election where impersonation affected the outcome, the court would be constrained to declaring the election invalid and ordering a new poll. Pringle J considered that remedy both adequate and consistent with absolute secrecy:

the point is that, in order to preserve the purity of an election, it does not appear to me to be essential that there should be a disclosure of

²³ *McMahon v The Attorney General* [1972] IR 69 at pp 104, 105 and 108. A point which Ó'Dálaigh CJ stressed was that it was not only the “spurious” voter whose vote could be discovered, but also a bona fide (but objectively disqualified) voter. This stresses that the right to secrecy for him belonged to such an individual even if they weren't entitled to a vote: in other words, his was a personal rights analysis of secrecy. By contrast to the Irish jurisprudence, the Bahamian ballot, based on the classical UK approach, was upheld in *Ingraham and Others v McEwan* (2002) 65 WIR 1 (Court of Appeal of the Bahamas), refuting any personal right to secrecy of the vote.

the manner in which any particular elector voted.²⁴

- 1.45 The minority in the Supreme Court of Ireland considered that that losing the scrutiny jurisdiction was not a price worth paying to attain absolute secrecy. The machinery in the 1923 Act (and implicitly, the Ballot Act 1872), in FitzGerald J's view, worked satisfactorily. It was designed, in McLoughlin J's words, "to ensure, as far as is practically possible, a true return of members ... in accordance with the choice of qualified electors expressed secretly". Absolute secrecy protected not only valid votes but also invalid and spurious votes. The history of the ballot system indicated that the mischief which it was designed to abolish was bribery and intimidation of voters under an open voting system. Putting a marked paper in a "safe" box – the ballot box – made voting secret as opposed to open and thus diminished opportunities for successful bribery and intimidation; voters were free to express their own will when voting. Secrecy was the immediate, not the whole, object of the system. It was a means of securing the "free and untrammelled expression of the popular will". Purity of elections was the ultimate aim. For McLoughlin J the 1923 Election Act's regulations:

hold a correct balance between the individual's right to secrecy and the public interest that the purity and integrity of elections shall be maintained untainted by corruption or by fraudulent, spurious or unqualified votes.²⁵

- 1.46 The Republic of Ireland, having inherited the UK system, decided that the constitutional requirement that voting be by secret ballot must mean absolute secrecy. Since that decision, as McLoughlin J recognised, affected the balance between secrecy of the individual's choice and the integrity of the poll, contemporary Irish electoral law has had to address that balance by bolstering safeguards against fraud elsewhere. In particular:

- (1) The presiding clerk, in addition to asking prescribed questions may also require the elector to take an oath to affirm his identity, and furthermore may ask that the voter produce a "specified document". If the returning officer or presiding officer is not satisfied that the person is the person to whom the document relates, that person will not be permitted to vote.²⁶
- (2) Where a ballot paper has already been issued to an elector and someone subsequently applies for a ballot paper in the same name, the latter must produce the "specified document" of identification, and must either answer the prescribed questions or take an oath or affirmation, in order to vote. That person is then entitled to receive a ballot paper and place it in the ballot box in the same way as any other elector. Since there is no mechanism for tracking either voter's ballot paper and

²⁴ *McMahon v The Attorney General* [1972] IR 69 at 87 to 89.

²⁵ *McMahon v The Attorney General* [1972] IR 69 at 119 to 122. The earlier quote was by McLoughlin J of Brown J in the American case of *Elwell v Comstock* 99 Minn. 261; 109 NW 113, at p 700.

removing the invalid vote, there is no “tendered” vote, and both votes count equally.²⁷

The operation of the secret ballot in the UK

- 1.47 The original mechanism for judicially sanctioned tracing of ballot paper to voter was the “counterfoil” to the ballot paper, on which was marked the elector’s number and the serial number of the ballot paper. The counterfoils would be stored and could be used to match an elector with their ballot paper. An elector who was in fact an impersonator or otherwise not qualified to vote could have the vote they cast discounted and a valid elector who cast a tendered vote could have that vote counted. The count could be corrected, and potentially the result changed without a further poll.
- 1.48 The counterfoils were replaced with corresponding number lists by the Electoral Administration Act 2006. Ballot papers are required to have a number, a unique identifying mark,²⁸ and an “official mark”. The corresponding number list prepared by the returning officer must contain the numbers and unique identifying marks of all ballot papers.²⁹ When a ballot paper is issued, the voter’s electoral number is recorded by polling clerks beside the ballot paper number on the corresponding number list. While it was intended that voters would also sign the list, the power to require this has not been brought into effect.³⁰

Storage and destruction

- 1.49 The key to unlocking secrecy is the corresponding number list. By possessing it one can link a particular ballot paper (requiring access to ballot paper packets) to an elector (requiring access to the register). Once a poll has closed, the ballot box or boxes, tendered votes and the corresponding number lists are sealed in separate packets by the presiding clerk, with polling agents also able to fix their own seals.³¹ The ballot boxes are opened for the count and thereafter re-sealed, but the corresponding number list and tendered vote packets must not be opened.³² After the count the returning officer forwards the packets of ballot papers (including tendered votes) and corresponding number lists to the

²⁶ Electoral Act 1992, s 111. The specified documents include passport or driving licence, among other photographic and non-photographic identification such as credit cards or chequebooks showing address.

²⁷ Electoral Act 1992, s 104. The powers of an election court under s 132(7) extend to declaring the correct result or, if unable to determine the correct result, declare the election or a part of it void.

²⁸ Such as a barcode, a mixture of letters and numbers or even a repeat of the ballot paper number with the addition of a prefix or suffix.

²⁹ Representation of the People Act 1983, sch 1 rr 19A and 20. The references here are to the Parliamentary Election Rules, but the operation of the corresponding number list is uniform across all elections.

³⁰ Electoral Administration Act 2006, s 75; Electoral Administration Act 2006 (Commencement No. 2, Transitional and Savings Provisions) Order 2006 SI 2006 No 3412, sch 1 para 12(d).

³¹ Representation of the People Act 1983, sch 1 r 43(1).

³² Representation of the People Act 1983, sch 1 r 54,

registration officer for the area, who must retain them for a year unless otherwise directed by order of the House of Commons or the High Court.³³ No further regulation exists relating to the conditions of such retention or its security, but given the context it ought to be plain that these must be stored securely.

1.50 As to the circumstances in which the sealed packets may be produced by the registration officer, rule 56 of the Parliamentary Election Rules provides as follows.

(1) An order –

(a) for the inspection or production of any rejected ballot papers in the custody of the relevant registration officer, or

(b) for the opening of a sealed packet of the completed corresponding number lists or ... the inspection of any counted ballot papers in his custody,

may be made –

(i) by the House of Commons; or

(ii) if satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition, by the High Court or a county court.

(2) An order for the opening of a sealed packet of the completed corresponding number lists or ... for the inspection of any counted ballot papers in the relevant registration officer's custody may be made by an election court.

(3) An order under this rule may be made subject to such conditions as to –

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

as the House of Commons or court making the order may think expedient; but in making and carrying into effect an order for the opening of a packet of the completed corresponding number lists or of... for the inspection of counted ballot papers, care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved—

³³ Representation of the People Act 1983 sch1 r 57(1).

(i) that his vote was given; and

(ii) that the vote has been declared by a competent court to be invalid.

(4) An appeal lies to the High Court from any order of a county court under this rule.

(5) Any power given under this rule –

(a) to the High Court or, except in Northern Ireland, to a county court, may be exercised by any judge of the court otherwise than in open court; and

(b) in Northern Ireland to a county court, may be exercised in such manner as may be provided by rules of court.

(8) Save as by this rule provided, no person shall be allowed to inspect any rejected or counted ballot papers in the possession of the relevant registration officer or to open any sealed packets of the completed corresponding number lists or of certificates.

1.51 There is an equivalent rule for all other elections, with one material difference. Only in respect of UK Parliamentary elections is the House of Commons empowered to make an order for the inspection of sealed packets. The House may also make directions concerning the retention of packets by registration officers. For all other elections only the courts can make such an order.

1.52 There is anecdotal evidence that some voters query why their electoral and ballot paper numbers are being recorded and may be concerned that the secrecy of their vote is being compromised. The Electoral Commission's guidance on frequently asked questions for the 2010 general elections included the following answer concerning the corresponding number list.

Q. Why do you need to write my elector number beside my ballot paper number? Does this mean my vote is not secret?

A. The requirement that the elector number is recorded on this list against the number of the ballot paper issued to you is included in the election rules. This system is essentially an updated version of a system that dates from the Ballot Act 1872, which was introduced to avoid the possibility of counterfeit ballot papers being used and to assist with the detection of alleged fraud. Clearly, if the ballot papers are numbered, it is far more difficult for an unscrupulous person to introduce copies of official ballot papers into the ballot box. If a fraudulent act has occurred, it would be possible to detect the offence by reference to the corresponding number list. There is a safeguard to prevent the ballot paper numbers on the corresponding number list being linked with the marked ballot papers. At the close of poll, the corresponding number list is placed in a sealed envelope by the Presiding Officer at the polling station. The sealed envelope is then taken to the (Acting) Returning Officer. After the count has taken

place, the used ballot papers are also sealed. The only occasion when the sealed packets can be opened is on the order of a judge as a result of an election petition or in furtherance of an investigation into an alleged election offence. Even then, it is very rare for the documents to be examined except in cases where fraud or personation (i.e. someone voting illegally on someone else's behalf) are being investigated. Because of the above safeguards, it is virtually impossible for any person to be in a position to marry up the voter to a particular ballot paper. For that reason, voters can be confident that the ballot remains secret. Voters have no grounds to fear that the way in which they voted could be detected, except under the very special circumstances outlined above.

1.53 This is rather a long answer for a poll clerk to give an elector. Perhaps because it is an anachronism, there is no reference to the House of Commons' power under rule 56. As previously noted, the perception that secrecy of the ballot is fallible may be the foremost concern. It is one that strikes at the heart of the 1872 ballot system. The secret ballot sought to eliminate outside influences from the polling process. It did so by freeing voters from any concern that the way they voted might be discovered. This system is undermined by any public misconception about when voter secrecy might be unlocked.

1.54 In practice, secrecy is very rarely unlocked by a judicial process. Where it is, the court will ensure that the process is confidential and for an elector's particular vote not to be made public. An example of an order states:

3.1 The Prescribed Officer do first inspect the above mentioned ballot papers and other materials in order to establish whether there is a valid declaration of identity corresponding to the ballot paper identified at paragraph 6 of the Petition and then;

3.2 The above-mentioned ballot papers and other materials be then and there inspected and the votes recorded therein be recounted;

all necessary precautions being taken to preserve the secrecy of the ballot at each stage.³⁴

THE ROLE OF THE HOUSE OF COMMONS

1.55 The justification for rules enabling voter secrecy to be unlocked is that they are a judicial safeguard against impersonation and fraud. However, the rule we set out above for UK Parliamentary elections appears to give the House of Commons a continuing role in that safeguard. Furthermore, according to rule 56(1) the House's jurisdiction to make orders for inspection is unconditional, whereas the courts' jurisdiction is premised on there being an election petition or criminal investigation.

³⁴ *Edgell v Glover* [2003] EWHC 2566 (QB), [2004] ACD 26 at [6]. This order was only partly executed. However, at any public trial, the nature of partisan dispute will mean that some voters will give evidence as to how they voted, making that information public even if they are not found to be unqualified to vote.

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- 1.56 This power might be a vestige of the House of Commons' historical jurisdiction to adjudicate on its own elections. However, that jurisdiction had been transferred to the judiciary in 1868, four years before the Ballot Act 1872. It may be that in 1872 the permanence of this transfer was not clear. There is evidence that the judiciary had only reluctantly accepted the role of adjudicating upon election petitions.³⁵ There is also evidence of contemporary support for special or Royal Commissions of inquiry into elections. These often uncovered extensive corruption in cases which the House of Commons' legalistic petitions process had not been able to penetrate. It had been a practice, where fraud was rife, for constituencies to lose the franchise as a penalty.³⁶ Perhaps it was thought that the House of Commons should retain some extrajudicial means of investigating fraud.
- 1.57 Whatever the contemporary explanation might be, we can find no evidence of the House of Commons using its jurisdiction to inspect sealed documents since 1872. Recourse was still had to Royal Commissions, often on the recommendation of the petition judges, but this is not the same as an exercise by the House of Commons of an inspection jurisdiction, which is necessarily a preliminary procedure.³⁷ The election court system established in 1868 was later seen as a great success, and no Royal Commission has been ordered in relation to an election since 1906.³⁸
- 1.58 In *McMahon v Attorney General*, Pringle J did not consider the Dáil's similar power to inspect sealed papers to be necessary to preserve security of the poll. The Dáil had no judicial powers and it was not clear, if its order was made conditional on precautions being taken to minimise intrusion into voter secrecy, how those conditions could be enforced. On appeal to the Supreme Court, the Attorney General conceded that "the judicial powers purported to be given to the Dáil" were unnecessary and unconstitutional.³⁹
- 1.59 Quite apart from principle, as a matter of drafting the rule may be redundant. An "order of the House of Commons", although not defined by the 1983 Act, is generally understood to signify, when a question is put to and agreed on by the

³⁵ For a concise historical account of election courts see *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [22] to [30].

³⁶ C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1961) pp 21 to 23, 28 to 31. and 39.

³⁷ C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1961) pp 132 to 158 (The Royal Commissions set up after the 1880 general elections were instrumental in the introduction of expense regulation in the Corrupt and Illegal Practices Act 1883)

³⁸ D Butler, "Elections, Litigation and Legislation" in D Butler, V Bogdanor and R Summers (Eds), *The Law, Politics and the Constitution: Essays in Honour of Geoffrey Marshall*, (1999) at p 173; C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1961) p 221. There is a marked contrast in the tone of Commons debates as to whether to delay the processing of a writ in 1880 and 1911: [Hansard, 17 June 1880, Vol 253 cc203-9](http://hansard.millbanksystems.com/commons/1880/jun/17/evesham-borough-writ#S3V0253P0_18800617_HOC_120) (http://hansard.millbanksystems.com/commons/1880/jun/17/evesham-borough-writ#S3V0253P0_18800617_HOC_120); [Hansard, 21 April 1911, Vol 24 cc1251-8](http://hansard.millbanksystems.com/commons/1911/apr/21/exeter-election-petition#S5CV0024P0_19110421_HOC_13) (http://hansard.millbanksystems.com/commons/1911/apr/21/exeter-election-petition#S5CV0024P0_19110421_HOC_13).

³⁹ *McMahon v Attorney General* [1972] IR 69 at p 89, 90 and 95.

House, a direction to (among other persons connected with the House) its officers. It is concerned with Parliamentary proceedings. The Acts of 1872 through to 1983 required sealed packets to be retained by the Clerk of the Crown in Chancery who, being an Officer of the House of Commons, is a proper recipient of an order of the House.⁴⁰ However, by amendment to the 1983 Act in 2006, the duty to retain sealed packets was transferred from the Clerk to local registration officers who are local government officials, not Officers of the House of Commons.

Safeguarding secrecy at polling

- 1.60 Given the existence of a mechanism by which a ballot paper can be judicially traced to a particular elector, the law imposes certain obligations to maintain voter secrecy. These are contained both in the main body of legislation and the election rules for each election.

General requirements of secrecy

- 1.61 Section 66 of the 1983 Act sets out the overarching “requirement of secrecy”, which applies to UK Parliamentary elections, local and mayoral elections in England and Wales and elections to the Greater London Assembly.⁴¹ The requirement is accompanied by prohibitions of the communication of various pieces of information. Any person who acts in contravention of the requirements of the section, set out below, is liable on summary conviction to a fine of £5,000 or imprisonment for a term not exceeding six months.⁴²
- 1.62 Election-specific legislation replicates this provision for other elections, with minor amendments and additions.⁴³ For elections to the Scottish Parliament and local government in Scotland, the maximum term of imprisonment for violating secrecy is three months.⁴⁴

AT THE POLLING STATION

⁴⁰ M Jack (ed) *Eskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, 2011) pp 119 and 424. Examples of other legislative references to an order of the House of Commons include Representation of the People Act 1983, s144(7) (as to giving effect to election court reports) and House of Commons Disqualifications Act 1975, s 6.

⁴¹ As well as applying to UK Parliamentary elections, local elections in England and Wales and elections to the Greater London Authority, this provision is applied to elections to the Northern Ireland Assembly by the Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 and to Mayoral elections in England and Wales by the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, reg 3.

⁴² Representation of the People Act 1983, s 66(6).

⁴³ European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 29; European Parliamentary Elections (Northern Ireland) 2004 SI 2004 No 1267, reg 30; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 35; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Electoral Law Act (Northern Ireland) 1962, sch 9 para 27 and s 111.

⁴⁴ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 31(7); Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 27.

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- 1.63 Section 66 of the 1983 Act lays down a general duty of those attending a polling station to “maintain and aid the secrecy of voting”. It also forbids them, unless authorised by law, from communicating before the poll is closed any information as to the name or number on the register of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station, or any information about the official mark.

AT THE COUNT

- 1.64 Those attending the count must not ascertain or attempt to ascertain the number or other unique identifying mark on the back of the ballot paper, or communicate information obtained at the counting of the votes as to the candidate for whom any vote is given on a particular ballot paper.⁴⁵

DURING THE POSTAL VOTING PROCESS

- 1.65 Those attending proceedings connected with the issue and receipt of ballot papers must not, unless authorised by law, communicate before the poll is closed any information as to the official mark. They must not at any time, unless authorised by law, communicate the number or unique identifying mark on the back of the ballot paper sent to any person, or attempt to ascertain this at the proceedings for receipt of ballot papers. They must also not attempt to ascertain at the proceedings for receipt of ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate the information they may have obtained in this respect.⁴⁶

DUTIES IMPOSED ON ALL

- 1.66 Section 66(3) also sets out general obligations regarding secrecy. These stipulate that no person shall interfere with a voter when recording his vote, or otherwise obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted. Further, no person shall communicate any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given to the voter at the station, or induce a voter to display his ballot paper after they have marked it so as to make known to any person the name of the candidate which has or has not been voted for.

ADDITIONAL OBLIGATION AT EUROPEAN ELECTIONS

- 1.67 For European Parliamentary elections, any person attending the verification of the ballot paper accounts is additionally prohibited from expressing an opinion based on information obtained during the verification of ballot papers as to the likely result of the election.⁴⁷ This is because such elections may take place over a four day period within EU member states. To avoid reporting results while polling is still taking place elsewhere in the EU, the count may take place a few

⁴⁵ Representation of the People Act 1983, s 66(2).

⁴⁶ Representation of the People Act 1983, s 66(4).

days after the UK poll, but verification will occur shortly after the poll.⁴⁸

- 1.68 Curiously, the same additional provision is made for Police and Crime Commissioner elections, despite there being no gap between verification and the count.⁴⁹ It is likely that the inclusion of this provision is a drafting error.

MODERNISING THE REQUIREMENT OF SECRECY

- 1.69 Section 66(3) of the 1983 Act prohibits communication by any person of information obtained in a polling station of how an elector voted. By contrast, communicating information obtained outside the polling station – such as in an exit poll – is not unlawful. The advent of modern communication methods, especially mobile telephones, and growing use of social networking websites, challenge the traditional notions underpinning this protection of the secret ballot. Using a mobile phone, a marked ballot paper may be photographed in a polling station, shown to another or posted online to a wide audience. This is a threat to the main reason for the secret ballot, the prevention of bribery or undue influence, as it enables the effect of any such practices to be corroborated directly, although it should be remembered that there is no prohibition on telling others how you yourself have voted.
- 1.70 Section 66 predates postal voting, so that there is also a disparity in the protection of secrecy between in person and postal votes. Section 66(3) only protects information obtained in a polling station. It does not appear to prevent a person communicating which candidate they or another voter has voted for if their ballot paper was marked outside a polling station, for example as a postal vote.

Further secrecy protection in election rules

- 1.71 Each set of election rules contains virtually identical provision on secrecy which

⁴⁷ European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 29(3); European Parliamentary Elections (Northern Ireland) 2004 SI 2004 No 1267, reg 30(3).

⁴⁸ Act concerning the election of representatives of the Assembly by direct universal suffrage, Official Journal L 278 of 08.10.1976, p 6, article 9(2).

⁴⁹ Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 22(4).

can be summarised as follows.⁵⁰

- (1) A voter cannot be required at election petition proceedings to disclose whom they voted for. This is not the clearest of provisions, but it probably means that if a voter is asked, they may decline to answer without any fear of the repercussion.
- (2) The returning officer must notify persons attending polling stations and the count as to the general requirements of secrecy under section 66 of the 1983 Act or equivalent.
- (3) Safeguarding secrecy is implicit in the procedure for polling and the count. Thus:
 - (a) The mark on the list of electors once a ballot paper is issued must not note the ballot paper number – that is for the corresponding number list only.
 - (b) Voters are required to mark their paper “secretly”.
 - (c) At verification and the count care must be taken that the number and unique identifying marks are not visible to those observing the count.

1.72 There is thus a great deal of focus in the general law and election rules on ensuring that secrecy of polling is maintained.

Qualified secrecy

1.73 Ballot papers are sequentially marked on their back, and that number is recorded along with the voter’s electoral number on the corresponding number list. This is central to the UK’s ballot system. Through this, a court can trace an elector’s particular ballot and correct the outcome of an election. Because of this, the secrecy of the poll is qualified and not absolute. Polling and counting rules seek to protect the voter from identification other than through the appropriate judicial

⁵⁰ Representation of the People Act 1983, sch 1 rr 21, 31, 37(1)(c), 37(5) and 45(4); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 rr 25, 34, 41(1)(c), 41(4), and 51; European Parliamentary Elections (Northern Ireland) 2004 SI 2004 No 1267, sch 1 rr 22, 32, 39(1)(c), 39(9), and 50; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 31, 40, 46(1)(c), 46(4) and 55(6); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 5 rr 30, 39, 46(1)(c), 46(4) and 55(11); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying the foregoing rules under the 1983 Act and inserting r 44B(6); Greater London Authority Election Rules 2007 SI 2007 No 3541, sch 1 rr 20, 31, 38(1)(c), 38(4) and 49(7), sch 2 rr 21, 32, 39(1)(c), 39(4) and 50(7), sch 3 rr 20, 31, 38(1)(c), 38(4) and 49(7); Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 rr 19, 28, 35(1)(c), 35(4) and 45(6); Local Elections (Parishes and Communities) (England and Wales) Rules 2006 SI 2006 No 3305, sch 2 rr 19, 28, 35(1)(c), 35(4) and 45(6); Local Authorities (Mayoral Elections) Regulations 2007 SI 2007 No 1024, sch 1 rr 21, 30, 37(1)(c), 37(4) and 47(7); Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 rr 17, 27, 33(1)(c), 33(4) and 43(4); Electoral Law (Northern Ireland) Act 1962, sch 5 rr 18, 28, 34(1)(d), 34(8) and 45(4); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 3 rr 22, 32, 39(2)(c), 39(5)(a) and 49(3).

process.

Is there a rights-based argument against qualified secrecy?

- 1.74 After the general election in 2005, the Organisation for Security and Co-operation in Europe (OSCE), whose mission had observed the election, recommended that the UK government consider abolishing vote tracing.

The current procedure that allows the possibility to trace a marked ballot to a particular voter may be contrary to the UK's OSCE commitment that elections should be held by secret ballot or by equivalent free voting procedure. It may also be contrary to suffrage provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. If greater safeguards are considered necessary, other procedures that do not risk compromising the secrecy of the ballot might be instituted. Ballots should remain secret even to members of a court during an investigation of electoral fraud.

In order to ensure the secrecy of each ballot under any circumstances, consideration should be given to abolishing the printing of serial numbers on the ballots and replace them with other safeguards for the integrity of the voting process, such as presenting an identification document in order to receive a ballot.⁵¹

- 1.75 This espouses the point of view that voter secrecy is absolute, so that even judges investigating electoral fraud should not be able to go behind it. In other words, it is a rights-based approach to voter secrecy, which views the vote as a personal right of the voter.
- 1.76 Unlike other jurisdictions, there is no written constitutional norm mentioning secrecy of the ballot in the UK. However, the OSCE referred to "suffrage provisions of the European Convention for the Protection of Human Rights" in making its recommendations. Article 3 of the First Protocol to the European Convention on Human Rights states:

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

- 1.77 Plainly the UK has agreed to hold elections by secret ballot. It is less clear whether this necessarily means an absolutely secret ballot, which is a matter of interpretation of article 3 of the First Protocol. As we outlined above, the Irish Supreme Court interpreted a constitutional requirement of a secret ballot to

⁵¹ Organisation for Security and Co-operation in Europe (Office for Democratic Institutions and Human Rights), *United Kingdom of Great Britain and Northern Ireland General Election 5 May 2005: OSCE/ODIHR Assessment Mission Report* (August 2005), pp 7 to 8.

require absolute secrecy. The question is whether a UK or Strasbourg court would do the same when interpreting the European Convention on Human Rights.

- 1.78 There is no case law directly on this question. This is unsurprising as it is likely that the United Kingdom is the only contracting state to the Convention which uses the 1872 qualified secrecy system, and it has never been subjected to challenge. However, the jurisprudence on article 3 of the First Protocol suggests its provisions should be considered in the context of constitutional system and political evolution of a State, so that what is a violation in one country may not be in another.⁵²
- 1.79 The political evolution of the UK has resulted in one orientation of its electoral system over another. The mere fact that secrecy is qualified does not, without more, breach article 3 of the First Protocol to the European Convention. We have outlined a vote tracing process, subject to secrecy safeguards in the 1983 Act (and equivalents) and election rules. Vote tracing is intended to be unlocked by judicial order only. In light of these balances, we do not think that the particular orientation of the UK system breaches human rights law. However, it is likely that there are strong human rights arguments for ensuring that both the law and practice are such that the risk of secrecy being breached is minimised.

QUALIFIED SECRECY AT EU PARLIAMENTARY ELECTIONS

- 1.80 A separate set of European Union norms governs elections to the European Parliament. A Council decision amends the Act concerning the election of representatives of the European Parliament so that Article 1(3) requires elections to be by direct universal suffrage and to be “free and secret”. However the preamble to the directive states:

Whereas ... the Act concerning the election of members of the European Parliament by direct universal suffrage should be amended to enable members to be elected ... in accordance with principles common to all Member States while leaving Member States free to apply their national provisions in respect of aspects not governed by this Decision.

- 1.81 It is unlikely, therefore, that secret elections should mean absolute secrecy, which prevails in other member states of the EU, and that the amendment was intended to affect the UK’s long established qualification of secrecy to enable judicial vote tracing.

Is there a functional argument against qualified secrecy?

- 1.82 If there is no fundamental right to absolute voter secrecy, the question remains whether the current system of qualified secrecy functions satisfactorily. If not, then a functional argument might be made for absolute secrecy. There are several functional arguments against qualified secrecy.

⁵² *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1 App No 9267/81 at [51] to [54].

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- 1.83 The first argument is that the vote tracing procedure might be seen as undermining the secrecy of the ballot without sufficiently deterring impersonation.⁵³ It is, however, difficult to assess the strength of this argument without knowing how much impersonation is deterred by the legal safeguards currently in place.
- 1.84 The second, closely related argument is to do with how often the mechanism for judicially unlocking secrecy is used. As we noted earlier, the reason for using numbered ballot papers and a corresponding number list is to retain the ability of the election court to correct the result of an election, by conducting a scrutiny.⁵⁴ There are some tangential arguments about helping to prosecute impersonators, but the court's ability qualitatively to correct the result – is the central remedial option which is only available if secrecy is qualified. However, the following observations can be made about the scrutiny. Both are imperfect at this stage in our review, and will be investigated further when considering the law on challenge.
- (1) Only a small fraction of elections are challenged, and certainly not all elections whose result appears to participants to be suspect are challenged.⁵⁵ If in principle the justification for vote-tracing is to deter and investigate impersonation, and to ensure true returns are made, it is relevant that its operation is not systematic, but instead depends on private actions being brought by those with sufficient funds to sustain them.
 - (2) Of election petitions tried, it appears that only in a small fraction is the vote tracing mechanism being used. We are currently working on a schedule of reported cases to present figures as to when (i) the numbering on a ballot paper was used to allocate papers to polling stations and (ii) when the further step was taken of reconciling numbering to electoral number (and thus voter), thereby unlocking secrecy. We hope that we will have some concrete figures to present when we review the law on challenge and scrutiny later in the work plan. However, it is likely to be a very small number of cases where secrecy was unlocked by a court. An early version of our schedule appears at appendix E.
- 1.85 The third argument is administrative. The operation of a corresponding number list is a serious administrative undertaking on polling day. The integrity of the election depends upon the correct ballot paper number being assigned to the correct electoral number. It is a process that must take place before a ballot paper is issued to the voter. At some elections, things can be even more

⁵³ Home Affairs Committee, Report of on Electoral Law and Administration (1998) HC 768-I at para 107.

⁵⁴ The word “scrutiny” is here used more loosely than may be canonical. Scrutiny, in the narrow sense, is the jurisdiction to correct the result of the election by assessing votes cast. Here we use the word to include any judicial use of the vote-tracing mechanism.

⁵⁵ In the *Aston and Bordesley Green* case Commissioner Mawrey QC noticed similar patterns in postal voting in wards other than those before him, where he had found corrupt practices had prevailed. *Re Bordesley Green and Aston Ward of Birmingham City Council petition*, 4 April 2005 (unreported) at [691].

complex.

- (1) At Greater London Authority, Welsh Assembly and Scottish Parliamentary elections, which use the Additional Member System, there are multiple ballot papers: three for the former election, two for the latter elections. If a voter wishes to cast just one ballot paper, a practical difficulty arises concerning marking the corresponding number list to reflect that just one ballot paper has been allocated.
- (2) The above problem arises at combined polls also. The Association of Electoral Administrators has raised the practical concern that the corresponding number list as described in legislation does not properly take account of combined polls, where there are multiple ballot papers and entitlements to the franchise.⁵⁶

1.86 The arguments are sufficient to raise doubt as to whether the way in which the electoral system in the UK is currently oriented, with its focus on corrective mechanisms after the poll, is justified on functional grounds. If the scrutiny jurisdiction is not often used to correct the result and its administratively cumbersome, it may not be worth retaining. However, as we noted above, there are different ways of orientating the legal mechanism for safeguarding the security of the poll. Whether absolute secrecy or the 1872 safeguard is applied to the ballot has an effect on the structure of the entire polling system. The classical approach in Great Britain is to have a permissive system on polling day, subject to a judicial mechanism to unlock secrecy and correct any fault with polling day voting. In Northern Ireland the polling day system is less permissive, since there are identification requirements for voters, but the vote tracing mechanism is retained.

IMPLICATIONS OF ADOPTING ABSOLUTE SECRECY

1.87 If absolute secrecy were adopted, a different mechanism must be selected to address impersonation in Great Britain. The experience in the Republic of Ireland shows that adopting absolute secrecy requires adjustments elsewhere in the electoral system. In order seriously to consider proposing doing away with numbered ballot papers, corresponding number lists and the scrutiny jurisdiction, this project would have to consider bolstering the security of polling processes on polling day through a number of devices, such as:

- (1) requiring identification of voters at the poll, which means
 - (a) using existing and available forms of identification, which may not all be photographic, or
 - (b) extending the electoral identity card scheme in Northern Ireland to the rest of the United Kingdom; and/or
- (2) empowering presiding clerks to reject voters at the poll having made

⁵⁶ Association of Electoral Administrators, *Beyond 2010 Report on the Future of Electoral Administration in the UK* (July 2010) at p 55.

qualitative judgements about their identity or entitlement to vote.

QUALIFIED SECRECY IN NORTHERN IRELAND

- 1.88 In Northern Ireland, the vote tracing mechanism exists alongside a requirement for voter photographic identification at the poll. The Chief Electoral Officer issues an electoral identity card to plug any gap in the availability of photographic identification (since passport and driving licenses are optional, and the other forms of identification also).

Are the current safeguards for securing secrecy adequate?

- 1.89 There are two arguments for reviewing the operation of the vote tracing mechanism. The first is functional. Central to the idea of the 1872 ballot is that the voter must have every confidence that how they vote will be secret. To do otherwise would negate the advantages of the ballot system, namely that it renders ineffective the corruption of voters by making it impossible to verify the efficacy of (and enforce) bribes, intimidation, or undue influence.
- 1.90 The second argument is rights based. While we concluded that there is no rigid human right to absolute secrecy, we do think that any mechanism to unlock voting secrecy should be structured so that any risk of breach of secrecy is minimised if not eliminated. If this is not a requirement in the current law, it is strongly likely to be the public expectation.
- 1.91 We set out above the rules concerning the retention of the sealed packets of ballot papers and corresponding number list, and the power to order their delivery and inspection. Our work on collating examples of secrecy being unlocked by the courts suggests that this happens very rarely. There is no evidence of unauthorised access to ballot papers and counterfoils or corresponding number lists. It is therefore likely that secrecy is in practice adequately preserved. However, the functional argument about vote tracing is as concerned with risk or public perception of unauthorised access to a vote.

Removing the archaic House of Commons order

- 1.92 As we noted above, the power of the House of Commons at UK Parliamentary elections to order the production and inspection of secret documents is a vestige of a jurisdiction long ago transferred to the judiciary. As is acknowledged in the Electoral Commission's guidance to administrators on answering public queries, in practice only a judge may unlock secrecy, and even then only in very special circumstances.

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- 1.93 There is, however, one example of the power being exercised. This occurred on 27 October 2009, when a motion was passed without debate in the House of Commons.⁵⁷ After the Glenrothes UK Parliamentary by-election on 6 November 2008, marked copies of the registers had been lost whilst in the custody of the Sheriff Clerk. These show which electors on the polling station register actually voted at the polling station and are required to be made available for public inspection. In order to reproduce the contents of the marked register, the returning officer obtained an order authorising him to re-open the sealed packets containing completed corresponding number lists on terms that forbade him from copying the ballot paper numbers. This example of the use of the power points at a lacuna in the grounds for which the courts may grant access to the corresponding number list; the only reason why the House of Commons' power was used was the unconditional nature of its power to order the inspection of sealed documents.⁵⁸

PERMISSIBLE WAYS OF CASTING A VOTE

- 1.94 Voters at UK elections can vote in person, by post, or through a proxy. Whatever option is used, a vote is cast by marking a ballot paper. The default method of voting is by marking a ballot paper in person at a polling station. The alternative is to make arrangements to cast an absent vote. Postal voting is available on demand in Great Britain while good cause is required for postal voting in Northern Ireland, and for proxy voting in the UK generally.
- 1.95 At the May 2010 parliamentary general election, approximately 6.9 million postal votes (15% of electors) were issued, out of which 5.5 million postal votes were validly cast (18% of votes cast). By contrast in Northern Ireland the proportion of electors issued a postal vote was just 1.4%. The proportion of electors who appointed proxies was 0.6%, while UK-wide the proportion was 0.3%, a total of 130,000 electors.
- 1.96 The law governing how electors may cast a vote is spread among various provisions. Election rules govern voting in-person and absent voting; depending on the election, these will be in primary or secondary legislation. Core provision regarding postal voting is made in the Representation of the People Act 1985 (in relation to Northern Ireland) and the Representation of the People Act 2000 (in relation to Great Britain), and in election-specific measures. The administration of the postal and proxy voters' lists, meanwhile, is covered by regulations governing electoral registration and certain election-specific measures. The combination of the fragmentation of rules across different legislative measures, and the conventional approach to detail of the prescription within them, means that the law is complex and voluminous.

⁵⁷ *Hansard* (HC), 27 October 2009, vol 498, col 256.

⁵⁸ See: the "Protocol to create substitute marked register for Glenrothes by-election on 6 November 2008", October 2009
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238524/7729.pdf, and the minutes of a meeting of the Seventh Delegated Legislation Committee, Monday 26 October 2009
<http://www.publications.parliament.uk/pa/cm200809/cmgeneral/deleg7/091026/91026s01.htm> (both last accessed 2 December 2014).

How electors can cast a vote in the UK

Voting is by ballot, and the ballot consists of a ballot paper

- 1.97 As we noted above, every set of election rules stipulates that the vote in the poll shall be given by ballot, and that the ballot shall consist of a ballot paper. In addition to this classical provision, schedule 4 to the Representation of the People Act 2000 (the 2000 Act) contains a general statement of how electors can vote at parliamentary and local government elections in Great Britain.⁵⁹ Adapting the provision across many statutes, the following is a general overview of how electors vote in Great Britain.

Voting in person

- 1.98 An elector, meaning a person registered to vote for a particular election, is entitled by default to vote in person at the polling station allotted to them under the relevant election rules, provided they appear in the register of electors. A postal voter will be able to hand in a postal ballot paper at the polling station; if they deny having applied for a postal vote they may cast a tendered vote there, which will not be counted after the election unless an election court decides otherwise at petition proceedings.⁶⁰
- 1.99 An elector who cannot reasonably be expected to vote at their allotted polling station due to their employment as a constable or by the returning officer on polling day may vote in person at another polling station if they are not entitled to cast an absent vote.⁶¹ In practice this is done at the polling station they are working in, and their ballot paper is stored in an envelope that will be handed in at the count venue.

Postal voting

- 1.100 By law an elector may vote by post if they are shown on the postal voters list. That list is kept by the registration officer. An elector will appear on that list if their individual application to vote by post has been granted. Postal voting is “on demand” in Great Britain, so such an application must be granted if the registration officer is satisfied that the elector is or will be registered and the application contains the elector’s signature and date of birth and meets the

⁵⁹ Representation of the People Act 2000, s 17(2). The elections include the election of councillors in England and Wales and Scotland, and elections to the Greater London Authority. The 2000 Act is applied to Mayoral elections in England and Wales in the same way that it applies to local elections by virtue of regulation 3 of the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024. Its provision is repeated in other election measures: European Parliamentary Elections Regulations 2004 SI 2004 No 293 sch 2 r 2; Scottish Parliamentary Elections Order 2010 SI 2010 No 2999, art 7; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 7; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 r 1.

⁶⁰ Representation of the People Act 2000, sch 4 para 2(2) and (6A).

⁶¹ Representation of the People Act 2000, sch 4 para 2(5). By amendment not yet in force, the reference to a constable will include one to a community support officer. Electoral Registration and Administration Act 2013 s 21(3).

requirements as to form and time prescribed in the registration regulations.⁶²

Voting by proxy

- 1.101 By law an elector may vote through a proxy if they are shown on the list of proxies held by the registration officer. The registration officer will grant an application to vote by proxy if the elector cannot reasonably be expected to vote on polling day due to absence for work, study, distance or illness. An elector may vote through a proxy unless, before a ballot paper has been issued to the proxy, the elector applies at their polling station for a ballot paper in order to vote in person.

Proxy postal voting

- 1.102 The above governs entitlement to vote as proxy. A separate step is to appoint a proxy to vote for the elector. Once appointed, the proxy may themselves apply to vote by post.⁶³ This has the effect that the vote cannot be cast in person – we noted above that the elector who has appointed a proxy may always apply to vote themselves at the polling station so long as the proxy has not cast a vote yet. This is not possible if the proxy has applied to vote by post.

The formalistic approach to manner of voting: each method has its list

- 1.103 It is worth pausing to reflect on the way the law governs how people vote. The classical provision has been that the electoral register governs the entitlement to vote in person at the allotted polling station. Even an obvious impersonator must be allowed to cast their vote after they are asked the “prescribed questions” as to their identity and address, albeit that they may be arrested immediately after voting. The approach to absent voting – both the classical voting by proxy and the innovation of postal voting – retains this basic approach, although postal voting statements must be verified against identifying records.
- 1.104 In relation to each method of casting a vote, therefore, a list governs the entitlement to vote. Voting by post is conditional in law on the elector’s name showing in a list of postal voters. The same is true of voting by proxy (list of proxies) and voting by postal proxy (list of postal proxies). The question for the returning officer and their poll staff is whether an elector is on the appropriate list. The role of the registration officer is to administer and manage those lists.
- 1.105 The statutory language always seems to refer at least conceptually to a paper document, although in reality we understand that registration software run by local authorities – which underpins the electoral register – will be able to generate these lists from the registration database. A further issue, is whether the “list” imagery in the law is desirable.

⁶² Representation of the People Act 2000, sch 4 para 3(1); Representation of the People Act 2000, sch 4 paras 2(3), (7) and (8); 3(2), 4(2) and 5(1); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 293; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497.

⁶³ Representation of the People Act 2000, sch 4 para 7(1), (6).

Ways of voting in Northern Ireland

- 1.106 The Representation of the People Act 1985 (the 1985 Act), which used to apply throughout the UK, still governs absent voting at UK Parliamentary Elections held in Northern Ireland. Every other election in Northern Ireland has its own specific, though nearly identical, measure.⁶⁴ The main difference between Northern Ireland and Great Britain is that the basis for postal voting in Northern Ireland is the same as proxy voting – namely, there must be a good legal reason for casting an absent vote. Proxies may also vote by post, which precludes the elector who appointed them from applying to vote in person on polling day.⁶⁵ Save for the requirement of identification documents at the poll, the rules which govern voting in person are identical to those which operate in Great Britain.⁶⁶ The formalistic approach of compiling lists of postal, proxy, and postal proxy voters is retained, with entitlement to an absent vote conditional on the elector appearing on such a list.⁶⁷

The administration of absent voters and absent voting processes

- 1.107 While the law sets out eligibility requirements for an absent vote, there is also the question of how electors become absent voters and, once they are and an election is in course, how they cast the absent vote. It is useful at the outset to distinguish between three facets of absent voting.
- (1) First, there is the question of substantive entitlement to an absent vote which we considered above – for example, on demand for postal voting in Great Britain, or on satisfying discrete grounds for proxy voting.
 - (2) Secondly, there is the administration of applications for an absent vote, and the ongoing maintenance of the lists of absent voters (“the administration of absent voters”).
 - (3) Thirdly, there is the matter, at election time, of issuing postal voting packs and receiving postal votes up to polling day (“the postal voting process”).
- 1.108 The above division is useful when considering the wealth of legal material

⁶⁴ European Parliamentary (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 pt 1; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599 sch 1, applying s 5, 7, 8 and 9 of the 1985 Act with modifications; Local Government (Northern Ireland) Elections Order 1985 SI 454; sch 2 pt 1.

⁶⁵ Representation of the People Act 1985, s 9(1), (2); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 11(1), (2); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 4(1), (2).

⁶⁶ Representation of the People Act 1985, s 5(2), (5), (5B); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 7(2), (5), (6A); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, art 6(1), (7), (7B); Elections Northern Ireland) Act 1985, s 1(2).

⁶⁷ Representation of the People Act 1985, ss 7(4) and 9(9); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, regs 9(6) and 11(8); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 paras 2(4) and 4(8).

concerning absent voting. The implementation of eligibility for an absent vote – in our shorthand the administration of absent voters – runs concurrently with the registration framework. It takes place irrespective of whether an election is due. In law it amounts to the upkeep of a list by the registration officer, which is passed on to the returning officer at election time, because the issue and receipt of postal ballots – in our shorthand the postal voting process – is inherently a polling process tied to the election. Nevertheless, the postal voting process is generally governed by the same provisions which govern the administration of absent voters.⁶⁸

Fragmentation of legislation governing absent voting

- 1.109 The first point to note is the fragmentation of the legislation underpinning absent voting. The legislative provisions which govern the above facets of absent voting are spread across a number of instruments, which makes it difficult for users of electoral law to establish the legal position. Such a user must first ascertain which of the three registration regulations (for England and Wales, Scotland and Northern Ireland) applies, or whether there is an election-specific measure governing absent voting for the particular election. Whichever measure applies, it will make reference to parts of the 2000 or 1985 Act, which must also be consulted.
- 1.110 This unwieldy exercise is exacerbated in Northern Ireland by the lack of systematically updated electronic database of legislation. The Northern Ireland Assembly Order 2001, which applies with some modifications provisions of the 1985 Act and Representation of the People (Northern Ireland) Regulations 2008, also makes reference to the Local Elections (Northern Ireland) Order 1985. A person wishing to ascertain the absent voting provisions for elections to the Assembly will thus have to have regard to four different legislative provisions, some of which (the 1985 Act and 1985 Order) are not kept up to date electronically.
- 1.111 Appendix C sets out the various provisions governing absent voting. The fragmentation of legislation is unsatisfactory, not least because the substantive provision is essentially identical for all elections. In practice, other than the divide between Northern Ireland and the rest of the UK as to entitlement to a postal vote on demand, there is a uniform approach to electoral administration of absent voters.
- 1.112 Generally in the UK, what underpins the legislation is that absent votes are applied for, granted, and records kept for the discrete election in question. In practice, applications are dealt with in a holistic way. There is thus a mismatch between legal prescription and the practicalities of ordinary election management.

⁶⁸ There is an exception for local government elections in Scotland whose polls are not combined with another election. Here the administration of absent voters is governed by Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 SSI 2007 No 170, whereas postal voting processes are governed by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 SSI 2007 No 236.

The administration of postal voters in Great Britain

APPLICATIONS FOR A PERIOD OR FOR A PARTICULAR ELECTION

- 1.113 The principal absent voting measures are in schedule 4 to the 2000 Act, which applies to UK Parliamentary elections, local government elections in England and Wales, elections to the Greater London Authority, Mayoral elections in England and Wales and local government elections in Scotland.⁶⁹ The legislation is structured to enable a person applying for a postal vote to do so for a period, whether definite or indefinite (a “periodic” postal vote), or for a particular election – in other words, for a specific election day and no election thereafter (“specific” postal vote).⁷⁰ The only practical difference between a periodic or specific postal vote application is that the former results in an enduring, and potentially indefinite, entry into records as a postal voter. However, because the legislation draws a hard distinction between the two forms of postal voting applications, there are some differences, particularly concerning how applications to vote by post at certain elections can relate to voting at other elections.

APPLYING FOR A POSTAL VOTE UNDER THE 2000 ACT

- 1.114 Electors have a choice under the 2000 Act whether to apply for a postal vote at a parliamentary or local government election, or both, and a periodic postal vote application must state whether it is made for one or both types of election.⁷¹ By dint of the drafting, electors cannot similarly apply for a postal vote at only one of the elections which fall under the definition of “local government elections”, even though that term covers, in England and Wales, three distinct species of election (for local government, Mayors, and the Greater London Authority).
- 1.115 Where an application is made for a specific postal vote, that is for a particular Parliamentary or local government election day, and the poll for that election falls on the same day as the poll at “another election”, the one application “may” (in England and Wales) be used for both elections, and, in Scotland, “shall, unless a contrary intention appears” be used for both elections.⁷² It is not clear whether “another election” is meant to refer only to elections governed by the 2000 Act.

APPLYING FOR A POSTAL VOTE FOR NON-2000 ACT ELECTIONS

- 1.116 We noted above that absent voting at every election which is not covered by the

⁶⁹ Representation of the People Act 2000, sch 4 para 1(1), 1(2) read with s 203 of the Representation of the People Act 1983. Mayoral elections are included by virtue of regulation 3 of the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024.

⁷⁰ Representation of the People Act 2000, sch 4 paras 3 and 4; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(4) and (5); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(4) and (5).

⁷¹ Representation of the People Act 2000, sch 4 paras 3(1) and 4(1); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(4); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(4).

⁷² Representation of the People Regulations 2001 SI 2001 No 341, reg 51(5); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(5); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(5).

2000 Act is governed by discrete legislation (see appendix C below). The legislation closely follows the 2000 Act template, and in general retains the distinction between periodic and specific postal vote applications and the approach of tying applications to the election concerned by the measure. However attempts are made to enable applications to constitute applications for a postal vote at other elections, albeit in an inconsistent manner.

European Parliamentary elections

- 1.117 The legislation governing elections to the European Parliament ties applications for a postal vote specifically to European elections. Thus paragraph 17(6) of schedule 2 to the European Parliamentary Elections Regulations 2004 (the 2004 Regulations) provides:

An application made under this Schedule [for a periodic absent vote] must state (a) that it is so made; and (b) that it is made for European Parliamentary elections.

- 1.118 This follows the template of the 2000 Act, which requires applications to state they are made under it, and the election they are for. Unlike the 2000 Act, the 2004 Regulations do not enable an application for a specific postal vote at a European Parliamentary election to be taken as an application to vote by post at a combined poll with another election. Instead, paragraph 17(9) of schedule 2 to the 2004 Regulations enables applications for a postal vote generally to be combined with applications made under the 2001 Regulations (for Scotland, and England and Wales), as well as applications for a postal vote at Mayoral elections and for Mayoral referendums.⁷³ This is plainly an attempt at enabling applications for a postal vote to be made on a more general basis, although one necessarily hampered by the fact that the elections referred to are not all the elections in Great Britain.

National Assembly for Wales elections

- 1.119 The National Assembly for Wales (Representation of the People) Order 2007 does not require applications for a postal vote to state that they are made for the election concerned.⁷⁴ It also seems to enable applications for a postal vote (whether periodic or specific) to be taken as applications for a postal vote at any election whose poll is combined with Welsh Assembly elections.

(5) (a) An application... which is made for an indefinite [or specified period] ... must state that it is so made;

(b) an application... which is made for a particular Assembly election must state that it is so made,

but, where the poll for an Assembly election falls on the same day as

⁷³ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 17(8),(9).

⁷⁴ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(5)(a) omits the additional requirement to identify the election for which a periodic postal vote is sought.

the poll at another election, the same application may be used for both elections.⁷⁵

Police and Crime Commissioner elections

- 1.120 One measure which does not follow the 2000 Act template is the Police and Crime Commissioner Elections Order 2012. Rather than envisaging periodic postal voting applications in respect of these elections, the legislation enables those who are included in one of the postal voters' lists under schedule 4 to the 2000 Act or schedule 2 to the European Parliamentary Elections Regulations 2004 to be automatically be included in the postal voters' list for Police and Crime Commissioner elections. Curiously, there is no reference to periodic postal voters under the National Assembly for Wales (Representation of the People) Order 2007.
- 1.121 The 2012 Order does enable electors to apply for a specific postal vote at a PCC election, however. Such applications may be combined with applications for an absent vote under the 2001 Regulations, including applications for a postal vote for Mayoral elections, Mayoral referendums, and council tax referendums.⁷⁶

Scottish Parliamentary elections

- 1.122 The only species of election in Scotland not covered by the 2000 Act (other than European Parliamentary elections which we covered above) are those to the Scottish Parliament. Article 8(1) of the Scottish Parliament (Elections etc.) Order 2010 envisages applications for a periodic postal vote to be made for Scottish Parliamentary elections alone or along with Scottish local government elections. Applications for a particular election are governed by article 9(1) of the 2010 order, and unlike some measures mentioned above, there is no power to combine the application with one for any other election. Paragraph 1 of schedule 3 to the Order states:

(5) An application under article 9(1)... shall specify the election in respect of which it is made.

(6) An application under article 9(1)... shall also specify whether it is for an indefinite period or for a particular period specified in the application.⁷⁷

- 1.123 The reference in subparagraph 6 to article 9(1), rather than 8(1) which governs periodic postal voting applications, is curious and out of step with the drafting in other measures. It is probably a drafting error.

⁷⁵ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(5). This applies the proviso under regulation 51(5) of the Representation of the People (England and Wales) Regulations to both periodic and specific postal vote applications, as opposed to only the latter. Query how a registration officer is prospectively to know which elections will occur on the same day as National Assembly elections.

⁷⁶ Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 4(2) and 11(7).

⁷⁷ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8(1) and 9(1).

APPLICATIONS FOR A POSTAL VOTE ARE IN PRACTICE FOR ALL ELECTIONS

- 1.124 We can summarize the foregoing as follows. Applications for a postal vote are tied by the relevant measures to the election in question. The 2000 Act, whose scope covers most elections, enables applications for a periodic or specific postal vote to be made in respect of all elections covered by it. Other measures confer entitlement to apply for a postal vote in respect of the particular elections they cover. Some attempt is made to enable applications for a postal vote under those measures to be taken as applications for a postal vote at other elections, but none of them is entirely satisfactory or effective.
- 1.125 In practice it seems that registration officers' own forms offer electors an opportunity to apply for a postal vote for all elections and referendums for a period or on a particular election date. We attach an example of a postal voting application form at Appendix D. The Electoral Commission's own template application form is similar. This is notwithstanding the specific requirement under some of the legislation that an application for a periodic vote must state which election it relates to.
- 1.126 Electors completing such a form are taken to have applied for both parliamentary and local government elections (for the purposes of the 2000 Act) and for each discrete election governed by its own measure, notwithstanding any requirement that the application must state that it is made for a certain type of election. The records of postal voters kept by the registration officers will in the main govern postal voting entitlements at all elections. It is not known how administrators would deal with an elector exercising their express right under the legislation to apply for a periodic postal vote only in respect of certain kinds of elections. We expect that software is able to record data in such a way as to distinguish records for different elections.
- 1.127 This practice appears to compensate for the unsatisfactory features of the legislation governing absent voting, namely that entitlement to apply for a postal vote relates to particular types of election and not all. This approach in principle permits an elector to apply to be a postal voter for a certain type of election, and an in person voter for another election, even if both elections take place at a combined poll. This is not only administratively onerous; it is divorced from practical reality. It is difficult to conceive of a reason why an elector would choose to cast an absent vote for one election, but vote in person in another election at a combined poll.

THE CONTENT OF THE APPLICATION

- 1.128 The substantive law governing the content of applications is uniform.

Electors' details

- 1.129 The law does not lay down a prescribed application form. It prescribes the content of applications. Applicants must give their full name, the address at they are registered and the address to which the ballot paper should be sent and state

if they are an anonymous voter.⁷⁸ In addition, the signature and date of birth of the applicant must be provided. These are generally referred to as “personal identifiers”.⁷⁹

Personal identifiers to be in prescribed format

- 1.130 The personal identifiers provided must conform to certain formal requirements, to enable them to be scanned and electronically recorded. This allows a computer programme to check the signatures provided on a postal voting statement against those recorded from postal vote applications.⁸⁰ The requirements are that:

- (1) the “signature shall appear against a background of white unlined paper of at least five centimetres long and two centimetres high”; and
- (2) the “applicant's date of birth shall be set out numerically configured in the sequence of date, month and year, namely [d][d][m][m][y][y][y][y]”.⁸¹

POSTAL BALLOTS TO BE SENT OTHER THAN TO REGISTERED ADDRESS

- 1.131 Where an elector wishes their postal ballot paper to be sent to a different address from that under which they are registered, they must state why their circumstances will be or are likely to be such that the ballot paper should be sent to an alternative address. The same requirement applies where electors who are already postal voters wish their ballot paper to be sent to a different address from

⁷⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(2); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(2); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 17(2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 1(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 11(1).

⁷⁹ Representation of the People Act 2000, sch 4 paras 3(1)(b) and 4(1)(b); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3(1)(b) and 4(1)(b); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8(1)(b) and 9(1)(b); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8(1)(c) and 9(1)(c); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 3(1)(b); Local Electoral Administration and Services (Scotland) Act 2006, s 21.

⁸⁰ A postal voting statement accompanies a postal ballot paper, and is the means by which a postal voter identifies themselves as the person casting the vote. A postal voter must provide their date of birth and signature on the postal voting statement. Electoral Commission, *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers, Part G – Absent Voting* (July 2013), paras 1.6 and 1.18.

⁸¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(3A); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(3A); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(3A); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 17(4); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 1(2); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 11(3).

that in the record.⁸²

1.132 The Electoral Commission guidance repays quoting verbatim.

5.8 The regulations make no provision for a [registration officer] to reject an application if they are not satisfied with the explanation provided for requesting redirection. This being the case, it is recommended that for the purposes of determining applications [the officer] should accept postal vote applications at face value if an explanation for redirection is given.... [The elector] cannot simply say, for example, “because I prefer it that way”.

5.9 There are many reasons why a person may wish their postal vote to be sent to an alternative address: they may be on holiday, be in hospital, have post sent to their work address, and so on. If no explanation...is given, [a registration officer] may wish to check with the elector and obtain an explanation, or could choose to reject the application on the grounds that it does not meet the prescribed requirements, notifying the elector accordingly.

5.10 Levels of proxy and postal redirections should be monitored and applicants asked for more information if necessary.⁸³

1.133 Discussions of postal vote redirections tend to focus on the case of an existing absent voter asking for a postal vote to be delivered to an alternative, perhaps temporary, address. However it is important to note that redirection is an option from the outset of an application for a postal vote. A voter may apply to be a postal voter for an indefinite period, and simultaneously apply for a postal vote redirection to an address which is different from their registered address. The registration officer is restricted to accepting explanations at face value, although the Electoral Commission advises that if “necessary” (in the light of levels of redirection of postal and proxy votes), more information may be requested by the registration officer. We will consider what further guidance can be given to registration officer in this context when reviewing the law on registration. It is plainly a matter of concern if an elector is registered at one address but seeks permanent redirection of postal ballot papers to another address – given that registration follows residence.

⁸² This facility does not extend to anonymous electors. Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 51AA and 51B; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 51AA and 51B; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 5 and 6; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 20 and 21; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 4; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(7) and (8); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 12 and 13.

⁸³ Electoral Commission, *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers, Part G – Absent Voting* (July 2013), paras 5.8 to 5.10.

WAIVER OF REQUIREMENT FOR A SIGNATURE

- 1.134 The rules on absent voting were amended in 2006 to allow registration officers to dispense with the requirement that applications for a postal or proxy vote contain the elector's signature. Registration officers may grant the waiver if satisfied that the applicant is, by reason of any disability or inability to read or write, unable either to provide a signature or to sign their name in a consistent and distinctive way. Any waiver request must give the reason why the elector is unable to provide a signature, and include the name and address of a person who has assisted the elector to complete the application.⁸⁴
- 1.135 The legislation gives no instruction on how registration officers should go about satisfying themselves as to the reason for dispensation. We have previously noted that the conventional approach in electoral law is not to require administrators to make qualitative judgements. When applied to the present context, that might suggest that registration officers are not required to go behind the reasons offered by the elector.
- 1.136 The Electoral Commission guidance emphasizes the potential for waivers to be used to avoid the security measures for postal voting, and encourages registration officers to take active steps to make sure that the security measures work to their fullest extent. One such step may be to require the person who assists the elector who is requesting the waiver to sign a declaration confirming that the elector is unable to provide a signature or consistent signature, on a form which could also draw attention to the offence of providing false information in connection with an application for an absent vote. The Commission recognises, however, that registration officers cannot request attestation by medical professionals (which is required for applications to vote by proxy), nor are they able to investigate applications or qualified to make medical judgements. In the end, it is the registration officer's decision and if they are not satisfied as to authenticity of the request after appropriate enquiry, they should refuse it. Officers should remain vigilant to detect any trends emerging from waiver requests, such as inexplicably large numbers of applications assisted or signed by one person or relating to one street or area.⁸⁵
- 1.137 How registration officers approach this task will affect how effective personal identifiers are as a safeguard against fraud. On the other hand, this is a measure

⁸⁴ Representation of the People Act 2000, sch 4 paras 3(8), 4(5), and 7(11); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 51(2)(f) and 51A(b); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 51(2)(f) and 51A(b); Local Electoral Administration and Services (Scotland) Act 2006, s 21(5); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 3(2)(f) and 4(b); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3(8), 4 (6), 7(12), 17(2)(f) and 19(b); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8(8), 9(7), 11(11) and sch 3 para 1(1)(f). The power to dispense under arts 8(8) and 9(7) is unusually – and needlessly – repeated as relates to proxy voting in art 10(12); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8(8), 9(5), 12(12) and sch 1 paras 1(1)(f) and 1(6)(b); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 3(7)), 7(11), 11(1)(f) and 27(2).

⁸⁵ Electoral Commission, *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers, Part G – Absent Voting* (July 2013), paras 6.2 to 6.13.

designed to offer disabled electors access to absent votes on the same basis as everyone else. As the Association of Electoral Administrators has put it:

Guidance issued by the Electoral Commission offers as a practical solution a declaration by the person assisting the applicant that the elector in question meets the above criteria.

Whilst it is absolutely right that people with a genuine disability are supported to apply for the means of voting which suits them best within the current provisions, the lack of a statutory declaration means that the waiver continues to present a potential risk to the integrity of the process.⁸⁶

- 1.138 The Association has recommended that applicants requesting a waiver should be required to have their applications attested in the same way that proxy applications must be.
- 1.139 We have provisionally concluded that this is a better alternative than leaving the matter to registration officers without further guidance. The key aim in this context must be to enable disabled electors to access the electoral system on the same footing as others while preserving it from fraud and abuse – and doing so, furthermore, without asking registration officers to involve themselves in qualitative judgements.

Mode of delivery of the application

- 1.140 Electoral law does not make any provision beyond requiring receipt of an application by the registration officer. It need not be delivered or mailed by the applicant, and although the provisions state that applications must be made in writing, they also (with the exception of those governing Scottish Parliamentary elections and local government elections in Scotland) allow applications to be submitted electronically.⁸⁷
- 1.141 Guidance for Electoral Registration Officers produced by the Electoral Commission states that scanned in copies of a postal or proxy vote application form, attached to an email, should be accepted by a registration officer so long as the personal identifiers (signature and date of birth) satisfy the legislative

⁸⁶ Association of Electoral Administrators – *Beyond 2010: The future of electoral administration in the UK* (July 2010), p 43.

⁸⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 5 and 51(3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 5 and 51(3); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(3); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 14 and 17(3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 91 and sch 3 para 1(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 144 and sch 1 para 1(2); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 87 and sch 2 para 11(2).

requirements.⁸⁸

Electronic signatures

- 1.142 Other than for Scottish Parliamentary and local government elections in Scotland, legislation allows the use of electronic signatures instead of written ones, provided that the electronic signature is certified by any person.⁸⁹ An electronic signature is defined as anything in electronic form which is incorporated into or associated with an electronic communication for the purpose of establishing the authenticity or integrity of that communication or both.
- 1.143 However, these regulations cannot mean that an electronic signature may replace the handwritten signature required as a personal identifier. The signature that must be provided in a postal voting application will be recorded and later compared with the signature on the postal voting statement – thus it is essential that the signature provided on the application is the handwritten signature of the elector applying to vote by post.

THE DECISION OF THE REGISTRATION OFFICER

- 1.144 So long as an application for a postal vote meets the requirements set out in statute, the registration officer “shall” grant the application, and has no discretion to refuse it.⁹⁰ Upon granting an application the officer must notify the elector except in the case of applications for absent voting at Scottish Parliamentary and local elections in Scotland, where notification is only mandatory “where practicable”.⁹¹ In practice, as we have seen, many applications for a postal vote are made for all elections, so that such distinctions are meaningless.
- 1.145 A registration officer who refuses an application for a postal vote must notify the elector and give a reason for the refusal. At Scottish Parliamentary elections this provision only applies to applications for a periodic postal vote.

⁸⁸ Electoral Commission, *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers, Part G – Absent Voting* (July 2013), para 1.18.

⁸⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 6; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 6; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 14; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 144; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 87.

⁹⁰ Representation of the People Act 2000, sch 4 paras 3 and 4; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3 and 4; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8 and 9; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8 and 9; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 3.

⁹¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 57(1); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 57(1); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 12(1); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 27(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 10(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 8(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 17(1).

Appeals

- 1.146 A person may appeal against the decision of the registration officer, but must do so within 14 days of notification of the refusal of their application.⁹² No provision is made for such an appeal in the rules on postal voting at Police and Crime Commissioner elections. This is the same appeals system as applies to decisions relating to applications to register as an elector.

REGISTRATION OFFICERS' RECORDS AND LISTS

"Records" of periodic postal voters under the 2000 Act

- 1.147 Registration officers must keep a record of postal voters whose application (whether for a definite or indefinite period) has been granted. The record must state:

- (1) whether the application was in respect of parliamentary, local government elections, or both;
- (2) whether it was for an indefinite or a particular period; and
- (3) the address provided by the elector as that to which the ballot paper should be sent.⁹³

- 1.148 Rules also govern the circumstances in which a person may be removed from the record. The obligation to keep a record thus applies only to "periodic" postal voters, with no equivalent record required for specific postal voting applications.

Personal identifiers record

- 1.149 Registration officers must also keep a personal identifiers record containing postal voters' signatures and dates of birth. The record must be kept for the period of 12 months either from the date an elector is removed from the record of periodic postal voters, or in the case of an elector applying for a postal vote at a specific election, from the date of that election.⁹⁴

Postal voters list

- 1.150 The registration officer is obliged, in respect of a UK Parliamentary or local government election, to produce a "postal voters list". This list contains the entries on the record of periodic postal voters, together with the names and addresses of specific postal voters. It is an elector's appearance on this list which

⁹² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 57(4) and 58(1); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 57(4) and 58(1); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 12(4) and 13(1)

⁹³ Representation of the People Act 2000, sch 4 paras 3(4).

⁹⁴ Representation of the People Act 2000, sch 4 paras 3(9), 4(6); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 61B; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 61B; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 18A.

sets out their entitlement to a postal vote with respect to a forthcoming election.⁹⁵

Records and lists for non-2000 Act elections

- 1.151 As outlined above, those elections which are not governed by the 2000 Act are governed by discrete measures that replicate its provisions. They make identical provision for keeping the records and lists mentioned above.⁹⁶
- 1.152 There is one exception. The Police and Crime Commissioners Elections Order 2012 does not provide for “periodic” postal vote applications at PCC elections. Instead, registration officers enter onto the postal voters list for PCC elections the entries appearing in records of periodic postal voters kept under the 2000 Act and the European Parliamentary Elections Regulations 2004.⁹⁷

Election-specific records

- 1.153 The legislative approach suggests that the law envisages separate records of postal voters to be kept under each governing measure. Thus the Police and Crime Commissioner Elections Order 2012 mentions a record for periodic postal voters under the 2000 Act, and a distinct record under the European Parliamentary Elections Regulations 2004. The omission of the records kept under the National Assembly for Wales (Representation of the People) Order 2007 is hard to explain. The final set of records are those kept for Scottish Parliamentary elections.
- 1.154 Furthermore, the law plainly envisages that the 2000 Act record should be able to distinguish whether an entry is in respect of parliamentary or local government elections only. So electors have the right to choose to be postal voters for one or the other kind of election, as well as the option to apply to be a postal voter for only one or some of the elections not covered by the 2000 Act.
- 1.155 Some of the practical difficulty caused by the current approach is alleviated by the previously mentioned practice of using standard application forms that on their face apply to all elections (and referendums). The result is that, insofar as distinct records are kept as the legislation envisages, the successful applicant is added to each. In reality, as we mentioned above, we suspect that registration software stores data in a single pool of records but retains the capability of “pulling” distinct records for certain elections at the click of a button. This is something we will need to verify with practitioners.
- 1.156 The practice of using and encouraging the use of pan-election application forms, however, does not address registration officers’ inability under the legislation for all but PCC elections, to move postal voters from one “record” to another. It is possible, for example, to apply for and obtain a periodic postal vote for European

⁹⁵ Representation of the People Act 2000, sch 4 paras 3(4), 4(6), 5(1) and 5(2).

⁹⁶ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3(4), 4(7) and 5(1) and (2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8(4) and 9(5) and (8); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8(3), 9(6) and 10(1) and (2);

⁹⁷ Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 4(2).

Parliamentary elections, while retaining the ability to vote in person at a local government election. If both polls were combined, logically the elector would have a postal vote for one election, but would have to vote in person at the other. It is not clear how the provision, mentioned further above, enabling the combination of an application for a postal vote at European Parliamentary elections to be combined with one under the 2001 Regulations, can assist in this scenario.⁹⁸

FRESH PERSONAL IDENTIFIERS

- 1.157 As we alluded to when discussing waiver of the requirement for a signature, one issue with, postal voting is the adequacy of personal identifiers. They are the means by which voters provide evidence that they are the person who applied for a postal vote when actually casting a vote by post. Accordingly the law obliges registration officers to seek fresh signatures at five yearly intervals from periodic postal voters. The registration officer must send a notice to electors whose signatures are older than five years by 31 January every year. If the registration officer has not heard from the elector within three weeks, they must send another notice to the elector.
- 1.158 If the elector fails or refuses to provide a fresh signature, their entitlement to a postal vote ceases six weeks after the date of the first notice, and the officer must remove the elector from the list of postal voters, and send a notice to the elector informing them of this. A voter thus removed may make a fresh application.⁹⁹

DEADLINE FOR APPLICATIONS TO BE A POSTAL VOTER

- 1.159 The administration of postal voters is continuous and permanent. However, in order for an application to be effective to enable an elector to vote by post at a forthcoming election, it must be made by a certain deadline. A registration officer must “receive” a postal voting application by 5pm on the 11th day before the poll,

⁹⁸ European Parliamentary Elections Regulations 2004 sch 2 reg 17(9). For an account of the difficulties experienced in finding some legal basis for translating records of absent voters from one election into another (strictly speaking, in the instant example, a national referendum), see Association of Electoral Administrators Report: *The administration of the referendums and elections across the UK in 2011* (July 2011), pp 20 – 23, 74 to 84.

⁹⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 60A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 60A; Local Electoral Administration and Services (Scotland) Act 2006, s 22; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 15A and 15C; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 31; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 14; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 12. A power to request fresh signatures before the regular interval is proposed by the Representation of the people (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013. We understand that there is a lack of clarity in the provisions on fresh signatures, for example whether such signatures must be provided in the same form as for initial applications, and at what point registration officers may remove a person from the absent voters’ record because they have failed to provide identifiers. There is also an issue concerning signature refresh where it occurs during an election, as the postal voters’ list will be finalised six days before an election. Even if a person is removed from the absent voters’ record in that time due to failure to provide a new signature in time, there is no way of cancelling any postal vote that may be received in that time.

failing which he must refuse the application as regards the particular election.¹⁰⁰ The practice, particularly on deadline day, is for the registration officer's staff to mark the time of receipt of postal vote applications. The applications deadline is a busy day in any election timetable, as it coincides with the effective registration deadline day (which itself runs to midnight). Administrators have reported a tendency from parties to collect postal voting applications from supporters and deliver these to registration officers, often shortly before the deadline for applications.¹⁰¹

Proxy voting in Great Britain

1.160 Another way of casting an absent vote is for an elector who is unable to vote in person on polling day to appoint another person to cast a ballot on their behalf. As we mentioned above, entitlement to vote by proxy requires satisfying the registration officer that the elector cannot reasonably be expected to vote in person on polling day. The grounds for requesting a proxy vote are:

- (1) blindness or some other disability;
- (2) occupation, employment or attendance on a course;
- (3) registration as a service voter or overseas elector;
- (4) anonymous registration; and
- (5) ordinary registration at an address from which travel to a polling station would require a journey by sea or air.

Should proxy voting be subsidiary to postal voting?

1.161 Some have argued that postal voting may have rendered proxy voting redundant. Inability to cast a vote in person on polling day can be remedied, without the need for justification, by casting a postal vote. Electors can ask for postal ballot papers to be sent to an address other than their place of registration. By casting a postal vote, they retain the choice as to how to cast their vote, whereas an appointed proxy is free to vote however they like and need not say who they voted for.

1.162 Nevertheless, the needs that proxy voting can satisfy do not correlate exactly with what postal voting offers. For example, those suffering a medical emergency may

¹⁰⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 56(1); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 56(1); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 11(1); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 26(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 9(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 7(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 16(3).

¹⁰¹ Association of Electoral Administrators, *A question of timing? The administration of the Police and Crime Commissioner elections in England and Wales* (February 2013), para 6.57; Electoral Commission, *Electoral fraud in the UK: Evidence and Issues Paper* (May 2013), para 4.17; Association of Electoral Administrators, *Beyond 2010: The future of electoral administration in the UK* (July 2010), p 42.

request a proxy vote as late as 5pm on the day of the poll, whereas the deadline for postal voting applications is eleven days before the poll. Furthermore, the Electoral Commission continues to promote consideration of proxy voting for armed forces members deployed overseas. In some circumstances, the certainty of choice provided by postal voting can be offset by logistical problems in receiving and casting postal ballots.¹⁰²

- 1.163 It can be argued that the arguments in favour of proxy voting only hold true of these specific categories: voters in armed services posted abroad and those who find themselves unable to vote in person at short notice. It may be possible to restrict proxy voting to these two scenarios. Postal voting by overseas electors may also be made easier once provisions come into force which permit postal ballot papers to be issued as soon as practicable (after the final list of candidates has been ascertained).
- 1.164 In order to qualify for an “emergency” proxy vote, an elector would have to show that they had become unable to vote in person after the deadline for applying for a postal vote. They would still be able to apply for a precautionary proxy vote, with the option to vote in person on the day if they are able (and cast an in person vote before their proxy does).

The administration of proxy voters in Great Britain

- 1.165 We now turn to the administration of proxy voters. This involves two distinct matters:
- (1) managing applications to become a proxy voter – that is, to be on record as an elector who is to vote through a proxy; and
 - (2) managing the appointment of the proxy through whom the above elector will vote.
- 1.166 We will start by considering the first aspect of proxy voting: the elector’s application.

The scope of applications to vote by proxy

- 1.167 The provisions governing applications for a periodic or specific postal vote apply equally to applications for a proxy vote.¹⁰³ We have discussed those in the context of postal voters, but key provisions refer to applications for an “absent vote”, whether for a definite or indefinite period, or a particular election. They then distinguish between postal and proxy voting applications.

¹⁰² Office for Democratic Institutions and Human Rights, *Report on the May 2010 UK General Election* (July 2010) p 12; Electoral Commission, *About My Vote*, http://www.aboutmyvote.co.uk/register_to_vote/armed_forces.aspx (last visited 22 November 2012).

¹⁰³ Representation of the People Act 2000, sch 4 paras 3 and 4; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3 and 4; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8 and 9; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8 and 9.

1.168 Electors may apply for a periodic proxy vote – that is, to be proxy voters for a definite or indefinite period, or for a specific proxy vote in relation to a single election. In addition to ensuring the elector is or will be registered, and that their application meets prescribed requirements, the registration officer must be satisfied that the applicant is eligible to vote by proxy – that they have a legal reason to do so. That is the central difference between postal and proxy voting; the latter is not available on mere demand.

(1) The record of periodic proxy voters must contain, in addition to the elector's name, address, and the length of the period, the names and addresses of those appointed as their proxies.

(2) Electors who apply for a specific proxy vote must satisfy the registration officer that:

[their] circumstances on the date of the poll will be or are likely to be such that [they] cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to [them] under the appropriate rules.¹⁰⁴

1.169 The problems associated with election-specific legislation which we described above in relation to postal voting therefore persist in the context of applications to vote by proxy; outside the 2000 Act, the scope of proxy voting applications is tied to the election type (with the same, but flawed, provision for combined applications). The legislation also envisages a "record" of periodic proxy votes which is tied to a particular type of election. And similarly, in practice, the standard forms in use encourage electors apply for a proxy vote for all elections they are can vote in.

Content of the application to vote by proxy

1.170 There is no legislatively prescribed proxy voting application form. The information which must be provided includes the full name of the applicant, the address at which they are registered, the grounds on which the elector claims to be entitled to a proxy vote and, if the applicant has an anonymous entry in the register, that fact.¹⁰⁵ Personal identifiers are also required, and must be given in the prescribed form which we described for postal votes. The rules on providing fresh signatures at five yearly intervals apply equally to proxy voters as they do to postal voters

¹⁰⁴ Representation of the People Act 2000, sch 4 para 3(2)(a), 3(4)(c), 4(2)(a).

¹⁰⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(2); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(2); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 17(2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 1(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 11(1).

and postal proxy voters.¹⁰⁶

- 1.171 If the required information has been provided, and the registration officer is satisfied that the elector is eligible for a proxy vote, their application will be granted and their details entered into the relevant record of proxy voters. The record of periodic proxy voters is then combined with specific proxy voting applications to generate the proxy voters' list which governs entitlement to a proxy vote for a particular election.¹⁰⁷

Attestation of eligibility for a proxy vote

- 1.172 A corollary of the fact that applicants must identify a ground of entitlement to a proxy vote is the requirement that their application must be attested by a prescribed person, or possession of certain documents, or their entitlement must otherwise be self-evident from the nature of their registration or registered address.

NO ATTESTATION REQUIRED WHERE GROUND SELF-EVIDENT

- 1.173 Applications for a proxy vote made by service voters, those registered pursuant to an overseas electors' declaration, and by anonymous voters, are not subject to an attestation requirement. This is because the ground for voting by proxy – residence overseas or anonymity due to concerns about personal safety – are verified by the special category under which the elector is registered.
- 1.174 Applications for a proxy vote because voting in person would require travel by sea or air do not require attestation. The registration officer is qualified to decide which electors need to make such a journey to get from their registered address to their polling station.

ATTESTATION REQUIRED IN OTHER CASES

- 1.175 In other cases, registration officers are ill-equipped to make judgements about the veracity of the proffered ground for voting by proxy. Accordingly the Registration regulations, and election specific measures for non-2000 Act

¹⁰⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 60A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 60A; Local Electoral Administration and Services (Scotland) Act 2006, s 22; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 15A and 15C; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 31; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 14; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 12.

¹⁰⁷ Representation of the People Act 2000, sch 4 paras 3(4), 4(6), 5(1) and 5(3); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 3(4), 4(7) and 5(1) and (3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, arts 8(4) and 9(5) and (8); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 8(3), 9(6) and 10(1) and (3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 3(8) and 4(1) and (3).

elections, require the application to be attested.¹⁰⁸

Attestation of periodic proxy applications

- 1.176 Applications made for a definite or indefinite period must be attested by a person listed in the relevant provision. Where the ground relates to blindness or some other disability, regulations prescribe for attestation by listed health professionals and other professionals involved in the provision or management of care homes.
- 1.177 However, no such attestation is required where the application states that the elector is in receipt of certain prescribed benefits, or is registered blind by the local authority. In the latter case, mere registration is evidence of eligibility, which suggests that in the others, some documentary evidence may be required by the registration officer.
- 1.178 Where the ground relates to absence for reasons of work or study, details must be furnished and attested by an employer or course provider.

No attestation of specific proxy voting applications.

- 1.179 Applications made in respect of a particular election must only set out why the applicant's circumstances on the date of the poll will be or a likely to be such that they will not be able to attend a polling station to vote. There is no further need for attestation, provided the application is received by the ordinary deadline of six days before the poll.

Deadlines for proxy voting

DEADLINES RELATING TO PROXY VOTING

- 1.180 In order to be effective for any impending election, applications must be ordinarily be received by 5pm on the sixth day before polling day. Where an elector is entered into the postal voters list, the deadline to move their entry from that list to the proxy voters list is the same date as the ordinary deadline for postal voting applications, apart from for Police and Crime Commissioner elections where the deadline is 5pm on the sixth day before polling day. Where a person appointed

¹⁰⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 52 to 55; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 52 to 55; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, regs 7 to 10; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 22 to 25; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 paras 5 to 8; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 paras 3 to 6; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 14 and 15.

as proxy applies to vote by post as proxy, the ordinary deadline applies.¹⁰⁹

EMERGENCY PROXY APPLICATIONS

- 1.181 A specific proxy application may be made after the ordinary deadline in two circumstances: where the applicant becomes disabled after the ordinary deadline for proxy applications, or where the applicant is a mental patient who is not detained. Such an application may be received up to 5pm on polling day. It may only be made in respect of a particular election.¹¹⁰
- 1.182 Where an application for an emergency proxy vote is made on the ground that the applicant became disabled after the ordinary deadline for proxy applications the same attestation requirements apply as with regard to applications for an indefinite or definite period on grounds of disability. The attester must additionally state, to the best of their knowledge and belief, the date upon which the applicant became disabled.¹¹¹
- 1.183 Where an application for an emergency proxy vote is made by a mental patient who is not detained, similar attestation requirements. The Representation of the People (Description of Electoral Registers and Amendment) Regulations 2013 have introduced an attestation requirement for emergency applications on the grounds of occupation, service or employment.¹¹²

¹⁰⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 56; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 56; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 11; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 26; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 9; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 7; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 16.

¹¹⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 56(3A); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 56(3A); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 11(4); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 26(4); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 9(4); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 7(3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 16(2).

¹¹¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 55(3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 55(3); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 10(3); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 25(3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 7(3); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 6(3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 14(5).

¹¹² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 55(5); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 55(5); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 10(5); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 25(5); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 7(5); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 6(5); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 14(7).

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- 1.184 An amendment to the 2001 Regulations extends the scope of an emergency proxy vote to include grounds relating to an applicant's occupation, service or employment. The same attestation requirements apply.¹¹³

Appointing a person as a proxy for another

- 1.185 An application to be a proxy voter must be accompanied by the appointment of another who is willing and able to vote on their behalf, stating their full name and address, and their familial relationship to the applicant, if any.
- 1.186 Unlike other applications in the field of absent voting, a specified form is to be used, called a "proxy paper", to appoint a particular person as a proxy. This is prescribed by schedule 3 to the Representation of the People Regulations applying to England and Wales and Scotland, and in election-specific legislation for non-2000 Act elections. The Scottish Parliament (Elections etc.) Order 2010 allows the registration officer to combine a proxy paper for a Scottish Parliamentary election with one issued in respect of any other election, meaning that the same form may be used to appoint the same person as proxy for multiple elections. Where a proxy paper is prescribed in the legislation, a form to the like effect may also be used.¹¹⁴

Qualifications for proxy appointment

- 1.187 The basic principle is that any person who satisfies the relevant franchise is capable of being appointed proxy to vote for another. By recent amendment to the law, a person must now also be a registered elector before they can be appointed as proxy. A person cannot be appointed to vote as proxy if they are subject to a legal incapacity to vote at that election as an elector, will not have attained 18 years of age on the date of the poll or are neither a Commonwealth citizen nor a citizen of the Republic of Ireland. For local and European Parliamentary elections, a proxy may be a citizen of the European Union.
- 1.188 A person is not entitled to vote as proxy on behalf of more than two electors, "of whom that person is not the spouse, civil partner, parent, grandparent, brother,

¹¹³ Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 SI 2013 No 3198, reg 23; Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 SI 2013 No 3206, reg 23.

¹¹⁴ Representation of the People Act 2000, sch 4 para 6(9); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 4(2) and 57(3) and sch 3; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 4(2) and 57(3) and sch 3; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 12(3) and sch 1 para 1; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 6(8) and 12(2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 10(8) and sch 3 para 10(3); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 11(8) and 142 and sch 1 para 8(3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 5(5).

sister, child or grandchild.”¹¹⁵ Although, not the clearest drafting, this means that a person can be a proxy for up to two electors, or more than two, provided that all of them are close relatives. They cannot be proxy for two acquaintances, and simultaneously for others who are family members.

The role of the registration officer in proxy applications

- 1.189 In general, the role of the registration officer in granting applications and maintaining records and lists of postal voters applies equally to proxy voting.
- 1.190 Upon granting an application for the appointment of a proxy a registration officer must also confirm in writing to the elector that the proxy has been appointed, the proxy’s name and address, and the duration of the appointment. For elections held in Scotland, this must only be done “where practicable”. The Scottish Parliament (Elections) Order also requires, where practicable, that this confirmation is also sent to the proxy.¹¹⁶
- 1.191 As opposed to requiring fresh signatures, a registration officer is also given the power to make inquiries at any time of those registered for a periodic proxy vote by virtue of their disability, occupation or education to ascertain whether there has been a material change of circumstances such that the person is no longer entitled to a proxy vote. For all elections apart from those to the Scottish Parliament, this power must be exercised every three years in relation to those entitled to a proxy vote by reason of their occupation or education. A registration officer is entitled to treat a failure to respond within one month of sending any such inquiries as sufficient evidence of a material change of circumstances.¹¹⁷

Voting by post as proxy in Great Britain

- 1.192 A person appointed to vote as a proxy may apply to vote by post as proxy, on demand, by making submitting an application by 5pm on the 11th day before the

¹¹⁵ Representation of the People Act 2000, sch 4 para 6; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 6; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 10; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 11; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 5 and 6.

¹¹⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 57(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 57(2); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 12(2); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 27(2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 10(2); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 8(2); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 17(2).

¹¹⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 60; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 60; Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 15; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 30; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 13; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 11.

poll.¹¹⁸ The application must include the full name, address, and personal identifiers of the proxy applying to vote by post as proxy, together with the name and address of the elector for whom they are appointed to vote.¹¹⁹

The administration of absent voters in Northern Ireland

- 1.193 As explained above, absent voting in Northern Ireland for UK Parliamentary elections is governed by sections 5 to 9 of the Representation of the People Act 1985 (“the 1985 Act”) and the Representation of the People (Northern Ireland) Regulations 2008 (“the 2008 Regulations”).¹²⁰ Absent voting at elections to the European Parliament, local government, and the Northern Ireland Assembly is governed by election-specific measures.¹²¹ The chief difference from Great Britain is that electors must show their entitlement to an absent vote, whether by post or proxy. In general, therefore, one can say entitlement to an absent vote in Northern Ireland is based on the satisfaction of the same conditions as proxy voting in Great Britain – blindness or other disability, occupation, employment or attendance on a course; registration as a service or overseas elector; and travel from registered address to polling station requiring a journey by air or sea.¹²²
- 1.194 The Electoral Law Act (Northern Ireland) 1962 (“the 1962 Act”), makes provision for absent voting in parallel with the other applicable legislation, but its mentions of parliamentary elections are references to the now defunct Stormont Parliament.

Key features of administration of absent voters in Northern Ireland

- 1.195 We now turn to the detailed rules governing the administration of absent voters in Northern Ireland. In large part, these follow the norms set for Great Britain. We concentrate mainly on the differences in the rules subsisting in Northern Ireland.

¹¹⁸ Representation of the People Act 2000, sch 4 para 7; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 56(1); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 56(1); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 11(1); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 paras 7 and 26(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 11 and sch 3 para 9(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 12 and sch 1 para 7(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 paras 7 and 16(3).

¹¹⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 51(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 51(2); Representation of the People (Absent voting at local government elections) (Scotland) Regulations 2007 SSI 2007 No 170, reg 3(2); European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 2 para 17(2); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 3 para 1(1); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 1 para 1(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 2 para 11(1).

¹²⁰ X-ref to para {1.128}.

¹²¹ European Parliamentary (Northern Ireland) Regulations 2004 SI 2004 No 1267; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454.

¹²² Anonymous registration, a ground in Great Britain, does not exist in Northern Ireland.

Applications for a periodic or particular absent vote

- 1.196 The distinction between “periodic” and “specific” applications for an absent vote holds in Northern Ireland. The grounds of eligibility for a periodic postal or proxy vote are based on the grounds discussed further above. Eligibility for a specific absent vote turns on the Chief Electoral Officer being satisfied that the elector’s circumstances on the date of the poll will be or are likely to be such that they cannot reasonably be expected to vote in person at their allotted polling station.
- 1.197 One central difference is that an application for a “periodic” absent vote can only be for an indefinite period. There is no option, as there is in Great Britain, to specify a finite period for which the application is made. Accordingly, there is no requirement for an application to do anything other than seek an indefinite absent vote, or one for a particular election, on which day circumstances are such that the elector cannot vote in person.
- 1.198 The election-specific scope of absent voting applications which we highlighted in relation to Great Britain is also evident in the different measures on absent voting applying to each type of election held in Northern Ireland. In fact, no attempt is made to enable applications for one type of election to be “combined”, with others, as we saw was done in varying ways in relations to the legislation in Great Britain. The question in Northern Ireland is also, therefore, whether there is a power to move electors from one statutory “record” of applicants to another, if electors insist on applying for an absent vote at just one species of election.
- 1.199 For Northern Ireland Assembly elections (like PCC elections), it is not possible to apply for an absent vote other than for a specific election; but electors entered on the relevant record of absent voters for local elections in Northern Ireland will automatically be included in the postal voters’ list for Northern Ireland Assembly elections.¹²³

General requirements for applications

- 1.200 An application for an absent vote need not be made on a particular form – it must simply contain the information prescribed in the legislation. The necessary information includes the name of the applicant and the address at which they are registered, and the grounds on which the elector wishes to apply for an absent vote.¹²⁴ Applications must be signed and dated.
- 1.201 There is no provision for an applicant to request the waiver of the signature requirement when applying for a postal vote. This is because in Northern Ireland the provision of personal identifiers is required at the point of applying to become a registered elector. A person who is unable to sign their name in a consistent and distinctive way may request, on their registration application, a waiver of the

¹²³ Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying s 7 of the Representation of the People Act 1985 with modifications.

¹²⁴ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 55(2); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 para 2(2); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People (Northern Ireland) Regulations 2008, reg 55(2); Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 5(1)

requirement to provide a signature.¹²⁵ If such a waiver is granted, that person will not be required to provide a signature for an absent vote application or on a declaration of identity submitted with a postal vote.¹²⁶

- 1.202 This approach suffers from the flaw that if a person who is already a registered elector becomes unable to sign consistently or distinctively, they will not be entitled to waive the requirement to provide a signature on a postal vote application or declaration of identity. Advice from the Electoral Office for Northern Ireland recommends that in such a situation the elector should apply for a proxy vote, as no signature is necessary in order to cast a vote by proxy.

Electronic transmission, but not signature

- 1.203 While an application for an absent vote may be sent electronically under regulation 5 of the 2008 Regulations, such applications are specifically excluded from the scope of regulation 6, which permits electronic signatures to be used elsewhere. Regulations 5 and 6 are applied to Northern Ireland Assembly elections,¹²⁷ but not included in the provisions on European Parliamentary elections and local government elections in Northern Ireland. Applications for an absent vote at those elections are explicitly to be sent by post or delivered to the Chief Electoral Officer.¹²⁸

Personal identifiers include National Insurance number and must be matched

- 1.204 As in Great Britain, applicants must provide their date of birth and signature. In addition, applicants must also provide their National Insurance number or state that they do not have one. A further, key area of difference is that the Chief Electoral Officer is required to match these personal identifiers with those supplied with the elector's application to register. If these do not correspond, the officer must reject the application.¹²⁹

Attestation

- 1.205 All applications for an absent vote in Northern Ireland must be attested by a person listed in the relevant legislative provision. A key difference between Northern Ireland and Great Britain is that this includes applications for an absent vote at a specific election. As we saw, only "emergency" specific applications, which are based on some supervening reason for the application, must be

¹²⁵ Representation of the People Act 1983, ss 10(4A) and (4B), 10A(1A) and (1B), 13A(2A) and (2B).

¹²⁶ Representation of the People Act 1985, ss 6(1) and 7(1); Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 87.

¹²⁷ Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2.

¹²⁸ Local Elections (Northern Ireland) Order 1985 SI 1985 No 454 sch 2 para 5(2).

¹²⁹ Representation of the People Act 1985, ss 6(1) and 7(1); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, arts 8(1) and 9(1); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying Representation of the People Act 1985, s 7(1); Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 paras 1(1) and 2(1).

attested in Great Britain. In Northern Ireland even an ordinary application for a specific absent vote must be attested by an adult UK resident who knows, but is not related to, the applicant, who certifies that to the best of his or her knowledge and belief, the applicant's statement as to their circumstances is true.¹³⁰

Additional requirements relating to postal voting

- 1.206 Applications which request a ballot paper to be sent to an address different from that in respect of which the applicant is registered or that listed in the record of postal voters must state why the applicant's circumstances are or are likely to be such that their ballot paper should be sent to that address.¹³¹ There is no provision for sending a ballot paper to a different address in the regulations governing European Parliamentary elections held in Northern Ireland.

Additional requirements relating to proxy voting

- 1.207 The same requirements as to eligibility to be appointed as proxy as in Great Britain. An elector also cannot have more than one person at any time appointed as proxy to vote for him or her.¹³² However, that provision is not included in the Local Elections (Northern Ireland) Order 1985.
- 1.208 Where an elector applies to vote by proxy, the application must additionally state the full name and address of the proxy, their familial relationship with the applicant, if any, and that the proxy is able and willing to take up the appointment.¹³³
- 1.209 A proxy paper must be used to appoint a person as proxy. The form is prescribed in the election specific legislation, although a form to the like effect may be used. While the Northern Ireland Assembly Elections Order 2001 applies section 8 of the 1985 Act, which requires the use of a proxy paper, to Assembly elections, the 2001 Order does not apply any provision setting out the form of

¹³⁰ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 57 to 59; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 paras 4 to 6; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People (Northern Ireland) Regulations 2008, reg 59; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 paras 6 to 8.

¹³¹ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, regs 55A and 55B; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People (Northern Ireland) Regulations 2008, regs 55A and 55B; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 5B and 5C.

¹³² Representation of the People Act 1985, s 8; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, art 10; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying Representation of the People Act 1985, s 8; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 3.

¹³³ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 56; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 para 3; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People (Northern Ireland) Regulations 2008, reg 56; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 9.

proxy paper.¹³⁴

Specific requirements relating to voting by post as proxy

- 1.210 An application to vote by post as proxy for an indefinite period must be granted if the person appointed as proxy is included in the record of periodic absent voters or if the address provided by the applicant for his ballot paper to be sent to is not in the same area as the elector's address. For European Parliamentary and local elections in Northern Ireland, a proxy may vote by post where their address is in a different ward to that of the elector.¹³⁵
- 1.211 Where applications to vote by post as proxy in Northern Ireland are made in respect of a particular election, the application must set out why the applicant's circumstances on the date of the poll will be or are likely to be such that they cannot reasonably be expected to vote in person at the polling station allotted to the elector.¹³⁶

Deadlines relating to absent voting in Northern Ireland

- 1.212 Applications to vote by post, by proxy or by post as proxy must be received by 5pm on the 14th day before polling day.
- 1.213 Emergency applications to vote by post or proxy in respect of a particular election may be made up to 5pm on the sixth day before polling day, if accompanied by the correct attestation.¹³⁷

THE ROLE OF THE CHIEF ELECTORAL OFFICER

- 1.214 What applies in Great Britain in relation to the role of the registration officer applies equally to the Chief Electoral Officer in Northern Ireland. However, there are some minor differences which are worth noting. Where the Chief Electoral Officer has granted an application for an absent vote they the elector need only

¹³⁴ Representation of the People Act 1985, s 8(8); Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, regs 4(2) and 62 and sch 3 form E; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, regs 2A(2) and 10(8) and sch 2 para 9; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying Representation of the People Act 1985, s 8; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 3 and appendix.

¹³⁵ Representation of the People Act 1985, s 9(4); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 11(4); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying Representation of the People Act 1985, s 9; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 4(4).

¹³⁶ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 60; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 para 7; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People Regulations 2008, reg 60; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 10.

¹³⁷ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 61; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 para 8; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People Regulations 2008, reg 61; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 11.

be notified “where practicable”.¹³⁸ There is also no provision for appeal against the decision of the registration officer in the legislation governing Northern Ireland Assembly elections and local government elections in Northern Ireland.

PERSONAL IDENTIFIERS: FORM AND RENEWAL

- 1.215 There is no requirement in Northern Ireland for signatures and dates of birth to be supplied in a specific form in absent voting applications, although there is an obligation to verify signatures and dates of birth in rule 45(2)(b) and (2A) of the Parliamentary Elections Rules in schedule 1 to the Representation of the People Act 1983. Nor is there a requirement for fresh identifiers to be provided at five year intervals.

Special Polling Stations in Northern Ireland

- 1.216 Section 10 and schedule 1 of the Representation of the People Act 1985 provide for another permissible way to cast a vote in Northern Ireland: by voting in a “special polling station”. The Secretary of State may bring the scheme for special polling stations contained in schedule 1 into force if he or she considers it necessary to prevent abuse of the system of postal voting, where applications are made in respect of a specific election. While schedule 1 is in force, only those who provide an address in Great Britain for their ballot paper to be sent to will be entitled to a “specific” postal vote; any voter in Northern Ireland who is unable to vote in a particular election at the polling station that would normally be allotted to them must instead apply to vote at a special polling station.
- 1.217 Under the provisions of schedule 1, a person may apply to vote at a special polling station under the same circumstances as if applying for an absent vote for a specific election.¹³⁹ They will be allotted to a special polling station by the Chief Electoral Officer and may only vote in person at that polling station.¹⁴⁰
- 1.218 Other provisions for voting at special polling stations are largely similar to in person voting at ordinary polling stations; save that the official mark on ballot papers used at special polling stations must be different to that used for ballot papers distributed in ordinary polling stations.¹⁴¹ In addition, the only persons permitted to attend special polling stations (other than voters on the list for that special polling station) are “observers” appointed to a particular polling station by the Chief Electoral Officer after appropriate consultation. Observers may be candidates or their agents.¹⁴²

¹³⁸ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 62(1); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 2 para 9(1); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 2 applying Representation of the People Regulations 2008, reg 62; Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 para 12(1).

¹³⁹ Representation of the People Act 1985, sch 1 para 1(2).

¹⁴⁰ Representation of the People Act 1985, sch 1 para 1(1) and (3).

¹⁴¹ Representation of the People Act 1985, sch 1 para 3.

¹⁴² Representation of the People Act 1985, sch 1 para 5.

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- 1.219 Section 10 provides for schedule 1 to come into force on a date that the Secretary of State may by order appoint, and cease to be in force if another order to that effect is made by the Secretary of State. Any such order is subject to an affirmative resolution by both Houses of Parliament.
- 1.220 The Electoral Administration Act 2006 made two minor amendments to the special polling stations scheme. A provision was modified to refer to section 18A of the Representation of the People Act of the 1983 Act; and a provision applying two of the Parliamentary Elections Rules was omitted.¹⁴³ If and when schedule 1 is brought into force, these amendments will take effect. However, no consequential amendments to schedule 1 have been made to reflect modern developments in electoral law, such as the use of a corresponding number list instead of a counterfoil. This suggests a current political view that schedule 1 is unlikely to come into force in the near future.
- 1.221 The special polling stations scheme is a unique provision in electoral law whose relevance to the modern context can be questioned, and it is another matter to be brought up before the Northern Ireland Office in order to understand whether it is firm government policy to insist on such a provision remaining in the statute book.

Third party handling of absent voting applications in the UK

- 1.222 The provisions on applications for an absent vote offer a great deal of scope for third party involvement in the process. This can be a cause for concern where the third party has a strong interest in the outcome of the election – for example, a political party, or a group of politically affiliated campaigners.
- 1.223 The legislation permits, by not prescribing a form, the use of bespoke application forms for an absent vote, and the collection of completed application forms for delivery to the registration officer. This might enable unscrupulous individuals to inspect applications and identifiers, oversee the appointment of proxies, or the sending of postal votes to another address.
- 1.224 There is also an administrative dimension to third party involvement. We have seen that standard forms enable a registration officer to ensure the pan-electoral scope of absent voting applications. Furthermore, the fact that the form may be delivered by anybody allows parties to collect postal voting applications and deliver large numbers of them close to the deadline, which as well as being burdensome might allow suspicious applications to go unnoticed.
- 1.225 The Electoral Commission's guidance to Electoral Registration Officers advises them to be vigilant in spotting patterns of postal voting applications, and to refer any suspicious behaviour to a point of contact in the police.¹⁴⁴ Registration officers have no general power to investigate absent voting applications, which must be accepted if they fulfil the requisite conditions, and it might be undesirable to give registration officers such a power in the politically sensitive environment

¹⁴³ Electoral Administration Act 2006, sch 1 para 135; Representation of the People Act 1985, sch 1 paras 1(6) and 7(2).
















¹⁴⁴ Electoral Commission, *Managing electoral registration in Great Britain: Guidance for Electoral Registration Officers, Part G – Absent Voting* (July 2013), paras 1.28 and 5.10.

during the run-up to an election.

- 1.226 Instead, the Electoral Commission has released a code of conduct for campaigners relating to postal voting, proxy voting and polling stations. This is directed at candidates and their agents and supporters, political parties, and campaigners at elections and referenda more generally. The code recommends certain behaviours, which are designed to reduce the opportunity of fraudulent behaviour and prevent innocent behaviour from appearing fraudulent. The Electoral Commission have indicated orally that there have been calls from those involved in the electoral process for elements of the code to be put on a statutory footing.
- 1.227 The issue of putting any of the duties currently in the voluntary code of conduct on a statutory footing is a matter that we will consider fully when considering the law on candidates and the campaign. However, we can presently make the following remarks.
- (1) The classical governance of electoral conduct is based on the twin principles of:
 - (a) A mechanism for eliminating outside influence in the form of the secret ballot; and
 - (b) Stringent regulation of candidates' conduct through criminal and public sanctions and relaxed agency requirements, which are aimed with the interference with in-person voting through bribery, treating, undue influence, intimidation and so on.
- 1.228 Absent voting departs from the secret ballot mechanism described above, in that proxies are free to vote as they want, and the marking of postal ballot papers is not guaranteed to occur in secret.
- 1.229 Since it is difficult to see how a mechanism can be developed which addresses the vulnerability of absent voting to outside interference, relative to secret, in person voting, there is a strong case for ensuring that the regulation of candidates is adequate to cope with the increased role it plays in keeping elections free from corruption.
- 1.230 In a report on electoral fraud in the UK published in January 2014, the Electoral Commission, considering absent voting applications and postal voting, recommended that campaigners at elections and referendums in the UK should not be involved in the process of assisting other people in completing postal or proxy vote applications or handling postal ballot packs. It hoped to implement this policy without a new offence being introduced, by seeking agreement from political parties to the prohibition being in its Code of Conduct for campaigners.¹⁴⁵

¹⁴⁵ Electoral Commission, *Electoral fraud in the UK* (January 2014), pp 41 to 42.

APPENDIX A: ELECTION SPECIFIC BALLOT PAPER RULE AND FORM

Type of Election	Provision for Ballot Paper Form	Template for Ballot Paper Form																		
UK Parliamentary Elections	<p>Rule 19 Schedule 1, Representation of the People Act 1983</p> <p>(1) The ballot of every voter shall consist of a ballot paper, and the persons shown in the statement of persons nominated as standing nominated, and no others, shall be entitled to have their names inserted in the ballot paper.</p> <p>(2) Every ballot paper shall be in the form in the Appendix, and shall be printed in accordance with the directions in that Appendix, and —</p> <p>(a) shall contain the names and other particulars of the candidates as shown in the statement of persons nominated;</p> <p>(b) shall be capable of being folded up;</p> <p>(c) shall have a number [and other unique identifying mark] printed on the back;</p> <p>(2A) If a candidate who is the subject of a party's authorisation under rule 6A(1) so requests, the ballot paper shall contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).</p> <p>(2B) The request must—</p> <p>(a) be made in writing to the returning officer, and</p> <p>(b) be received by him during the period for delivery of nomination papers set out in the Table in rule 1.</p> <p>(3) The order of the names in the ballot paper shall be the same as in the statement of persons nominated.</p> <p>(4) The Secretary of State may in regulations—</p> <p>(a) prescribe a different form of ballot paper from that in the Appendix;</p> <p>(b) amend or replace the directions as to printing the ballot paper in the Appendix;</p> <p>(c) in consequence of anything done for the purposes of paragraph (a) or (b), amend or replace the Form of directions for the guidance of the voters in voting in the Appendix.</p>	<p>Appendix Schedule 1, Representation of the People Act 1983</p> <p>APPENDIX</p> <p>VOTE FOR ONE CANDIDATE ONLY</p> <table> <tr> <td>1</td><td> BASWRA Paresh Baswra 20 Kincade Road, Small Heath, Birmingham B10 9JG Liberal Democrat </td><td></td></tr> <tr> <td>2</td><td> CRANLEY Alana Cranley 4 Kennil Road, Edgware, Middx. HA8 5JJ Green Party </td><td></td></tr> <tr> <td>3</td><td> EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Stop the By-Pass Candidate </td><td></td></tr> <tr> <td>4</td><td> GUNNIL-WALKER Roger Gunnill-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate </td><td></td></tr> <tr> <td>5</td><td> SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent </td><td></td></tr> <tr> <td>6</td><td> SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate </td><td></td></tr> </table>	1	BASWRA Paresh Baswra 20 Kincade Road, Small Heath, Birmingham B10 9JG Liberal Democrat		2	CRANLEY Alana Cranley 4 Kennil Road, Edgware, Middx. HA8 5JJ Green Party		3	EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Stop the By-Pass Candidate		4	GUNNIL-WALKER Roger Gunnill-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate		5	SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent		6	SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate	
1	BASWRA Paresh Baswra 20 Kincade Road, Small Heath, Birmingham B10 9JG Liberal Democrat																			
2	CRANLEY Alana Cranley 4 Kennil Road, Edgware, Middx. HA8 5JJ Green Party																			
3	EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Stop the By-Pass Candidate																			
4	GUNNIL-WALKER Roger Gunnill-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate																			
5	SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent																			
6	SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate																			

Note:

The Parliamentary Election Rules are a schedule to a primary Act, which can only be amended by the UK Parliament. However, the Secretary of State has the power to prescribe a different ballot paper form or amend/replace the directions as to printing in regulations.

**UK
Parliamentary
elections (draft
new ballot
paper)*****Draft Representation of the People (Ballot Paper)
Regulations 2013, sch 1***

Election of the Member of Parliament for the *[insert name
of constituency]* constituency

Vote for **only one candidate** by putting a cross  in the
box next to your choice

BASWRA, Paresb

2 The Cottages, Anytown XY8 8JG

Liberal Democrat

☐

CRANLEY, Alana

4 The Walk, Anytown XY9 5JJ

Green Party

☐

EDGBASTON, Richard

6 The Heath, Anytown XY4 0BH

The Common Good Party

☐

GUNNIL-WALKER, Roger

33 The Lane, Anytown XY6 3GD

The Labour Party Candidate

☐

SMITH, Catherine Angelina

21 The Grove, Anytown XY2 5JP

Independent

☐

SMITH, Keith James

3 The Road, Anytown XY3 4JN

The Conservative Party Candidate

☐

ZANUCK, George Henry

17 The Parade Anytown XY9 5KP

The United Kingdom Independence Party Candidate

☐

European Parliamentary Elections

Rule 22

European Parliamentary Elections Regulations 2004 (SI 2004/293)

(1) The ballot of every voter must consist of a ballot paper, and the registered parties, together with their candidates shown in the statement of parties and individual candidates nominated and the individual candidates shown as standing nominated, and no others, are entitled to have their names inserted in the ballot paper.

(2) Every ballot paper must be in Form A in the Appendix, and must be printed in accordance with the directions in that Appendix, and—

(a) must contain the names followed by the descriptions, if any, of the registered parties shown in the statement of parties and individual candidates nominated, together with the names of the candidates of those parties and the names, followed by the descriptions if any, of any individual candidate so shown;

(b) must be capable of being folded up; and

(c) must have a number and other unique identifying mark printed on the back.

(3) If a request is made by or on behalf of a nominating officer of a registered party, the ballot paper must contain adjacent to the party's name the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(4) The request must—






(a) be made in writing to the returning officer; and

(b) be received by him before the last time for the delivery of nomination papers set out in the Timetable in rule 1.

(5) The order of the names of the registered parties, together with their candidates, and of the individual candidates in the ballot paper must be the same as in the statement of parties and individual candidates nominated.

Form A Appendix

European Parliamentary Elections Regulations 2004 (SI 2004/293)

Election for the European Parliament NORTH WEST REGION You have one vote		
1	Conservative Party 1. Arthur John Briggs 2. Edith Kitching 3. David Harrieth Scott 4. Ibrahim Malik 5. Douglas Alexander Chapman 6. Christopher Paul Hampton 7. Derek Holloway-Jones 8. Russell Montgomery Johnstone 9. Anita Patel 10. Sheila Hammonds-Jameson	
2	Green Party 1. James Edward Worthingborough 2. Kathleen Mary Ferrier 3. Mary Jean Chandler 4. Frank Probert 5. Samuel James Winesbury 6. William Anderson 7. Paul Alfred Madarska 8. Kathleen Stephen Murphy 9. Maximus Paul Alexander 10. Philip Paul Holland	
3	Labour Party 1. Eileen Iris Allop 2. Indira Anita Gupta 3. Robert Henry Anderton 4. Victor Daniel Amos 5. Annabelle Susannah Hilly-Stowas 6. Andrew Wilson 7. Harry Townsend 8. Eric Harvey Williamson 9. Minnie Christine Marsden 10. Gareth Geoffrey Handman	
4	Liberal Democrat Party 1. Peggy Veronica Greenburgh 2. David Lloyd-Perry 3. Simon David Gaskin 4. Julie Henrietta Drake-Henderson 5. Franka Maria Pearson 6. Ayobola Ajoku 7. Geraldine Mary Jennings 8. Sandra James Sinden 9. Patricia June Hendryke 10. Gustaf Arthur Jones	
5	United Kingdom Independence Party 1. Peter Hamilton Price 2. Gordon Harold Bentley 3. Gerrie Stephanie Unwinster 4. Leonard David Atherton 5. Charles Henry Robinson-Browne 6. Joan Davidson 7. Carole Jocelyn Stuart 8. Richard Annabald Butler 9. Gerrie Philippe Jameson 10. Brian Atkinson	
6	Elizabeth Penelope Nightingale Independent	
7	Manmeet Singh Independent	

Note:

The European Parliamentary Election Rules are a set of regulations prescribed by the Secretary of State pursuant to his power under the European Parliamentary Elections Act 2002.

There is no European requirement for the ballot paper to appear in this particular way.

European Parliamentary Elections in Northern Ireland





**Rule 19
European Parliamentary Elections (Northern Ireland) Regulations 2004 (SI 2004/1267)**

- (1) The ballot of every voter must consist of a ballot paper, and the persons shown in the statement of candidates nominated as standing nominated, and no others, are entitled to have their names inserted in the ballot paper.
- (2) Every ballot paper must be in the Form A in the Appendix of Forms, and must be printed in accordance with the directions in that Appendix, and—
 (a) must contain the names of the persons shown in the statement of candidates nominated,
 (b) must be capable of being folded up, and
 (c) must have a number and other unique identifying mark printed on the back.
- (3) If, on behalf of a candidate who is the subject of a party's authorisation under rule 5(1) the registered nominating officer of that party so requests, the ballot paper must contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).
- (4) The request must be—
 (a) made in writing to the returning officer, and
 (b) received by him before the last time for the delivery of nomination papers set out in the timetable.
- (5) If, on behalf of a candidate who is the subject of two or more parties' authorisations under rule 5(3), the registered nominating officers of those parties so request, the ballot paper must contain, against the candidate's particulars the registered emblem of one of those parties (or, as the case may be, one of its registered emblems).
- (6) The request must be—
 (a) made in writing by the nominating officers of the parties jointly to the returning officer, and
 (b) received by him before the last time for the delivery of nomination papers set out in the timetable.
- (7) The order of the names in the ballot paper must be the same as in the statement of candidates nominated.

**Form A Appendix
European Parliamentary Elections
(Northern Ireland) Regulations 2004 (SI 2004/1267)**

Rule 19
FORM A: THE BALLOT PAPER

Form of front of ballot paper

Mark order of preference in space below		
		BITTERN (Richard Bittern of 5 Down Street, Bangor, Co. Down. Democratic Unionist Party)
		DIPPER (JOANNA Dipper of 9 Mourne View, Donaghadee, Co. Down. Independent)
		DIPPER (MARTIN Dipper of 8 Magilligan Drive, Portaferry, Co. Down. SDLP (Social Democratic and Labour Party))
		FINCH (John Finch of 29 Gilford Place, Millisle, Co. Down. Sinn Féin)
		KITE (Julie Kite of Glen Cottage, Banbridge, Co. Down. Independent)
		LINNET (Harry Linnet of 7 Gortin Mansions, Dromara, Co. Down. Ulster Unionist Party)
		ROBIN (David Robin of 3 Strangford Road, Killinchy, Co. Down. Independent)
		SPARROW (Anne Sparrow of 41 Devenish Drive, Ballymahinch, Co. Down. Independent)
		SWALLOW (Peter Swallow of 3 Mourne View, Bangor, Co. Down. Independent)
		SWIFT (Lee Swift of 11 Moira Terrace, Newry, Co. Down. Independent)

Note:

**Local Government
(Principal Areas)
Elections**

Rule 16

Schedule 2, Local Elections (Principal Areas) (England and Wales) Rules 2006

(1) The ballot of every voter must consist of a ballot paper, and the persons remaining validly nominated for the electoral area after any withdrawals under these Rules, and no others, shall be entitled to have their names inserted in the ballot paper.

(2) Every ballot paper must be in the form in the Appendix, and must be printed in accordance with the directions in that Appendix, and—

(a) must contain the names and other particulars of the candidates as shown in the statement of persons nominated;

(b) must be capable of being folded up; and

(c) must have a number and other unique identifying mark printed on the back.

(3) If a candidate who is the subject of a party's authorisation under rule 5(1) so requests, the ballot paper must contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(3A) If a candidate who is the subject of an authorisation by two or more parties under rule 5(3) so requests, the ballot paper must contain, against the candidate's particulars, the registered emblem (or, as the case may be, one of the registered emblems) of one of those parties.

(4) The candidate's request under paragraph (3) or (3A) must—

(a) be made in writing to the returning officer, and

(b) be received by him before the last time for the delivery of nomination papers set out in the Table in rule 1.

(5) The order of the names in the ballot paper must be the same as in the statement of persons nominated.

Part 7






Schedule 2, Local Elections (Principal Areas) (England and Wales) Rules 2006

Rule 16

Local Government Elections

Form of Front of Ballot Paper

VOTE FOR NO MORE THAN CANDIDATES

1	BASWRA Pareesh Baswra 20 Kincaide Road, Small Heath, Birmingham B10 9JG Liberal Democrat		
2	CRANLEY Alana Cranley 4 Kennil Road, Perry Bar, Birmingham B32 5JJ Green Party		
3	EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Common Good Party		
4	GUNNILL-WALKER Roger Gunnill-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate		
5	SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent		
6	SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate		

Form of Back of Ballot Paper

Number

Other Unique Identifying Mark

Election for the *(..... electoral division/ward) of the

*(county/district/London borough/county borough) of

on 20 ..

*Delete whichever is inappropriate

Note:

The Local Election Rules for Principal Areas are contained in rules prescribed by the Secretary of State pursuant to his power under the Representation of the People Act 1983.

Local Government (Parish or Communities) Elections

Rule 16

Schedule 2, Local Elections (Parishes and Communities) (England and Wales) Rules 2006

(1) The ballot of every voter must consist of a ballot paper, and the persons remaining validly nominated for the electoral area after any withdrawals under these Rules, and no others, shall be entitled to have their names inserted in the ballot paper.

(2) Every ballot paper must be in the form in the Appendix, and must be printed in accordance with the directions in that Appendix, and—

- (a) must contain the names and other particulars of the candidates as shown in the statement of persons nominated;
- (b) must be capable of being folded up; and
- (c) must have a number and other unique identifying mark printed on the back.

(3) If a candidate who is the subject of a party's authorisation under rule 5(1) so requests, the ballot paper must contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(3A) If a candidate who is the subject of an authorisation by two or more parties under rule 5(3) so requests, the ballot paper must contain, against the candidate's particulars, the registered emblem (or, as the case may be, one of the registered emblems) of one of those parties.

(4) The candidate's request under paragraph (3) or (3A) must—

- (a) be made in writing to the returning officer, and
- (b) be received by him before the last time for the delivery of nomination papers set out in the Table in rule 1.

(5) The order of the names in the ballot paper must be the same as in the statement of persons nominated.






Part 7

Schedule 2, Local Elections (Parishes and Communities) (England and Wales) Rules 2006

Parishes and Communities Elections

Form of Front of Ballot Paper

VOTE FOR NO MORE THAN CANDIDATES

1	BASWRA Paresh Baswra 20 Kincade Road, Small Heath, Birmingham B10 9JG Liberal Democrat		
2	CRANLEY Alana Cranley 4 Kennil Road, Perry Bar, Birmingham B32 5JJ Green Party		
3	EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Common Good Party		
4	GUNNIL-WALKER Roger Gunnill-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate		
5	SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent		
6	SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate		

Form of Back of Ballot Paper

Number

Other Unique Identifying Mark

Election for the *(..... ward of the) *Parish/Community

of

on 20 ..

*Delete whichever is inappropriate

Note:

The Local Election Rules for Parishes and Communities are contained in rules prescribed by the Secretary of State pursuant to his power under the Representation of the People Act 1983.

Greater London Authority (Constituency Members) Elections

Rule 17

Schedule 1, Greater London Authority Election Rules 2007

(1) The ballot of every voter must consist of a ballot paper that must be in the appropriate form.

(2) Each person remaining validly nominated for the election, after any withdrawals, and no other, is entitled to have their name inserted in the ballot paper.

(3) Every ballot paper—

(a) must be printed in accordance with the directions set out in the Forms Schedule,

(b) must contain the names and other particulars of the candidates as shown in the statement of persons nominated,

(c) must have a number and other unique identifying mark printed on the back, and

(d) may, in the case of ballot papers for use at polling stations, be marked with the words “do not fold”.

(4) If a candidate who is the subject of a party’s authorisation under rule 6(5) so requests, the ballot paper must contain, against the candidate’s particulars, the party’s registered emblem (or, as the case may be, one of the party’s registered emblems).

(4A) If a candidate who is the subject of an authorisation by two or more parties under rule 6(7) so requests, the ballot paper must contain, against the candidate’s particulars, the registered emblem (or, as the case may be, one of the registered emblems) of one of those parties.

(5) The candidate’s request under paragraph (4) or (4A) must—

(a) be made in writing to the CRO, and

(b) be received by him within the period for delivery of nomination papers set out in the timetable in rule 3.

(6) The order of the names in the ballot paper must be the same as in the statement of persons nominated.

(7) At an ordinary election, the GLRO must supply the ballot papers for use at the election to the CRO by such date as may be agreed between them.

(8) The ballot papers supplied under paragraph (7) must be of a different colour from those used at any other Authority election with which the election is taken.

Form 5

Schedule 10, Greater London Authority Election Rules 2007







Form 5 – Ballot paper for Constituency Member elections

CMER rule 17

Election of the London Assembly
Constituency Member – [name of constituency]

Front of Ballot Paper

Vote once (X) in one blank box

	1	BASWRA Paresh Baswra Liberal Democrat	
	2	CRANLEY Alana Cranley Green Party	
	3	EDGBASTON Richard Edgbaston The Common Good Party	
	4	GUNNIL-WALKER Roger Gunnil-Walker The Labour Party Candidate	
	5	SMITH CATHERINE ANGELINA Smith Independent	
	6	SMITH KEITH JAMES Smith The Conservative Party Candidate	

Back of Ballot Paper

Ballot Paper Number
Unique Identifying Mark

Election for (insert description of election(s))

on 20 ..

Note:

The GLA Election Rules for constituency members are contained in rules prescribed by the Secretary of State pursuant to the Representation of the People Act 1983.

Greater London Authority (London Members) Elections

Rule 18
Schedule 2, Greater London Authority Election Rules 2007





- (1) The ballot of every voter must consist of a ballot paper which must be in the appropriate form.
- (2) Each registered party that remains validly nominated at the election and whose party list includes a person who remains validly nominated as a list candidate, after any withdrawals, and no other, is entitled to have its authorised description inserted in the ballot paper.
- (3) Each person remaining validly nominated as an individual candidate at the election, after any withdrawals, and no other, is entitled to have their name inserted in the ballot paper.
- (4) Every ballot paper—
 (a) must be printed in accordance with the directions set out in the Forms Schedule,
 (b) must contain the authorised descriptions of the registered parties; and the names and other particulars of the individual candidates as shown in the statement of persons nominated,
 (c) must have a number and other unique identifying mark printed on the back, and
 (d) may, in the case of ballot papers for use at polling stations, be marked with the words “do not fold”.
- (5) If a request is made by or on behalf of a registered party’s nominating officer, the ballot paper must contain, against the party’s authorised description, the party’s registered emblem (or, as the case may be, one of the party’s registered emblems).
- (6) The request under paragraph (5) must—
 (a) be made in writing to the GLRO, and
 (b) be received by him during the period for delivery of nomination papers and party lists set out in the timetable in rule 3.
- (7) The order of the authorised descriptions of the registered parties and the names of the individual candidates must be in the same order as in the statement of parties and persons nominated.
- (8) The GLRO must supply the ballot papers for use at the election to the CRO by such date as may be agreed between them.
- (9) The ballot papers supplied under paragraph (8) must be of a different colour from those used at any other Authority election.

Form 6
Schedule 10, Greater London Authority Election Rules 2007

Form 6 – Ballot paper for London Members elections LMER rule 18

Election of the London Assembly
London Member
Front of Ballot Paper

Vote once (X) in one blank box

	1	THE COMMON GOOD PARTY	
	2	CONSERVATIVE PARTY	
	3	THE GREEN PARTY	
	4	THE LABOUR PARTY	
	5	THE LIBERAL DEMOCRAT PARTY	
	6	WILLIAMS Keith James Williams Independent	

Back of Ballot Paper

Ballot Paper Number
Unique Identifying Mark
Election for (insert description of election(s))
on 20 ..

Note:
The GLA Election Rules for London members are contained in rules prescribed by the Secretary of State pursuant to the Representation of the People Act 1983.

Greater London Authority (Mayor) Elections

Rule 17
Schedule 3, Greater London Authority Election Rules 2007

(1) The ballot of every person entitled to a mayoral vote at the election must consist of a ballot paper which must be in the appropriate form.

(2) Each person remaining validly nominated at the election, after any withdrawals, and no other, is entitled to have their name inserted in the ballot paper at that election.

(3) Every ballot paper—

(a) must be printed in accordance with the directions set out in the Forms Schedule,

(b) must contain the names and other particulars of the candidates as shown in the statement of persons nominated,

(c) must have a number and other unique identifying mark printed on the back, and

(d) may, in the case of ballot papers for use at polling stations, be marked with the words “do not fold”.

(4) If a candidate who is the subject of a party's authorisation under rule 6(5) so requests, the ballot paper must contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(4A) If a candidate who is the subject of an authorisation by two or more parties under rule 6(7) so requests, the ballot paper must contain, against the candidate's particulars, the registered emblem (or, as the case may be, one of the registered emblems) of one of those parties.

(5) The candidate's request under paragraph (4) or 4(A) must—

(a) be made in writing to the GLRO, and

(b) be received by him during the period for delivery of nomination papers set out in the timetable in rule 3.

(6) The names of the candidates must be arranged alphabetically in order of their surnames and, if there are two or more of them with the same surname, of their other names.

(7) The GLRO must supply the ballot papers for use at the election to the CRO by such date as may be agreed between them.

(8) The ballot papers supplied under paragraph (7) must be of a different colour from those used at any other Authority election with which the election is taken.

Form 7
Schedule 10, Greater London Authority Election Rules 2007

Form 7 – Ballot paper for Mayoral Elections






MER rule 17

Election of the Mayor

Front of Ballot Paper

Vote once (X) in column one for your first choice

Vote once (X) in column two for your second choice

		Column One (First Choice)	Column Two (Second Choice)
	1 BASWRA Paresh Baswra Liberal Democrat		
	2 CRANLEY Alana Cranley Green Party		
	3 EDGBASTON Richard Edgbaston The Common Good Party		
	4 GUNNIL-WALKER Roger Gunnill-Walker The Labour Party Candidate		
	5 SMITH CATHERINE ANGELINA Smith Independent		
	6 SMITH KEITH JAMES Smith The Conservative Party Candidate		

Back of Ballot Paper

Ballot Paper Number
Unique Identifying Mark

Election for (insert description of election(s))

on20 ..

Note:

The GLA Election Rules for mayoral elections are contained in rules prescribed by the Secretary of State pursuant to the Representation of the People Act 1983.

<div>Local Government Mayoral Elections</div>	<div><div>Rule 18</div><div>Schedule 1, Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007</div><div><div>(1) The ballot of every person entitled to a vote at the election shall consist of a ballot paper.</div><div>(2) The persons remaining validly nominated for election to the office of mayor, after any withdrawals, and no others, shall be entitled to have their names inserted in the ballot paper at that election.</div><div>(3) Every ballot paper must be in the appropriate form, and must be printed in accordance with the appropriate directions set out in the Appendix, and—<div>(a)must contain the names and other particulars of the candidates as shown in the statement of persons nominated;</div><div>(b)must be capable of being folded up; and</div><div>(c)must have a number and other unique identifying mark printed on the back.</div></div><div>(4) If a candidate who is the subject of a party’s authorisation under rule 7(1) so requests, the ballot paper must contain, against the candidate’s particulars, the party’s registered emblem (or, as the case may be, one of the party’s registered emblems).</div><div>(4A) If a candidate who is the subject of an authorisation by two or more parties under rule 7(3) so requests, the ballot paper must contain, against the candidate’s particulars, the registered emblem (or, as the case may be, one of the registered emblems) of one of those parties.</div><div><div>(5) The candidate’s request under paragraph (4) or (4A) must—<div>(a)be made in writing to the returning officer, and</div><div>(b)be received by him before the last time for the delivery of nomination papers set out in the Timetable in rule 3.</div></div><div>(6) The order of the names in the ballot paper must be the same as in the statement of persons nominated.</div></div></div></div>	<div><div>Appendix</div><div>Schedule 1, Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007</div><div><div>Election of the Mayor for (insert name of authority)</div><div><div>Vote <input checked="" type="checkbox"/> for one candidate only</div><div><div><div><div><div>BASWRA, Paresh</div><div>2 The Cottages, Anytown XY8 9JG</div><div>Cream Party</div></div><div>Cream Party emblem</div><div></div></div><div><div><div><div>CRANLEY, Alana</div><div>4 The Walk, Anytown XY9 5JJ</div><div>Purple Party</div></div><div>Purple Party emblem</div><div></div></div></div></div><div>Form of back of ballot paper</div><div>Number</div><div>Other unique identifying mark</div><div>Election of the Mayor for [insert name of authority]</div><div>on.....20....</div></div></div></div></div>
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	<div><p>Election of the Mayor for <i>(insert name of authority)</i></p><div><p>Vote once <input checked="" type="checkbox"/> in column 1 for your first choice, and</p><p>Vote once <input checked="" type="checkbox"/> in column 2 for your second choice</p></div><table><thead><tr><th></th><th>Column 1 first choice</th><th>Column 2 second choice</th></tr></thead><tbody><tr><td>BASWRA, Pares 2 The Cottages, Anytown XY8 9JG Liberal Democrat</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>CRANLEY, Alana 4 The Walk, Anytown XY9 5JJ Green Party</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>EDGBASTON, Richard 6 The Heath, Anytown XY4 0BH The Common Good Party</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>GUNNIL-WALKER, Roger 33 The Lane, Anytown XY6 3GD The Labour Party Candidate</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>SMITH, CATHERINE ANGELINA 21 The Grove, Anytown XY2 5JP Independent</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td>SMITH, KEITH JAMES 3 The Road, Anytown XY3 4JN The Conservative Party Candidate</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr></tbody></table><p>Form of back of ballot paper</p><p>Number</p><p>Other unique identifying mark</p><p>Election of the Mayor for <i>(insert name of authority)</i></p><p>on.....20....</p></div>		Column 1 first choice	Column 2 second choice	BASWRA, Pares 2 The Cottages, Anytown XY8 9JG Liberal Democrat	<input type="checkbox"/>	<input type="checkbox"/>	CRANLEY, Alana 4 The Walk, Anytown XY9 5JJ Green Party	<input type="checkbox"/>	<input type="checkbox"/>	EDGBASTON, Richard 6 The Heath, Anytown XY4 0BH The Common Good Party	<input type="checkbox"/>	<input type="checkbox"/>	GUNNIL-WALKER, Roger 33 The Lane, Anytown XY6 3GD The Labour Party Candidate	<input type="checkbox"/>	<input type="checkbox"/>	SMITH, CATHERINE ANGELINA 21 The Grove, Anytown XY2 5JP Independent	<input type="checkbox"/>	<input type="checkbox"/>	SMITH, KEITH JAMES 3 The Road, Anytown XY3 4JN The Conservative Party Candidate	<input type="checkbox"/>	<input type="checkbox"/>
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EDGBASTON, Richard 6 The Heath, Anytown XY4 0BH The Common Good Party	<input type="checkbox"/>	<input type="checkbox"/>																				
GUNNIL-WALKER, Roger 33 The Lane, Anytown XY6 3GD The Labour Party Candidate	<input type="checkbox"/>	<input type="checkbox"/>																				
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SMITH, KEITH JAMES 3 The Road, Anytown XY3 4JN The Conservative Party Candidate	<input type="checkbox"/>	<input type="checkbox"/>																				
<p>Note: The Local Government Mayoral Election Rules are contained in regulations prescribed by the Secretary of State pursuant to the Local Government Act 2000.</p>																						

**National
Assembly for
Wales
(constituency)
Elections**

Section 24

Schedule 5, National Assembly for Wales (Representation of the People) Order 2007

(1) At a constituency election, the ballot of every voter shall consist of a ballot paper.

(2) The persons shown in the statement of persons nominated as standing nominated, and no others, shall be entitled to have their names inserted in the ballot paper.

(3) Every ballot paper shall be in form CK in Schedule 10, and shall be printed in accordance with the directions in form CK1 in that Schedule and—

(a) shall contain the names and other particulars of the candidates shown in the statement of persons nominated;

(b) shall be capable of being folded up; and

(c) shall have a number and other unique identifying mark printed on the back.

(4) The order of the names in the ballot paper shall be the same as in the statement of persons nominated.

(5) If a certificate received by the constituency returning officer under rule 5(1) or (3) has requested that a registered political party's registered emblem (or, as the case may be, one of the party's registered emblems) is to be shown on the ballot paper against the candidate's particulars, the ballot paper shall contain that emblem in that way.

Form CK

Schedule 10, National Assembly for Wales (Representation of the People) Order 2007

Form CK

Constituency Ballot Paper

National Assembly for Wales election

Etholiad Cynulliad Cenedlaethol Cymru

Ballot paper to elect the Assembly
Member for the

Papur pleidleisio i ethol Aelod Cynulliad ar
gyfer etholaeth.....

.....constituency

Vote ☒ once only

Pleidleisiwch ☒ unwaith yn unig

ASHTON Peter
27 Bryn Nant, Abertillery, EN 47 13WA
Labour Party/Y Blaid Lafur



BONDS John
14 Empress Way, Haverfordwest WA28 18SC
Liberal Democrat/Democratiaid Rhyddfrydol



COLE Lindsay
5 Gordon Road, Penarth, IR31 5WA
Plaid Cymru – The Party of Wales



DAILY Andrea
Chez Moi, Heol Dan y Coed, Newport WA6 35IT
Independent/ Annibynnol



ETHERINGTON David
21 Home Avenue, Frederickstown, WA6 40FR
UK Independence Party/ Plaid Annibyniaeth y DU



FLETCHER Susan
12 Baker Street, Newtown, VB45 6TY
Conservative Party/ Y Blaid Geidwadol



GALE Sarah
65 Justin Street, Brecon, LD93 5YR
Farmers of Wales/ Ffermwyr Cymru



Note:

The National Assembly for Wales Election Rules for constituency members are contained in an order made by the Secretary of State pursuant to the Government of Wales Act 1998.

**National
Assembly for
Wales
(regional)
Elections**

Section 25
Schedule 5, National Assembly for Wales (Representation of the People)
Order 2007


- (1) At a regional election, the ballot of every voter shall consist of a ballot paper.
- (2) The following, namely—
(a) the persons shown in the statement of persons nominated standing nominated as individual candidates; and
(b) the registered political parties which have submitted a party list and are shown in the statement of persons nominated as standing nominated, together with the party list candidates appearing on the party list of each such party and as standing nominated,
and no others, shall be entitled to have their names and descriptions inserted in the ballot paper.
- (3) Every ballot paper shall be in form CL in Schedule 10, and shall be printed in accordance with the directions in form CL1 in that Schedule, and—
(a) shall contain the names and descriptions of the individual candidates shown in the statement of persons nominated;
(b) shall contain the names or, as the case may be, descriptions of the registered political parties shown in the statement of persons nominated together with the names of the candidates included on those parties' lists;
(c) shall be capable of being folded up; and
(d) shall have a number and other unique identifying mark printed on the back (together with a mark or other distinguishing feature by which the Assembly constituency can be identified in which the vote is to be given in relation to the ballot paper).
- (4) The order of—
(a) the names of the individual candidates; and
(b) the names or, as the case may be, descriptions of the registered political parties (together with, in respect of each such name (or names) or, as the case may be, description of a registered political party, the names of its party list candidates),
in the ballot paper shall be the same order as in the statement of persons nominated.
- (5) If a certificate received by the regional returning officer under rule 8(1) has requested that the registered political party's registered emblem (or, as the case may be, one of the party's registered emblems) is to be shown on the ballot paper against the party's description, the ballot paper shall contain that emblem in that way.


Form CL
Schedule 10, National Assembly for Wales (Representation of the People)
Order 2007


Form CL


Regional Ballot Paper


National Assembly for Wales election	Etholiad Cynulliad Cenedlaethol Cymru
Ballot paper to elect the Assembly Member for theregion	Papur pleidleisio i ethol Aelod Cynulliad ar gyfer rhanbarth.....
Vote <input checked="" type="checkbox"/> once only	Pleidleisiwch <input checked="" type="checkbox"/> unwaith yn unig

Conservative Party/ Y Blaid Geidwadol		<input type="checkbox"/>
---------------------------------------	---	--------------------------

Democratiaid Rhyddfrydol Cymru/ Welsh Liberal Democrats		<input type="checkbox"/>
---	---	--------------------------

Labour Party/Y Blaid Lafur		<input type="checkbox"/>
----------------------------	---	--------------------------

Plaid Cymru – The Party of Wales		<input type="checkbox"/>
----------------------------------	---	--------------------------

UK Independence Party/Plaid Annibyniaeth y DU		<input type="checkbox"/>
---	--	--------------------------

Xavier Alfonso Independent/ Annibynnol		<input type="checkbox"/>
---	--	--------------------------

Note:

The National Assembly for Wales Election Rules for regional members are contained in an order made by the Secretary of State pursuant to the Government of Wales Act 1998.

Northern Ireland Assembly***Schedule 1, Northern Ireland Assembly (Elections) Order 2001***

Applies Rule 19 in RPA 1983 with modifications:

For paragraph (2A) substitute “If, on behalf of a candidate who is the subject of a party's authorisation under rule 6A(1), the registered nominating officer of that party so requests, the ballot paper shall contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems)”.

After paragraph (2B) insert—

“(2C) If, on behalf of a candidate who is the subject of two or more parties' authorisations under rule 6A(1B) the registered nominating officers of those parties so request, the ballot paper must contain, against the candidate's particulars, the registered emblem of one of those parties (or, as the case may be, one of its registered emblems).



(2D) The request mentioned in paragraph (2C) must be—

- (a) made in writing by the nominating officers of the parties jointly to the returning officer, and
- (b) received by the returning officer before the last time for the delivery of nomination papers.”

After paragraph (4) insert—

“(5) In this rule “registered nominating officer” means the person registered as a party's nominating officer under the Political Parties, Elections and Referendums Act 2000 or a person authorised by the nominating officer to act on his or her behalf.”

Appendix***Schedule 1, Northern Ireland Assembly (Elections) Order 2001***

Mark order of preference in space below	
	 BITTERN (Richard Bittern of 5 Down Street, Bangor, Co. Down. Democratic Unionist Party)
	DIPPER (JOANNA Dipper of 9 Mourne View, Donaghadee, Co. Down. Independent)
	 DIPPER (MARTIN Dipper of 8 Magilligan Drive, Portaferry, Co. Down. SDLP (Social Democratic and Labour Party))
	 FINCH (John Finch of 29 Gilford Place, Millisle, Co. Down. Sinn Féin)
	KITE (Julie Kite of Glen Cottage, Banbridge, Co. Down. Independent)
	 LINNET (Harry Linnet of 7 Gortin Mansions, Dromara, Co. Down. Ulster Unionist Party)
	ROBIN (David Robin of 3 Strangford Road, Killinchy, Co. Down. Independent)
	SPARROW (Anne Sparrow of 41 Devenish Drive, Ballynahinch, Co. Down. Independent)
	SWALLOW (Peter Swallow of 3 Mourne View, Bangor, Co. Down. Independent)
	SWIFT (Lee Swift of 11 Moira Terrace, Newry, Co. Down. Independent)

Note:

The Northern Ireland Assembly Election Rules are contained in an order made by the Secretary of State pursuant to the Northern Ireland Act 1998.

**Scottish
Parliament
(constituency
candidates)
Elections**

Section 27

Schedule 2, Scottish Parliament (Elections etc) Order 2010

(1) The ballot of every voter at a poll for the return of a constituency member shall consist of a ballot paper (referred to in these Rules as a “constituency ballot paper”).

(2) The persons shown in the statement required by rule 18 (statement of persons nominated as candidates for return as a constituency member) and no others, shall be entitled to have their names inserted in the constituency ballot paper.

(3) Every constituency ballot paper shall be in the form J set out in the Appendix, and shall be printed in accordance with the directions in that form, and—

(a) shall contain the names and descriptions of the candidates as shown in the statement required by rule 18; and

(b) shall have a number and unique identifying mark printed on the back.

(4) The order of the names in the constituency ballot paper shall be alphabetical, as set out in the statement required by rule 18.

(5) If a candidate’s description falls within rule 4(5)(a) or (b), and if the candidate so requests, the ballot paper shall also contain, to the right of that candidate’s particulars—

(a) where the description falls within rule 4(5)(a) (name of one registered party), the registered emblem (or one of the registered emblems) of the party named in that description; or

(b) where the description falls within rule 4(5)(b) (names of two registered parties), the registered emblem (or one of the registered emblems) of one of the parties named in that description.

(6) The request must—

(a) be made in writing to the CRO; and

(b) are received by the CRO during the period for delivery of nomination papers set out in the Table in rule 1(1).

Appendix

Schedule 2, Scottish Parliament (Elections etc) Order 2010

Schedule 2 Rule 27

FORM J

(Front of Form of Constituency Ballot Paper)

Ballot paper to elect the member of the Scottish Parliament for the
[insert name of constituency] Constituency

Vote once only in
the box opposite the
candidate of your
choice using an X

SURNAME Forename(s)	[Emblem]	<input type="checkbox"/>
Description (where applicable)		
SURNAME Forename(s)	[Emblem]	<input type="checkbox"/>
Description (where applicable)		
SURNAME Forename(s)	[Emblem]	<input type="checkbox"/>
Description (where applicable)		
SURNAME Forename(s)	[Emblem]	<input type="checkbox"/>
Description (where applicable)		
SURNAME Forename(s)	[Emblem]	<input type="checkbox"/>
Description (where applicable)		

Note:

The Scottish Parliament Election Rules for constituency candidates are contained in an order made by the Secretary of State for Scotland pursuant to the Scotland Act 1998.

APPENDIX B: GENERAL DESIGN PRINCIPLES

Section 4

4

Voter materials

4A

Ballot papers

Function

The function of the ballot paper is to enable the voter to indicate their chosen candidate or party at an election.

To do this, the ballot paper needs to be designed in a way that makes it easy for the voter to:

- understand what the ballot paper is for
- find their chosen candidate or party
- mark their choice in such a way that their vote is valid, and reflects their intention

It should also be designed in a way that means the voter's choice can be clearly identified when the votes are counted.

Style

- Put each candidate's or party's set of details on a separate row (see Figure 1).

i Explanation

- Having individual rows helps the voter to quickly and easily find the candidate or party they want to vote for.

- Do not number the rows.

i Explanation

- Numbers can confuse voters, especially new or inexperienced voters who do not know what they mean or what they are for.
- As some elections require people to vote using numbers, it is better not to print any numbers on the ballot paper itself to avoid any confusion. This also means that ballot papers have a consistent design, whichever voting system is in use. This is particularly important if there is a combined election with voting systems using both numbers and Xs.
- Removing numbers also creates more space and reduces the overall amount of information on the page.

- Do not use a grid format to separate the different sections of the ballot paper. Use a horizontal line beneath each row (including after the last row in the list) to separate it from the next row. The line should extend from the start of the text to the logo (see Figure 1).

i Explanation

- A grid creates boxes on the page which can confuse the voter if the instructions refer to marking in 'a box'. It is more straightforward to have one set of individual boxes in which to mark your vote. This also makes the paper look less cluttered.
- One horizontal line is a clear, simple way of separating one row from the next. Putting a line after the last row indicates that it is the end of the list.

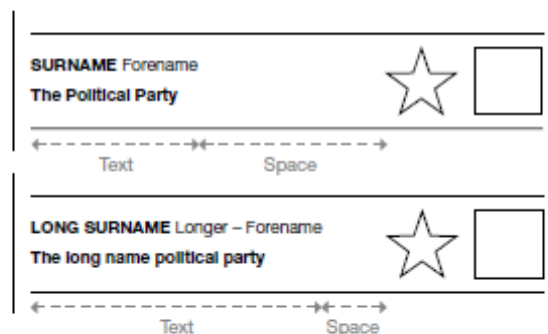
- Have individual boxes for voting, at the right-hand end of each row.
 - The box should be square and its height slightly less than the height of the row (to allow for a small space between each box).
 - The box should be big enough for the voter to easily make their mark inside it.

i Explanation

- Having individual boxes makes it clearer to the voter where they need to make their mark, and that these are the boxes referred to in the instructions.

- The longest line of text will be the main factor that determines the overall width of the rows, and therefore will also determine the width of the ballot paper.
- As the candidate or party details are left-aligned, and the voting box and logo are towards the right of each row, there will be a blank space in the right-hand half of the row between the text and the logo. The size (length) of this space will vary, depending on how much space is taken up by the text, as shown in Figure 1.
- As a minimum, this space should be equal to the width of the logo.
- Ideally, there should be more text than blank space on the row. However the longest line of text will determine the width of the rows, which may mean in practice that there are some rows which have more blank space than text.
- You might need to alter the width of the paper to keep the spacing in the right proportions (see Figure 1). The width of the margin at the right and left edges of the page can also be adjusted if necessary (though avoid having a very large margin).
- If there is no logo, treat the row as if there is one, for consistency, i.e. leave an equivalent space (unless none of the candidates are using a logo).

Figure 1



i Explanation

- Keeping the logo and voting box close to candidate or party information maintains the link between them. This helps the voter to find the voting box for the candidate or party of their choice and to put their mark in the correct place.

Content and structure

- Put the election and ballot paper title at the top of the ballot paper:
 - first line: the name of the election
 - second line: what the ballot paper is for (e.g. 'Ballot paper to elect the [position] for [electoral area]')

i Explanation

- The title identifies the ballot paper, links it to other documents used at the election, and reminds the voter what they are voting for.
- This helps people at elections where there is more than one ballot paper to distinguish between them, and to find the right instructions (which will refer to the names of the different ballot papers).

- Put information about voting underneath the title:
 - what mark to use for your vote at this election (X or numbers)
 - how many candidates or parties you can vote for

i Explanation

- This gives the voter all the information they need to know before they start voting. Putting it at the top of the ballot paper means they are more likely to see and read it.

- Include specific instructions on how to vote underneath the title, above the list of candidates or parties:
 - how to mark your vote on the ballot paper, and where on the ballot paper you should do this (and how many candidates or parties you can mark)

i Explanation

- Including specific instructions helps to make sure that the voter is clear about exactly how to vote on that particular ballot paper.
- Putting the instructions on the ballot paper means that the voter can see them at the point they are needed (i.e. just before carrying out the action), rather than relying on other guidance or notices which are often overlooked.

- Allow flexibility in the wording of the instructions, so that if there are no independent candidates standing, they are not referred to.

i Explanation

- Being flexible about specific elements of the notice means the notice can be adapted to keep it accurate, so that it does not confuse or mislead the voter.
- Accompany the written instructions with a diagram to show how to mark the ballot paper. Place this above the voting boxes, with an arrow pointing to them, to show where the voter should make their mark on the ballot paper.

i Explanation

- A diagram helps to visually explain and reinforce the written instruction. Also useful for people who have difficulty in reading or following written instructions.
- Layout of a row:
 - candidate information at the start of the row (i.e. starting at the left-hand side)
 - voting box at the right-hand end of the row
 - logo immediately to the left of the voting box (remember to left-align text)

i Explanation

- A left-to-right sequence follows the normal layout for how people read written English.
- Having the voting box on the right means that the voter can read the candidate/party information first, and then mark the box after it, as the last part of the 'task'.
- Having the logo next to the voting box helps the voter to find the candidate/party of their choice and to check that they are marking the right box.
- Layout of candidate/party details:

For an individual candidate:

- candidate name on the top line
 - surname first in bold capital letters
 - forename(s) following surname in title case, not bold (unless there are two candidates with the same surname, in which case the forenames of those candidates should be in bold)
 - minimum 14 point font
- party name on the next line
 - sentence case
 - bold
 - smaller than candidate name – minimum 12 point font
- party description (if the candidate wants to include one) on the next line
 - sentence case
 - normal text (not bold)
 - minimum 12 point font

For a party:

- party name on the top line
 - sentence case
 - bold
 - minimum 14 point font
- party description (if the party wants to include one) on the next line
 - sentence case
 - normal text (not bold)
 - minimum 12 point font

i Explanation

- A top-to-bottom sequence follows the normal layout for how people read written English.
- The main information should come first and be prominent: if you are voting for a candidate, their name; if you are voting for a party, the party name.
- On party list ballot papers, independent candidates should be included in the alphabetical order (not listed after the registered parties).

For ballot papers with two columns of candidates/parties

Ideally, ballot papers should have one column, as long as this still allows the ballot paper to be designed in line with the rest of this guidance (e.g. in terms of font size), and does not make the ballot paper physically unmanageable. If it is not possible or practical to avoid having two columns, then:

- Do not separate the two columns with a vertical line down the middle.

i Explanation

- Have a blank space between the first and second columns. A printed vertical line implies that the columns are separate from one another, rather than being part of the same list, which could lead the voter to think that they can or must vote for a candidate or party in each column.
- Try to position the title and instructions so that they span the top of both columns.

i Explanation

- Spreading the title and instructions across both columns helps to reinforce that the columns are part of one list, and one ballot.
 - Only do this if there is enough text – do not centre-align the text or stretch it out just to fit across the width of the columns. If necessary, indent the start of the line of text further in from the edge of the paper than usual.
- Have one diagram (not two) showing how to mark your vote on the ballot paper, and where on the paper you should do this.
 - Do not include an arrow pointing to the voting boxes.

i Explanation

- Having one diagram avoids confusion about the columns, as two diagrams could lead the voter to think that they can or must vote for a candidate or party in each column.
- Leaving out the arrow avoids leading the voter to vote in a particular column.

APPENDIX C: TABLE OF PROVISIONS ON ELIGIBILITY AND ADMINISTRATION OF ABSENT VOTING

Election	Eligibility	Administration	Issue and receipt of postal ballot papers
UK Parliamentary elections (England and Wales)	Representation of the People Act 2000, schedule 4.	Representation of the People (England and Wales) Regulations 2001, part 4.	Representation of the People (England and Wales) Regulations 2001, part 5.
UK Parliamentary elections (Scotland)	Representation of the People Act 2000, schedule 4.	Representation of the People (Scotland) Regulations 2001, part 4.	Representation of the People (Scotland) Regulations 2001, part 5.
Greater London Authority	Representation of the People Act 2000, schedule 4.	Representation of the People (England and Wales) Regulations 2001, part 4.	Representation of the People (England and Wales) Regulations 2001, part 5.
Local Government (Principal Areas and Parishes and Communities) (England and Wales)	Representation of the People Act 2000, schedule 4.	Representation of the People (England and Wales) Regulations 2001, part 4.	Representation of the People (England and Wales) Regulations 2001, part 5.
Scottish Local Government elections	Representation of the People Act 2000, schedule 4.	Local Administration and Registration Services (Scotland) Act 2006, s 21 to 23. Representation of the People (Absent Voting at Local Elections) (Scotland) Regulations 2007.	Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007.
Mayoral elections (England and Wales)	Representation of the People Act 2000, schedule 4.	Representation of the People (England and Wales) Regulations 2001, part 4.	Representation of the People (England and Wales) Regulations 2001, part 5.

Election	Eligibility	Administration	Issue and receipt of postal ballot papers
UK Parliamentary elections (Northern Ireland)	Representation of the People Act 1985, sections 5 to 9.	Representation of the People (Northern Ireland) Regulations 2008, part 4.	Representation of the People (Northern Ireland) Regulations 2008, part 5.
European Parliamentary elections (England, Wales and Scotland)	European Parliamentary Elections Regulations 2004, schedule 2 part 1.	European Parliamentary Elections Regulations 2004, schedule 2 part 2.	European Parliamentary Elections Regulations 2004, schedule 2 part 4.
European Parliamentary elections (Northern Ireland)	European Parliamentary Elections (Northern Ireland) Regulations, regulations 7 to 13.	European Parliamentary Elections (Northern Ireland) Regulations, schedule 2 part 1.	European Parliamentary Elections (Northern Ireland) Regulations, schedule 2 part 2.
Scottish Parliamentary elections	Scottish Parliament (Elections) Order 2010, articles 7 to 11.	Scottish Parliament (Elections) Order 2010, schedule 3.	Scottish Parliament (Elections) Order 2010, schedule 4.
National Assembly for Wales	National Assembly for Wales (Representation of the People) Order 2007, articles 7 to 12.	National Assembly for Wales (Representation of the People) Order 2007, schedule 1.	National Assembly for Wales (Representation of the People) Order 2007, schedule 3.
Northern Ireland Assembly	Northern Ireland Assembly Elections Order 2001, schedule 1 (applying certain provisions of the Representation of the People Act 1985).	Northern Ireland Assembly Elections Order 2001, schedule 2 (applying certain provisions of the Representation of the People (Northern Ireland) Regulations 2008).	Northern Ireland Assembly Elections Order 2001, schedule 2 (applying certain provisions of the Representation of the People (Northern Ireland) Regulations 2008).
Local government elections in Northern Ireland	Local Elections (Northern Ireland) Order 1985, section 6 and schedule 2.	Local Elections (Northern Ireland) Order 1985, schedule 2 part 1.	Local Elections (Northern Ireland) Order 1985, schedule 2 part 3.
Police and Crime Commissioner elections	Police and Crime Commissioner Elections Order 2012, schedule 2 part 1.	Police and Crime Commissioner Elections Order 2012, schedule 2 part 2.	Police and Crime Commissioner Elections Order 2012, schedule 2 part 3.

APPENDIX D: SAMPLE POSTAL VOTING APPLICATION FORM

Application to vote by post



**MANCHESTER
CITY COUNCIL**

Electoral Services Unit
Room 134
Town Hall
Manchester
M60 2LA

Telephone: 0161 234 1819

Textphone: 0161 234 3378

Fax: 0161 274 0020

Email: esu@manchester.gov.uk

<http://www.manchester.gov.uk/elections>

1. Elector name and registration address

Surname _____

First names (in full) _____

Address (where you are currently resident) _____

Postcode _____

2. How long do you want a postal vote for?

☐ I want to vote by post at all elections and referenda until further notice (permanent postal vote).

If you only want a postal vote for particular elections or timescale (tick one box only):

☐ for elections to be held on

 D D M M Y Y Y Y

☐ for the period
 from _____
 D D M M Y Y Y Y
 to _____
 D D M M Y Y Y Y

3. Address for ballot paper

☐ Please send my ballot paper to the address above.

Or to this different address:

Postcode _____

The reason I would like my ballot paper sent to this address, rather than my registered address is

Office use	PD	ElecNo	Recd	OnScr	Initial

4. Your date of birth and declaration

Date of Birth: Please write your date of birth in the boxes below, using black ink.

D	D	M	M	Y	Y	Y	Y

Declaration: As far as I know, the details on this form are true and accurate. I understand that to provide false information on this form is an offence, punishable on conviction by imprisonment of up to two years and/or a fine.

Signature: Sign below, keeping within the grey border.

If you are unable to sign please get someone to complete this form overleaf.

5. Date of application

Today's date _____
 D D M M Y Y Y Y

Telephone _____

Email _____

Providing a contact telephone/email will help us resolve any issues with your application.

APPENDIX E: TABLE OF ELECTION PETITIONS

Only ballot papers inspected	Serial ballot numbers considered without ascertaining how elector voted	Way elector voted discovered
<i>Levers v Morris</i> , Exeter (1971) <ul style="list-style-type: none"> - dubiously marked ballot papers considered by court 	<i>Morgan v Simpson</i> , Croydon North East (1974) <ul style="list-style-type: none"> - ballot papers missing official mark - on inspection established that all of the 44 rejected ballot papers had been issued at polling stations under the control of the returning officer - inspection ascertained <i>who</i> votes were cast for and at which polling station 	Exeter (1911) <ul style="list-style-type: none"> - elector admitted that he had voted twice, one vote struck off - votes of two electors struck off for being employed in connection with the poll (other votes struck off without it being necessary to ascertain how the elector voted)
South Newington, Kingston-upon-Hull (1948) <ul style="list-style-type: none"> - dubiously marked ballot papers considered by court - papers missing part of official mark 	<i>Gunn v Sharpe</i> , West Midlands (1974) <ul style="list-style-type: none"> - ballot papers not stamped with official mark - Report of scrutiny determined who the unmarked ballot papers were cast for and at which polling station 	Slough (2008) <ul style="list-style-type: none"> - postal voter fraud: postal votes applied for in respect of non-existent voters
<i>Ruffles v Rogers</i> (1982) <ul style="list-style-type: none"> - papers missing official mark - dubiously marked ballot papers considered by court 	<i>Edgell v Glover</i> , North Lincolnshire (2003) <ul style="list-style-type: none"> - all postal ballot - candidate elected by majority of 1 vote - no matching Dol could be found for ballot paper 2965, cast for elected candidate - six faulty Dols found as a result of inspection - no need to order further inspection to marry up faulty Dols with ballot papers, since under s 48 already clear that elected candidate not duly elected - election held invalid 	Birmingham (2004) <ul style="list-style-type: none"> - postal voter fraud: postal vote applications made in respect of voters who were unaware of the application being made
<i>Cornwell v Marshall</i> (1977) <ul style="list-style-type: none"> - dubiously marked ballot papers considered by court 	<i>McWhirter v Platton</i> , Enfield (1970) <ul style="list-style-type: none"> - many more votes counted than recorded ballot papers distributed - order for recount only in relation to prosecution – Conservatives elected by very large majority so no chance of a different election result - recount necessary to discover for whom electors voted, and who the supervisor was in the relevant ward, so that those supervisors might be prosecuted - requirement of secrecy did not prevent such a recount, since the essential matter to be kept 	<i>Ali v Bashir</i> , Woking (2012) <ul style="list-style-type: none"> - postal voting fraud: 73 votes disputed, although petitioner could not say for whom they were cast - during scrutiny, way in which votes cast ascertained for some voters - in judgement Commissioner Mawrey made public the way in which votes had been cast, including some which were genuine votes. Witnesses may have volunteered this information. - election voided for general corruption – not able to declare other candidate elected.

Only ballot papers inspected	Serial ballot numbers considered without ascertaining how elector voted	Way elector voted discovered
	secret was the way in which each voter had in fact voted, and what the true figures were	
<i>Pilling v Reynolds</i> (2008) <ul style="list-style-type: none"> - dubiously marked ballot papers considered by court 	Cirencester (1893) <ul style="list-style-type: none"> - By mistake of the polling clerk a man named Bruton, whose number on the register was 504, had received the ballot paper answering to 540, and had voted with it. A man named Cleaver, whose number was 540, had therefore tendered a vote in the manner prescribed by the Act. Both votes were allowed, as both men were clearly entitled to work. - 	West Bromwich (1911) <ul style="list-style-type: none"> - where a voter had inadvertently voted twice, and one vote was struck off in respect of an illegal practice, the other vote must also be disallowed.
<i>Re Rowe</i> [2001] <ul style="list-style-type: none"> - dubiously marked ballot papers considered by court 		Londonderry (1886) <ul style="list-style-type: none"> - votes of infants and minors struck off
Winchester (1997) <ul style="list-style-type: none"> - ballot papers missing official mark 		Finsbury (1892) <ul style="list-style-type: none"> - votes by aliens, personators and those not registered struck off - The vote of a voter called Lange proved bad, but on looking for his ballot paper two ballot papers with the same number were discovered. Counsel for petitioner submitted that Lange could be asked how he voted in order to identify the ballot paper. Counsel for respondent objected, contending that under the Ballot Act no voter could be asked how he voted, nor could a ballot paper be looked at until it had been proved to be bad. As long as the papers were unidentified they would not be looked at. Court decided that the voter himself might be shown the ballot papers, and asked which was his.