

## Taking forward the Electoral Commission's independent review of the 2007 Scottish Parliamentary and local government elections

The events surrounding the Scottish elections of 3 May 2007 cannot be ignored by anyone involved and interested in the administration of elections in the United Kingdom. The report by Ron Gould CM sets out a broad and complex agenda for change; an agenda designed to put the elector firmly at the heart of our elections. The Electoral Commission today accepts his report, and the challenges it poses, for Scotland, for the wider *status quo* in UK elections and to our own work and priorities.

While the implementation of the Electoral Administration Act 2006 and the Local Elections and Registration Services (Scotland) Act 2006 has gone some way to modernising and securing our electoral processes, the Gould report reminds us that much remains to be done. The confidence of the UK electorate is at stake.

The Gould report sets out a wide range of material for consideration. We are clear that not just the final chapter of recommendation, but the wider analysis must be considered. In examining the range of issues put to him, Ron Gould notes 'in many cases, there is more than one solution to the problem that has been identified. In these cases, a number of options have been put forward for consideration by the various electoral stakeholders who must determine which, if any, are most appropriate and realistic in relation to the Scottish electoral environment.'

As well as dealing with questions arising from the specific circumstances of Scotland in May 2007, the discussion must be widened. How should these issues and solutions be considered in the wider UK context, and how should resolutions be found that last for more than one electoral cycle?

### Background to the Gould report

On 3 May 2007, combined elections were held in Scotland: a general election to the Scottish Parliament, and full elections to all 32 of Scotland's local councils. The election date was fixed in law and the conduct of the elections was fully combined under electoral law.

During the election itself, and most especially during the overnight counting process on 3–4 May, several issues relating to the administration of the election were of concern to the Commission, political parties and observers. These were covered extensively by Scottish, UK and international media. The Commission announced on 4 May that it would expand its planned statutory

report to include a full, independent review of the elections in Scotland. In particular, we announced an examination of 'the high number of rejected ballots; the electronic counting process; and the arrangements for postal voting'.

The Commission appointed Ron Gould CM to head the review and to provide a definitive view of the problems experienced and propose remedies for the future.

Elections in the United Kingdom are not run by the Electoral Commission but rather are the responsibility of individual, independent Returning Officers. In Scotland as in the rest of Great Britain, Returning Officers are senior officials of local government. In Northern Ireland, there is a separate independent Chief Electoral Officer.

Electoral policy and law are the responsibility of the relevant Government department. In Scotland this responsibility was split as part of the devolution settlement. Policy and law for the Scottish Parliament remains with the UK Government and is handled by the Scotland Office in cooperation with the Ministry of Justice (formerly the Department for Constitutional Affairs). Policy and law for Scottish local elections are an entirely devolved matter handled by the Scottish Government.

## Reaction and response

The Commission has called on all concerned to give proper consideration to the findings and recommendations of the Gould report. This consideration must be informed by the findings of other election reports and evaluations in recent years, both by the Commission and by others.

Today we set out our response to direct recommendations wherever we can, and set out how others should be taken forward with more considered examination and reflection.

We are pleased that both the Secretary of State for Scotland and the First Minister of Scotland have welcomed the report and accepted many of its conclusions. We look forward to detailed responses from both Governments and from other stakeholders including Returning Officers and Electoral Registration Officers, as important contributions to the way ahead, as well as any wider reflections on the analysis and options put forward.

## Learning the lessons

The most important response to the Gould report must be a marked and swift change in attitude and approach from all electoral stakeholders – governments, political parties, Returning Officers and Electoral Registration Officers, and the Electoral Commission itself.

**“...the voter was treated as an afterthought...”**

The most important change of attitude will be to truly put the elector at the heart of electoral policy and decision making.

**“...consider initiatives to restore confidence...”**

Elections are based on confidence – once lost it can prove elusive to restore. Gaining and maintaining electors' confidence must be a tangible outcome of the experience of Scottish electors in 2007 and the Gould report.

**“...much of what has been described in this report is not new...”**

This criticism, while it has been little noted, is fundamental. The report found decisions taken on information known to be faulty or incomplete; decisions that had proven disadvantageous previously or elsewhere taken again; and processes known to be already under strain dangerously overloaded.

All those involved with elections must learn from this insight, and be prepared to act now to ensure it can never be repeated again. For **governments and policy makers**, this will mean:

- addressing the question of how to remove the problems that will arise for electors if policy making remains fragmented and piecemeal
- ensuring true public consultation on electoral matters
- producing better and earlier electoral legislation, to support the delivery of elector-focused elections and electoral registration and to safeguard electors' rights
- seeking out and being demonstrably open to expert advice and views, whether offered during the design or the evaluation of the electoral process, and including advice and views from political and administrative stakeholders
- providing for thorough and independent testing and modelling of proposed electoral processes, plans and technology for usability and accessibility
- ensuring that voting procedures are easy and convenient, and that they can be explained to electors in plain and accessible language
- not introducing change for the sake of change, but only when a clearly demonstrated need arises
- not considering any electoral reform or innovation unless it is intended and proven to enhance, not detract from, the secrecy of the ballot and security and confidence in elections

For **Electoral Registration Officers** and **Returning Officers**, this will mean:

- considering how electors will be affected first and foremost in the design of information and processes
- always valuing the secrecy and security of the ballot above all else in their work, and designing procedures to ensure this
- ensuring that every elector, wherever they are and whichever voting channel they chose, understands how to cast a valid vote and can be confident that their valid vote will be counted
- undertaking more and better planning, including contingency planning
- reclaiming their statutory responsibilities from suppliers to ensure decisions are taken with the elector as the only consideration
- exercising their statutory responsibilities free from political pressure
- committing to more training and development, both for themselves and for their staff, whether permanent or temporary, to ensure electoral services are delivered consistently and professionally; to continuous review of practices and procedures, and more sharing of practice with colleagues to harness innovation and learn from good practice

For the **Electoral Commission**, this will mean:

- being clear on the basic standards required for democratic elections; providing clear, accessible information to electors, electoral officers, police and prosecutors, political parties and candidates to enable them all to effectively meet these standards; and speaking up when any of them fail to deliver
- strengthening our processes for advice on policy and practice, and ensuring all our work is managed in order to reinforce at all stages the needs and concerns of electors
- improving the training and guidance we deliver, making it more practically focused
- producing election reports focused on improvement in processes that will help electors
- advocating change only when there is evidence that change is required, and thoroughly assessing its probable impact
- continuing to press for individual voter registration, to ensure end-to-end security for our voting processes

For **political parties and candidates**, this will mean:

- providing checks on the exercise of powers by Electoral Registration Officers and Returning Officers
- ensuring their campaigns do not confuse or mislead electors in the exercise of their rights
- participating fully in consultations and discussions designed to improve the provision of electoral services
- demanding that election counts are run to be accurate, not fast
- accepting that change and innovation can take time

## Much more to be done

We have set out above changes to attitudes and approach that are needed to ensure that future Scottish elections, and elections throughout the UK, are delivered consistently, professionally and with the elector as the primary focus.

There remains, however, a deeper and more fundamental issue. The Commission and various other stakeholders have discussed the structure of electoral administration over the years, but the Gould report has raised serious questions about whether the current arrangements for electoral administration in the UK are capable of delivering an equitable and consistent service to electors and other participants. In some areas, service is excellent and elections enjoy the confidence of electors and other participants. In others, service is patchy or inadequate. There is an urgent need to ensure that electors in Scotland and across the UK are better served in future.

## Detailed response

The Gould report, published on 23 October 2007, makes a number of recommendations and suggestions about the future of electoral administration and legislation in Scotland. In our response to the report, we place on record our views on the recommendations and outline our plans to address those where we have an interest. Many important issues have been examined and discussed in the context of the Scottish elections, and we hope that this momentum will also be carried through into the wider UK context. For our part, we will engage with the UK and Scottish Governments, Returning Officers, Electoral Registration Officers, electoral administrators and political parties in learning the lessons from the elections and from the Gould report.

The Gould report, and the circumstances that required it, have identified and examined a wide range of important issues in the context of the Scottish elections. Many of these issues need to be addressed not only in Scotland but in the wider UK context as well.

In the pages that follow, the boxed text sets out the recommendations of the Gould report. There then follows in each case a statement of the Commission's views on how the recommendations should be taken forward.

We recommend that all those with a role in organising future elections consider the voters' interests above all other considerations.

The Commission wholeheartedly endorses this approach; we view this report as key in identifying lessons to be learnt so that the elector can be placed first at elections that are better run in the future. While we have sought to consider the interests of electors in our work, some of the key conclusions in the report suggest we can be more thorough and consistent in future. The Commission will consider its own internal lessons and will strengthen our 'elector first' approach not just in Scotland, but in all our work.

### Electoral legislation

Our review of the present legislation, as it affects both the Scottish parliamentary and the local government elections, has led us to conclude that it is so fragmented and antiquated that it fundamentally interferes with the ability of electoral stakeholders to make timely decisions and to carry out all activities related to planning, organising and implementing an election effectively. The obvious conclusion, and our recommendation, is that a major initiative should be undertaken to rationalise and consolidate the existing legislation as it relates to these elections, ensuring that the respective electoral provisions of the laws are as compatible as possible and that they focus on electoral policy rather than micro-management of the elections.

1. The Electoral Commission has been calling for the consolidation of electoral legislation since 2001. We are aware that the Ministry of Justice is engaged in some work on consolidation of the Representation of the People

Acts. But as the Gould report says, a major initiative now needs to be undertaken with greater priority. A further clear lesson from Scotland is that a more thorough process of consulting practitioners and modelling processes must be part of any legislative effort – whether consolidation or reform.

2. We are also firmly of the view that consolidation is only a beginning, and that rationalisation and possible simplification must also be considered.

Throughout this report, we have pointed to problems that have arisen because the passing of electoral legislation has been unduly delayed. To avoid these problems, we would recommend a practice found in the electoral laws in other countries. These laws provide that electoral legislation cannot be applied to any election held within six months of the new provision coming into force. If, as proposed, a Chief Returning Officer (CRO) is appointed for Scotland, a clause might be added to the provision permitting the time period to be waived by the CRO following an assessment of the legislation's operational impact.

3. Since 2004 the Commission has consistently expressed concern about the problems caused by the late passage of primary and secondary electoral legislation. We agree that a 'cut off' provision should be introduced as the Gould report recommends.

4. We also agree that this 'cut-off' should be subject to provisions allowing for an agreed process whereby late legislation with little administrative impact can be implemented within the six month period, where absolutely necessary and in the interests of the voter.

5. Any expert input into the legislation, as well as the operational assessment, must be given in a transparent manner.

### Holding different elections on the same day

We are convinced that combined elections are not only a disservice to the local councils and candidates but also to the electorate as well. Therefore, we recommend separating the Scottish parliamentary and local government elections, preferably by a period of about two years.

6. The Gould report has carefully weighed the arguments for and against combination, from the perspective of what it means for the voter. On balance, Gould recommends against holding elections on the same day – a finding particularly directed at the situation in Scotland, with elections using two different electoral systems, and different ballot paper marking requirements.

7. We agree that in the Scottish context, early consideration should be given to the timing of the next Scottish Parliamentary and Scottish local government elections, with a view to 'decombining' them.

8. Meanwhile, we urge governments across the UK to begin any consideration of combining elections (or referendums with elections) by

considering the interests of the electorate – this is the approach the Commission will certainly take. At present, there is not enough evidence to say with certainty that combination is always in the best interests of electors, nor is it possible to say it is never in their best interests. At the same time, there is some evidence that combination can lead not only to confusion among electors as to how to mark their ballot paper correctly, but also to confusion as to which institutions electors are voting for. This suggests that combination may pose difficulties not only for electors, but also for parties, candidates or the institutions being elected.

9. Although combination is increasingly a part of the UK electoral landscape, there is no thorough understanding of the effect of combination on the electorate – either in regard to marking their ballot papers or in regard to their appreciation and understanding of the role of different elected institutions.

10. We therefore propose that a comprehensive research study should be undertaken into these matters, research that includes consideration of the different types of combination that can occur anywhere in the UK – we estimate that almost 100 different types of combination could occur. The Government should undertake this research as a matter of urgency.

11. It is also the case that elections can be held on the same day without all processes being combined, as was the case with the 1999 Scottish Parliamentary and local government elections. However, the concerns raised above about combined elections would also arise with simultaneous elections, so the research programme must consider ‘simultaneous’ elections as well.

12. We would also like to see a commitment from governments across the UK to review the legislative rules for combination, so that where combined elections are pursued the rules are both clear and flexible, again allowing for voters’ interests to take precedence. In particular, principles and processes for the combination of postal voting and the taking of the poll merit careful scrutiny.

## The structure of electoral administration in Scotland

Establish a Chief Returning Officer (CRO) for Scotland: The CRO would be responsible for issuing directions, coordinating and overseeing all aspects of the electoral processes for the Scottish parliamentary and local government elections where consistency or centralisation of Returning Officer responsibilities arise, such as in the areas of electronic counting, criteria for ballot paper rejection and other areas which have been discussed throughout the report.

Professionalise Returning Officer positions in each [constituency]: Returning Officer positions would be 'permanent' from the day the election is called to a defined period following the election. Their selection (and the selection of their Deputies) would be in accordance with standards and criteria established by the CRO in consultation with existing Returning Officers. We would also recommend combining the present positions of Regional, Constituency and local Returning Officers with the new Returning Officer position, as applicable, and consider what other election-related responsibilities could fit within the Returning Officer's portfolio, such as that of voter registration.

Rationalise the role of the Electoral Commission and other stakeholders in relation to the proposed Chief Returning Officer for Scotland: We recommend that a process be put in place to assess the relationship of the CRO with the Ministers' offices in the UK and Scottish parliaments. As indicated earlier, the goals should not be to remove the input of political parties into the electoral process, but to distance the potential for political party interests to unduly influence how elections are implemented. We believe that the Electoral Commission, in supporting and enhancing understanding and bringing consistency of administration to the 32 Returning Officers, other stakeholders and the electoral process as a whole, played a role which could be assumed in future by the proposed Chief Returning Officer.

If the recommendation to create the position of Chief Returning Officer for Scotland is accepted, it would be our recommendation that all operational roles, including those mentioned above, become the responsibility of the CRO, with the Electoral Commission continuing to carry out its advisory role – offering the CRO guidance on accepted policies, practices and standards – while conducting rigorous post-election audits on specific elections, identifying problems and offering options by which stakeholders can improve electoral processes in Scotland in the future.

It is recommended that the proposed Chief Returning Officer develop standard selection criteria and training programmes for [information officers].

Having assessed the manner by which public information was disseminated for the 2007 Scottish parliamentary and local government

elections, and the fragmentation of the institutions involved, we would recommend that both functions would be best managed by the proposed Chief Returning Officer who would be able to work closely with Returning Officers in conducting both Scotland-wide and polling station-based public information campaigns for future elections.

13. These recommendations have far reaching implications for electoral administration both in Scotland and across the UK. The key issues raised in the Gould report – independence, accountability and voter focus – have not all been examined in the context of other UK elections. They arise beyond as well as in Scotland, and should not remain unaddressed.

14. Given the importance of these matters, there has been early comment on whether the recommendations could be implemented before the next scheduled Scottish Parliamentary or local elections. Should there be a wish to proceed to swiftly consider or implement the options for the structure of electoral administration in Scotland that the Gould report sets out, further thought should be given before doing so to:

- the effect of any changes on the conduct of UK and European Parliamentary elections in Scotland
- the need for any change to the current arrangements for electoral registration in Scotland, given that the report does not raise concerns about these arrangements
- the need to combine the Scottish Parliamentary and Local Government Returning Officer roles, if a decision is taken to move away from combined elections as recommended in the report
- the workability of the proposed changes to the status of individual Returning Officers
- any difficulties that would be faced for UK and European Parliamentary elections in Scotland if the Commission's role as party registrar did not cover all elections, and any implications for the political finance system which the Commission oversees
- the cost effectiveness of a Chief Returning Officer conducting public information for some but not all elections in Scotland while the Commission continues its role in relation to UK and European Parliamentary elections and with respect to electoral registration
- what needs the Chief Returning Officer will have as regards staff, budget and other resources, and a more detailed consideration of how such an officer would improve the level of professionalism among Returning Officers
- how the Chief Returning Officer would operate, and most importantly be accountable, in the context of whatever decisions may be taken about the report's recommendations on jurisdiction
- the fact that the Commission's role in respect of Scottish local government elections is different from its role in respect of all other elections in Scotland

15. The Commission's view is that the current arrangements for electoral administration across the UK are no longer capable of delivering elections in a

consistent and equitable fashion, as many of the issues examined by Gould apply not just in Scotland but in the rest of the UK as well. The diversity of electoral administration structures, and the disparity in their resources and accountability must be addressed. Although recent procedural change illustrates the dangers of the current fragmented arrangements, the situation has existed for some time. What is now notable is both the degree of inconsistency inherent in the system and the growing calls – from parties, candidates, and electoral officers themselves – for more reliability across the UK.

16. It is now time for a wide ranging examination of electoral administration to be held encompassing the recommendations of the Gould report, the applicability of these recommendations to other parts of the UK, and the views of the Committee in Standards in Public Life relating to regional electoral officers for Great Britain and the Government's recent response to these proposals.<sup>1</sup>

17. The Commission intends to undertake an examination of electoral administration structures across the UK, rather than considering Scotland in isolation, or considering some Scottish elections but not all as needing changed arrangements. It is our view that this matter is urgent, and must proceed immediately.

18. The examination will consider the arrangements already in place across the UK, as well as those suggested in the Gould report. There are also a range of international models for co-ordinating and delivering electoral services. These models range from single office holders with national responsibility for elections and electoral registration, through multi-member commissions with similar roles, to the Western European model of limited central input into electoral administration.

19. The examination should, however, focus on the principles of electoral administration, rather than existing bodies or organisations. This could mean starting with a discussion of applicable international norms and reports, if helpful. As an example, in 1996,<sup>2</sup> an international discussion on good electoral administration practice found that electoral administration should demonstrate respect for the law; be non-partisan and neutral; be transparent; be accurate and be designed to serve the voters. The examination will look at what this would mean in the UK context, and how this could be delivered, equally and consistently, across the UK.

20. The Commission will contribute our expertise, and our views, but we will rely heavily on informed and enthusiastic participation from governments across the UK, political parties, candidates and agents, Returning Officers and Electoral Registration Officers and their staff, and groups across civil society, including those who are able to represent electors. We will aim to focus on both a set of principles that enjoy wide stakeholder support and an

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<sup>1</sup> Committee on Standards in Public Life, *Review of the Electoral Commission*, January 2007.

<sup>2</sup> International IDEA, *Code of Conduct for the Ethical and Professional Administration of Elections*, 1996.

assessment of how various models of administration will succeed against these principles, and to report the initial conclusions of the examination by the middle of 2008.

## Coordination and planning

To ensure effective and comprehensive election planning in the future, we would recommend that a future Elections Steering Group be strengthened and tasked with the function of providing integrated election plans and timetables.

The Elections Steering Group would be formed and function not only when an election was called but at any time new approaches or systems are proposed. Its mandate would be to develop and integrate timelines and milestones relating to all activities and ensure that adequate testing is conducted before any change is applied to an electoral process. Once an election was called, the Steering Group would be charged with putting together an electoral calendar which would incorporate legislation deadlines with operational ones. .... Inseparable from this initiative is the development of contingency plans related to every major milestone in the planning process. We recommend that the Steering Group be charged with the development of contingency plans directly related to the timelines in the electoral calendar.

21. The Gould report is right to reflect on the need for structured, expert consultation on the review and reform of electoral processes. This is managed differently across the UK at present, with the steering group model only one of several options. How best to achieve this across the UK will be a key discussion in our examination of electoral administration structures. What is obvious is that successful elections are those where a range of stakeholders are able to give meaningful input into plans and processes at a suitable stage.

## Public information

22. The Gould report recommends that public information responsibilities could perhaps be transferred to the proposed Chief Returning Officer. The proper body for the conduct of public information work will be a subject for the examination described above – public information is a vital part of the administration of modern elections, and should not be considered an afterthought or adjunct. It is clear however, that electors would be ill served by fragmentation of public awareness activities, which would also lose the benefits of scale and result in cost increases.

23. The Gould findings, in fact, point clearly to the responsibility for public information needing to rest with the body responsible for the conduct of the elections, and accordingly this will be considered as part of the examination described above. Key examples – the need to communicate late changes in ballot paper design; the necessity of a coordinated message, from television advertising right through to staff in polling stations, and the reliance on mandatory information notices – all point to closer integration between public

information and electoral management functions. This is achieved not just by having both functions performed by one body, but by integrated planning and delivery of an entire election (or referendum).

24. The points made throughout the Gould report about the large number of bodies involved also apply to the public information campaign. Any consideration of jurisdiction over Scottish elections must consider where public information functions can be most appropriately and efficiently undertaken; this is important even if the two elections are not combined.

25. The Gould report also raises important issues around the reliance on formal documents to provide important messages to electors. It is of course important that materials such as poll cards and polling station notices are consistent across an election. However, as the analysis in the report shows, much can be done to make these materials more user-friendly and accessible. Documents contained in legislation do not need to rely on legislative language.

26. The Commission fully accepts that the timing of the tracking research meant it did not yield the expected analysis. We have already reframed our plans for 2008 to reflect this learning.

27. The Commission also notes the concerns raised with regard to whether the public information campaign reached all potential electors. We continue to conduct research to identify whether the barriers to participation are motivational or structural and will consider the points raised when designing our next research.

28. The Commission agrees with the Gould report that more information is required when elections with different ballot paper marking systems are combined or held at the same time. As noted above, combination should only be considered if there are positive benefits for the elector; when ballot papers are marked differently this could be especially difficult to establish.

## Ballot paper issues

<p>We would recommend that the strengthened Elections Steering Group, working closely with Returning Officers, examine a number of options (to be put forward by the Chief Returning Officer) related to the ballot papers used for the Scottish parliamentary and local government elections. These could include, but not be limited to: the design of ballot papers; the need for comprehensive testing to be conducted; establishment of contingency plans; evaluation of the ballot paper production; the integration of postal ballot packs; ways to enhance ballot secrecy; and other related matters.</p>
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29. It is essential that there should be a formal consultation process along these lines in future, and that intensive work should be carried out to inform future ballot paper design, whatever the structural arrangements in future, and wherever in the UK the election is to take place. This work should also

consider related electoral materials such as postal voting statements and postal ballot pack components, both for design integrity and in order to ensure a consistent fit and feel of the materials.

30. Without prejudice to the outcome of the wider examination of future arrangements for electoral management across the UK, the Commission will publish a plan for the development of a set of UK-wide standards on the accessibility, design and usability of ballot papers and associated stationery by 30 September 2008. It would be expected that in demonstrating how such standards are achieved, user testing and research would be required. The Commission would then test any draft legislation presented to it against these standards.

31. These standards would also provide a more certain framework for Returning Officers in selecting and managing their suppliers, as the parameters within which ballot paper designs must fall will be available to all. These standards should also produce more consistency in ballot paper production, removing the need for any local deviations from what is actually a closely prescribed form.

We recommend that the interests of voters would be best served by printing the regional ballot paper on a separate sheet from the constituency ballot paper, regardless of whether future elections are separate from or combined with local government elections.

32. The Commission agrees with this recommendation, and would support this approach unless and until the research described above indicates otherwise. We would of course examine this issue in setting any standards for ballot paper design, along with evidence from other Additional Member System elections in the UK and internationally. Until evidence suggested otherwise, we do not support the use of combined ballot sheets at any UK election. If a future move to combined ballot sheets was required, further design standards would need to be developed, and could include the issue of party order on both columns of the sheet.

It is our recommendation that legislation is amended to require that registered names of political parties (rather than their descriptions) appear first on all regional ballot papers for the Scottish parliamentary elections.

33. The Commission has committed to considering the registration of party descriptions further on a UK-wide basis, in consultation with political parties and other interested bodies; we intend to conclude this consultation by the end of January 2008. We will include this point in that work, as it must be absolutely clear that voters are in no doubt as to which party they are voting for.

34. The Gould report also reflects on the allocation of descriptions between UK-wide political parties and those that only contest elections in one part of the UK, and we are considering this issue as well.

35. Legislative changes are likely to be required before any changes that the Commission recommends can be put into effect.

To provide equitable opportunity to all political parties and candidates to access favourable positions on the ballot paper, we also recommend that a public lottery be held to determine ballot paper positioning.

36. The Commission would support a decision by government to consider this idea further in light of the multiplicity of electoral systems now in use across the UK.

We would recommend that the legislation permit access to the face of electronic images of the rejected ballot papers as authorised by the Electoral Commission, the Chief Returning Officer or other appropriate body. The face of the *electronic* images of the rejected ballot papers does not violate the secrecy of the vote. As access to the *physical* ballot papers does have the potential to violate the secrecy of the vote, the present legislative restrictions should continue to apply.

37. The Commission believes that there should be discussions among interested parties before any move to legislate on this issue.

38. The Commission was grateful to both the Secretary of State and the First Minister for making the required legislation in 2007 to allow the Scottish Elections Review team access to ballot images. However, our comments on the Order drafted to permit access to the Scottish Parliamentary ballot papers made clear our concern at the open ended nature of the Order and highlighted the need for this issue to be considered openly, and in respect of all elections in the UK.

39. We would be happy to support such a debate, and would hope that it could include consideration of the provisions of the Representation of the People Act 1983 that permit the House of Commons to grant access to ballot papers used in House of Commons elections.

40. In all discussions, the need to maintain the secrecy of the vote should be balanced against the benefits of any such scrutiny, and the necessary controls should be carefully designed. The advent of electronic records and the related ease of making copies of ballot paper images could conflict with current law on access to sensitive electoral documents and this should be given the utmost consideration.

We recommend consideration of options such as returning to folded ballot papers as in the past (or providing folders to voters if folding them is not an option) as well as the active involvement of political parties and candidates along with electoral officials in the sealing of ballot boxes and recording of seal numbers for later checking.

41. The Commission shares the report's concerns that secrecy may not be best maintained when ballot papers cannot be folded, and will include

consideration of the options in the Gould report in developing standards for ballot paper design.

42. We also agree that parties and candidates may need to be reminded of their rights in regard to the sealing of ballot boxes and provisions for noting serial numbers and/or adding their own seals to ballot boxes.

## Postal voting

[There should be] a review by the proposed Elections Steering Committee of postal voting issues, keeping in mind the need to involve Returning Officers.

43. The postal voting process in Scotland is about to change with the introduction of personal identifiers for absent voting. We are working with the Scotland Office and the Scottish Government to ensure that this process is well supported, and that learning from England and Wales is shared with Scottish colleagues. To this end we will reiterate for Scottish colleagues the key learning of our three 2007 England and Wales reports as they apply to postal voting and, if necessary, revise our already comprehensive guidance on the procurement and management of contractors. We will also ensure that lessons from the Gould report are included in guidance and training on this issue.

44. It is clear from the Gould report and our own activities in Scotland that more work needs to be done to embed key learning on managing postal voting activities. We have consistently provided information and advice on these issues, and will actively review our approach to ensuring that Returning Officers and Electoral Registration Officers are:

- informed of their statutory duties and the often exacting requirements of electoral legislation
- encouraged to develop better relationships with electoral suppliers, including proper and documented procurement processes, more quality assurance tests and key decision making agreements
- helped to support the postal voting process through proactive public information campaigns at the local level

The present provisions concerning the postal vote do not provide sufficient time for printing the ballot papers following close of nominations for voters to be assured they will receive their ballot papers early enough to be able to return them or, in some cases, before they have to leave the constituency. We would recommend amending the existing legislation to provide for the close of nominations on the 23<sup>rd</sup> day (instead of the 16<sup>th</sup> day) before polling day. In addition, for reasons similar to those described above, the legislation might be amended to set the final day for postal voting applications to an earlier day, as the present deadline can mislead voters into assuming they will receive their postal ballot packs in time to return them before the deadline, which has not always been the case.

45. The Commission has previously recommended a standard 25-day timetable for elections. We note that the proposed timetable for the Greater London elections is 30 days. The Commission is currently re-examining the 25 day proposal, to ensure that new procedures and processes introduced since 2003 can be safely accommodated, and we will report on this re-examination by 31 March 2008. The Ministry of Justice agreed to consult on the issue of the election timetable in the response to the Commission's report on the Blaenau Gwent dual by-elections in 2006, and we are happy to contribute further to this important work.

We recommend that consideration be given to other advance voting strategies similar to those found in other countries, such as Canada and Sweden, to supplement a postal voting approach. Such strategies include voting in the Office of the Returning Officer from the time ballot papers are printed up until a day or two before the election and/or holding one or more advance polls in a number of convenient locations in each constituency on one or more days prior to polling day.

With the aim of reducing stress on the system for electoral administration, we would recommend that careful consideration be given to readying returned postal ballot papers in advance; advance voting at the Office of the Returning Officer and via advance polls (and potentially even counting) before polling day to the greatest extent possible.

46. The Commission has evaluated 28 pilots of 'early voting' in English local authorities since 2002, and 15 were held in 2000; and in 2007 concluded advance voting was well implemented but actual take-up by the electorate was low. With this in mind, and the fact that there were few new lessons learnt, the Commission recommended that the Government come to a decision on whether advance voting should be introduced.

47. We recommend that the Government consult on the provision of advance voting facilities at all statutory elections in the UK, with a view to early legislation. Such advance voting should be by normal polling, and not require additional declarations or processes. It should be made available at the office of the Returning Officer and at any other appropriate venue in the electoral area between 1 and 7 days before the close of the poll.

48. While we remain very supportive of Returning Officers completing as many of the possible pre-count processes for postal votes as possible, we do not support any counting of votes (including the scanning of ballot papers into e-counting systems) before the close of the poll. Such a move would be against the UK's strong tradition of all votes remaining sealed until the close of the poll, which has been effective in ensuring that all electors' choices are kept secret and that elections are not unfairly influenced by early voting trends; such a move should not be made lightly or for administrative convenience.

## Counting procedures

We recommend that if the polls continue to close at 10:00pm, there should be no overnight count of the ballot papers.

49. The Commission continues to believe, as we recommended in January 2006, that overnight counting for combined Scottish Parliamentary and local government elections was unwise. In Scotland the commencement of the count is at the discretion of Returning Officers under current legislation and we believe it should remain so. However, we remain clear that the goal for election counts is an accurate and acceptable result, rather than a fast one. We also see merit in some reconsideration of counting procedures – the Gould report’s suggestion that postal and polling station ballot papers need no longer be mixed is sensible – now that postal voting accounts for around 12% of votes and so secrecy is not jeopardised if mixing is removed.

We recommend that the proposed review of existing legislation must ensure that electronic counting technology is properly integrated into the electoral process. On an operational level we recommend that the Chief Returning Officer examine how best to achieve this, especially as it relates to postal ballot pack design and contingency planning.

50. The Commission supports this recommendation, and stands ready to support such a review, which should be undertaken by government. We have continually pointed out that efforts to graft 21st century technology onto 19th century legislation does not work. The nature of the challenge that the introduction of technology poses to the UK’s electoral norms and practices has been underestimated in the past and can not be ignored any longer.

We recommend that electronic counting continue for future combined parliamentary and local government elections or local government elections alone when the STV system is being used.

51. In August 2007 the Commission made recommendations to the UK Government following our evaluation of e-counting pilots in May 2007 and commented on the draft rules for the Greater London Authority. We were clear that any further e-counting plans needed to take full account of substantial testing and consider whether sufficient time had been allowed for the full development of the project, including time for expert subject matter input from electoral professionals. However, this is no longer sufficient.

52. Noting that rules will be laid imminently that require the use of e-counting for the London elections on 1 May 2008, we accept that it is now too late to revert to planning and executing a manual count for those elections. We recommend, however, that e-counting should not be made available at any further UK statutory elections – even as a pilot – until:

- the Government undertakes and publishes a cost-benefit analysis for the use of electronic counting, and consults widely on the findings

- the Government consults on and finalises an implementation strategy for electronic counting, setting clear milestones for establishing procedures for testing, security, and stakeholder assurance
- the Government produces an analysis of the modifications required to electoral law to allow for electronic counting to be undertaken with all the transparency and safeguards currently in place for manual counting, including those for adjudicating and rejecting ballot papers and consults widely on the necessary amendments to legislation; the Commission can no longer support the 'patchwork' approach to e-counting legislative development
- the Commission is able to produce comprehensive best practice guidance on the management of electronic counting processes, including risk assessment, contingency planning, preparation of manual backups and a design for elector and stakeholder consultation
- the Government makes the necessary amendments to section 6A-6F of the Political Parties, Elections and Referendums Act 2000, to guarantee full access to all relevant parts of any e-counting system or process

53. We do not underestimate the timescale involved in this work. The Government should move swiftly to ensure it is completed by the end of 2009.

54. We would also expect to see evidence of a standard testing profile that covers the scenarios set out in the Gould report's analysis as well as the basic requirements set out in Commission reports since 2003.

55. As the London elections will proceed with e-counting, we will write to the Greater London Returning Officer to make clear the Commission's areas of concern; and we will pay particular attention to these issues in our evaluation of the London elections.

We recommend that at the next election to use electronic counting, all doubtful ballot papers should be adjudicated by Returning Officers' staff, with no auto adjudication. All ballot papers should be assessed using a guidance booklet developed by the Chief Returning Officer similar to the one used for the 3<sup>rd</sup> May 2007 elections. We would also recommend that each example of a rejected ballot paper would have its own special code. The applicable code would be entered on each ballot that was rejected.

56. This recommendation means that all ballot papers that may be rejected should be subject to human adjudication (many rejected ballot papers are not 'doubtful' in that they are clearly blank). We agree that no automatic rejection should be allowed in legislative rules for electronic counting, and will urge the Greater London Returning Officer to include human adjudication of all potentially rejected ballot papers in the process for 2008. This provides for candidates and agents to fully exercise their rights to inspect and object to the rejection of a ballot paper.

57. As part of the work taking forward our recommendations in paragraph 52, the Government should also consider whether e-counting rules should mandate that ballot papers themselves should be made available for adjudication when e-counting, in addition to the ballot paper images.

58. We agree that common guidance products increase consistency of adjudication; we are working with the Greater London Returning Officer to produce such a product for London 2008; the Greater London Returning Officer is empowered to direct that its contents be followed and we will urge him to do so. We can see the merit in the use of a code and will discuss this with the Greater London Returning Officer; its longer term use should be considered in the e-counting strategy recommended above.

We strongly recommend against introducing electronic voting for the 2011 elections, until the electronic counting problems that were evidenced during the 2007 elections are resolved.

59. The Commission supports this recommendation, which is fully in keeping with our findings following the 2007 pilot schemes.

### Jurisdictional issues

As long as the responsibilities for the decisions which have an impact on the Scottish parliamentary and local government elections are divided between the Scotland Office and the Scottish Government, it cannot be guaranteed that these electoral processes will be conducted effectively, due to the fragmentation of the legislation and decision-making in this context. As a result, we would recommend that exploratory discussions take place with a view toward assigning responsibility for both elections to one jurisdictional entity. In our view, the Scottish Government would be the logical institution.

60. We agree that the number of bodies with a direct interest in the administration of elections should be reduced, and see the merit in such a proposal, given the issues faced in 2007. However, consideration must also be given to the conduct in Scotland of UK and European Parliamentary elections, electoral registration, and any future referendums, in assessing the full implications of this recommendation. These structural questions could usefully be considered in the context of the examination that the Commission proposes to lead on the arrangements for running elections.

The Electoral Commission  
29 November 2007