Sewel Memorandum

REPRESENTATION OF THE PEOPLE BILL

Summary

1. The Representation of the People Bill was presented to the House of Commons on 18 November. The Bill will modernise the arrangements for the conduct of elections and for electoral registration. Conduct of parliamentary elections, and electoral registration, are reserved matters; whilst the conduct of local government elections is devolved. The Bill largely concerns the reserved area, and also has provisions allowing for experimental and innovative voting procedures in local elections in England and Wales: these are described below.

2. However the Bill also contains provision for postal voting on demand, and this has been drafted (with the agreement of the Scottish Executive) so as to apply for all elections including Scottish local government. This memorandum explains the reasoning for this, and recommends that the Parliament should give its agreement to the inclusion of this provision which lies within the legislative competence of the Parliament.

Purpose and Content of the Bill

3. The Working Party on Electoral Procedures, a group chaired by the then Home Office Minister, George Howarth, and containing representatives from the main political parties, local government and electoral administrators, published its final report on 19 October 1999. The Bill seeks to give effect to the Working Party's recommendations

4. The main provisions of the Bill are;

4.1. Registration -

4.1.1. A "rolling register" allowing electors to register or change registration at any time (except after close of nominations at an election) rather than once a year as at present.

4.1.2. Allow electors to decide whether or not their personal details as provided for electoral registration should be included in the register made commercially available.

4.1.3. New arrangements to make it easier for the homeless and rough sleepers to register.

4.1.4. Removal of the restriction on detained mental patients from registering.

4.1.5. The introduction of the right of prisoners on remand to register to vote.

4.2. Provisions making it easier for people with disabilities to vote.

4.3. Postal voting on demand.

4.4. An enabling provision to allow pilot projects to be run by local authorities to test new alternative voting arrangements. This will apply to England and Wales only. The Bill provides that such schemes must be approved by the Home Secretary and will allow him, if successfully piloted, to roll out such practices to other elections by regulations rather than requiring further primary legislation.

4.5. The Bill will also extend those areas where UK Ministers can make regulations under the Representation of the People Act. This will allow further recommendations made by the Howarth Working Group to be taken forward by regulation.

Legislative Competence

5. Elections for membership of the House of Commons, the European Parliament and the Scottish Parliament, and the franchise at local government elections are reserved matters by virtue of Section B3 of Schedule 5 to the Scotland Act 1998. The electoral register is related to the franchise; and hence the items listed under paragraph 4.1 above will apply throughout Great Britain and are reserved.

6. The provisions for the disabled (paragraph 4.2) can be applied to Scottish local government elections by means of secondary legislation which Scottish Ministers would bring to the Parliament.

7. The powers in the Bill relating to piloting innovative electoral practices (paragraph 4.4) will, as noted above, apply in England and Wales only. The Executive notes however that similar recommendations were made by the McIntosh report for local government in Scotland; and we shall watch with interest the experience gained with the England and Wales legislation, with a view to possible Scottish legislation in the context of other McIntosh recommendations.

8. The provision for postal voting on demand (paragraph 4.3) would in any case apply for parliamentary elections and for local elections in England and Wales. The Bill has been drafted however so as to extend them to local government elections in Scotland, which is a matter within the legislative competence of the parliament.

Why legislate at Westminster for postal voting on demand?

9. Many of the proposals of the Howarth Working Group are similar to those set out in the Report of the Commission on Local Government and the Scottish Parliament (the McIntosh report). As such the Executive supports them. Legislation on the McIntosh recommendations cannot be introduced in the immediate future however, since key recommendations - including those regarding the electoral system, are currently the subject of further study by the Renewing Local Democracy group which I announced in the statement I made to Parliament on 2 July. The Executive is also consulting on other recommendations, by means of the paper we issued in September, and will need to take stock of the responses to that consultation.

10. In the case of postal voting on demand, however the Executive does not believe that it is in the public interest to wait for legislation following up the McIntosh report before taking forward this proposal. To have different qualifying criteria for a postal vote at local government elections from all other types of elections would create problems not only for the administration of absent votes but also for the electorate. Postal vote applications can be submitted at any time, not just in the run-up to elections. It is likely that once the Bill comes into force there will be an increased number of applications, particularly if there is accompanying publicity designed to get as many early applications in as possible to avoid being swamped at election time. Electors would be particularly frustrated if they are to be told that they must return at some later stage once the legislation had been amended by the Scottish Parliament to make a further application for a postal vote for local government elections. Indeed, it could tend to put people off voting at local elections at all.

11. On that basis, the Executive believes that this change should be made for all elections at the same time and that the Representation of the People Bill in the UK Parliament provides the most appropriate vehicle for that change.