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Note: Appendices are available on the Scottish Elections Review website
www.scottishelectionsreview.org.uk

Message from the Electoral Commission

As the Scottish parliamentary election counts were being carried out in the early hours of 4 May 2007 it became clear that a higher number of ballot papers were being rejected than had been the case in the two previous elections for the Parliament. Along with a number of other issues that emerged on or before polling day, this suggested that these Scottish elections should be the subject of a full expert review.

The Electoral Commission has a statutory duty to report on the administration of the elections to the Scottish Parliament and was asked by the Scottish Executive to report on the local government elections which were taking place on the same day. We had produced one combined report on the May 2003 elections in Scotland, and were intending to do so again in 2007.

Our previous four reports on the administration of elections in Scotland since 2001 have been written by the Commission supported by external researchers; they reflected our experience and were informed by the views of key participants including electors, political parties and the local government staff who run elections.

The Commission is not responsible for running elections but we had an involvement in aspects of the 2007 Scottish elections, including through consultation on legislation, guidance and training for electoral officers and the public information campaign.

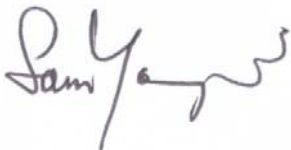
We decided that our involvement in the arrangements for these elections meant that it would not be appropriate to report in the way which had become established and that we should seek to fulfill both our statutory duty and the request from the Scottish Executive in a different way.

We therefore commissioned an independent external review of key aspects of the elections, to be led by Ron Gould CM. In this way, we aimed to fulfill our responsibilities while ensuring that the full range of issues – including the involvement of the Commission in the arrangements for the election – would be examined by objective experts.

Our report is therefore published in two parts. This first part is the review team's report on the aspects of the election identified by the Commission on 4 May 2007 and included in Ron Gould's terms of reference. The second deals with a range of factual and technical details arising from the elections that were specifically not included in the review's team terms of reference.

We are immensely grateful that Ron Gould, an international expert in electoral administration, was able to lead the review at short notice and grateful also to the team who supported him.

The Commission will consider the details of the review and publish a response to it no later than 30 November 2007. We commend it for detailed consideration by both the UK Government and the Scottish Executive, as well as those involved in electoral administration throughout Scotland.



Sam Younger
Chairman
Electoral Commission



Sir Neil McIntosh CBE
Electoral Commissioner

Review acknowledgements

During the first two months of the Scottish Elections Review (SER), the review team met with many individuals and groups, each of whom openly shared their diverse views and provided valuable input on which this report has been constructed. I am grateful for the important contribution made by these stakeholders and the many other contributors to this report.

I would like to acknowledge the close cooperation received from the Secretary of State for Scotland; the First Minister of Scotland, the Speaker of the House of Commons, the Scotland Office, the Scottish Executive and the Electoral Commission for their views and for providing critical legislative, technical and material support.

I appreciate the time and effort taken by the many other individuals and organisations that met with us, as well as those who provided input in the form of submissions, letters and responses to our public consultation initiatives. Specifically, I extend my thanks to the Members of Parliament (including the Speaker of the House), political party representatives, candidates, Returning Officers and other election officials, Royal Mail staff, representatives of the media, DRS and ERS and the many other contributors who provided indispensable input to the Review.

The number of individuals and groups who wished to meet with us far exceeded our expectations. Although this prolonged the period of the Review, the information gleaned from these consultations has played an important role in enhancing the contents of this report.

At the outset, I wish to make special mention of the contribution of Michael Boda to this Review. His involvement and guidance throughout the Review with respect to all aspects of the report have been indispensable and deserving of my sincerest gratitude.

I would also express my thanks to Alice Killam for her involvement in the overall process, to Gill Ryan for her substantive involvement in the compilation of this report, and to Ian Coldwell for his advice and guidance on public and media relations.

Finally, I am also grateful to the specialist advisors who have offered invaluable contributions to matters of fact with respect to this Review, including Louise Footner, Kate Sullivan, Clive Payne, Jeff Hawkins, Colin McDonald and Paul Allen. Our office staff, Lindsey Hamilton, Sylvia Jenkins and Cara-lin Lonetree, and researchers, Stefan Szwed and Shohei Sato, also provided excellent support throughout the project.

Ron Gould CM
Edinburgh, Scotland
23 October 2007

1.0 Introduction

1.1 Appointments

On 3 May 2007, combined elections were held in Scotland, electing members to both the Scottish Parliament and all 32 of Scotland's local councils. On 8 May, the Electoral Commission asked Ron Gould CM to conduct an independent review with specific reference to the problems that had arisen during those electoral processes.

In turn, Mr. Gould recommended the appointment of Michael Boda, an experienced elections practitioner, researcher and author of a study of the UK's election administration system, to serve as deputy reviewer, lead drafter and director of the Review's operation. Later, Alice Killam, a Canadian Returning Officer with international experience, was appointed to manage the documentation and conduct research. Given the breadth and scope of the review and the limited time available, a diverse group of individuals who had been involved in the 3 May elections were asked to provide factual background information related to various chapters of this report.

1.2 Terms of reference

Terms of reference were agreed regarding the issues which should be considered as part of the 3 May 2007 Scottish Elections Review (SER). Issues of concern relating to both the Scottish parliamentary and local government elections were to be considered, including:

- the reasons for the high number of rejected ballot papers;
- the electronic counting process and its impact on the final results;
- the arrangements for the production and dispatch of postal ballot packs;
- the decision to combine the Scottish parliamentary and local government elections;
- the decision to electronically count both the local government and Scottish parliamentary ballot papers;
- where decision-making took place in relation to these issues as opposed to where it should have taken place, either according to the law or responsibility; and
- the role of the Electoral Commission itself in the preparations for the elections.

From the above, we determined that the parameters under which the Review team would be working could lead elsewhere but would not explore the validity or outcome of the elections nor take any action which might threaten the secrecy of the vote.

1.3 Independence of the Review

The Electoral Commission has a statutory duty¹ to report on the administration of the Scottish parliamentary elections and had been asked by the Scottish Executive to report on the Scottish local government elections.² Given its involvement in the Scottish elections, however, the Electoral Commission determined instead that it would expand its statutory report to include a “full, independent review of the elections in Scotland.”³

Within these parameters, the Electoral Commission has been responsible for all fees and expenses related to the conduct of the Review. It has provided office accommodation apart from Electoral Commission facilities and logistical and administrative support. It has supplemented this assistance from within the resources of the Electoral Commission and allowed the Review team to seek assistance externally when required.

1.4 Approach to the Review

To facilitate an understanding of the Review process, a brief description of the parliamentary and local government elections held in Scotland on 3 May 2007 and our approach to assessing them follow here. There were two different electoral systems – the Additional Member System (AMS) for the parliamentary election and the Single Transferable Vote (STV) system for the local government election. For the Scottish parliamentary election, voters were asked to complete two ballot papers printed on a single sheet. Voters were to mark the ballot papers with two crosses ('x'), one on the column on the left side of the sheet and another on the column on the right. On the left was the regional list where voters were to select a political party or an independent candidate of their choice. On the right was the list of constituency candidates. The combination of these ballot papers, side-by-side on one sheet, had not been used before in Scottish elections. Voters were also asked to complete a separate ballot paper for the local government elections. In this case, voters were exposed for the first time to a new electoral system – STV. Instead of using the traditional ballot paper marking requirement of a cross ('x'), voters were instead required to rank their preferences for candidates with numbers (1, 2, 3, 4, etc.).

¹ Political Parties, Elections and Referendums Act 2000. sec 5.

² As permitted by Political Parties, Elections and Referendums Act 2000. sec 10.

³ Terms of Reference. para 5.

Close of polls, ballot papers sent to counting centres: At the close of the polls at 10.00pm on 3 May, all ballot papers were sent to central counting centres to be counted electronically.

- **Ballot papers cast:** There were more than two million votes cast for each election (regional: 2,102,623; constituency: 2,101,638; and local government: 2,099,945).
- **Rejected ballot papers – Scottish Parliament:** For the parliamentary elections, a total of 146,099 ballot papers (regional: 60,455 or 2.88%; constituency: 85,644 or 4.075%) were rejected. This was significantly higher than the rejected ballot paper rate in 2003 – 0.65% of the regional ballot papers and 0.66% of the constituency ballot papers.
- **Rejected ballot papers – local government:** For the local government elections, there were 38,352 rejected ballot papers or 1.83%. This compares to 0.64% in 2003.⁴

While the results of the elections were ultimately accepted by the political parties and candidates, there was an accompanying outcry from them, from the media and from the voting public with respect to the large number of rejected ballot papers and other election-related problems that were subsequently identified. Over the course of the Review, we examined many of the comments, complaints and concerns which had been publicly expressed following these elections. Building on the terms of reference provided by the Electoral Commission, we established seven key issue areas which have become the focus of the Review. These include:

- Legislation;
- Roles, relationships and accountability;
- Planning and timing;
- The combination of the Scottish parliamentary and local government elections;
- Ballot papers and voting issues (including ballot papers for the parliamentary and local government elections; postal ballot papers and packs; and the secrecy and security of ballot boxes);
- Public information; and
- The count (including issues relating to the overnight count and the electronic count and related procedures).

⁴ Electoral Commission. Email confirmation of statistics for 2007 Scottish parliamentary and local government elections. 28 September 2007. Percentages are calculated on all ballot papers cast which were rejected at the count.

The first major Review activity was to conduct a series of meetings and interviews. Mr. Gould and Mr. Boda met with a cross-section of stakeholder groups and individuals with an interest in the 3 May 2007 elections during the months of June and July 2007.⁵ In July, members of the public were also invited to submit their comments on the elections in writing, by e-mail or through a questionnaire on the Review's website www.ScottishElectionsReview.org.uk. Advertisements were placed in newspapers across Scotland inviting comments and submissions. In addition to the 77 letters received prior to the consultation period, there were 127 responses via the internet and an additional 55 letters – a total of 259 responses. The majority of the responses came from the general public but there were also responses from candidates, party agents and election officials. While these views were taken into account over the course of the Review, it was determined that given the number of responses a separate chapter on public consultation would not be required. Instead, a detailed analysis of all the responses has been included in Appendix B of the report.⁶

Early in the Review, it became clear that a review of the rejected ballot images would be advantageous. The rationale for requesting access to the face of the rejected ballot paper images and not the ballot papers themselves was threefold. First and foremost, our aim was to avoid any possibility of violating the secrecy of the vote either inadvertently or perceptually.⁷ There would be a risk of this if we had access to the number on the back of the ballot paper linked to the individual voter on the register, which might accidentally have been included in the package with the rejected ballot papers. Second, a review of the actual rejected ballot papers could have provided data which may have raised questions about the validity of the election results. Finally, it was evident that a large sampling within the parameters described would help us access the basic information we required to fulfil the mandate set out for us - a mandate focused on offering advice on how the administration of elections in Scotland might be improved in the future. In response to Mr. Gould's request to the Secretary of State for Scotland, an order was prepared and passed by the UK Parliament granting access to the rejected parliamentary ballot paper images.⁸ Subsequently, the Scottish First Minister offered to take the necessary steps to provide us with access to the images of the face of the local government rejected ballot papers.⁹

In preparing this report, the objective has been to discuss each of the issues in as consistent a manner as possible. While readers will appreciate the complexity of the circumstances surrounding the elections of 3 May 2007, we have laid out each chapter (relating to the issue areas outlined above) by initially offering some background that, in essence, tells the 'story' related to the topic being discussed. Following this, we describe the principal problems that were uncovered from submissions received and from our discussions with electoral stakeholders. A number of options for addressing these

⁵ See Appendix A: List of meetings and submissions.

⁶ See Appendix B: Public consultation analysis.

⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A (III)), art 21(3); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 25(b).

⁸ Scottish Parliament (Elections etc.) (Amendment) Order 2007. 26 July 2007.

⁹ Scottish Local Government Elections (Amendment) Order 2007. 14 August 2007.

problems then follow. 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.

To ensure that the problems and options described in the pages to follow were based on information which was as factually correct as possible, we requested assistance from a diverse group experts, including Returning Officers, Electoral Commission staff and subject matter specialists, who were qualified to provide us with factually validated background material. In doing so, we have made every effort to ensure the accuracy of the statements within this report and we accept responsibility for any factual errors which might be discovered.

The final chapter is based on the options that have been put forward over the course of this report. The conclusions offer a number of recommendations which could strengthen the present system for planning, organising and implementing elections in Scotland. Although some of the recommendations could have implications for the United Kingdom as a whole, they are designed specifically as constructive measures to enhance and strengthen the processes involved in future elections in Scotland.

2.0 Legislation

Background

A fragmented system of electoral legislation

Electoral law in the United Kingdom is complex and fragmented. With no one constitutional document and democratic expectations that have evolved over the last one hundred and fifty years, it is characterised by a patchwork approach. Key measures – such as the franchise, the electoral system, the structure of electoral administration and the regulation of political finance – are found in a series of primary Acts of the UK Parliament.¹ Further power is provided under these Acts for the making of statutory instruments to prescribe the detail of electoral practice and for the application of the principles to the different elections throughout the United Kingdom.

In the Scottish context, there is also a split in responsibilities between the UK Government and the Scottish Executive. Electoral registration remains a reserved matter and is legislated for in the UK Parliament. When secondary legislation is required, a separate statutory instrument is usually required for Scotland to accommodate the different electoral administration and legal structure in Scotland even if the content and intent is generally the same.² Elections to the Scottish Parliament, the UK Parliament and the European Parliament are also a reserved matter, including the detailed rules for the conduct of Scottish parliamentary elections. Scottish local government is an entirely devolved matter and so the Scottish Parliament makes all legislation relating to the conduct of Scottish local government elections. As will be illustrated below, this requires a large number of legal instruments to be created for each electoral event; the split of responsibilities in Scotland requires even more.

Many organisations have called for consolidation of the UK's electoral legislation in recent years. The Electoral Commission made such a recommendation in its 2003 report *Voting for change*³ and it was echoed in the OSCE-ODIHR election assessment mission's report following the 2005 UK parliamentary general election.⁴

¹ Representation of the People Acts 1983, 1985 and 2000; Scotland Act 1998; Political Parties, Elections and Referendums Act 2000; Electoral Administration Act 2006.

² Examples of which are Representation of the People Regulations (Scotland) 2001 and Representation of the People (Form of Canvass) (Scotland) Regulations 2006.

³ Electoral Commission. *Voting for change: An electoral law modernisation programme*. 2003. p 28-39.

⁴ Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights. *United Kingdom of Great Britain and Northern Ireland Assessment Mission Report*. 2005. p 4.

Continuous change and innovation

Following a long period of relatively static electoral law and procedure, a large amount of electoral administrative reform and innovation has taken place across the UK in the last ten years. In 2001, key changes were introduced to the system of electoral registration and absent voting.⁵ Incremental changes were made in the following years through a series of statutory instruments.

Following widespread public concern around the conduct of the May 2005 UK parliamentary general elections, the UK Government moved to amend the electoral process in a more ambitious manner. This was done firstly through secondary legislation – in the Scottish context through the Representation of the People (Scotland) (Amendment) Regulations 2006. More extensive change was brought about by the Electoral Administration Act 2006 which made provision in relation to the registration of electors, standing for election, the administration and conduct of elections and the regulation of political parties. This Act was designed to directly apply to all elections in the UK except local government elections in Scotland, but its introduction has been staggered. A number of the changes introduced were implemented or supported through secondary legislation; some remain to be commenced at a future date. The Local Electoral Administration and Registration Services (Scotland) Act 2006 made parallel changes to those aspects of electoral administration that have been devolved to the Scottish Parliament, namely in relation to the conduct of local government elections.

At the same time as these changes to the administration of elections were being developed across the UK, the Scottish Parliament introduced a new electoral system – the Single Transferable Vote (STV) system – for the next scheduled local government elections. This move led to discussions and decisions on the counting method to be used, with an eventual decision to use electronic counting of ballot papers for both the Scottish parliamentary and local government elections.

Decisions were also taken to redesign the ballot papers that had been used at the two previous elections to the Scottish Parliament.

Combination

In the United Kingdom, some elections can be held on the same day. Depending on which bodies are to be elected, the elections can be either combined or simultaneous. If an election is combined, then certain administrative steps can be or must be taken together. As each type of election is governed by its own legislation, a set of rules is required to prescribe the process to be followed when the legislation does not match. These are known as ‘combination rules’.

⁵ Through the Representation of the People Act 2000 and the operationalising Representation of the People Regulations 2001.

Under the provisions of the Scottish Local Government (Elections) Act 2002, the polls at the scheduled local government elections are required to be combined with the polls at the Scottish parliamentary election. So in 2007, in addition to rules implementing administrative reform and the new voting and counting systems, combination rules were required to make the two sets of election rules compatible. The relevant legislation for the 2007 Scottish parliamentary and local government elections is shown in the table below.⁶

Table 1		
Full title	Timing	Summary
Local Government (Scotland) Act 1973		This Act includes details of qualifications and disqualifications for candidates
Representation of the People Act 1983 (as amended by the Representation of the People Acts 1985 and 2000) and Local Government Etc. (Scotland) Act 1994		This Act contains provisions relevant to the franchise and its exercise, the election campaign, legal proceedings and the timing of local elections
Scotland Act 1998		This Act, which established the Scottish Parliament, makes provisions regarding how and when elections to the Parliament will take place, how vacancies are filled, and the franchise
Political Parties, Elections and Referendums Act 2000		This Act, which established the Electoral Commission, covers the registration of political parties, and campaign and election expenses
Local Governance (Scotland) Act 2004		Introduced the Single Transferable Vote method for local elections and amended candidate qualifications
Representation of the People (Scotland) Regulations 2001 (as amended by the Representation of the People (Scotland) (Amendment) Regulations 2002, 2006 and 2007	2006 Regulations Made 9 March 2006 ⁷ Laid 26 January 2006 Came into force 23 March 2006 2007 Regulations Made 14 March 2007 Laid 6 February 2007 Came into force 1 April 2007	These regulations deal with areas which include electoral registration

⁶ Provided by the Electoral Commission. 2007.

⁷ Statutory instruments can be either affirmative or negative instruments. Affirmative instruments must be approved by the relevant Parliament, so these must be laid before they are made. Negative instruments are instead made before they are laid in the relevant Parliament.

Electoral Administration Act 2006	Introduced 11 October 2005 Received Royal Assent 11 July 2006 Came into force from 11 September 2006 and various dates thereafter	This Act makes provisions in relation to the registration of electors, the keeping of electoral registration information, standing for election, the administration and conduct of elections and the regulation of political parties
Local Electoral Administration and Registration Services (Scotland) Act 2006	Introduced 20 December 2005 Received Royal Assent 1 August 2006 Came into force 29 January 2007 and 17 February 2007	This Act makes specific provision in relation to the administration and conduct of local government elections, effectively replicating the equivalent provisions of the Electoral Administration Act 2006 for Scottish local government elections.
Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007	Made 2 March 2007 Laid 6 March 2007 Came into force 2 May 2007	These disapply Part IV of the Representation of the People (Scotland) Regulations 2001 in respect of Scottish local government elections, and the relevant provisions are updated and reproduced in these Regulations
Representation of the People (Postal Voting at Local Government Elections) (Scotland) Regulations 2007	Made 21 March 2007 Laid 8 February 2007 Came into force 23 March 2007	These Regulations make provision in respect of postal voting at Scottish local government elections
Representation of the People (Post-Local Government Election Supply and Inspection of Documents) (Scotland) Regulations 2007	Made 21 March 2007 Laid 8 February 2007 Came into force 2 May 2007	These make provision in respect of the supply of and access to documents after Scottish local government elections
The Scottish Local Government Elections Order 2007	Laid 13 January 2007 Made 9 February 2007 Came into force 17 February 2007	This order sets out the provisions relating to the conduct of elections of members of local authorities
The Scottish Parliament (Elections etc.) Order 2007	Laid 7 February 2007 Made 14 March 2007 Came into force 15 March 2007	This order sets out the provisions relating to the conduct of elections for and the return of members to the Scottish Parliament as well as for combination of the elections with those for Scottish local government

Responsibility for design and implementation

As outlined on the previous page, the responsibility for legislation is split between the two parliaments. In the UK Government, overall responsibility for electoral law and policy sits with the Ministry for Justice, previously the Department for Constitutional Affairs. This department works with the Scotland Office to ensure that policy and legislation fit with the devolution settlement. Where necessary the Scotland Office prepares the secondary legislation for application in Scotland including the detailed conduct and all other secondary legislation relating to the Scottish parliamentary elections. For local government elections, the Local Electoral Administration and Registration Services (Scotland) Act 2006 and the Scottish Local Government Elections Order 2007 (plus associated statutory instruments) were prepared by the Scottish Executive for consideration in the Scottish Parliament.

The Electoral Commission must be consulted on legislation relating to electoral matters including the conduct of the Scottish parliamentary elections.⁸ The Electoral Commission has no remit with regard to Scottish local government elections, as they are devolved, and so is not consulted formally. The various government departments consult with a wide range of stakeholders in the preparation of electoral law and policy. The most direct interest is taken by political parties in both parliaments and by electoral administrators.⁹ As part of the implementation of the Electoral Administration Act, the then Department for Constitutional Affairs set up a series of working groups, in conjunction with the Electoral Commission, to model and discuss the proposed changes to electoral administration. While these groups had a wider remit, Scotland Office officials participated in these meetings and to a limited extent so did the Scottish election practitioners.

For the Scotland specific legislation, and following the model of 2003, the 2007 Elections Steering Group set up a legislation sub-group with the purpose of reviewing and commenting on the draft legislation.¹⁰ Scottish Executive officials alternated with the Scotland Office in chairing the sub-group, with Scotland Office officials chairing meetings which focused on legislation relating to the Scottish parliamentary elections and Scottish Executive officials chairing meetings focusing on legislation relating to the local government elections. Among those on the sub-group were representatives from the Electoral Commission and Scotland's professional associations involved in election administration – the Society of Local Authority Chief Executives and Senior Managers (SOLACE), Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), the Association of Electoral Administrators (AEA) and the Scottish Assessors Association (SAA).

The original timetable for the making of the requisite secondary legislation – specifically the two conduct Orders – envisaged the Local Government Order

⁸ Political Parties, Elections and Referendums Act 2000. sec 7.

⁹ More detail in Chapter 3.0 Roles, Relationships and Accountability.

¹⁰ Ibid.

being made by 30 September 2006 and the Parliamentary Order by 31 December 2006.¹¹

For these elections, a large amount of legislative change was being introduced across the United Kingdom as part of the processes leading to the Electoral Administration Act and its accompanying legislation. This can be compared to the 2003 elections when the major changes to be implemented related to combination and originated from and responded to a purely Scottish environment. In 2007, the change being driven at a UK level was happening at the same time as the two major Scotland specific changes – the introduction of STV and the use of electronic counting (e-counting).

Problems

(1) Fragmented and late legislation

As outlined above, the United Kingdom presents a challenging environment for those who need to find their way around electoral law. This is becoming more difficult as almost yearly changes to electoral legislation must be implemented. Changes are also implemented in an asymmetrical way, some implemented across the UK, some only in Great Britain and some in England and Wales but not in Scotland. This means that source materials such as the legal reference services Parker's Law and Conduct of Elections and Schofield's Election Law tend to be complex and not particularly user friendly. The Electoral Commission's guidance, while more accessible, is 'election specific' and not of general assistance in all situations. The fragmented approach can obviously lead to confusion among those working with the legislation, and also leaves more opportunity for drafting or compatibility errors. In the Scottish context, the potential for this is even greater, with two parliaments and two administrations being involved.

One of the difficulties consistently cited by those involved in conducting the elections on 3 May 2007 was the tight timeframe between finalisation of policy and legislation and the date of the election. Notice of election had to be published between 22 March and 2 April 2007, yet the main rules governing the conduct of the elections were not made until shortly before this date. The Local Government Order was made on 9 February and the Parliamentary Order on 14 March 2007.

Preparations necessarily had to begin before relevant legislation was passed. On certain key issues, preparations started and continued while policy decisions were still being debated. For example, decisions regarding the design of both the parliamentary and local government ballot papers were not finalised until late 2006. The design of the parliamentary ballot paper was announced on 22 November 2006 and the local government ballot paper design was the subject of consideration until 12 December 2006, with the draft Local Government Order

¹¹ First meeting of 2007 Elections Steering Group. 23 February 2005. Agenda item no.2. Paper SG03.

being laid in Parliament the following day. Decisions regarding the timing of the count for the local government elections were also the subject of uncertainty until January 2007.

One of the reasons for the delay in the preparation of the legislation was the complexity of the legislative framework for the elections in Scotland. The legislation governing the conduct of these elections is found in a number of different instruments.¹² Many of these required amendment. As the legislative drafting must be as consistent as possible for combination to work, it was important for the Scotland Office and the Scottish Executive to work closely together. Inevitably, progress on legislation in relation to one set of legislation was affected by progress and policy decisions in relation to the other.

Because of its application across the UK, and because of the wide ranging nature of the changes it introduced, it was the Electoral Administration Act that drove the timetable for legislative change. Although the Act was announced in May 2005 and tabled in the UK Parliament in October 2005, Royal Assent was not granted until July 2006. That delay impacted on the timing and preparation of further legislation for the May 2007 Scottish elections.

Similarly, the timing of the Parliamentary Order was affected by the progress of the Local Government Order. The Parliamentary Order contained the rules on combination of elections, which modified the rules contained in the Local Government Order, and therefore had to be made after the Local Government Order was made.

(2) Amendments to legislation poorly conceived and badly timed

The delay in finalising policy and preparing the legislation had an impact on the effective conduct of the elections. One consequence was that there was limited time for input into the legislation from stakeholders. Although the legislation sub-group met four times between April 2005 and August 2006 to review drafts of the legislation, in practice the group spent much of its time focusing on draft conduct rules relating to the local government elections. The first draft of the Parliamentary Order was not available until 21 August 2006 and the sub-group had its last meeting on 1 September 2006.¹³

The Electoral Commission was provided with an early draft of the Order on 14 September 2006. That draft was subject to substantial revision and on 9 November 2006 the Scotland Office sent a further draft of the Parliamentary Order and the draft Representation of the People (Scotland) (Amendment) Regulations to the Electoral Commission for the Commission's comments. The Electoral Commission responded on 19 December 2006, noting that the provisions relating to the combination of the elections remained to be redrafted. Some of the Commission's comments were acted upon by Scotland Office, but others were not, possibly due to the pressure of time. Neither the Commission

¹² See Table 1.

¹³ SOLAR. Scottish Elections 2007 Review: Observations of SOLAR. 18 July 2007.

nor the Steering Group's legislation sub-group had the opportunity to comment on the final draft of the Parliamentary Order, incorporating amendments to the provisions on combination. Nor did the legislation sub-group comment on the provisions relating to the design of either the parliamentary or the local government ballot papers.

Through our review of the 3 May 2007 elections, we have learned that the professional associations unfavourably contrast the amount of consultation in 2007 with that of 2003 with regard to legislation.¹⁴

(3) Uncoordinated decision-making

The problems experienced with the legislation – even by experienced electoral practitioners and party activists – such as the deadline for new postal voting applications, illustrate that the contents of the legislation do not appear to have been fit for purpose. Electoral legislation – especially in a fragmented legislative environment – is nuanced and dense. Understanding is usually built up through years of experience 'on the ground', whether as an administrator or a party activist. This understanding is difficult to develop on a purely intellectual level, which is why practitioner input is vital. This was recognised by the establishment of the Steering Group and its legislative sub-group. Our review of the 3 May elections suggests that practitioners' input was insufficient in 2007 and that where practitioner input was given it was not always acted upon.¹⁵

What is characteristic of 2007 was a notable level of party self interest evident in Ministerial decision-making (especially in regard to the timing and method of counts and the design of ballot papers). The timing and impact of policy decisions taken by Ministers also seem to be a critical factor. SOLAR, in particular, has emphasised that the work of the legislation sub-group was undermined by late policy decisions taken by Ministers on a variety of legislative issues. While prescribing all elements of electoral legislation remains a legislative function, Ministers will always need to take some decisions on elements of electoral administration. However, as in other areas of public life, these can and should be taken with the voters' interests as the primary objective, supported by publicly available professional and expert advice. This appears not to have been the case in 2007.

Options

With the problems identified above relating to the legislation that guided the 3 May 2007 elections in Scotland, a number of options are provided which could minimise those problems in the future. These include:

¹⁴ SOLACE/SOLAR/AEA submission to Scottish Elections Review. 15 August 2007 and SOLAR submission to Scottish Elections Review. 18 July 2007.

¹⁵ SOLACE/SOLAR/AEA submission to Scottish Elections Review. 15 August 2007 and SOLAR submission to Scottish Elections Review. 18 July 2007.

(1) Consolidate legislation

Given the excessive fragmentation of the legislation related to elections in the UK, compounded by the further fragmentation brought on with devolution in Scotland and the interdependence of the legislation made in two parliaments, an obvious option involves consolidating the current legislation to the greatest extent possible with a view toward minimising the number of separate Acts, Orders and Regulations. We are aware that the UK Government has recognised the need for consolidation of electoral legislation¹⁶ but has not acted quickly on this commitment. The 2007 Scottish elections, with the combination of different instruments requiring amendment, provide a good illustration of why consolidation has already been too long in coming. Even though the present devolution settlement will see challenges to true consolidation of the legislation, this should not discourage the search for innovative solutions to the new electoral environment.

(2) Assess decision-making authority and timing

Another option is that of exploring where decision-making responsibilities related to each level of the legislation should lie, in order to minimise critical delays in the electoral process and avoid unintended conflicts or problems within the legislative process between one jurisdiction and another or in the management of the electoral process itself. Specific deadlines for decisions could be placed in enabling primary legislation¹⁷ that mandates a six month cut-off date for such matters as combined polling, ballot paper design, etc. This could be constructed so that both parliaments would still have the flexibility to act for future elections, but that for any election whose notice of election was six months or less from the date the legislation came into force the changes would not apply. This would serve to minimise, if not avoid, many of the problems encountered at the May 2007 elections.

We are aware that the UK Government addressed this issue in its 2004 response to two Electoral Commission reports.¹⁸ While the UK Government as a whole may have felt it necessary to maintain its flexibility in this regard, this argument is hard to sustain in Scotland. Scottish parliamentary elections are held every four years on a fixed date and Scottish local government elections are held every four years on a fixed date for the whole council. The certainty found in the Scottish electoral cycle by these fixed electoral cycles is weakened by the uncertainties inherent in late policy development and legislation.

As has been outlined, proposed electoral policy and legislation is greatly enhanced when it is informed by the expertise of experienced practitioners. In order to ensure that this is happening, and to minimise the actual or perceived role of political self-interest in decision-making, a process should be established to ensure that their expertise has contributed to proposed electoral legislation. In early 2007, the Committee on Standards in Public Life

¹⁶ UK Government Response to the OSCE-ODIHR *Assessment Mission Report on the UK General Election 5 May 2005*. Also see Electoral Administration Act 2006. sec 72.

¹⁷ Such as in the Scotland Act 1998 or the Local Governance (Scotland) Act 2007.

¹⁸ See The UK Government's response to the Electoral Commission report *Delivering democracy: the future of postal voting*. 2004. p 18.

made a move towards this, with its recommendation that proposed electoral legislation should be accompanied by the views of the Electoral Commission upon introduction into the UK Parliament.¹⁹ While this would be beneficial, our view is that a step further should be taken with regard to Scotland, as outlined in the next option.

(3) Establish a committee to rationalise legislation

This option suggests that a committee should be set up under the chairmanship of a Chief Returning Officer,²⁰ long in advance of the 2011 electoral process, to review the various legislative documents with a view towards rationalising which provisions would be most appropriate for inclusion at which level of legislation. One objective of such a committee would be to minimise the role of primary legislation in the micro-management of the electoral practice. While guided by a Chief Returning Officer, representatives on this committee would include other Returning Officers, political parties, the Scottish Executive and the Scotland Office, with the Electoral Commission acting in an advisory capacity only. Regular consultation with other stakeholders, such as the police and prosecution service, Royal Mail and others, as applicable, should be part of the mandate of the Committee.

Consultations with practitioners both improve the comprehension of the legislation amongst those being consulted and provide a valuable opportunity to 'reality-test' proposals. Discussions with political parties yield valuable insight into the impact of change on voters and the campaign process, as well as intelligence as to how voters approach various electoral tasks. Talking to potential suppliers of services also ensures that legislation does not enshrine procedures that are undeliverable, expensive or rare.

The primary mandate of such a committee would be to ensure that the interests of voters are given primary consideration with respect to all legislative recommendations and decisions.

¹⁹ Committee on Standards in Public Life. *Review of the Electoral Commission 2007*. Eleventh Report. CN7006. p 90.

²⁰ The role of a Chief Returning Officer is discussed in Chapter 3.0 Roles, Relationships and Accountability.

3.0 Roles, relationships and accountability

Background

The institutional arrangements for administering elections in Scotland are extremely complex. The institutions responsible for electoral administration not only include electoral stakeholders focused on UK-wide issues, but others whose remit is solely focused on Scotland.

Legislative and administrative stakeholders: An inventory

The Scottish Parliament: The Scottish Parliament's powers are set out in the Scotland Act 1998, allowing it to legislate in relation to all matters devolved under that Act. In turn, the Scotland Act makes the Scottish Executive (now called the Scottish Government) the devolved government for Scotland led by a First Minister who is nominated by the Scottish Parliament. The First Minister appoints the ministers who make up the cabinet. The members of the cabinet are referred to collectively as the Scottish Ministers.¹ The Scottish Ministers are responsible for policy on elections to the 32 local authorities in Scotland and legislation relating to the conduct of those elections.² Civil servants in the Scottish Executive are accountable to Scottish Ministers, who are accountable to the Scottish Parliament.

The Scotland Office: In the context of devolution, the UK Parliament has retained jurisdiction over certain areas of electoral law in Scotland, including the power to make legislation relating to the elections for the Scottish Parliament, and on matters relating to electoral registration with regard to both Scottish parliamentary and local government elections.³ The Secretary of State for Scotland (his office is known as the Scotland Office) is responsible for policy and legislation for the Scottish parliamentary election and for the franchise at both the Scottish parliamentary and the local government elections.⁴ The Scotland Office works closely with the Ministry of Justice (formerly the Department for Constitutional Affairs) which oversees policy and legislation for UK parliamentary and European parliamentary elections.

¹ Scotland Act 1998. sec 44.

² Although the costs of running local government elections are ordinarily met by local councils, the Scottish Executive provided additional financial resources for costs related to electronic counting during the 2007 electoral cycle. See User Agreement between the Scottish Ministers; the Secretary of State for Scotland, DRS and individual local authorities. para 6.2.

³ Scotland Act 1998. sec 12.

⁴ The Scotland Office is responsible for funding the Scottish parliamentary elections and for monitoring accounts submitted by Returning Officers. See Representation of the People Act 1983. sec 29; as applied by Scottish Parliament (Elections etc) Order 2007. sec 19.

The Electoral Commission: Established in November 2000,⁵ the Electoral Commission is an independent body that reports directly to the UK Parliament through the Speaker's Committee.⁶ Its current remit includes UK-wide regulation of political party financing and matters relating to electoral registration, along with matters relating to all UK statutory elections, the exception being the Scottish local government elections, which are wholly devolved to the Scottish Parliament. With respect to the Scottish parliamentary elections, the Electoral Commission holds diverse statutory functions and powers that are regulatory, advisory and operational in nature. As a 'watchdog', it must be consulted on changes to rules for elections and electoral registration,⁷ to review electoral law and practice,⁸ and to publish reports on the administration of certain elections including the Scottish parliamentary elections.⁹ As an 'advisor', the Electoral Commission can provide advice and assistance to Electoral Registration and Returning Officers, political parties and to the Scottish Executive on any matter in which it has skill and experience.¹⁰ It can also be asked by the Scotland Office to review and report on such matters.¹¹ In addition, as an operational entity it has been tasked with maintaining a register of political parties, including descriptions and emblems to be used by political parties on ballot papers¹² and is empowered to conduct a public information campaign for the Scottish parliamentary election.¹³ While the Electoral Commission does not hold responsibilities regarding Scottish local government elections, it has worked jointly with the Scottish Executive on certain election-related matters at the request of the Scottish Ministers.¹⁴

Electoral Registration Officers and Returning Officers: Scotland is unique when compared to other nations of the United Kingdom in that the officers responsible for electoral registration and the conduct of elections are in separate bodies. Electoral Registration Officers are responsible for preparing and maintaining the register of electors and lists of absent voters within their specified area. That list is used for both constituency and regional contests for the Scottish parliamentary elections and for local government elections. In 31 of 32 local councils it is the Assessor, appointed to manage the council tax and business rating system, who fulfils the role of Electoral Registration Officer.

Each council must appoint an officer of the council to be Returning Officer for the election of councillors to the authority.¹⁵ From this appointment flows the

⁵ Political Parties, Elections and Referendums Act 2000. sec 2(2).

⁶ The Committee is chaired by the Speaker of the House of Commons within the UK Parliament. Its members represent the political parties found within the House of Commons.

⁷ Political Parties, Elections and Referendums Act 2000. sec 7.

⁸ Ibid. sec 6.

⁹ Ibid. sec 5.

¹⁰ Ibid. sec 10.

¹¹ Ibid. sec 6.

¹² Ibid. sec 23 and 28A.

¹³ Ibid. sec 13.

¹⁴ Such as reporting on the Scottish local elections in 2003 and 2007 (www.electoralcommission.org.uk/media-centre/newsreleasecorporate.cfm/news/630) and the joint public information campaign for the 2007 Scottish elections (www.scotland.gov.uk/Resource/Doc/1070/0034510.pdf).

¹⁵ Representation of the People Act 1983. sec 41.

appointment of the Returning Officers for all other types of elections. For the purposes of the Scottish parliamentary elections, a Regional Returning Officer is appointed by Order of the Secretary of State.¹⁶ The Constituency Returning Officer is also the Local Government Returning Officer when a constituency is wholly situated in one local government area.¹⁷ In instances where a constituency is situated in more than one local government area, the Constituency Returning Officer is designated by the Secretary of State for Scotland.¹⁸ The Constituency RO's responsibilities include provision and staffing of polling stations, printing and distribution of electoral materials including ballot papers, and administration of all aspects of the postal vote.

The functions of a Regional Returning Officer are limited to overseeing the nomination process for regional contests and for calculating and declaring the allocation of the regional seats under their authority. The Constituency Returning Officer has the main responsibility for the conduct and organisation of the Scottish parliamentary election and the combined functions for the Scottish parliamentary and local government elections in their constituency or constituencies. The Local Government Returning Officer is responsible for all aspects of the local government elections other than those undertaken by the Constituency Returning Officer in relation to combined functions. The Constituency Returning Officer and the Local Returning Officer will often be the same person and in some cases one person will hold all three positions of Regional Returning Officer, Constituency Returning Officer and local Returning Officer.

Professional associations: Across the United Kingdom, there is an active electoral administration community represented by a number of professional associations. In Scotland, the views of various electoral administrators are represented by professional associations including the Society of Local Authority Chief Executives and Senior Managers in Scotland (SOLACE); the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR); the Association of Electoral Administrators (AEA); and the Scottish Assessors Association (SAA). In addition, the Convention of Scottish Local Authorities (COSLA) – the representative body of councils in Scotland – has a strong interest in electoral matters and was represented on the 2007 Elections Steering Group.

Contractors: With the introduction of electronic counting for the 3 May elections, a supplier – DRS Data Services – was contracted to provide services related to e-counting. While not solely responsible, the company was directly involved in: designing and printing the ballot papers; distributing the ballot papers to the various constituencies; counting the ballot papers; and providing the results of the various contests. With the increase in the demand for postal voting combined with the complexity of the new administrative requirements for postal votes,¹⁹ 23 of the 32 Returning Officers

¹⁶ Scotland Act 1998. sec 12(6).

¹⁷ Representation of the People Act. sec 41.

¹⁸ Scottish Parliament (Elections etc) Order 2007. art 15.

¹⁹ Scottish Parliament (Elections etc.) Order 2007. sch 4. para 19(6) and 25. Also Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007. sec 22(6) and 23.

contracted with Electoral Reform Services (ERS), and in two cases with K2, to prepare and issue postal ballot packs and provide an automated solution for recording their receipt. Royal Mail was engaged by every Returning Officer to deliver postal votes.

Political parties: All political parties represented in the Scottish Parliament are members of the Scottish Parliament Political Parties Panel. This is convened by the Electoral Commission as a consultative body on electoral matters and meets regularly. In the run-up to the 3 May 2007 elections, the panel was the mechanism for the parties to be informed of and discuss preparations for the elections and was attended by Returning Officers, Electoral Registration Officers, Royal Mail and government officials for this purpose.

2007 Scottish Elections Steering Group

Given this network of stakeholders, a mechanism for coordination known as the 2007 Scottish Elections Steering Group was assembled in advance of the 3 May 2007 electoral processes.

The 2007 Elections Steering Group was based on a model used in preparation for the 2003 Scottish parliamentary and local government elections, with the hope of overcoming problems that could arise in coordinating the various electoral stakeholders involved in planning, organising and implementing the electoral processes across Scotland. The approach had also been used in planning for the UK parliamentary general election in 2001, when many of the new provisions from the Representation of the People Act 2000 and the Political Parties Elections and Referendums Act 2000 came into effect for the first time in Scotland. As previous steering groups had worked well, it was decided to proceed on the same basis as before but with increased numbers of representatives from the professional associations to address the greater array of tasks and challenges presented by the 2007 elections, particularly the introduction of the Single Transferable Vote (STV) system and electronic counting (e-counting). The 2007 Elections Steering Group, as with previous steering groups, had no legal status and no power to make decisions that were binding on all parties, given its composition of such a broad range of stakeholders with diverse responsibilities. The group's purpose was to oversee and to coordinate input from the different stakeholders in an attempt to ensure that all relevant factors and information were taken into account in delivering combined elections. A sense of the complexity involved can be gauged from the list of main tasks which the Steering Group identified at its first meeting.²⁰

The 2007 Elections Steering Group and its various sub-groups consisted of representatives from the stakeholders described above, including individuals from the Scottish Executive (acting as Chair), the Scotland Office, the Electoral Commission, SOLACE, SOLAR, AEA, COSLA,²¹ SAA and the Scottish Parliament. The Steering Group's sub-groups comprised:

²⁰ 2007 Elections Steering Group minutes. 23 February 2005.

²¹ Member of the 2007 Elections Steering Group only.

Legislation; Training and Guidance; Forms; Public Awareness; Fees and Charges; and E-counting.²² Representation was supplemented, where appropriate, by external organisations such as the Disability Rights Commission; the Royal National Institute for the Blind; the Equal Opportunities Commission; Commission for Racial Equality; Capability Scotland; and E-gender.

Problems

(1) Fragmentation of decision-making throughout the process

With respect to the combined Scottish parliamentary and local government elections, the number of organisations and individuals involved in the decision-making process and in election management was unwieldy and contributed directly to the problems encountered. Some of the stakeholders involved in one way or another included both the UK and Scottish parliaments; their respective governments; ministers and advisors; 32 Constituency Returning Officers; eight Regional Returning Officers; 15 Electoral Registration Officers; and the Electoral Commission, all of whom had various responsibilities under the existing legislation for key decisions and actions which often impacted on each other and had an influence on the 3 May elections.

The 2007 Scottish Elections Steering Group was charged with considering the legislative and administrative aspects of both the Scottish parliamentary and local government elections; and to agree on the necessary tasks to enable these elections. The Group's role was then to oversee the management and completion of these tasks by delegating the implementation to sub-groups and by providing technical advice and executive decisions as necessary.²³ However, there was no effective coordination or communication between the Steering Group and the sub-groups,²⁴ which was a contributing factor to the fragmentation of decision-making.

Given this fragmented approach, it was virtually impossible to determine a person or group that had overall responsibility or could be held accountable with regard to the problems which arose in the Scottish parliamentary and local elections, where legislative delays, late political decisions, communication failures and operational errors were found.

²² The E-Counting Sub-Group was replaced by the E-Counting Project Board and E-Counting User Group. The Board's membership was comprised of the Scottish Office, Scottish Executive, SOLACE, SOLAR, and DRS. The User Group was comprised of the same members, but also included the AEA.

²³ Terms of Reference for the 2007 Elections Steering Group. Adopted at first meeting of 2007 Elections Steering Group. 23 February 2005.

²⁴ SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. 1.2 and 9.1.

(2) Roles and responsibilities of some electoral stakeholders are out of step with current electoral management trends

The multiplicity of participants within the decision-making process for the Scottish parliamentary and local government elections has been described above. In this context, another problem can be identified. While the model for overseeing and managing the electoral process in Scotland has become increasingly fragmented, the evolving trends in conducting elections would benefit from further central coordination and responsibility. For example, the 32 Returning Officers individually responsible for election administration in their constituencies find themselves ‘swimming upstream’ against new technology (such as electronic counting) which requires greater central input and co-ordination.

In addition, as described earlier, the Electoral Commission has three principal roles – watchdog, advisor and administrator – which can be incompatible and result in a situation of conflict where it is charged with evaluating its own operational activities. For example, the Commission provides guidance and training to electoral administrators to assist them in their roles. The Commission is required by law to report on the administration of elections, and such a report would usually include an assessment of these guidance and training activities.²⁵

Options

(1) Greater focus on accountability in organising and implementing Scotland’s elections

A comprehensive review of the legislation for both the Scottish parliamentary and local government elections has already been suggested in an earlier chapter.²⁶ Even if this review does not occur, careful attention should be given to how these elections are organised and implemented. As has been described, with the 2007 Elections Steering Group and sub-groups, although individual responsibilities were generally clear, there was no way to determine who could be held accountable for the overall implementation of the electoral process and there was no individual or institution finally accountable. In light of this, it will be important to place greater emphasis in the future on defining the specific roles, inter-relationships and accountability of individuals and institutions *vis-à-vis* each stage of the electoral cycle. To achieve this, the legislative and operational timetables need to be developed concurrently, with clear lines of formal authority and accountability determined and defined.

(2) Reconsider roles and responsibilities of stakeholders, strengthen role of Returning Officers

To enhance accountability, it would be beneficial to reassess the manner by which decisions are made and elections are administered, with the aim of

²⁵ The Review acknowledges that while such assessments have usually been outsourced by the Electoral Commission, they are not required to be.

²⁶ See Chapter 2.0 Legislation.

establishing decision-making that is less fragmented. With the trend toward electoral administrative practices that require increasing centralisation, it is most important to ensure that decisions affecting voters and the voting process are consistent in every constituency.

One option to achieve this would be to reinforce the professional role of Returning Officers through a selection process based on common criteria and standards, and the establishment of the Returning Officer positions on a full-time basis from the call of an election or by-election until all required activities are completed. Returning Officers could be selected by competition by each council or through an examination process, and assigned other duties outside of the election period. Some of these other duties might include related functions such as electoral registration. Furthermore, consideration might be given to combining the Constituency, Regional and local Returning Officer positions into one combined role on a permanent basis to improve accountability and consistency across Scotland. Similarly, Deputies should also be selected through a competition process using common criteria throughout Scotland. These Returning Officers and their Deputies would continue to have operational responsibility for both the Scottish parliamentary and local government elections. Obviously consideration should be given to the roles, if any, of the Scotland Office and the Scottish Government in the selection process.

To supplement and strengthen consistency in interpretation of legislation and decision-making, consideration might be given to appointing a Chief Returning Officer (CRO) for Scotland with the responsibility to issue directions, coordinate and oversee all components of electoral processes related to centralised electoral matters such as electronic counting, adjudication criteria for rejected ballot papers, public information plans, and other issues that fall into this category. Each of the 32 Returning Officers would retain responsibility for all but those matters requiring common, consistent and/or coordinated administration.

Significant thought should be given to giving the proposed CRO the power of direction and to reconsidering the roles and responsibilities of the Ministers' offices, within both the UK and Scottish parliaments. The goal should not be to entirely remove the input of political parties from the administration of elections, but to distance the potential for individual political party interests to influence the manner by which electoral processes are implemented. Such progress could be made by assigning more authority to a CRO, who would make recommendations to an all-party committee on how elections can best be administered according to national and international standards. The proposed CRO could be appointed jointly by the UK and Scottish parliaments following an open competition regulated by the UK and Scottish Commissioners for Public Appointments. Financing of the office of the CRO would be the responsibility of the Scottish Government. The CRO could report to the Speaker and the Presiding Officer and/or a special joint all-party committee.

Earlier, the Electoral Commission was described as having three distinct roles at present; those of watchdog, advisor and election administrator. Under these circumstances the Electoral Commission would be mandated to carry out two of these roles in relation to the Chief Returning Officer and the Scottish elections. Its advisory role would be an important one in relation to

providing advice, guidance and information on Scottish electoral matters to the CRO for Scotland, the Scotland Office and the Scottish Government when requested by them. In Scotland, it would no longer directly carry out training, public information campaigns or other election management functions as these would be assumed by the Chief Returning Officer, including the registration of political parties for elections in Scotland. The CRO could still seek the advice and guidance of the Electoral Commission as to commonly accepted practices, standards, criteria, interpretations, etc in these or other areas. Its 'watchdog' role would be to carry out its regulatory functions, including post-election 'audits' of the Scottish elections; the application of policies, practices and standards by the CRO and other relevant stakeholders; and to make recommendations for resolving problems and making future electoral improvements.

4.0 Planning and timing

Background

Finalising Orders, planning and implementing

Elections, including those of 3 May 2007, are run on prescribed timetables set out in legislation; timetables that outline the day and time by which specific steps must be taken and, in some instances, the first and last days by which they can be taken.

Table 2 2007 Scottish Parliament and Local Government Elections Timetable¹	
Proceeding	Day
Notice of election to be published	Not earlier than Thursday 22 March and not later than Monday 2 April
Delivery of nomination papers	Between the hours of 10am and 4pm on any day after publication of the notice of election
Deadline for delivery of nomination papers	Not later than 4pm on Wednesday 11 April
Making of objections to nomination papers (Scottish Parliamentary election only)	Between 10am and 4pm (or exceptionally between 10am and 5pm) on Wednesday 11 April
Deadline for withdrawals of nomination	Not later than 4pm on Wednesday 11 April
Deadline for notice of appointment of election agents	Not later than 4pm on Wednesday 11 April
Publish statement as to persons and parties nominated/notice of poll/notice of situation of polling stations	4pm on Wednesday 11 April (if no objections made) and not later than 4pm on Thursday 12 April (if objections made)
Last day to submit a registration application form to be included on the register of electors to be used at these elections	Wednesday 18 April
Deadline for requests for a new postal vote or to change or cancel an existing postal vote or proxy appointment	Not later than 5pm on Wednesday 18 April
First time from which postal votes can be dispatched	Not earlier than 5pm on Wednesday 18 April
Deadline for new applications to vote by proxy (not postal proxy), except for medical emergencies	Not later than 5pm on Wednesday 25 April
Last day for notice of appointment of counting agents and polling agents	Thursday 26 April
First day to issue ballot papers in response to requests to replace lost postal ballot papers	Monday 30 April
Deadline for the appointment of sub-agents	Tuesday 1 May
Polling day	Thursday 3 May (7am to 10pm)
Deadline for the issue of replacements for spoilt or lost postal ballot papers	Not later than 5pm on Thursday 3 May
Deadline for new applications to vote by proxy on grounds of a medical emergency	Not later than 5pm on Thursday 3 May
Last day to make alterations to the register to correct a clerical error or to implement a court (registration appeal) decision	Not later than 9pm on Thursday 3 May

¹ Electoral Commission. *Managing the Scottish Parliamentary and local government elections: guidance for Returning Officers. A good practice guidance manual.* 2007. Election timetable p 61–62.

Responsibility for the **planning and delivery** of these tasks rests with the relevant Returning Officer.² In planning for an election, the Returning Officer must ensure that the prescribed legislative timetable for the conduct of the elections is followed once the notice of election has been issued. This timetable is set out in the relevant conduct rules for each election and follows that established for elections across the United Kingdom. In 2007, the timetables incorporated amendments to the electoral process resulting from the Electoral Administration Act 2006 and the Local Electoral and Registration Services (Scotland) Act 2006, which changed several deadlines for action by both electors and electoral administrators, most notably that for the registration of electors and applications for and distribution of postal ballot packs.

Responsibility for **making the relevant conduct rules** rests with both the UK Parliament (for Scottish parliamentary elections) and the Scottish Parliament (for local government elections). Delays in the finalisation of the rules influenced the subsequent planning for and implementation of these electoral events. The Scottish Local Government Elections Order was made on 9 February 2007, coming into force on 17 February 2007. The Scottish Parliament (Elections etc) Order was made on 14 March 2007, coming into force the following day. Notices of election had to be published between 22 March and 2 April 2007.

An air of uncertainty

On 15 March 2007, the Electoral Commission began to issue its series of guidance manuals to assist electoral administrators, candidates, parties and agents in carrying out their duties for both the Scottish parliamentary and local government elections.³

While this guidance material had been drafted in advance and made available in a provisional form from the beginning of February 2007, it could not be issued in its final form until the relevant rules had been approved. A draft chapter from the guidance manual dealing with planning for elections, sourcing and contracting suppliers and elections finance issues was provided to Returning Officers in November 2006.⁴ So while Returning Officers had not yet received the relevant conduct orders, they were aware of the proposed timetables some time in advance and had received information on pre-planning and contracting suppliers. Still, delays evidenced within the overall timetable for the 3 May 2007 elections, beginning with delays in release of the Orders for these events, contributed to an air of uncertainty among all the stakeholders involved, including parliamentarians, electoral administrators, political parties and candidates and, ultimately, the voters.

² See Chapter 3.0 Roles, Relationships and Accountability.

³ Electoral Commission. *Managing the Scottish Parliamentary and local government elections: guidance for Returning Officers*. 2007; *Handbook for polling station staff*; *Guidance for candidates and agents – Local government elections in Scotland, 3 May 2007*; *Guidance for candidates and agents – Scottish parliamentary elections in Scotland, 3 May 2007*.

⁴ Electoral Commission. Part B – *Preparing for the Scottish Parliamentary and local government elections*. 2006.

Problems

(1) Failure to account for operational planning and timing realities in issuing Orders

During our consultations with stakeholders, it became clear that both the Scotland Office and the Scottish Executive were frequently focused on partisan political interests in carrying out their responsibilities, overlooking voter interests and operational realities within the electoral administration timetable.⁵ At worst, the Ministers disregarded the highly negative and disruptive influence on the elections caused by their delays in arriving at key decisions. At best, they either overlooked or were poorly advised with regard to the serious operational consequences that could and did result.

The Returning Officers, specifically, were responsible for facilitating a tremendous amount of change as part of these elections. Implementation of innovation requires advance understanding of those changes and their practical impact on electoral processes, as well as time to respond when amendments to the process influence traditional expected operational outcomes. While some decisions were known well in advance – such as the move to allow registration to take place up to 11 days before polling day – others were not. How far in advance policy needs to be settled is not an exact science, but consideration must be given in the Scottish context to the influence that this lack of clarity had on the 3 May 2007 electoral processes.

(2) Planning function is too fragmented

Despite the fact that the 3 May elections were subject to prescribed timetables, some of these provisions were unrealistic and could not be met because they are dependent on other election activities and deadlines not dealt with in the legislation.

It is clear that the responsibilities for planning were simply too fragmented, leading to a situation that threatened the success of the elections. We heard consistently from stakeholders that too much was attempted in too little time. Perhaps this was the case, but in instances where enough time was allotted, it was the isolation with which decisions were often made that contributed to an undermining of the electoral processes involved. There was, for example, adequate time available to design the ballot papers if those responsible had understood the time necessary to test and implement them. The problem of fragmentation in planning has already been discussed in a previous chapter.⁶ The point here is that such a fragmented approach has implications for the timetable; that the legislative timetables must be integrated with the operational ones and the legislation with those responsible for operational planning and implementing the election.

⁵ Also see descriptions in Chapters 2.0 Legislation, 6.1 Ballot Papers, 8.1 Electronic Count.

⁶ See Chapter 3.0 Roles, Relationships and Accountability.

(3) Inadequate planning and contingency planning

Effective election planning and timing start with related legislation, which is only one element in an integrated electoral process. In Scotland, Returning Officers are legally responsible for the planning and implementation of the election on the due date. From our perspective, however, they have found themselves in a 'catch 22' in which they have been assigned legal responsibility but not the practical authority to meet that obligation. The lack of timely agreement on policy and subsequent arrival of secondary legislation directly influenced their capability to plan for and meet operational deadlines. Until this situation is altered, the Returning Officers' operational planning and timing calendar will remain not much more than a wish list. Successful planning and implementation is undermined when uncertainty surrounds an electoral process and adequate time is not available to understand the change.

Inadequate planning for the 2007 elections has been identified as an important shortcoming. This was manifested not only in tasks being rushed, but in the real problems evidenced in delivery within the set timetable. While Returning Officers are responsible (and liable) for the conduct of elections, they increasingly rely on a range of external suppliers. For 3 May 2007, the key supply chain involved outsourcing ballot paper production and the production and assembly of postal ballot packs. Such tasks require long lead times with set specifications to ensure that proper procurement, testing and contracting can be achieved; tasks which could not be realised given the shortened timeframe resulting from delays in finalising the legislation.

While planning was a problem, contingency planning was also lacking. Limits to the time available to implement the elections were exacerbated further by the use of electronic counting which contributed to a more tightly prescribed printing specification than during previous elections. These new innovations had the effect of 'shrinking' the number of suppliers on which Returning Officers could rely, thereby placing greater stress on the small number of companies that could feasibly be relied on to complete the necessary work. In instances where suppliers could not come through, our review of the plans leads us to the conclusion that not nearly enough contingency planning was put in place by the Returning Officers, Scotland Office, Scottish Executive and the suppliers engaged to implement the electoral process.

Options

(1) Establish a realistic timeframe and ensure deadlines are met

As outlined in a previous chapter,⁷ we believe that instituting a cut-off date for new election-related legislation would allow for improved planning and tasking. This approach to establishing legislation not only provides the certainty needed to improve the quality of planning that is essential for

⁷ See Chapter 2.0 Legislation.

organising and implementing electoral events, but also the time that is essential for facilitating coordination among Returning Officers. This kind of schedule allows practitioners time to properly model new or amended methods and establish adequate contingency plans. In addition, practitioners would be better able to take advantage of enhanced guidance and training that is not available when time pressures force them to focus on avoiding 'major errors' rather than conducting a process that best meets the needs of all stakeholders, particularly the voters.

(2) Allow Chief Returning Officer to directly/authoritatively advise Ministers and Members of Parliaments

The appointment of a Chief Returning Officer (CRO) has already been discussed.⁸ An important role for a CRO could include acting as an advisor to legislators on the relationship between the guidance offered in legislation and what is needed in operational timetables. A Chief Returning Officer could assist in planning, providing direction and facilitating consensus among stakeholders on approaches to electoral administration; key milestones to be met and task allocation; and providing public assurance that Returning Officers are ready for upcoming elections.

(3) Consolidate planning and timing

To further facilitate such planning, a joint legislative/operational planning group – chaired by the proposed Chief Returning Officer – could be established to oversee planning and timing issues related to the legislative and operational phases of upcoming elections, ensuring that they are in step with one another, that the timeframes are realistic, the deadlines are met and that contingency plans are in place. This would lay the foundation for holding those responsible for organising and implementing elections accountable for their actions. Ensuring that the decisions of the group are applied consistently would be the responsibility of the Chief Returning Officer.

⁸ See Chapter 3.0 Roles, Relationships and Accountability.

5.0 Combined elections

Background

The road to combined elections

The combination of elections is not unique to Scotland, it is found across the United Kingdom. In electoral law and practice, 'combination' has a specific meaning. When elections are organised on the same day, 'simultaneous' means that the separate elections are conducted simultaneously but not necessarily combined. 'Combined' means that two or more elections are conducted simultaneously, with certain procedures being integrated to allow for greater efficiency in running those elections.

The first Scottish parliamentary election, on 6 May 1999, was held on the same day as the Scottish local government elections. Although not yet officially combined via legislation, the 1999 elections saw some tasks delivered together.

The Scotland Act sets out that the Scottish Parliament will have a fixed four year term, with elections on the first Thursday in May every four years from 1999.¹ Provision is made for an exceptional procedure to move these elections a month either way with the permission of the monarch.²

The Scottish Local Government (Elections) Act 2002 provided that local elections are to be held in the same year as those for the Scottish Parliament,³ and the Representation of the People Act 1983 requires these to be on the first Thursday in May as well.⁴ The 2002 Act gave Scottish Ministers the power to move the date of the local government elections should the Scottish parliamentary elections be moved.

So these provisions together provide for the elections to be held with the same polling day as the norm, with a limited power to change the dates of both elections as necessary. Furthermore, the Scottish Parliamentary Rules require combination where the polls are on the same date.⁵ So combination is required by law unless the date of either election is altered.

The Scottish Parliament could at any time have passed legislation to amend the 2002 Act to decouple the elections, and could do so in the future.

¹ Scotland Act 1998. sec 2 (2).

² This can be moved a month either side by Her Majesty if proposed by the Presiding Officer and following a parliamentary special procedure.

³ Scottish Local Government (Elections) Act 2002. sec 1.

⁴ Representation of the People Act 1983. sec 43.

⁵ Scottish Parliament (Elections etc.) Order 2007. sec 14 (1).

Perspectives on combined elections

It was the prerogative of Scottish Ministers to continue to combine the Scottish parliamentary and local government elections in 2007. Our meetings with political parties suggest that there was some support for this decision. Other electoral stakeholders were clearly not in agreement in advance of the 3 May 2007 elections, as evidenced the findings the Arbuthnott Commission on Boundary Differences and Voting Systems and from submissions to this Review.⁶ Arbuthnott recommended that the elections should not be decoupled from 2011, and that either the local government elections be postponed in 2007 or that further research on the ‘impact of this combination’ be carried out in advance of 2007.⁷

The professional associations also made clear their concerns in advance of the elections and, subsequently, during this Review. The Society of Local Authority Chief Executives (SOLACE), the Society of Lawyers and Administrators in Scotland (SOLAR) and the Association of Electoral Administrators (AEA) all submitted evidence to the Local Government and Transportation Committee of the Scottish Parliament expressing strong concerns about combined elections which involved an electoral system (STV) that was different from any of the list-based electoral systems which had been introduced in the last decade.⁸

Concerns have been expressed about the combination of these elections since the inception of the Scottish Parliament. In 1999, the Commission on Local Government and the Scottish Parliament recommended that the local government elections be timed to take place at the mid-point of the Parliament,⁹ primarily because of concerns that combined elections weaken the democratic mandate of local government. Concerns about combination continued after legislation had been introduced. In February 2005, David Mundell (then MSP) proposed a Local Government Elections (Scotland) Bill to provide for local government elections to be held on different dates from Scottish parliamentary elections and to delay the next local government election until 2008. The proposal had cross-party support and was signed by 26 MSPs but fell when Mr. Mundell resigned.¹⁰ In July 2006, David Davidson MSP made a final proposal on the Bill following a consultation, again with cross-party support.¹¹ It fell when Parliament dissolved for the summer, without having been debated.

⁶ For example, see: Bill Aitken MSP. Conservative Party. Email submission to Scottish Elections Review. July 2007; FAIRSHARE. Submission to Scottish Elections Review; *Scotland's Campaign for a Better Democracy*. July 2007; Martin, Scott. Submission to Scottish Elections Review. July 2007; Alastair Whitelaw. Scottish Green Party. Submission to Scottish Elections Review. July 2007.

⁷ Sir John Arbuthnott, Commission on Boundary Differences and Voting Systems. *Putting Citizens First: Boundaries, Voting and Representation in Scotland*. para 4:81 and 4:93. rec 12. p 73.

⁸ Local Government and Transportation Committee. 2nd Report (Session 2). *Stage 1 Report on the Local Governance (Scotland) Bill: Volume 1*. 2004.

⁹ Sir Neil McIntosh. Commission on Local Government and the Scottish Parliament. Report. June 1999. para 71-72.

¹⁰ Mr. Mundell resigned when he was elected as an MP in the 2005 UK parliamentary elections.

¹¹ Including the Scottish Conservative Party; Green Party; Scottish National Party, Scottish Senior Citizens Unity Party and Independents.

Problems

In our discussions with electoral stakeholders, a variety of problems were considered in the context of two specific scenarios. One involves the Scottish parliamentary and local government elections being de-coupled; a second involves continuing with the combination of these two elections.

(1) De-coupling the elections would lead to increased operational costs and could reduce voter turnout

From an operational standpoint, the cost of running two separate elections is more than that of running just one. It stands to reason that de-coupling elections would lead to higher operational costs. The same would hold true with regard to mounting two separate political campaigns. During this Review, some political parties expressed concern about having to assemble party faithful on two occasions instead of one in order to encourage voters to support their party and candidates. Not only is conducting a campaign a costly affair, it requires significant time commitment among party campaigners.

De-coupling the elections could also lead to a reduction in voter turnout. Such concerns, particularly for local government elections, were raised by a number of stakeholders. Voter turnout has been mentioned consistently as an advantage of combining the elections, with the assertion being made that coupling them maintains or even increases the number of voters who show up at the polls. While there has been no specific research on whether combination increases overall turnout, we can say that in Scotland there is evidence that the local government election benefits from increased voter turnout when coupled with the parliamentary election. Before combination, the average turnout for local government elections was 46%.¹² In the three combined elections from 1999 – 2007, the average turnout rose to 54%.¹³

(2) Combined elections diminish the place of local government elections and may confuse voters

One of the principal concerns raised with respect to running the Scottish parliamentary and local government elections in tandem has to do with the amount of attention that is given to local government elections. We frequently heard arguments that the public's focus is mainly on Scottish national issues rather than local candidates and local concerns. Given the limited amount of television time and newspaper space available, this is a logical conclusion. This leads to concerns that important local issues are not given adequate

¹² Rallings and Thrasher. *British Electoral Facts 1832-2006*. Turnout in Scottish local elections from 1974 – 1995.

¹³ 1999 - 59.1% (Local Government) 59.4% (Scottish Parliament); 2003 - 49.7% (LG) 49.6% (SP); 2007 - 53.9% (LG) 53.8% (SP). Source: Electoral Commission 2007.

consideration and that local candidate campaigns are left in the shadow of parliamentary candidates and parties.

Another problem with combining these elections has to do with the confusion it creates among the electorate. Greater responsibility is placed on voters when they must make decisions for two elections instead of one. They have the responsibility of understanding the messages from parties and candidates conducting campaigns for the Scottish Parliament – while also absorbing messages from candidates running for local councils. In situations such as the 3 May 2007 elections, they also had to understand the electoral systems used for each election. While the electoral system and the ballot marking requirements are discussed in more detail in another chapter,¹⁴ it is clear that some voters were confused by the combined elections using two electoral systems and two ballot paper marking requirements.

Options

The combination of elections in Scotland added complexity to the voting process. In light of this, two options might be considered for future elections. It is essential in each case that careful attention is paid to the extent by which the option minimises the problems described above. Regardless of the option pursued, the voters' interests must be the primary consideration in decisions related to every aspect of the voting process.

(1) De-couple electoral processes

A first option is to de-couple the Scottish parliamentary elections from the local government elections, holding them at different times. The degree of chronological separation would be a matter for further debate, but our findings during this Review suggest that holding separate elections in the same year would not be popular, as voters may become 'fatigued' by two election campaigns held too close together. Our findings were certainly consistent with those of Arbuthnott, in that a majority of those interviewed were in favour of decoupling. Prior to the introduction of unitary authorities, the two tiers of local government operated on a four year cycle with two years between each set of elections. A two year gap between Scottish parliamentary and local government elections may be worth considering. The additional benefits of focus on local issues and candidates may offset the additional costs. Furthermore, if the elections were held two years apart, parties and candidates would have sufficient time to plan and raise the necessary funds related to each election campaign.

If de-coupling is pursued, a number of initiatives should be implemented in order to raise the profile of local government issues and candidates and to encourage voter participation. At the same time, the objective should be to enhance voter interest, understanding and involvement with turnout numbers as a secondary consideration.

¹⁴ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

(2) Maintain combined elections, but cast ballot papers separately

A second option does not go as far as de-coupling, but would change the form of combination. At present, the combination rules for these two elections require the poll to be taken together. Instead, the rules could either require the two polls to be taken separately, or they could allow the proposed Chief Returning Officer to decide whether the polls should be taken together or separately. This could mean that an elector would cast their vote for one election, then receive the ballot paper for the other election, mark it and place it in the ballot box.¹⁵ This option could see voter turnout maintained but voter confusion diminished.

If elections continue to be combined, decision-makers might carefully consider other measures that would make voting easier for the electorate in Scotland. Three obvious issues, which will be discussed in the next chapter of this Review,¹⁶ would include considering changes to the electoral systems used, to the ballot paper marking requirements, and to the combination of the two parliamentary ballot papers. The paramount objective must be to ensure that every aspect of the combined elections is voter-friendly, through extensive testing of designs and instructions and decisions made on an operational, not political, basis.

¹⁵ If the combined ballot papers used for the Scottish parliamentary elections in 2007 are separated in the future, voters would return a third time for a third ballot paper.

¹⁶ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

6.0 Ballot papers and voting issues

6.1 Scottish parliamentary and local government ballot papers

Background

Detailed guidance in legislation

The legislation that directs both the Scottish parliamentary and local government elections is detailed, to say the least, and perhaps nowhere is this more obvious than its provisions with regard to the design of the ballot papers used for the 3 May 2007 elections. The Scottish parliamentary ballot papers are designed according to secondary legislation passed by the UK Parliament. As the Scottish Parliament is elected using the Additional Member System (AMS), voters cast two votes; one to elect the constituency MSP and one to elect the seven regional MSPs. In 1999 and 2003, electors were provided with two separate ballot papers, one for each of the parliamentary contests. The 2007 legislation was different in that it provided the option of combining the two ballot papers onto one ballot sheet.¹ The Secretary of State for Scotland announced on 22 November 2006 that this provision would be applied to the 2007 elections.² There is no prescribed form for a combined ballot sheet in the legislation, but there are instructions that the ballot papers must appear in two separate columns and that the regional list of candidates must be to the left of the constituency list of candidates. The two columns must be different in colour and the words 'you have two votes' must appear at the top of the sheet.

Local government ballot papers are prescribed in legislation passed by the Scottish Parliament.³ In 2007, a new ballot paper design was required to facilitate a transition to the Single Transferable Vote (STV) electoral system. As is traditional in UK electoral law, the rules dictate the form of the ballot paper. From 2007, these now include the instructions 'instead of using a cross, number the candidates in the order of your choice' for the local government elections. The words 'do not fold' must be printed in capitals on the reverse of the ballot paper.⁴

¹ Scottish Parliamentary (Elections etc) Order 2007. sch 2. rules 27 and 28.

² Scotland Office Press Release. *Douglas Alexander Announces 1 Page Ballot Paper for May Elections and New Anti-fraud Steps*. 22 November 2006. <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3561>.

³ Scottish Local Government Elections Order 2007.

⁴ Ibid. sch 1. forms 4 and 5.

Delays finalising the ballot paper design

The negotiations involved in establishing a final design for the Scottish parliamentary and local government ballot papers took much longer than had been anticipated by stakeholders. For the parliamentary ballot papers, the delays involved were linked to what can perhaps best be described as the extremely circuitous route by which a decision was made to combine the ballot papers for regional and constituency contests onto one ballot sheet. Ballot papers used for the 1999 and 2003 elections had been on separate sheets, one for each contest. In January 2006, the Arbuthnott Commission recommended a re-design of the Scottish parliamentary ballot papers to better reflect the way AMS works and suggested that the Electoral Commission take charge of this effort.⁵

In a press release on 9 June 2006, the Secretary of State for Scotland made clear his preference that the two ballot papers be combined on one sheet for the Scottish parliamentary elections.⁶ The same release announced that the Scotland Office would be launching a consultation on the design of the ballot papers for the Scottish parliamentary election in a document sent to a range of stakeholders, asking for feedback on the use of ballot papers on two sheets instead of one.⁷ The Scotland Office also wrote to the Electoral Commission asking that it “take soundings of voters through focus group work or in another way in order to assess the impact of any possible change in the ballot paper format.”⁸ In response, the Electoral Commission appointed Cragg Ross Dawson, a public opinion research firm, to conduct research into voter preferences. The company conducted interviews with 100 participants, in four locations in Scotland, interviewing them for 15-20 minutes on five different ballot paper designs which included separate and combined ballot paper options.⁹ While the sample group was very small, the rejection rate of 4% was significant as this was close to the actual rejection rate in the 3 May election.

In a letter to the Scotland Office on 16 August 2006, the Electoral Commission suggested that “further consideration” be undertaken on matters related to a combined ballot sheet.¹⁰

⁵ Sir John Arbuthnott. *Putting Citizens First: Boundaries, Voting and Representation in Scotland*. Commission on Boundary Differences and Voting Systems. p 73. rec 7 and p 42. para 4.52.

⁶ Scotland Office Press Release. *E-Counting to be used in 2007 Elections*. 9 June 2006. <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3530> The Secretary of State for Scotland said, “With changes taking place and the complexity of voting systems we should be making the voting process as straightforward as possible. All the voter should have to think about is which party’s policies meet their wishes. They shouldn’t have to worry about how to fill out the ballot paper. That is why I want a single ballot paper for the Scottish Parliament elections – removing any confusion that a vote on the regional list is less important, or a second choice.”

⁷ Ibid. Feedback was requested by 4 August 2006.

⁸ Letter from the Electoral Commissioner Sir Neil McIntosh CBE to Mr. David Cairnes, Parliamentary Under Secretary of State for Scotland. 4 August 2006

⁹ Electoral Commission. Cragg Ross Dawson. *Ballot Paper Designs for Scottish Parliament Elections 2007 Qualitative research report*. August 2006. <http://www.electoralcommission.org.uk/templates/search/document.cfm/17187>

¹⁰ Letter from Andy O’Neill, Electoral Commission to Sheila Scobie, Scotland Office, enclosing the results of Cragg Ross Dawson. *Ballot Paper Designs for Scottish Parliament Elections 2007 Qualitative research report*. 15 August 2006. The Electoral Commission’s involvement in the design of the Scottish parliamentary ballot papers ended at this time.

On 4 October, Ministers decided not to align parties on the regional part of the paper with their candidates on the constituency part of the sheet through the use of blanks where appropriate.¹¹ On 22 November 2006, the Secretary of State for Scotland issued a press release announcing that the regional and constituency ballot papers would be combined for the Scottish parliamentary elections.¹²

The Scottish Parliament (Elections etc) Rules 2007 were debated in the UK Parliament in February 2007. It has already been noted that the rules *allow* for the ballot papers for regional and constituency contests to be set out on the same ballot sheet. It also seems that it had been the intention of the Scotland Office to proceed with using one combined ballot sheet since nearly the beginning of the planning stage. There was no prescribed form for a combined ballot sheet in either the drafts or the final version of the Scottish Parliament (Elections etc.) Order 2007. This was inconsistent with the normal practice of including the ballot paper design in the legislation.

The absence of a design for the combined ballot sheet in the legislation, together with the decision-making process for the final ballot paper design, was a catalyst for further delays in the process. The final version of the combined ballot sheet was devised by the Scotland Office, in conjunction with DRS Data Services, the company responsible for printing and distributing the ballot papers. (See fig 1)

The Scotland Office used Article 89 of the Scottish Parliament (Elections etc) Order 2007 to change the style “with such variations as the circumstances may require”.¹³ This caused problems because the Scotland Office worked independently with DRS on this issue without adequately communicating its decisions on the combined ballot paper to Returning Officers, who are responsible for ensuring that ballot papers are legally compliant.¹⁴ Following numerous queries from Returning Officers,¹⁵ the Scotland Office provided a written explanation of the changes instituted through Article 89 six days after the close of nominations on 17 April 2007.¹⁶ By then the process of finalising the ballot paper had been delayed so long it made it difficult for those responsible for the operational side to meet subsequent deadlines relating to the printing and distribution of the ballot paper.

¹¹ Timetable on ballot paper design and electronic counting provided by Scotland Office to Scottish Elections Review. 27 June 2007.

¹² Scotland Office Press Release. 22 November 2006. *Douglas Alexander announces 1 page ballot paper for May elections and new anti-fraud steps*. [http://www.scotlandoffice.gov.uk/our-communications/ release.php?id=3561](http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3561)

¹³ Scottish Parliament (Elections etc) Order 2007. art 89 (1).

¹⁴ Ibid. art 7(2). “It is the general duty of every returning officer at a Scottish Parliamentary Election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those Rules.”

¹⁵ 18 Returning Officers reported querying the ballot paper design with DRS and the Scotland Office. SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. p 6.

¹⁶ E-mail from Scotland Office to all Returning Officers. *Scottish Parliament ballot paper – candidate data*. 17 April 2007.

Election of the Scottish Parliament
You have **two** votes




















Mid Scotland and Fife Regional Members		Kirkcaldy Constituency Member	
Vote once only (X)		Vote once only (X)	
Alex Salmond for First Minister		Harvie, Christopher Thomas Scottish National Party (SNP)	
British National Party Local People First		Livingstone, Marilyn Scottish Labour Party Candidate	
Christian Peoples Alliance		Potts, David Scottish Conservative and Unionist	
Free Scotland Party		Soper, Alice Scottish Liberal Democrats	
Publican Party - Smoking Room in Pubs			
Scottish Christian Party "Proclaiming Christs Lordship"			
Scottish Conservative and Unionist			
Scottish Green Party			
Scottish Labour Party			
Scottish Liberal Democrats			
Scottish Senior Citizens Unity Party			
Scottish Socialist Party - Lorna Bett			
Scottish Voice			
Socialist Labour Party			
Solidarity - Tommy Sheridan			
UKIPScotland			

Fig 1: Scottish parliamentary ballot paper

For the local government ballot paper, the delays can be linked to the political parties' inability to come to agreement on whether candidates would be listed alphabetically by surname or alphabetically by party grouping. In September 2006, Scottish Ministers decided to commission separate user research into the design of the local elections ballot paper. This research was also carried out by Cragg Ross Dawson. The company conducted 100 interviews with voters in four locations in Scotland. Four ballot paper designs were tested; two were based on ordering candidates alphabetically by candidate surname and two ordered the candidates alphabetically by party name. Fourteen names were on the sample ballot papers. The research was published on 16 November 2006, noting that the majority preference was for alphabetical listing by party name.¹⁷

In December the Scottish Executive announced that it would seek the views of the Scottish Parliament's Local Government and Transport Committee on the design of the local government ballot paper.¹⁸ The issue for consultation was whether the candidates should be listed in alphabetical order by party or candidate name. The Committee debated the design of the local government ballot paper on 12 December 2006. Concerns were expressed by Committee members about the robustness of the Cragg Ross Dawson research methodology. The Committee voted by five to four for the listing of candidates alphabetically by surname.¹⁹ The day after the Local Government and Transport Committee debate, on 13 December 2006, the draft local government rules were laid in the Scottish Parliament.²⁰

The final layout of the paper included a column on the left, containing the candidate's party name; a column in the middle with surname listed (by alphabetical order) in capitals, below this the candidate's first name in lower case and their address below that, on the right side of this column was the party's symbol, left blank for independent candidates; the final column on the right was for voters to mark their choices. (See fig 2)

¹⁷ Scottish Executive, Cragg Ross Dawson. *Single Transferable Vote Ballot Paper for Scottish Local Elections May 2007 Qualitative Research to Inform Design*. August 2006. <http://www.scotland.gov.uk/Publications/2006/11/15153056/0>

¹⁸ Scottish Executive Press Release. *Ballot paper for council elections*. 1 December 2006. <http://www.scotland.gov.uk/News/Releases/2006/12/01131257>

¹⁹ Scottish Parliament. Local Government and Transport Committee Official Report. 12 December 2006. c. 4442. <http://www.scottish.parliament.uk/business/committees/lg/or-06/lg06-3202.htm>

²⁰ Scottish Local Government (Elections) Rules 2007. sch 1. form 4. The final form of the ballot paper was included in the parliamentary rules laid in the Scottish Parliament in January 2007. See Chapter 2.0 Legislation.

Election for the Aberdeenshire Council Turriff and District Ward

Instead of using a cross, number the candidates in the order of your choice.

Put the number 1 next to the name of the candidate who is your first choice, 2 next to your second choice, 3 next to your third choice, 4 next to your fourth choice and so on.

You can mark as many or as few choices as you like.






SCOTTISH NATIONAL PARTY (SNP)	DUNCAN Sandy Beechwood, Burnend, Forglen, Turriff		
INDEPENDENT	NORRIE Alisan Slackadale House, Turriff, Aberdeenshire		
BRITISH NATIONAL PARTY	RAIKES Gary Hill of Colp Croft, Turriff		
SCOTTISH LIBERAL DEMOCRATS	ROBERTSON Anne Struan, School Road, Fyvie, Turriff		
SCOTTISH LABOUR PARTY CANDIDATE	SHEAL Ann Marie Reimshill Croft, Fyvie, Aberdeenshire		
SCOTTISH CONSERVATIVE AND UNIONIST	STRACHAN Alistair Duffus Millfield House, Cuminestown, Turriff		

Fig 2: Local government ballot paper

Delays in producing ballot papers

Returning Officers have traditionally been responsible for ensuring ballot papers are printed in a timely manner and available for distribution via the post and at polling stations. While election rules ordinarily specify the content and layout of the ballot paper, electronic counting introduced additional technical specifications to ensure that ballot papers were compatible with the scanning equipment used to count the ballot papers. This contributed to delays in producing the ballot papers.

A first delay occurred as Returning Officers began to input nomination data into a web-based system used by DRS to capture candidate information for the constituency ballot papers. They found that the layout used did not conform to the design of the constituency ballot paper found in the Scottish Parliament (Elections etc) Order 2007. The back-and-forth that went on between the Scotland Office and Returning Officers to clarify that the Scotland Office had used powers found in Article 89 (as previously mentioned) slowed DRS' ability to finalise the ballot papers and get them to the printers.

A second delay in producing the ballot papers was a side effect of electronic counting. In the past, Returning Officers would coordinate with printers (often locally based) to ensure ballot papers were delivered according to legislative requirements and operational specifications. In 2007, to ensure ballot papers met the technical specifications for compatibility with the scanners used in the counting process, DRS – the company responsible for the electronic count – was given responsibility for the procurement of all the ballot papers for the elections.²¹ Two companies were engaged by DRS to do the printing. One of these companies had some production problems associated with the required authentication mark. This resulted in a number of ballot papers being rejected by DRS and needing to be re-printed. As a result, the production and subsequent distribution of some ballot papers were late and had a direct negative impact on the distribution of the postal ballot packs in some locations.

Issues relating to the ballot papers

During the course of this Review, stakeholders raised a number of issues relating to ballot papers which require further consideration. Some background is offered here.²²

The use of two different electoral systems for the Scottish parliamentary and local government elections, using two different ballot paper marking requirements, was cited as a potential cause of voter confusion by many stakeholders. For the Scottish parliamentary elections, AMS was used and the two ballot papers were combined on one ballot sheet side by side. On the left column, the regional ballot paper required voters to mark one cross ('x') next to their preferred party or individual candidate. On the right column, the constituency ballot paper required voters to mark one cross ('x') next to the candidate of their choice. The local government ballot paper used STV and a different ballot paper marking requirement. In this instance, voters' preferences were determined by ordering candidates with numbers, starting with '1' next to their first choice, '2' next to their second choice, etc, for as many candidates as they wished to vote for.

Concerns were also raised over the naming strategies employed by some parties and candidates on the parliamentary ballot papers. Parties can choose to be listed by a registered party name or registered description. All descriptions must be registered with the Electoral Commission.²³ Returning Officers can only accept a name or description that appears on the Commission's register. The Commission has limited discretion under the law as to what kinds of descriptions can be refused.²⁴ Outside these limits, political parties have freedom to choose nearly any description they like as long as it is no more than six words in length.

²¹ Following recent practice in England, the e-counting invitation to tender required bidders to include ballot paper production in their proposal.

²² These issues are also discussed in Chapter 8.2 Electronic Count and Counting Procedures under 'Ballot paper design and contingency planning'.

²³ Electoral Administration Act 2006, sec 49(1).

²⁴ Political Parties, Elections and Referendums Act 2000, sec 28(A) and Registration of Political Parties (Prohibited Words and Expressions) (Amendment) Order 2006.

'Sloganisation' is the use of such party descriptions on the ballot paper. A description incorporating the name of high profile candidates was used by the Scottish National Party and Solidarity. The position of parties and candidates on both the regional list and the constituency list was determined by alphabetical order. The SNP used a party description to achieve a higher position on the ballot paper. The description 'Alex Salmond for First Minister' enabled the SNP to appear at the top of all but one regional list across Scotland.

Some stakeholders described the instructions on the combined ballot paper as confusing and potentially misleading. The words 'you have two votes' were printed in bold in the header above the two columns. The instructions were accompanied by directional arrows leading to each column along with the words 'vote once only (x)' at the top of each column but in smaller print. A concern raised among stakeholders was that some voters may have perceived the Scottish parliamentary combined ballot paper as one single ballot paper with two columns. As a result of the instruction 'you have two votes', they may have erroneously marked two crosses on one side or the other. This misconception might have been reinforced when the voter saw the name of the candidate 'Alex Salmond' at the top of the regional column on the left, while other candidates' names were seen in the constituency column on the right.

In Glasgow and Lothians, an additional complication arose when it became clear that the number of parties on the regional ballot would exceed the space available on the normal ballot paper design. Contingency plans for such a situation had been discussed as early as July 2006 during meetings of the E-Counting Project Board.²⁵ The option of using an A3 ballot paper was ruled out by DRS at a meeting of the E-Counting Project Board in December 2006.²⁶ This was because of timetable slippages due the Scotland Office's requests for DRS to investigate variant ballot paper designs which Ministers seemed keen to pursue.²⁷ In the end, it was decided to remove the directional arrows from the ballot papers to make room for the additional political parties in those regions.²⁸ (See fig 3)

²⁵ E-Counting Project Board. Minutes of meetings between 28 August 2006 and 4 April 2007.

²⁶ E-counting Project Board minutes. 12 December 2006. p 1.

²⁷ SOLAR. Scottish Elections 2007 Review: Observations of SOLAR. 18 July 2007.

²⁸ For more details see Chapter 8.2 Electronic Count and Counting Procedures under 'Ballot paper design and contingency planning'.

6.1 Scottish parliamentary and local government ballot papers

Election of the Scottish Parliament - you have **two** votes

Regional Members, vote once only (X)

Constituency Member, vote once only (X)

























Alex Salmond For First Minister			Jackson, Gordon		
British National Party - Local People First			Scottish Labour Party Candidate		
Christian Peoples Alliance - Leader Teresa Smith			McIntyre, Martyn Anthony		
Communist Party of Britain			Scottish Conservative and Unionist		
Independent Green Voice, Ecology, Localism, Democracy			McKenzie, Elinor		
Nine Per Cent Growth Party	9%		Communist Party of Britain		
Publican Party - Smoking Room In Pubs			Nasir, Asif		
Scotland Against Crooked Lawyers			Independent		
Scottish Christian Party "Proclaiming Christ's Lordship"			Sturgeon, Nicola		
Scottish Conservative and Unionist			Scottish National Party (SNP)	SNP	
Scottish Green Party			Young, Chris		
Scottish Labour Party			Scottish Liberal Democrats		
Scottish Liberal Democrats					
Scottish Senior Citizens Unity Party					
Scottish Socialist Party - Rosie Kane					
Scottish Unionist, Proudly Scottish, Proudly British					
Scottish Voice					
Socialist Labour Party					
Solidarity - Tommy Sheridan					
UKIP Scotland					
Cruickshank, James					
Independent					
Nasir, Asif					
Independent					
Shoaib, Muhammad					
Independent					

Fig 3: Scottish parliamentary ballot paper – Glasgow region

Rejected ballot paper analysis

Electoral stakeholders and those who responded to our public consultation have raised a variety of concerns regarding the ballot papers presented to voters on 3 May 2007. Among them are that two electoral systems with two different ballot paper marking requirements were used and that the Scottish parliament ballot papers were combined on one sheet. In responding to these concerns, we conducted an assessment of the images of the rejected ballot papers captured by DRS' electronic counting system. These images did not include images of ballot papers that were 'auto adjudicated' (i.e. ballot papers that were completely blank or combined ballot papers that had a valid constituency vote but a blank regional vote, or vice-versa).²⁹ These were acquired following amendments to the legislation for both the Scottish parliamentary and local government elections which had to be made to allow us legal access to the images.³⁰

The review used three sources of information to try to assess the reasons for the high level of rejected ballot papers:

- A statistical breakdown provided by DRS showing the numbers of ballot papers for each constituency available in each of the categories: valid, unmarked, over-voted, uncertain, no official mark, voter identified - cross classified by Regional vote and Constituency vote. Note that in contrast to the official statistics published on types of rejection these breakdowns differentiate between ballot papers that are unmarked and those where the voter's intention is deemed to be 'uncertain' (thus disaggregating the 'void for uncertainty' category used in the official statistics). These breakdowns were available for both the parliamentary and the local government elections;
- A random sample of the electronic images of Scottish parliamentary ballot papers rejected by Returning Officers for reasons of over-voting (voting for more than one candidate/party) or uncertainty about the voter's intention from 63 constituencies out of 73 available; and
- A random sample of the electronic images of local government ballot papers rejected by Returning Officers for reasons of over-voting or uncertainty from 29 of the 32 local authorities available.³¹

²⁹ For rationale see Chapter 1.0 Introduction.

³⁰ Scottish Parliament (Election, etc.) (Amendment) Order 2007. 26 July 2007; Scottish Local Government Elections Amendment Order 2007. 14 August 2007.

³¹ See Appendix D for more details of the methodology used.

Problems

(1) Excessive political debate over the design of the Scottish parliamentary and local government ballot papers

It has become increasingly clear that too much political debate was associated with the design of the Scottish parliamentary and local government ballot papers.³² Regarding the Scottish parliamentary ballot papers, months of partisan political discussion and debate wasted valuable time which could otherwise have been used to establish a ballot paper which all voters could easily understand. The Scottish Executive's inability to arrive at a consensus with political parties in the Scottish Parliament on the design of the local government ballot paper led to delays and the need to pass the problem to the Scottish Parliament's Local Government and Transport Committee for a decision. These legislative delays can be directly linked to subsequent operational delays.

The excessive political debate can be linked to the significant ballot paper-related detail found in the legislation for each electoral process. In many countries, only the general design of the ballot paper is included as an integral part of the primary legislation. Detailed operational decisions as to print (font) size, paper size, instructional wording, etc., are generally left to subordinate legislation such as rules or to electoral administrators, under circumstances where there is adequate coordination and balanced input from political parties. The present legislation and the political involvement in finalising ballot papers due to the centralisation of production left too much opportunity for political micro-management of the design of ballot papers for the 3 May elections, which had a negative impact on the electoral process.

(2) Inadequate research and user testing of Scottish parliamentary and local government ballot papers

Among the many innovations scheduled for the 3 May 2007 elections, four were particularly important for the impact they would have on the ballot papers. These were: the new STV electoral system for local government elections; a single ballot sheet for the Scottish parliamentary elections; the two different requirements for marking ballot papers; and electronic counting. Given these changes, a greater emphasis on research should have been among the primary objectives of those responsible for planning, organising and implementing these elections. A comprehensive expert-based design and testing research strategy, involving realistic timetables, should have been established.

Yet such an approach was not pursued. While two separate studies on the ballot papers were conducted by Cragg Ross Dawson, one for the Electoral Commission focusing on the Scottish parliamentary ballot paper and the other for the Scottish Executive looking at the local government ballot paper, the responses of 100 voters (for each election) to various ballot paper designs hardly seems adequate given the widespread change in the system.

³² Other instances in which political issues became part of the process are described in Chapters 2.0 Legislation; 4.0 Planning and Timing; 8.2 Electronic Count and Counting Procedures.

In addition, it is difficult to understand why a significant joint study was not carried out to consider the voters' reaction when faced with the two kinds of ballot papers and marking requirements. In our view, the Scotland Office (working with the Electoral Commission) and the Scottish Executive were remiss in not commissioning a much larger and joint study on the impact on the voter of the ballot papers and mixed marking requirements.

(3) Returning Officers had insufficient control over production of ballot papers

There is no doubt that the appointment of one contractor to provide the electronic counting system, using the same technology, equipment and software across the whole of Scotland, resulted in the centralisation of the production and supply of ballot papers. This meant that Returning Officers at the local level lacked the power to take effective remedial action when problems occurred. This is an issue which will also be covered in the chapter on postal ballot papers.³³ The most serious problem concerning the 'centralisation' of ballot paper production resulted from the sub-contracting by DRS to two printing firms outside of Scotland. This led to not only Returning Officers but also DRS losing control over production. It also caused delays in postal ballot pack production and quite probably contributed to disenfranchising a number of postal voters, who may not have received or been able to return their ballot papers on time. While a modernisation of electoral processes in Scotland will mean that greater centralisation is inevitable, it seems clear that Returning Officers need to be integrally involved to ensure that legal and operational requirements are fully met.

(4) Voters confused by combined Scottish parliamentary ballot sheet

Over the course of this Review, stakeholders suggested that the combination of the two Scottish parliamentary ballot papers on one sheet caused problems. Our assessment of the rejected ballot papers images and the statistical breakdown provided by DRS offered a number of key statistics.³⁴ In 96% of the parliamentary ballot papers counted, the voter cast a valid vote on both the regional ballot paper and the constituency ballot paper.

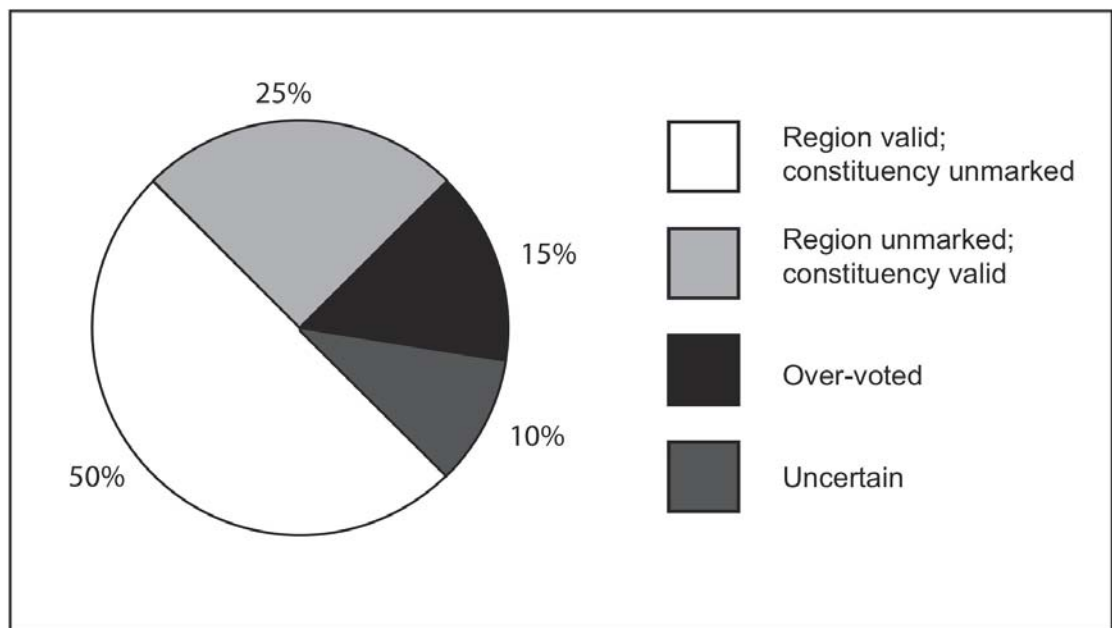
³³ See Chapter 6.2 Postal Ballot Papers and Packs.

³⁴ All figures given are sample estimates and thus subject to sampling error. They are also rounded for purposes of clarity. For full details see Appendix D.

The remaining 4% of voters had one or both parts of their ballot papers rejected. The main categories for rejected ballot papers are:

- 50% of these voters cast a valid vote on the regional ballot paper, but left the constituency ballot paper unmarked (about 2% of all voters). In this case, the valid vote was accepted and the blank paper rejected;
- 25% of these voters cast a valid vote on the constituency ballot paper, but left the regional ballot paper unmarked (about 1% of all voters). Again, only the blank paper was rejected;
- Thus, 75% of these voters marked one cross only, on one or the other side of the combined parliamentary ballot papers (about 3% of all voters);
- Of the remaining 25% of rejected ballot papers, more than 60% of voters 'over-voted' – casting two or more votes on the regional ballot paper (about 0.6% of all voters)

Chart 1: Parliamentary ballot sheets with one or both ballots rejected (4% of all voters)



An assessment of the rejected ballot papers cannot provide an answer as to why so many voters (75% of the rejected ballot papers, or 3% of all voters) left one side unmarked, while marking the other side correctly. Our assessment reveals what they did, but not why they did it. We can offer three possible reasons.

A first is that the voter deliberately abstained from voting on one side of the combined ballot paper or another. There were many more parties on the regional ballot paper (on the left), as some parties only ran in the regional contest, so the voter had more choice compared to the choices on the constituency ballot paper (on the right).

A second possibility is that some voters did not know (or did not understand) that they had two votes in the AMS system, one on the regional ballot paper and another on the constituency ballot paper. The 2007 Scottish parliamentary election was the first for over 30 years in Scotland where the voter was asked to put two votes on one ballot paper, so the norm has been for the voter to mark one cross ('x') on the ballot paper.³⁵ So voters who did not read (or understand) the voting instructions had a greater propensity to mark their single cross on the left column, partly because there were more options there and also because they may naturally look at the left side first. The constituency side of the combined ballot papers (on the right) may well have looked like a continuation of the regional list to some voters, especially in Glasgow and the Lothians. Marking one cross only on the combined ballot paper for this reason is probably the most plausible explanation for the *increased* level of rejected ballot papers compared to previous Scottish parliamentary elections.

Finally, the use of some named individuals on the regional list (as a result of naming strategies) may have influenced some voters. In particular, voters seeing 'Alex Salmond for First Minister' at the top of the regional ballot paper and wishing to vote for the high-profile SNP leader, may have marked their single cross against this option, leaving the constituency ballot paper unmarked. Other named high-profile candidates on the regional list, such as Margo MacDonald (Lothians only) or Tommy Sheridan (especially in Glasgow) may have attracted similar voting behaviour.

Of the remaining 25% of ballot papers that had one or both parts of the paper rejected, over 60% were rejected because of 'over-voting' (about 0.6% of all voters) – where the voter marks more than one political party or candidate. The remainder were rejected primarily because the voter's intention was uncertain.³⁶ While the 'uncertain' category is common to most elections, because some voters will either deliberately spoil their ballot papers and others will mark them unclearly, over-voting is of particular interest in this election because of the combined ballot papers. Some voters may well have been confused by the 'you have two votes' instruction, thinking that they could use these two votes in one or both columns.

³⁵ The last election in which some wards in local government elections were multi-member was 1973.

³⁶ 'Voter's intention was uncertain' refers to ballot papers which voters have marked in such a way that it is not clear who the vote is for. This category also includes cases where a voter deliberately spoils their ballot paper (e.g. by writing 'none of the above').

A sample of over-voted ballot papers from the constituencies from which data was available was used to address these questions. Among our findings are:

- 96% of those who over-voted (about 1 in 175 voters) used crosses ('x'), while only 4% (about 1 in 4200 of all voters) used an unacceptable number sequence (e.g. '2, 3, 4...');
- Four out of five who over-voted (about 1 in 210 of all voters) used two crosses ('x') on the regional side (on the left) of the combined ballot sheet and either marked one cross ('x') on the constituency side or left it unmarked (on the right);
- We found no support for the hypothesis that voters who cast their vote by post (and therefore did not have access to help provided at polling stations) were more likely to mismark their ballot paper than those who voted in polling stations.³⁷

There is very little evidence to support the argument that the simultaneous local government election using STV contributed substantially to the higher rejection rates in the Scottish parliamentary election (see Problem 6). There is very strong evidence to suggest that the combined Scottish parliamentary ballot sheet was the main cause of this problem. Marking one half of the combined ballot paper only or voting twice on one or both parts, which account for over 90% of the rejected ballot papers, are clearly a result of two ballot papers on one sheet. The clear conclusion from this analysis is that the main reason there were much higher rates of rejection in the 2007 Scottish parliamentary elections than in previous elections was a result of the combined ballot paper.

Further support for this conclusion is offered by the Greater London Authority elections in 2004. These elections had similarities with the Scottish elections in 2007. They included a combined ballot paper for the AMS system (Constituency member and one London-wide Region) and other elections held simultaneously (Mayoral and European parliamentary). The DRS e-counting system was also used – although auto-adjudication of combined papers (where one or both ballot papers were unmarked) was not implemented in London. The rejection rates for the GLA 2004 elections were 5.0% for the constituency and 2.5% for the London-wide region. In contrast, in the five AMS elections in the UK which have used separate ballot papers for the constituency and regional contests (Welsh Assembly in 1999, 2003, 2007; Scottish Parliament 1999, 2003) rejection rates have been in the range 0.36% to 1.39% - the highest in Scotland was 0.64% for the constituency ballot in 2003.

³⁷ A caveat is offered in Appendix D.

(5) Voters in Glasgow and Lothians confused by abbreviated instructions and format of the parliamentary ballot sheet

As previously mentioned, the combined Scottish parliamentary ballot papers used specifically in the Glasgow and Lothians regions³⁸ may have led to more confusion among some voters and thus to a higher rejection rate in these areas. The final format of the ballot paper used in these regions included:

- the removal of the directional arrows;
- a longer list of parties on the regional list (23 in both cases); and
- abbreviated instructions at the top of the paper.

Did these features lead to higher rejection rates? A breakdown of the categories of rejected ballot papers offers some support in this regard. Across the eight regions of Scotland (including Glasgow and Lothians), between 74% and 77% of the rejected ballot papers were cast with a single vote on one side (the regional ballot paper on the left) or the other (the constituency ballot paper on the right). Compared to the six other regions, the figures for the Glasgow and Lothians regions were markedly higher. Glasgow had on average a 10% higher instance of a single valid vote on the regional ballot paper (on the left) while the constituency ballot paper (on the right) remained unmarked. The same figure in the Lothians had on average about 5% more. When comparing the Glasgow and Lothian regions, however, the figures for rejected ballot papers in different categories are quite different, with Glasgow having much higher levels in the main reject categories than in all other regions. From our analysis, we could not adequately distinguish which of the three features of the ballot papers listed above had the greatest influence on voters.

It is important to offer a qualification here: the Glasgow and Lothians regions have higher levels of social deprivation than other Scottish regions and, especially in Glasgow, the differing social characteristics of voters may go a long way to explaining these differences. With aggregate data on only 73 constituencies, it is very difficult to adjust for the effects of this and other factors when assessing the effect of differing ballot paper formats and to make inferences about individual voting behaviour.³⁹ This question can better be addressed with either cognitive interviewing of samples of voters exposed

³⁸ Glasgow Anniesland; Glasgow Baillieston; Glasgow Cathcart; Glasgow Govan; Glasgow Kelvin; Glasgow Maryhill; Glasgow Pollok; Glasgow Rutherglen; Glasgow Shettleston; Glasgow Springburn; Edinburgh Central; Edinburgh East and Musselburgh; Edinburgh North and Leith; Edinburgh Pentlands; Edinburgh South; Edinburgh West; Linlithgow; Livingston; Midlothian.

³⁹ This has been attempted by Carman, Mitchell and Johns. They claim that 'altering the poorly designed ballot [for Glasgow and Lothians regions] had a distinct and important effect on the relative number of [rejected] votes across parliamentary constituencies'. See Christopher Carman, James Mitchell and Robert Johns. Department of Government, University of Strathclyde. *The Unfortunate Natural Experiment in Ballot Design: The Scottish Parliamentary Elections of 2007*. 2007. Paper presented at the 2007 Meeting of the Elections, Public Opinion and Parties specialist group of the Political Studies Association, Bristol.

to the two types of regional ballot papers, or by conducting a ballot paper design experiment among voters who have difficulty understanding the AMS system.

The particular design of the ballot sheets in the Glasgow and Lothians regions exacerbated the problems already evidenced regarding a combined Scottish parliamentary ballot sheet. The predominant cause was the combination of ballot papers on one sheet which caused similar problems throughout Scotland.

(6) Voters confused by introduction of new STV electoral system for local elections held simultaneously with the parliamentary election

The principal problem to be addressed here is one that was argued by a number of stakeholders over the course of the Review. This was that the combination of electoral systems (STV for the local government elections and AMS for the Scottish parliamentary elections) with the mixture of ballot paper marking requirements (a number sequence '1, 2, 3...' for STV and a traditional cross or 'x' for AMS) led voters to mismark their ballot papers.

We stated above (in Problem 4) that there is very little evidence to support the argument that the simultaneous local government election using STV contributed substantially to the higher rejection rates in the Scottish parliamentary election. In fact, 4% of ballot papers rejected because of over-voting (about 1 in 4200 of all voters) used unacceptable number sequences (e.g. "2, 3..." or just a "3") during the Scottish parliamentary elections.

An important point to be made is that the legislation and the guidance booklet 'Dealing with doubtful ballot papers' and associated charts (known as 'placemats') used by Returning Officers offered some allowances in this regard. A '1' on the parliamentary ballot paper was accepted as an 'x' and a single 'x' on the local government paper was accepted as a '1'.⁴⁰ This means that the 4% figure quoted here actually understates the degree to which number sequences were used on the Scottish parliamentary ballot papers.

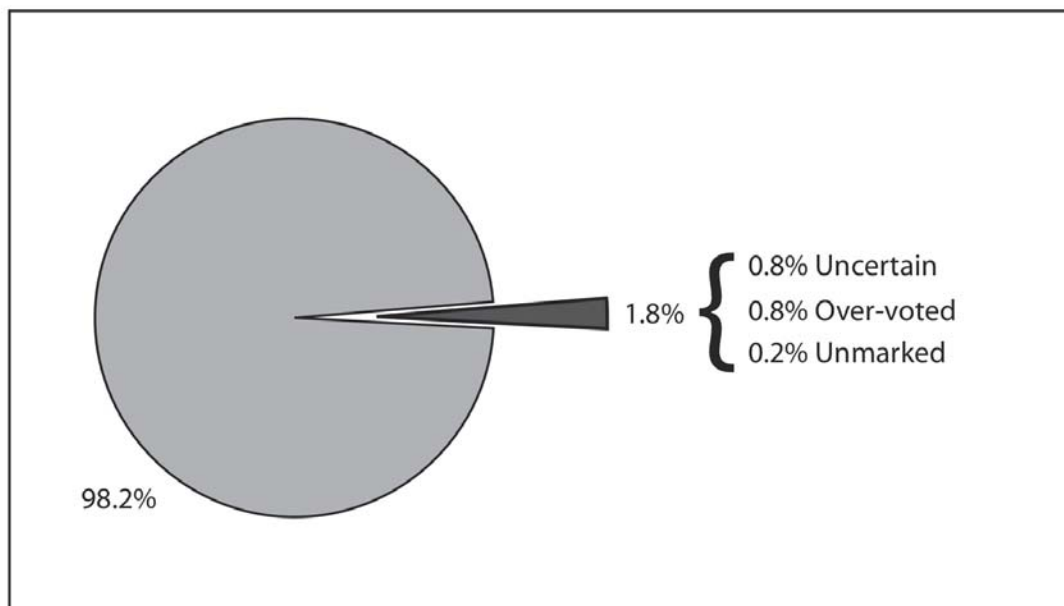
For the local government elections, the overall rejection rate for Scotland was 1.83% - of which 0.22% of ballot papers were 'unmarked'; 0.79% of ballot papers were 'over-voted' (about 1 in 125 voters); and 0.83% of ballot papers were 'uncertain' (about 1 in 120 voters). It is important to note that the number of ballot papers left 'unmarked' for the (single) local government ballot paper is 0.24% (less than 1 voter in every 400), a much lower figure than for the combined Scottish parliamentary ballot papers. The ballot papers of about 1.6% voters in the local government elections (1 in 60 of all voters) were rejected due to either over-voting or uncertainty.

⁴⁰ Scottish Parliamentary (Elections etc) Order 2007. sch 2. rule 58(5) and Scottish Local Government Elections Order 2007. sch 1. rule 43(2)(b). Also: Electoral Commission, *Dealing with doubtful ballot papers*, 2007. 2.15 and 4.5. Associated charts *Local government doubtful ballots – allowed votes* and *Scottish Parliamentary doubtful ballots – allowed votes*.

Of the 1.6% figure, a sample of rejected ballot papers from the local government elections was assessed for the degree to which ballot papers were rejected because an incorrect ballot paper marking requirement (i.e. an 'x') was used and the degree to which the ballot paper was rejected because an incorrect number sequence was used on the STV ballot paper. The assessment found:

- 75% (about 1 in 80 of all voters) used more than one cross ('x') to record their preferences, thus using an incorrect ballot marking requirement;
- Of the remaining 25% (about 1 in 240 voters of all voters) over half used invalid number sequences (such as '1, 1, 2'; or '2, 3, 4'; or a single number such as '3'; or a mixture of crosses and numbers).
- It should be noted that on the Scottish parliamentary ballot paper, voters who marked a '1, 2, 3...' had the '1' accepted, while on the STV ballot paper a voter marking 'x, x, x...' had their ballot paper rejected because the candidate order could not be determined.

Chart 2: All local government ballot sheets counted



For the local government elections, the principal reason for rejecting ballot papers was the use of the incorrect ballot paper marking requirements. The percentage of counted local government ballot papers rejected for the whole of Scotland (1.83%) compares favourably with the overall rejection rate of 2.1% in the STV local government election in Northern Ireland in 2005 which was held at the same time as the UK parliamentary election. Northern Ireland has had STV-based local government elections since 1973.

There was some cross-contamination of voting systems in the way voters marked their ballot papers but the degree to which this occurred was perhaps to be expected with the introduction of a very different voting system for the local election. So the problem of rejected ballot papers in the 2007 Scottish local government elections is less of a concern than in the parliamentary elections.

(7) Naming strategies to achieve advantageous positions on ballot papers confused voters

The use of 'naming strategies' by political parties to seek an advantageous position on the regional side of the Scottish parliamentary ballot sheet was raised consistently as a problem by many electoral stakeholders and those who responded to the public consultation.

The 'sloganisation' of party names has already been offered as a potential reason for why so many voters (75% of the rejected ballot papers, accounting for 3% of all voters) left one Scottish parliamentary ballot paper unmarked, while marking the other correctly. It may have been, in this case, that voters were attracted by the use of high-profile candidates' names in slogans on the regional list, such as Alex Salmond who was at the top of nearly all regional ballot papers,⁴¹ Tommy Sheridan (especially in Glasgow) or Margo MacDonald (Lothians only).

A second naming strategy is closely related to the first, with political parties strategising so their registered description begins with a letter early in the alphabet to ensure that their party is listed closer to the top of the ballot paper. We have already stated that our assessment of the rejected ballot papers could not provide answers with respect to these two naming strategies. One way to pursue an answer could be to calculate the distribution of votes allotted to each party by voters who cast a valid vote on the regional ballot paper (left side) but left the constituency ballot paper (right side) unmarked. Disproportionately high votes for particular parties could provide evidence of this voting behaviour. The potential to undermine the secrecy of the ballot paper, our interest in not questioning the legitimacy of the 3 May 2007 electoral processes, and the Review's focus on facilitating improvements to the operation of elections in the future all were deciding factors in the Review's decision not to pursue this approach.

⁴¹ An exception was in the Lothians region where 'Alex Salmond for First Minister' was listed second to 'Adam Lyal's Witchery Tour Party'.

While we have not gone through this exercise, there is relevant academic research that provides evidence that strategising can influence the choice of voters. Thorsten Faas and Harald Schoen state that “voters who are not intrinsically [politically] motivated want to minimise the effort [of completing the ballot paper]. But how can they vote with a minimal effort? While they, of course, will have to start scanning the ballot paper, they will nonetheless scan it only until they find an acceptable – ‘satisfying’ – choice.”⁴² “[These] voters...start scanning the list, but their motivation to look for positive arguments fades as they move further down the list. As a result, they come up with more positive arguments for the candidates on top of the list, which again benefits exactly those candidates.”⁴³ Name recognition would reinforce this tendency. In considering these naming strategies, another issue should not go unnoticed. This is that the independent candidates on the regional ballot paper were relegated to the bottom of the ballot paper, being listed there in alphabetical order according to their surname.

Options

(1) Establish formal consultation process for finalising ballot papers

The amount of political debate involved in finalising ballot papers for the Scottish parliamentary and local government elections in 2007 has been described as excessive. It is clear that the arrangement for establishing the form of ballot papers for the 2007 elections did not work, yet a new arrangement must be careful not to overlook input from a broad range of electoral stakeholders. An earlier chapter discussed how the roles and responsibilities of stakeholders should be revised in order to more efficiently administer these electoral processes.⁴⁴ One option would be to establish a formal consultation process, chaired by a Chief Returning Officer, through which the Scotland Office, the Scottish Executive and Returning Officers could formally discuss and record ballot paper issues and the implications of changes to those ballot papers, according to a set timetable. A preferred ballot paper design and instructions, with pros and cons, could be recommended to the Chief Returning Officer for thorough prior testing and implementation within a set time, allowing for the necessary legislation to be passed well in advance of the elections. This approach could minimise or avoid problems related to the design of the ballot paper.

⁴² Thorsten Faas and Harald Schoen. *The importance of being first: Effects of candidates' list positions in the 2003 Bavarian state election*. Electoral Studies. 25:1. 2006. p 93. See also Ian Swanson. Edinburgh Evening News. *Call for change in vote system to overcome alphabetical bias*. 26 May 2007. p 11.

⁴³ Ibid. p 93-94.

⁴⁴ See Chapter 3.0 Roles, Relationships and Accountability.

(2) Institute an extensive and staged research and testing programme

A research programme should be part of any change to an integral component of the electoral process. If different ballot paper designs, alternative instructions, new electoral systems or marking systems are considered for future Scottish elections, a comprehensive research and testing programme should be implemented under the guidance of electoral practitioners. This should also be undertaken in relation to combining or decoupling the elections and any proposed adjustments to the polling process. The research and testing should be carried out well in advance of the election to ensure that all components of the ballot papers are easily understood by the voter on polling day.

Such an effort would require much more extensive and staged research and testing than that for the 3 May elections, when separate studies were sponsored – the study on the parliamentary ballot papers by the Electoral Commission, at the request of the Scotland Office, and the study on the local government ballot papers by the Scottish Executive. This approach could continue if they jointly established the same criteria, merged their findings and based their ballot paper decisions on these. Alternatively, one body might be charged with carrying out the research on behalf of both.

(3) Ensure Returning Officers are integrally involved in ballot paper production

Serious problems have been identified in this chapter regarding the production of ballot papers. These problems had a detrimental affect on the timely assembly and dispatch of postal ballot packs.⁴⁵ This can be linked to a failure of the Scotland Office to communicate details of changes to the ballot papers to Returning Officers in advance. To minimise this problem Returning Officers, in consultation with the proposed Chief Returning Officer, must have the opportunity to provide input into decisions by contractors who design, print and distribute the ballot papers. Assuming that greater centralisation of the electoral processes will continue, the approach used in the past – whereby ballot papers were printed locally – may not be feasible but this underlines the necessity for those responsible for conducting both elections to be integrally involved in the production of the ballot papers.

(4) Separate the regional and constituency ballot papers for the Scottish parliamentary election

No matter the ultimate layout of the ballot paper, the primary focus must be on producing a ballot paper that meets the needs of voters rather than the political or technical preferences of those involved in implementing the election. A first step in this process has already been mentioned and involves establishing an intensive research programme linked closely to the electorate.

⁴⁵ See Chapter 6.2 Postal Ballot Papers and Packs.

In the case of the 3 May 2007 elections, it was clear that voters were particularly confused by the combined Scottish parliamentary ballot sheet. One clear option is to return to separate ballot papers for the two components of the AMS system. As there is strong evidence that the combined Scottish parliamentary ballot sheet was primarily responsible for the high level of rejected ballot papers, this option could well solve most of the problems experienced in the 2007 election. There may be some additional cost (printing two sheets of paper per voter) and the count may take longer.

(5) Greater focus on contingency plans to ensure the number of political parties and candidates can be accommodated

The action taken to accommodate the excess number of registered political parties on the regional ballot papers in the constituencies of Glasgow and Lothians has been discussed in Problem 5. The resulting problems are evidence of the need for contingency planning well in advance of the election. To address challenges that arise late in the operational cycle, contingency plans should be established for as many problems as can be foreseen. Testing should be conducted and projected costs estimated with respect to each item.

(6) While not a serious problem, steps could be taken to reduce 'cross-contamination' of ballot marking requirements

We heard from a number of electoral stakeholders that the combination of the STV and AMS electoral systems with the mixture of ballot paper marking requirements involved (a number sequence '1, 2, 3...' for STV and a traditional cross or 'x' for AMS) led to confusion among voters as they marked their ballot papers. Our assessment found that this was not a major problem.

If the issue remains a concern, there are avenues for reducing the minimal cross-contamination that was evidenced in our assessment. A first option is discussed in a previous chapter where de-coupling of the Scottish parliamentary and local government elections is considered.⁴⁶ De-coupling would reduce the problem of cross-contamination.

A second option, if combined elections are maintained, would be to re-double voter information efforts to ensure that voters are completely aware of the two different marking systems involved. In addition, further and enhanced guidance and training could be given to Returning Officers who are responsible for adjudicating ballot papers on which voters have used an incorrect ballot paper marking system.

⁴⁶ See Chapter 5.0 Combined Elections.

(7) Ensure consistency of party names on regional and constituency Scottish parliamentary ballot papers

In order to have a better understood and more consistent ballot paper for voters, two options might be considered. First, on the regional ballot list, it would be in the interest of voters that legislation be amended to require that registered political party names always be listed first. A party description could then be printed below the party name, preferably without using individual names, if the continuation of such a practice was deemed necessary. It would be useful to review how the twelve descriptions available on the UK-wide register work specifically for elections focused on Scotland, given that some parties which focus on Scotland alone are provided with the same number of descriptions as UK-wide political parties.

Second, on the constituency ballot, the candidate's surname and given names would continue to be listed first, followed by the registered political party name or 'independent' as applicable.

(8) Offer more equitable access to advantageous positions on Scottish parliamentary and local government ballot papers

To allow equal opportunity for all parties and candidates to access the top of the ballot paper or other advantageous positions, rather than always giving the advantage assigned by an alphabetical position, a public 'lottery' might be held where the names of parties and candidates would be drawn for their positions on each Scottish parliamentary ballot paper.

A sub-issue relating to the combined Scottish parliamentary ballot paper relates to the interest of some political parties to list their candidate on the constituency ballot paper directly across from the party name on the regional ballot paper. Despite significant political pressure, this approach was not pursued because of the major technical difficulties which it would have incurred. There is an option which might at least partially meet this objective. If parties agreed to the previous option of ordering by lottery on the regional ballot paper, their candidate might be grouped in the same position on the constituency ballot paper, whether the ballot papers were separate or combined. Although this would not necessarily mean that a party's candidate on the constituency ballot paper would be directly across from the party's name on the regional ballot paper, the party order would be identical on both sides of a combined ballot paper.

Fundamentally, party and candidate listings on any ballot paper need to be consistent to avoid misleading or confusing voters. To achieve this, the criteria for the descriptions of parties and candidates need careful attention and revision. Party and candidate symbols can be a useful tool for the voter as long as similar or identical party names or designs which could confuse the voter are always prohibited.

For the local government ballot paper, rather than list candidates alphabetically by surname on the ballot paper, candidates – listed by surname followed by given names – could also have their position on the ballot paper determined by public lottery. Candidates might also be grouped by party where there is more than one party candidate on the ballot paper, with the party group position determined by public lottery. In this case, the positions within the party group could be made by the party, by lottery or by other selection process.

These criteria – whether for the Scottish parliamentary or local government ballot papers – would also apply to independent candidates, whose position on the ballot paper could be determined by lottery on an equal basis.

These options would achieve more equitable ballot paper position access in all cases and also dissuade political parties from using naming strategies to achieve preferential ballot paper positioning. Although voters in Scotland have traditionally dealt with alphabetically ordered ballot papers, given the limited number of party and candidate names on local government ballot papers, positioning by lottery should not cause voter confusion if the change was supported by a voter information initiative.

6.2 Postal ballot papers and packs

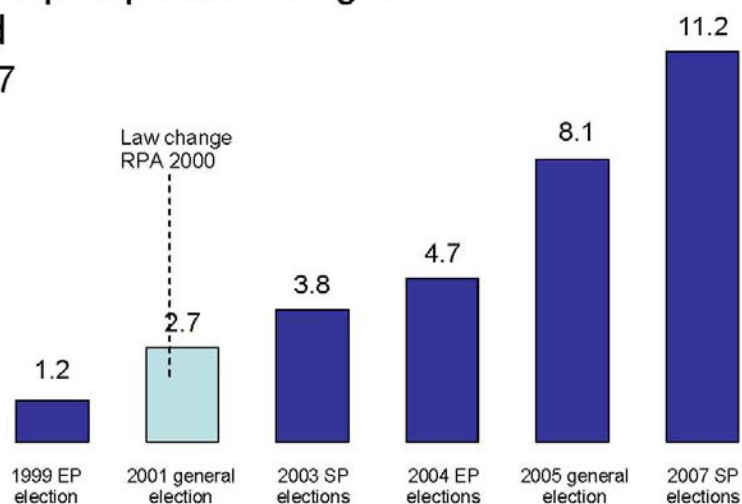
Background

Postal voting in Scotland

While legislation had always limited the categories of people who could apply, postal voting has been part of elections in the United Kingdom since 1918. Significant change came following recommendations from a government working party led by George Howarth MP, which was set up in 1997 to examine ways to modernise electoral procedures and encourage more people to vote. The working party recommended postal voting as one avenue for broadening access to voting, and that postal voting should be available to all eligible voters in Great Britain.¹ The Representation of the People Act (RPA) 2000 gave effect to these changes.

The demand for postal votes has grown substantially since then, with approximately 12.6% of the electorate in Great Britain now voting by post.² While this figure is lower in Scotland, the demand for postal votes has clearly increased since the 2001 elections when 'on demand' postal voting was first available, reaching 11.2% for the Scottish parliamentary elections in 2007.³

The take-up of postal voting in Scotland 1999-2007



Source: Electoral Commission

¹ George Howarth MP, *Final Report of Working Party on Electoral Procedures*. Home Office. 1999.

² Data provided by the Electoral Commission (figure excludes Northern Ireland as arrangements are different.)

³ Electoral Commission. *Postal Voting Statistics: Scottish Council and Parliamentary Elections*, 2007. See also SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. p 10-11.

The rules for postal voting are contained in the relevant legislation and while this involves two separate sets of rules – for the Scottish parliamentary and local government elections respectively – the combination rules allow for the joint issue and receipt of postal ballot papers if each Returning Officer agrees.⁴ The deadline for an application to vote by post is now 5.00pm eleven working days before the date of the poll and just seven days after the close of nominations.⁵ For the 2007 elections, this meant 5.00pm on 18 April 2007, which was also the last date for registering to vote. There is no statutory deadline for postal ballot papers to be issued or dispatched to electors, but in this instance they could not be issued until 5.00pm on Wednesday 18 April, in case electors cancelled their postal vote or requested it to be sent to another address.

Each elector voting by post for the 3 May Scottish elections should have received a postal ballot pack containing the following:

- A combined Scottish parliamentary ballot sheet
- A local government ballot paper
- A Postal Voting Statement (which is signed by the elector confirming they have marked the ballot papers themselves)
- Envelope A – to return their ballot papers in
- Envelope B – the outer return envelope into which they should place Envelope A and the complete Postal Voting Statement
- Instructions to the voter

Legal responsibility for postal ballot pack distribution

As with printing the ballot papers,⁶ Returning Officers are legally responsible for the assembly of postal ballot packs which are sent out to voters requesting them. Returning Officers can either compile the postal ballot packs themselves or outsource all or some of the process. For the 3 May 2007 elections, in a departure from previous practice in Scotland, 25 of 32 local authorities decided to outsource the compilation and issue of postal votes. Twenty three local authorities used Electoral Reform Services (ERS), a commercial subsidiary of the Electoral Reform Society; two used a Manchester-based contractor – K2; the remaining seven authorities did this task in-house.⁷

There has been some speculation as to why this change was pursued by so many Returning Officers. The professional associations involved in electoral administration have suggested it was due to a combination of the continued increase in the number of postal voting requests and the complexities introduced in recent legislation related to the postal voting process.⁸ The new requirements,⁹ such as preparing a marked register of returned postal votes;

⁴ Scottish Parliamentary (Elections etc) Order 2007. sch 4. para 2.

⁵ At the last scheduled elections in Scotland, the 2005 elections to the UK Parliament, this deadline was six days before the date of the poll.

⁶ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

⁷ SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. p 11.

⁸ SOLACE/SOLAR/AEA final submission to Scottish Elections Review. 15 August 2007 and SOLAR submission to Scottish Elections Review. 18 July 2007.

⁹ Scottish Parliament (Elections etc) Order 2007. sch 4. para 25 and Representation of the People (Postal Voting for Local Government Election) (Scotland) Regulations 2007. reg 23.

advising electors whether their postal votes have or have not been received; and confirming whether the ballot paper has been 'provisionally rejected', are all more easily and efficiently performed through automated systems when large numbers of postal votes are involved.

Given the large number of postal votes being issued and the new obligations, many Returning Officers had little choice but to use a more automated postal voting system than previously (especially one that handles barcodes and other specialised printing devices) in order to comply with the new legislation. Such a move toward a more 'high tech' approach by so many decreased the pool of suppliers available to complete the tasks involved, particularly with elections in Scotland being held in parallel with 312 English local authorities and all 22 Welsh local authority areas.

Returning Officers are responsible for ensuring that the postal ballot packs are delivered to the electorate in a timely manner. They can use a universal service provider to deliver the ballot packs (Royal Mail is the only such designated provider at present); an alternative commercial delivery service; or their own staff. Voters can return their postal ballot at any time up until close of poll either to the Returning Officer or to any polling station in their electoral area. Delivery to the Returning Officer can be by post or by hand whereas delivery to a polling station can only be by hand.

Delays in assembly and delivery of ballot packs

A number of delays were incurred during the assembly and delivery of postal ballot packs. In a survey conducted following the May 2007 elections, 29 local authorities are said to have experienced delays.¹⁰

From the outset, some of the delays could be linked to problems already identified in earlier stages of this electoral cycle. A previous chapter on Legislation has already described the delays involved in passing the legislation necessary to finalise the design of the ballot papers.¹¹ In the chapter on Planning and Timing, the influence these delays had on operational planning and implementation was noted.¹² The preceding section on the Scottish parliamentary and local government ballot papers also outlined timetable problems related to the printing of ballot papers.¹³ These all contributed to diminishing the time available within the election timetable to complete the production and issue of postal ballot packs.

There were additional issues, not attributable to the delays described above, which contributed to electors not receiving their postal ballot packs in a timely manner.¹⁴ One challenge to the system was found in the transfer of ballot papers between DRS Data Services – the company responsible for printing

¹⁰ SOLACE/SOLAR/AEA final submission to Scottish Elections Review. 15 August 2007.

¹¹ See Chapter 2.0 Legislation.

¹² See Chapter 4.0 Planning and Timing.

¹³ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

¹⁴ SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. p 36.

and distributing the ballot papers for Returning Officers – and the different stakeholders responsible for the assembly and delivery of the postal ballot packs; with ERS and Royal Mail carrying the bulk of responsibility for these tasks. It has been difficult to reconstruct all the details of this process because DRS' delivery contract was directly with each of the 32 local authorities in Scotland and not every case could be reviewed. Returning Officers have, however, made it clear that many of the ballot papers were not delivered according to the schedules agreed with individual Returning Officers.¹⁵ ERS has stated this as well.¹⁶ The lateness of this initial delivery set off a variety of decisions aimed at assembling the postal ballot packs in the shorter timescale, with some Returning Officers taking these tasks back in-house in the hope of issuing the ballot packs more quickly. Where in-house assembly was not an option, the delays clearly put strain on the assembly systems that were set up to complete all the tasks related to the delivery of postal ballot packs to voters. While ERS has stated that it completed assembly of the ballot packs in fewer days than its contract called for, it was not able to fully deliver them by the date specified in the individual schedules.

Another challenge to the system was found in the components of each of the ballot packs. Important decisions regarding the design, form and content of postal ballot packs – such as envelope size and style – were made individually by Returning Officers. Where the assembly of postal ballot packs was outsourced, Returning Officers still made these decisions but these were often based on what was offered by the supplier. The Review heard consistently from stakeholders that the components of the postal ballot packs were not necessarily compatible; in some instances, voters were required to fold ballot papers a number of times in order to fit the return envelope provided. The additional creases led to delays during the count as postal ballot papers were scanned.¹⁷ In addition, we were told that Returning Officers were sometimes late in providing suppliers with the information they required for inclusion in the postal ballot packs.

On receipt of the returned postal ballot papers from Royal Mail, Returning Officers carried out the pre-processing necessary to facilitate the introduction of ballot papers to the count. The process involved counting and recording the number of returned envelopes; opening the outer envelopes and extracting the returned postal voting statement and the inner envelope; ensuring that the required numbers match; marking the postal voters' list to indicate that a postal vote was returned; ensuring that the postal voting statement had been correctly completed by the voter; dealing with incorrect postal voting statements and provisionally rejecting any that fail; opening the inner envelope, checking that the inner envelope and the ballot paper match; and placing accepted postal ballot papers (without looking at how the voter voted) in a sealed ballot box until the count.¹⁸

¹⁵ SOLACE/SOLAR/AEA. *Survey of Returning Officers: Findings*. August 2007. p 12-13.

¹⁶ Confirmed during Review meetings with representatives of Electoral Reform Services.

¹⁷ See Chapter 8.2 Electronic Count and Counting Procedures.

¹⁸ This process is described in detail in Electoral Commission. *Managing the Scottish Parliamentary and local government elections: guidance for Returning Officers. A good practice guidance manual*. 2007. p 125-133.

Consequence of delays

Among the consequences of the delays outlined here was that some postal voters were disenfranchised because their ballot papers did not reach the Returning Officers in time. Across Scotland, 5,413 parliamentary postal ballot papers (1.24% of those issued) and 5,204 local government ballot papers (1.2%) were too late to be included in the count. In three areas, the number of late ballot papers exceeded 5% of postal ballot papers issued.¹⁹ The same statistical source confirms that across Scotland, the ratio of postal ballot papers returned was 73.5% for Scottish parliamentary and 73.1% for the local government elections.

During the public consultation period more than half (58.7%) of those who responded to a question regarding postal ballot papers stated that they believed that the arrangements for postal ballot papers were not adequate. Submissions from voters and party agents included a range of opinions such as “nobody seemed to care that I had lost my opportunity to vote” to “not a single person knew what to do or how to deal with what I had heard was a common complaint.”

Prior to the election, there were media reports that – according to Returning Officers – overstated the number of postal ballot packs that had not been mailed to applicants. To counter the growing public perception that postal voters may have lost their chance to vote, the Electoral Commission began a campaign to inform voters that the vast majority of postal voting packs had been distributed and voters had until 10.00pm on polling day to return them.

Problems

(1) Inconsistencies in postal ballot pack design led to incompatibility with other elements of electoral process

Certain inconsistencies in the components of some postal ballot packs were described by stakeholders during the Review. Voters had to fold postal ballot papers more times than instructed in order to fit the paper into the envelope provided. Not only might this have confused some voters, but such folds meant that the postal ballot papers caused problems with the scanners at the start of the electronic count, increasing the number of times ballot papers had to be scanned before being counted or referred to adjudication. This slowed down the count initially.

¹⁹ Electoral Commission. *Postal Voting Statistics for Scottish Parliament and Local Government Elections May 2007*.

(2) Limited coordination between operational stakeholders responsible for printing, assembly and delivery of postal ballot packs

The operational problems that arose in assembling and distributing the postal ballot packs were not entirely attributable to the suppliers involved at this stage, but can be linked to earlier delays. It became clear that the process was not coordinated effectively when the system came under pressure. It was difficult to determine during the Review exactly who, ultimately, was accountable at each step, as Returning Officers pointed to suppliers and suppliers pointed to other suppliers and to Returning Officers with whom they had contracted. Our assessment has led to the conclusion that clear lines of authority and accountability were not in place at this point in the electoral cycle.

(3) Postal ballot packs delivered to voters too late

The postal ballot packs for the 3 May elections were delivered to some voters too late for them to return their ballot papers before polling day. Several problems have already been described as influencing the late delivery of the ballot packs to voters. We would suggest that the schedule was too tight, even if those issues had not arisen. With the close of nominations on the sixteenth day before polling day, there was insufficient time to process postal ballot packs far enough in advance of the election to ensure that voters had adequate time to return them.

(4) Over-reliance on a single alternative to polling stations

The significant increase in popularity of postal voting underlines the need to provide voting facilities for those who cannot or do not wish to go to the polls on polling day. Professional associations involved in electoral administration in Scotland have emphasised that the growing demand for postal voting, combined with new legislative requirements, has placed particular stress on the postal voting system.²⁰ In addition, it is clear that issuing postal ballot packs is costly and involves an approach to voting that is susceptible to undermining the secrecy of the ballot and has the potential to be used fraudulently. In the context of Scotland and the UK, there appears to be an over-reliance on a single mechanism to meet the needs of voters with many different needs.

²⁰ SOLACE/SOLAR/AEA final submission to Scottish Elections Review. 15 August 2007 and SOLAR submission to Scottish Elections Review. 18 July 2007.

Options

(1) More emphasis on the design of the contents of the postal ballot packs and more consistency in design

Greater emphasis should be placed on the design of the postal ballot pack to ensure that it facilitates the return of ballot papers in a condition that is compatible with the counting system. A Scotland-wide approach could ensure that all envelopes are compatible with the ballot paper folding criteria. Formats that allow a vote to be counted quickly by the counting system whilst assuring the secrecy of the vote should be given primary consideration. An extensive and staged research programme has already been suggested with regard to the design of ballot papers,²¹ but such a programme could be expanded to include research on postal ballot packs. Furthermore, given the large number of postal votes at recent Scottish elections, the requirement to mix postal ballot papers with other ballot papers so that they will lose their 'identity' is no longer necessary.²² Removal of the legislative provisions to this effect would facilitate more efficient process of postal ballot papers for either a manual or electronic count.²³

(2) Centralise design and implementation of postal ballot packs

The decentralised nature of the postal ballot pack design and implementation stage contributed to the problems evidenced during the 2007 electoral processes. While this component was more centralised for 2007 than it had ever been; more centralised coordination is clearly needed. A more effective approach could be to centralise the design of postal ballot packs and, potentially, their distribution. Greater centralisation could be managed by a Chief Returning Officer as proposed in an earlier chapter.²⁴

(3) Lengthen period for issuing postal ballot packs

Those electors wishing to vote by post must apply in advance. Postal ballot packs must then be sent out as early as possible in order to provide sufficient time for voters to receive, complete and return them before the end of polling day. Because the close of nominations is the sixteenth day before polling day, Returning Officers have little time to finalise and print ballot papers; assemble and distribute postal ballot packs; and give voters enough time to fill out their ballot papers and return them by post. An option that was discussed with and received strong support from Returning Officers and political party representatives was that of amending the legislation to provide for another week, leaving 23 days between the close of nominations and polling day.

²¹ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

²² We note that there is no requirement to mix where the votes are counted electronically.

²³ Scottish Local Government Elections Order 2007. sch 2. sec 17. para 2A(c); and Scottish Parliament (Elections etc) Order 2007. sch 2. sec 55(4).

²⁴ See Chapter 3.0 Roles, Relationships and Accountability.

(4) Explore alternative voting methods that complement postal voting

Given the increasing pressure on Returning Officers concerning postal voting, it may be prudent to consider alternative voting methods in order to meet the needs of a diverse group of voters. One option would be to make 'advance voting' available. As soon as the ballot papers are printed and available, electors could be allowed to vote, in person, at the office of the Returning Officer up until a day or two before polling day. Some challenges exist in this approach. It could require some voters to travel long distances; there would be obvious additional costs; advance voters would have to be appropriately marked on the polling day registers; and the ballot papers would need to be securely stored until the count. Advantages would include electors not needing to apply in advance and there would be more assurance that the vote was cast by the actual elector. In addition, this system would not be as dependent on the performance of suppliers or the postal service.

A further model – in combination with or instead of voting in the RO's office – would be to provide for advance voting at a number of central locations in each constituency for several days before polling day. This option would necessitate some technical adjustments, including ballot boxes being sealed with numbered seals, to be opened and re-sealed each day, and providing for secure storage of the boxes. As transparency remains an important part of any form of advance polling, the participation of political parties, candidates and other observers would have to be considered.

6.3 Ballot boxes, security and secrecy

Background

Integral to every electoral process, ballot boxes guard the secrecy of the ballot from the time voters cast their ballot papers to when officials begin counting the votes. For the 3 May 2007 elections, voters were asked to place two unfolded ballot papers into separate ballot boxes, one for the local government elections and another for the Scottish parliamentary elections.

Ballot box specifications, procurement and testing

In Scotland, Returning Officers are responsible for providing each polling station with sufficient equipment for the poll, including ballot boxes.¹ While the procurement of ballot boxes has historically been undertaken by Returning Officers, the initial documentation for the electronic counting contract specified that ballot boxes were to be procured by the supplier – DRS Data Services.² There was a provision that the boxes had to be compatible with the overall counting system being implemented.

Each user agreement specified that the ballot boxes must be made of a water resistant material and capable of holding up to one thousand ballot papers.³ The boxes were to be in two pieces, each comprised of a box and separate chute. They were to be coloured white for local government elections and black for parliamentary elections. Each was to be disposable and flat-packed and their design was to allow voters to insert ballot papers easily and to ensure that the majority of ballot papers would be presented correctly at the point the boxes would be opened.

These ballot boxes were used as part of the volume testing which took place in Edinburgh in October 2006, after which it was reported to the E-counting Project Board (a sub-group of the 2007 Scottish Elections Steering Group) that there had been “a degree of comment regarding the suitability of the ballot boxes.”⁴ In response, the Project Board asked DRS to produce a document highlighting the suitability of the ballot boxes.⁵ It was also agreed that DRS Client Liaison Officers would visit authorities who had expressed concern to offer a demonstration of the fully sealed boxes. Following further investigation by the E-counting User Group, it was decided to proceed with the boxes proposed by DRS.

¹ Scottish Parliament (Elections etc) Order 2007. sch 5. paras 8 and 16.

² Scottish Executive. Invitation to Tender for Provision of Electronic Counting Facilities for Elections. Contract Reference QLC17/1. para 3.14.1. August 2005.

³ E-counting User Agreement signed by Scottish Ministers, Secretary of State for Scotland, individual local authorities and DRS.

⁴ E-counting Project Board minutes. 9 November 2006.

⁵ It was noted that DRS had used ballot boxes with such specification in the past. E-Counting Project Board minutes. 9 November 2006.

Ballot secrecy and ballot box security

The ballot papers used for the 3 May 2007 elections marked a significant departure from past practice. Voters were instructed *not to fold* their ballot paper before placing it in the box for the relevant election. While Scottish voters had, for many years, been instructed *to fold* their ballot papers before inserting them into the box, it was determined that folding the ballot papers would slow down the scanners used to electronically count the ballot papers, making the counting process less efficient.⁶ For this reason, voters were required to carry their marked ballot papers unfolded from the polling booth to the ballot boxes. Depending on how a voter carried a ballot paper, there was scope for other people to observe how it had been marked.

The ballot boxes procured for the 3 May elections came with numbered seals for use in sealing the ballot boxes before voting started. Numbered seals were also provided for use across the ballot box once the polls closed on polling day, to be recorded at that time and then checked on arrival at the count centre. It has not been a legal requirement or standard practice in Scotland to use numbered seals.

Problems

(1) Ballot box structure

In advance of the election and during interviews conducted for the Review, a number of stakeholders raised concerns about the design of the ballot boxes. One issue had to do with extent to which the ballot boxes used (as opposed to those constructed of metal or other more secure material) could resist tampering and destruction. An incident in Edinburgh on polling day, where a man entered a polling station with a golf club and “systematically destroyed” ballot boxes, would certainly have confirmed these concerns.⁷ Another issue had to do with the design of the ballot box slots. Several of those interviewed mentioned difficulties depositing their ballot papers into the slots.

(2) Separate ballot boxes add step to vote counting

During the 3 May elections, voters were asked to deposit their ballot papers in separate ballot boxes, one for their local government ballot paper and the other for their Scottish parliamentary ballot paper. The requirement for separate boxes comes from the legislation based on a manual count but was operationally unnecessary, given that the scanners used for the electronic count had the capacity to automatically identify whether ballot papers were cast for one or the other election. Of the 32 authorities, five voluntarily chose to conduct counts for each election separately.⁸

⁶ For greater detail, see Chapter 8.2 Electronic Count and Counting Procedures.

⁷ BBC News. *Polling Clerk Tells of ‘Bedlam’*. 3 May 2007.

http://news.bbc.co.uk/1/hi/scotland/edinburgh_and_east/6622105.stm

⁸ For details of the different approaches taken in the counting process, see Chapter 8.2 Electronic Count and Counting Procedures.

In these instances, a manual 'rummage' was required to separate ballot papers that were in the wrong ballot box. This process, where applied, constituted an additional step that slowed down the counting process.

(3) Ballot paper secrecy undermined

The secrecy of the ballot must be guarded throughout the electoral process, with provisions being made at all stages to ensure it is respected. The use of a double envelope as part of the postal ballot pack, guaranteeing that the ballot paper inside cannot be seen, is just one example. During the recent elections, however, the requirements of electronic counting undermined the secrecy of the ballot when voters were instructed *not* to fold their ballot papers as they had traditionally done. Folding the ballot paper reduces the efficiency of the scanners used during counting. During this Review stakeholders raised this issue on a number of occasions, stating that voters' choices may have been observed as they transported their ballot papers unfolded from the polling booth to the ballot boxes.⁹

(4) Ballot box security needs to be enhanced

While ballot secrecy is extremely important, so is the security of the ballot boxes used to store ballot papers until counting begins and whenever boxes containing ballot papers are moved from one place to another. The ballot boxes procured for the 3 May elections came with numbered seals, an excellent tool for helping officials determine whether the boxes had been tampered with. Numbered seals were also provided to seal the ballot slots once polling was closed and the boxes were ready to be transported to a counting centre. Interviews with stakeholders during the Review suggest that polling staff in some areas may have recorded the seal numbers on each of the boxes, and few of the party agents or candidates did so.

Options

(1) Determine ballot box structure based on operational needs

Ballot boxes constructed of secure material such as metal are certainly more resistant to tampering and cannot be destroyed as easily as those made of cardboard or similar material, but the costs and benefits of each must be considered carefully before making a decision on which kind to use. Metal ballot boxes are costly to make and to store between elections. Where there is no history of violence or disruption at the polls; lightweight, water resistant and collapsible ballot boxes are more realistic as they can be easily transported and stored for future use. The ballot boxes used for the 3 May 2007 elections met, and even exceeded, these criteria. As a result, no change in the materials used for these boxes is necessary for the foreseeable future.

⁹ Capability Scotland. *Polls Apart 5: Disabled voters' experiences in the 2007 Scottish election*. June 2007.

Some consideration could be given to the size and design of the slots in the ballot boxes and of the ballot boxes themselves. An important theme throughout this Review is the need to pursue a systematic research programme to ensure the components of the electoral process are compatible and easily accessible for voters' use. In this instance, research could be conducted into whether alterations to the design of the ballot box could better facilitate the deposit of ballot papers.

(2) Deposit ballot papers in a single ballot box

Scanners used in electronic counting immediately identify ballot papers as being either for the parliamentary or local government election, so it is not necessary to separate the ballot papers in advance. Consideration should be given to amending the legislation to permit the use of one or more ballot boxes at Scottish elections, at the discretion of the Returning Officer. This would permit the use of one box to facilitate the electronic count for combined elections while permitting the use of two or more ballot boxes where a manual count is pursued.

(3) Assess electoral practices for their compatibility with secrecy of the vote

While the requirements of electronic counting must be considered in the design and processing of ballot papers, the secrecy of voters' ballot papers must remain of greatest concern. This secrecy is easily compromised when voters must carry their ballot papers unfolded from the voting booth to the ballot box. To correct this problem, an option which was widely used in 2007 is for polling staff, when issuing ballot papers, to instruct all voters to return their ballot papers face down when carrying them to the ballot box.

A second, and more effective option, would be to provide each voter with a folder in which to place their ballot paper when transporting it to the ballot box, then returning the folder for re-use. Alternatively, instructions could be given to seal ballot papers in an envelope and place it in the ballot box, but this would most certainly add to costs and increase the number of steps involved in counting the ballot papers. When reviewing the above options, all possible avenues should be considered to ensure that the secrecy of the vote is enhanced at all stages of the electoral process.

(4) Increase confidence in ballot box security

While only one incident regarding ballot box security has been reported to us, we believe it is essential to ensure that the highest confidence possible is maintained with regard to ballot box security by all electoral stakeholders and particularly by political parties, candidates and other observers. To ensure this confidence in Scotland, one option would be to ensure that Returning Officers brief stakeholders on the importance of recording ballot box seal numbers and then to verify the numbers and that the seals have not been broken at critical junctures, such as when the boxes leave a polling station and arrive at a counting centre.

Our view is that this internationally accepted practice is one step that can easily be taken to reduce the potential for irregularities and malpractice and enhance confidence in the integrity of the electoral process.

7.0 Public information

Background

Voter education and voter information

A public information campaign for an election involves at least two important components. One focuses on 'voter education', which has the primary objectives of alerting the public to the election date, explaining the aims of the elections, motivating voters to take part and to register for voting if they had not already done so. A second component emphasises 'voter information', the primary objective of which is to explain the voting methods to be used. Because a new voting system was to be employed for the first time, there would be two different ballot papers with two different marking requirements, for two elections on the same day, the effective transmission of voter information was extremely important. As a general rule, a voter education campaign is aimed at the general public and is carried out predominantly via television and newspapers. A voter information campaign is usually more targeted at voters via posters, leaflets and information provided to explain the voting process at the polls.

The public information campaign conducted during the months leading to the 3 May elections involved both of these components. The Electoral Commission and the Scottish Executive shared responsibilities with regard to a Scotland-wide campaign 'VoteScotland', which included both voter education and voter information. The Returning Officers, supported by the VoteScotland campaign, were responsible for conducting the campaign targeted at voters arriving at polling stations on polling day. Here, the campaign focused on voter information alone.

Scotland-wide campaign

The Scottish Executive was responsible for voter education and voter information with regard to the local government elections, while the Electoral Commission's duties were related to the Scottish parliamentary elections.

Responsibility for the Scottish parliamentary elections rests with the UK Parliament. Responsibility for local government elections rests with the Scottish Parliament. The Electoral Commission has been tasked by the UK Parliament with promoting public awareness regarding a number of electoral processes for which the UK Parliament is legislatively responsible.¹ These elections include the

¹ Political Parties, Elections and Referendums Act 2000. sec 13 (1a).

Scottish parliamentary elections.² While they do not include local government elections in Scotland, the Scottish Executive may ask the Electoral Commission to provide advice and assistance in relation to the promotion of public awareness of those elections.³

Given the combination of elections, the Scottish Executive and the Electoral Commission agreed to a single joint campaign, while preserving the independence of each.⁴ There were two obvious benefits. First, to have run two separate public information campaigns would have risked confusing the voters. Second, combining the two campaigns was cost saving as duplication would have been inevitable otherwise. The joint project brief was agreed in May 2006.

The joint campaign was developed in stages. Public information activities began in November 2006 and continued for the following six months. Multimedia advertising commenced on 5 March 2007 and continued up to 18 April, the final date for registration, which was mainly voter education-related. From 9 April, the media campaign began to feature 'how to vote' information and to give advance notice of a leaflet that would arrive on voters' doorsteps. This leaflet was to be the centrepiece of the voter information part of the campaign, featuring illustrations of the two ballot papers and simple instructions about how to complete them. The leaflet was hand-delivered to every household in Scotland during the two weeks beginning 16 April. The same 'how to vote' message was presented up to polling day in media advertising, in press editorials and various local public relations initiatives, on the campaign website and by the roadshow and field teams which toured Scotland up until polling day.⁵

The rationale for this build-up, based on earlier research and experience of election campaigns,⁶ was that too early an exposure to the detailed actual voting procedure would be counter-productive: it would not stick in people's minds. Continuous repetition would be a turn-off and, at worst, it would frighten away more vulnerable and resistant voters (particularly the young and the elderly). People would need to be encouraged, coaxed and helped to feel that taking part was important. Thus enthused, they would be more likely to absorb what they needed to know about the voting process at a later point. The encouragement to register had to climax earlier, before the final registration date. This had the further benefit that the two messages would be less confused, since the registration message would finish before advertising started to feature the voting process.

² Political Parties, Elections and Referendums Act 2000. sec 13 (3). para b. The Electoral Commission is directed to perform these functions in a manner it sees fit, but may specifically do so by carrying out programmes of education or information to promote public awareness.

³ Political Parties, Elections and Referendums Act 2000. sec 10.

⁴ Terms of co-operation agreed in correspondence between the two organisations dated 22 August and 13 October 2006.

⁵ To boost interest in voting and registration among the key target group of young people (18-24), field marketing teams and a truck-based roadshow visited town centre sites, such as shopping malls, across Scotland during March and April. They had both voter education and information roles, including demonstration of the voting processes.

⁶ Qualitative research by George Street Research, commissioned by the Scottish Office in June 1999, following the February to May 1999 publicity campaign for the 1999 Scottish parliamentary election. Also, qualitative research by GfK NOP Social Research for the Electoral Commission in May-June 2006 underlined the extent to which people were confused about voting procedures. This research fed into the agency proposals for the campaign.

Polling place-focused campaign

The campaign extended to polling places on polling day, with the focus turning to voter information at this point. In this context, Returning Officers were required to provide and display voting instructions, including copies of the ballot papers, in the forms required by the various parliamentary and local government election rules. In addition, it is within the power of the Returning Officers to raise public awareness of the relevant elections.⁷

The parliamentary rules require the Constituency Returning Officer to provide each polling place with at least one enlarged sample copy of a constituency ballot paper and any regional ballot paper for display at the station together.⁸ Both the parliamentary rules⁹ and the local elections rules¹⁰ require further written instructions to be displayed at each polling station and/or in each compartment as to how the ballot paper should be marked. The parliamentary rules set out, in prescribed form, instructions and guidance to voters that must be displayed inside or outside the polling station.¹¹ When the regional and constituency ballot papers are printed on the same sheet, the parliamentary rules state there must be posted “in every compartment of every polling station” a notice which reads “There are two columns on the ballot sheet, in different colours. Vote once in each column, by marking an X in each column. Put no other mark on the sheet or your two votes may not count.”¹² However, when a parliamentary election is combined with a local government election, this instruction is changed: a specific form (form O3: ‘guidance for voters’) must be used.¹³ The relevant wording on form O3 is slightly different, as follows:

2. On the Scottish Parliament ballot sheet, coloured (insert colours), you have two votes. There are two columns on the sheet, each a different colour. Vote only once on each part. Mark your choice with a cross (X). Put only one X on each column.

3. On the white ballot paper for the local government election number the candidates in the order of your choice instead of using a cross. Mark the figure ‘1’ opposite the name of the candidate who is your first choice, then the figure ‘2’ opposite the name of the candidate who is your second choice, ‘3’ in the box next to your third choice, ‘4’ in the box next to your fourth choice, and so on. You can mark as many choices as you wish.

⁷ Election Administration Act 2006. sec 69; and Local Elections and Registration Services (Scotland) Act. sec 26.

⁸ Scottish Parliamentary Elections Order 2007. sch 2. rule 38 (4a).

⁹ Ibid. sch 2. rule 38 (11)-(12).

¹⁰ Scottish Local Government Elections Order 2007. rule 24.

¹¹ Scottish Parliamentary Elections Order 2007. sch 2. rule 38 (11)-(12).

¹² Ibid. sch 2. rule 38 (13) (15).

¹³ Ibid. sch 5. rule 21(1).

Further information for voters regarding the parliamentary election must be exhibited inside and/or outside every polling place. In the case of a combined poll for parliamentary and local government elections, Form X2 must be used ('notice providing further information for voters at polling stations at a Scottish Parliament election which is taken with a local government election').¹⁴ This form contains information on both the combined election and the procedure where the regional and constituency ballot papers are on the same sheet, and replaces form P2 (which is used in a parliamentary election when the regional and constituency ballot papers are on the same sheet but it is not combined with a local government election). A further notice must be exhibited inside every compartment. In the case of a combined poll, this notice is form O3, as above.¹⁵ The wording of forms P2 and X2 referring to the parliamentary election differs from form O3, as follows:

(Insert colour) column – Regional Ballot

You have one vote on this column. You should place an X in one box only.

Do not make any other mark in this column.

Votes cast in this poll will decide the allocation of 7 additional seats in the Scottish Parliament for this region. You may use this vote (either)* for a political party putting forward a list of candidates (or for an individual candidate not standing for a party list)* (**may both be deleted where no individual candidates are standing for election as regional members*).

(Insert colour) column – Constituency Ballot

You have one vote on this column. You should place an X in one box only.

Do not make any other mark in this column.

Votes cast in this poll will decide the election of a member to represent this constituency in the Scottish Parliament.

It is instructed that the form of ballot paper be illustrated. The wording referring to the local government ballot paper is the same in all three forms X2, P2 and O3.

For local government elections, the rules contain a power (rather than a duty) for the Returning Officer to display an enlarged copy of the ballot paper.¹⁶ But Returning Officers have a duty to exhibit notices in the prescribed form, giving directions for the guidance of voters in voting, inside and outside every polling

¹⁴ Scottish Local Government Elections Order 2007. sch 1. rule 24 and Scottish Parliamentary Elections Order 2007. sch 5. rule 21(2).

¹⁵ Scottish Parliamentary Elections Order 2007. sch 5. rule 21(1).

¹⁶ Scottish Local Government Elections Order 2007. sch 1. rule 24(7).

station and inside each compartment.¹⁷ In a combined poll involving both parliamentary and local government elections, these are forms X2 and O3 of the Parliamentary Order, which may be used with such variations as the circumstances may require.¹⁸

Although the Returning Officers could use information developed within their offices, the VoteScotland campaign led thinking on how the public could be given 'how to vote' information in the polling station and developed the concept of the cardboard pop-up and the use of Information Officers. This was based on information from Elections Ontario, the body responsible for provincial-level elections in Ontario, Canada. The VoteScotland campaign also encouraged Returning Officers to establish an Information Officer role in each polling place to offer voters assistance on how to mark their ballot papers or other matters. The Electoral Commission and the Scottish Executive provided guidance and training resources to assist Returning Officers in training such Information Officers. The Scotland Office agreed to fund these positions and the pop-up was funded by the Scottish Executive.

Problems

(1) Defects in measuring the public information campaign

The public information campaign attracted mostly positive comments, particularly as it related to voter education. It was planned to provide comprehensive coverage of the whole population of Scotland and its development was well researched.¹⁹ At the same time, the evidence of the success of its implementation is less clear. The principal reason for this was the unfortunate timing of the later waves of the tracking research set up to monitor the effectiveness of the public information campaign's Scotland-wide component.

The initial phase of the campaign (the voter education component) lasted up to the end of March 2007 and showed media penetration and awareness gains comparable to similar campaigns conducted by the Electoral Commission. Records of visits to the *AboutMyVote.co.uk* website and of calls to the dedicated helpline are evidence that the publicity succeeded in alerting people to the need to register by the due date.

The second phase of the Scotland-wide campaign (the voter information component) centred on a leaflet, delivered to every household during the two weeks from 16 April. This leaflet contained simple instructions on how to vote in both the parliamentary and local government elections, with illustrations of the ballot papers, and was available in ten minority languages as well as in English. While there is good anecdotal evidence that this leaflet was effective in imparting 'how to vote' information (notably the number of calls to the

¹⁷ Scottish Local Government Elections Order 2007. sch 1. rule 24(5).

¹⁸ Scottish Parliamentary Elections Order 2007. sch 5. para 26(2).

¹⁹ TNS System Three. *Scottish Elections Public Awareness Campaign: creative development research*. September 2006 and TNS System Three. *VoteScotland Leaflet Evaluation Research*. November 2006.

helpline quoting it as a source), there is no accurate estimate of the difference it made to voter knowledge of the voting procedures. This is because the third tracking wave, intended to measure the effect of the advertising during April 2007 by comparison with that at the end of March, was timed to take place after polling day. This means that it is impossible to disentangle the effect of the leaflet plus attendant publicity from the effect of having been in a polling place, confronted by actual ballot papers. This mistiming of the third wave also made it impossible to obtain a clear measure of the additional effectiveness of the material displayed in polling stations or of the Information Officers.

Since the main objective of the third tracking wave was to measure the effectiveness of the previous information campaign, there was no room in it for questions about the effectiveness of the Information Officers or polling place materials, which were the remit of the Returning Officers with the support of the VoteScotland campaign. The tracking company therefore carried out a fourth survey,²⁰ which found that just over half of those who had voted had spoken to an Information Officer (most of whom had found this helpful) and similar proportions remembered seeing the poster or the information stand. However, this survey was not put into the field until 24 May, by which time memories of polling day could well have faded for many respondents. Questions covering these points were included in a separate survey,²¹ which also covered general attitudes to the voting experience, concerns about fraud and privacy, etc. This survey showed that most voters found the voting processes very or fairly easy and the help provided at the polling station very or fairly useful, but a minority (around 10-15% of respondents) claimed that they had difficulty or had not found the information useful.

(2) Limitations in reaching 'resistant' voters

The campaign was designed to provide information to the general public. Yet some groups of people are harder to reach than others, being less motivated to vote and less likely to pay attention to information about elections and voting. The question arises whether the over-riding requirement to inform the public in general could or should be compatible with an attempt to focus additional effort on the more resistant groups. Resistant groups can be defined in two ways: demographically (e.g. the young, the elderly or disabled, the less educated) or in terms of where they live (e.g. areas of social deprivation). There is evidence of some correlation between rejected ballot papers and relative deprivation: "there is a strong relationship between constituency social context and the relative level of rejected ballot papers generated across constituencies."²²

It is relatively easy to boost media delivery to a demographic group, for example by ensuring that the message appears in media consumed by young people, and some attempt was made to do this. It is harder, and more expensive, to direct extra resources to specific areas in which people are

²⁰ TNS System Three. *Scottish Opinion Survey*. 24-29 May 2007.

²¹ GfK NOP. *2007 Scottish Post-Election Survey*. May 2007.

²² Carman, C. and Mitchell, J., University of Strathclyde. *An examination of ballot rejection in the Scottish parliamentary election of 2007*. p 5.

likely to be hard to reach. It is also difficult to predict what the effective return would be from doing this. But it could be argued that it is the only way of obtaining significant improvement in motivation (and therefore absorption of information, since the two are connected). A related concern is whether the questions used in the tracking surveys to measure awareness and motivation are adequate for the task. There is reason to think they may not be.²³

(3) Limited response to change in ballot paper design

In the Glasgow and Lothians regions, it turned out that the list of parties and candidates to be printed in the regional section of the Scottish parliamentary ballot paper was too long to fit into the agreed design. The design was therefore changed to accommodate the list. This re-design affected the heading of the ballot paper, including removal of the two arrows pointing voters to the two columns where they were to place one vote in each. Nineteen constituencies were affected by this change.²⁴

The decision to make those changes was made on 11 April,²⁵ but the Electoral Commission only became aware of the change on 17 April. This was too late to make targeted changes to the advertising materials. The leaflet door-drop was already in progress. Press and television advertising could not be targeted only to those constituencies where there was a change. The Electoral Commission considered whether press advertising in Glasgow and Edinburgh could be changed in order to explain the change in the ballot paper, but it was agreed that this could not be targeted effectively, given that the Glasgow and Edinburgh press is also largely the national press and therefore covers areas where no change had occurred. There was a significant risk of confusing voters if such press advertising were attempted. Even within the cities, the large numbers of commuters from outside the affected areas who read those titles meant there was a high risk of confusion. For the same reasons, it was decided not to upweight local radio advertising in these areas; besides, radio is not a good medium for explaining a change to a visual document.

The only other possibility for the VoteScotland campaign was to intervene in the polling stations. Polling station materials had gone to print so it was too late to change those. But the VoteScotland campaign could have liaised with Returning Officers in the affected constituencies to make sure that the Information Officers were fully briefed and the change was publicised as well as possible. To what extent the VoteScotland campaign attempted to do this is not clear; it is possible that they could have been more proactive. However, the VoteScotland campaign had no jurisdiction over the selection, appointment, training or briefing of Information Officers, which was the responsibility of the local Returning Officers.

²³ McDonald, C. *VoteScotland Campaign Evaluation*. July 2007. sec 5.5. p 17-18.

²⁴ Glasgow Anniesland; Glasgow Baillieston; Glasgow Cathcart; Glasgow Govan; Glasgow Kelvin; Glasgow Maryhill; Glasgow Pollok; Glasgow Rutherglen; Glasgow Shettleston; Glasgow Springburn; Edinburgh Central; Edinburgh East and Musselburgh; Edinburgh North and Leith; Edinburgh Pentlands; Edinburgh South; Edinburgh West; Linlithgow; Livingston; Midlothian.

²⁵ See Chapter 8.2 Electronic Count and Counting Procedures.

Also, the Returning Officers would have to determine any additional materials to be displayed in polling places.²⁶

The affected constituencies are areas of relatively high social deprivation and were among those with the highest rates of ballot paper rejection. Those Glasgow and Lothians constituencies included in the tracking research at the end of March 2007 recorded an average rejection rate of 6.7% (range between 4.3 and 10.2) at the elections; whereas for the other constituencies in the same sample the average rejection rate was 3.8% (range 1.9 to 5.4).

Those Glasgow and Lothian constituencies included in Wave 3, after the election, recorded an average rejection rate of 6.3% (range 4.1 to 9.8); whilst the other constituencies in the sample recorded an average of 3.3% (range 1.9 to 5.0).²⁷

It is a natural conclusion that some confusion, contributing to a higher rejection rate, was caused by the fact that the ballot papers which voters were confronted with in these areas were different from those they had been shown in media advertising and the leaflet, and also different from the examples displayed in the polling stations. The evidence from surveys suggests that the reception of the 'how to vote' information from the campaign in these areas was not defective compared to the rest of Scotland. However, the situation arising from the late change in design might have been better compensated by Returning Officers, supported by the Electoral Commission and the Scottish Executive through the VoteScotland campaign, by placing even greater emphasis on the role of the Information Officers and printing special leaflets to hand out at polling stations in constituencies where ballot papers were known to have been affected by changes to the instructions.

(4) Division of roles

A divide exists between the efforts of those tasked with conducting the Scotland-wide and polling place-focused campaigns. In the former, the Electoral Commission and Scottish Executive were the driving force behind the public information campaign. In the latter, it was the Returning Officers, with some guidance from the VoteScotland campaign, conducting the work. Some question has arisen as to whether, if better coordination had been in place, the Returning Officers in areas where changes to ballot paper instructions were identified might have been able to react more effectively in order to diminish the effect those changes had on the voters' ability to cast their votes.

(5) Instructions not clear

The provisions of the legislation relating to the duties imposed on Returning Officers to provide polling station information seem confused. In particular, as noted previously, it is not always clear where duties are mandated or merely

²⁶ Private communication from Electoral Commission.

²⁷ Re-analysis of statistics provided by Electoral Commission (rejected ballots by constituency, table 3.1).

at their discretion and the wordings designed for the various forms to be used are not consistent.²⁸ Returning Officers have a great many other details to concern them besides the provision of polling station information, which may easily register relatively low on their perceived list of priorities. Given this, the complexity of the legislation may well have confused some Returning Officers despite the fact that the Forms sub-group of the 2007 Elections Steering Group produced a set of forms to facilitate the modifications for the Returning Officers.

(6) Ineffectiveness of some Information Officers in their role

About half of the voters surveyed after the election remembered seeing information materials at the polling station or speaking to an Information Officer. These proportions were lower in Glasgow and Lothians than elsewhere. Most of those who had spoken to an Information Officer had found it helpful. About half (more in Glasgow and Lothians) had not spoken to an Information Officer, either because they did not feel they needed to or because they did not see them.²⁹ Information from a survey by election observers agrees with this: half of respondents had spoken to an officer, most of whom had found it helpful, but nearly half did not see the Information Officer at all, and about a third did not see other polling place materials.³⁰

This suggests that the quality and training of Information Officers was variable, and that they were more proactive in some polling stations than in others. It also suggests that the placing of pop-ups and posters in the polling stations was done more effectively in some places than in others. The supply and training of Information Officers is at the discretion of Returning Officers. The Electoral Commission and the Scottish Executive were able to encourage and assist Returning Officers in this matter, but could not direct them. Variability in the performance of the Information Officers is therefore very likely to be related to how important different Returning Officers considered the provision of polling station information to be.

Options

(1) Revise the methodology for measuring success in the public information campaign

To address this problem, the only step is to change the timing of survey measurements so that the effect of each phase of a campaign can be assessed without contamination by other phases. This would involve:

- (1) A tracking pre-wave (as was done);
- (2) A second wave to evaluate the impact of the voter education campaign phase (as was done at the end of March);
- (3) A third wave, to assess the voter information part of the campaign, including the leaflet door-drop and surrounding publicity (timed for the end of April) before polling day;

²⁸ For example, Scottish Local Government Elections Order 2007. sch 1. rule 24 (5, 7).

²⁹ McDonald, C. *VoteScotland Campaign Evaluation*. July 2007. sec 6.6. p 26-27.

³⁰ Robinson, E. and Casey, P. *My Election: a voter's eye view of the 2007 Scottish elections*. Unlock Democracy. June 2007.

(4) A fourth wave, specifically to investigate the impact of the polling place material and the Information Officers as well as to compare against Wave 3 for knowledge of the voting procedures. This should be fielded immediately after polling day, not three weeks after when memories have faded. Since the number of tracking waves would be the same, this change in timing would not involve any additional costs.

(2) Change the strategy for reaching 'resistant' voters

Any recommendations for rectifying this problem would involve incurring extra costs, so the extent and benefit of each option would need careful evaluation. A first option would be to boost coverage in relevant demographically-targeted media. To some extent this was done in order to reach young people and ethnic minorities.

A second option is to pursue a deeper study of areas of social deprivation, in order to assess whether more focused information and guidance in these areas would be helpful, and if so what form it should take. We note that in Britain there are exceptionally well-developed geo-demographic area classifications which would provide appropriate frameworks for identifying areas to study in this way (incidentally, the survey interviews were not classified for analysis in geo-demographic terms). Qualitative research work in those areas where communication seems relatively difficult would be designed to uncover what the obstacles are and suggest ways of overcoming them: for example, more intensive use of localised field teams or roadshows. Any methods which appeared to show promise would need to be tested before adoption to predict the likely benefit, since any such additional focused campaigning could be a substantial extra cost within the communication budget.

A third option might be considered. If a leaflet door-drop is used again to convey information about voting processes (and from what we can tell it does seem to have been successful), it would be advisable to investigate how thorough the drop was, especially in areas of high deprivation. In theory, every household received a copy, but there has been no feedback about how well this was achieved in practice.

For example, what were the distributors' instructions when faced with a multi-occupied apartment block or an institution of some kind such as a students' hostel or a care home? How many copies of the leaflet were left in such cases? It would be advisable to review the door-drop instructions and procedure, and perhaps introduce more rigorous quality controls and checks, especially in the more 'difficult' areas.

A final option in this context would include reviewing the questions asked in the tracking research. While reasonably adequate for assessing increases in awareness and the reception of information, the questions were not well designed to establish emotional responses, motivations to take an interest in the election, or whether and in what ways people might have been confused. It would be advisable to rethink the questions and techniques radically, so as to improve understanding of people's clarity, strength of understanding and feelings. Revised questionnaire alternatives should be pilot tested in good time before being fielded.

(3) Ensure the capability to respond quickly when unplanned changes occur

Clearly, the best solution for the future is to rethink the ballot paper design so as to allow for the possibility of longer lists. Perhaps larger sized paper could be used, assuming that the electronic scanning equipment can be adjusted in relevant areas to cope with this. Being forced to change the design at a late stage presented major challenges in informing voters, was clearly disastrous and to be avoided in the future. If, despite all efforts, last minute changes become necessary while a public information campaign is in progress, there should be a contingency plan in place to address the problem. This would include special briefing and training of Information Officers in the affected areas using common and consistent training materials and liaison with the Returning Officers to ensure that the change was adequately publicised at polling places, perhaps including the printing of special explanatory leaflets. Sufficient funds should be available to cope with such emergencies and predetermined content and criteria should be developed on a contingency basis to the greatest extent possible.

(4) Clarify responsibility for conducting public information campaigns

The divide between efforts conducted as part of the Scotland-wide campaign and polling place-focused public information efforts appears to be one instance in which better coordination could contribute to a more effective response when quick action is required. In an earlier chapter,³¹ we describe the need to rationalise which institutions are involved in administering elections and to seek better coordination in this regard, and recommend the establishment of a Chief Returning Officer. In the context of public information, a CRO could offer more effective coordination for voter education and voter information efforts on both a Scotland-wide and the polling-place level, working closely with Constituency Returning Officers to ensure that a consistent message is offered at all levels of public information.

(5) Clarify instructions

In preparation for future elections, the rules for Scottish parliamentary and local government elections might be reviewed with the aim of arriving at simpler instructions and publicity formats for explaining the different voting procedures. This would include developing and testing a form of words for each voting procedure that is consistent across all publicity. Consideration might also be given to how better assist Returning Officers in the production and display of such material. This might include ensuring that responsibility for seeing that the correct notices are put up in the correct places is given clearly to a designated individual, and a system of checks that they actually are displayed.

³¹ See Chapter 3.0 Roles, Relationships and Accountability.

(6) Better training for Information Officers

The innovative addition of Information Officers at polling places was generally a positive one as seen by the majority of election participants. Despite the increased cost implications, the guidance provided at the polls probably resulted in assisting many voters in correctly casting their votes when they might otherwise have been rejected. At the same time, comments we received indicate that the quality and actions of Information Officers varied significantly, with some being outgoing and proactive and others being quite passive with respect to their mandate. It was also suggested that because Information Officers were being used for the first time, many voters may have been unaware or even apprehensive of the assistance available or being offered to them.

If the Scottish parliamentary and local government elections are held separately in the future, the role of Information Officers may no longer be required. However, if combined elections continue as they have and if new situations such as a combined ballot paper and/or different ballot paper marking systems are involved, the continued use of Information Officers should be considered carefully.

In this case, common criteria and standards for use by Returning Officers in selecting Information Officers, as well as common training programs, materials and a further qualifying post-training test for all Information Officers could be established.

8.0 The count

8.1 Overnight count

Background

The tradition in the United Kingdom has been to conduct the count immediately after poll closes. There have been two notable exceptions, the first in Northern Ireland, where the security situation for many years saw counting take place during daytime hours starting the day after the poll.¹ The second was in London, when large scale electronic counting was undertaken in 2004.² Recent years have seen a further move to 'next day' counting, especially when elections are combined or a large number of postal votes are involved.

Count votes 'as soon as practicable'

During the 2003 combined elections, the Scottish parliamentary count commenced immediately after poll closed while the local government count began no sooner than 10.00am the following day. In its statutory report on those elections, the Electoral Commission noted that a number of stakeholders had expressed concern about holding the counts overnight and undertook to conduct a policy review on the issue in 2005.³ Endorsing a general consensus among stakeholders, the Electoral Commission recommended that the counts for the 2007 Scottish parliamentary and local government elections commence on the Friday morning, regardless of whether the count was carried out electronically or manually, taking into consideration that the Single Transferable Vote (STV) would be used for the first time in calculating local government votes.⁴ Those recommendations were submitted to the Scotland Office and the Scottish Executive. Two of Scotland's professional associations involved in electoral administration, the Society of Local Authority Chief Executives (SOLAR) and the Society of Lawyers and Administrators in Scotland (SOLACE) wrote to the Scotland Office and the Scottish Executive along similar lines, arguing strongly that the counts should be conducted the following day.⁵

¹ Electoral Commission. *The Northern Ireland Assembly elections 2007*.

² Electoral Commission. *Electronic Counting at the London elections*. June 2004.

³ Electoral Commission. *Scottish elections 2003: The official report on the Scottish Parliament and local government elections 1 May 2003*. p 69.

⁴ Electoral Commission. *Review of the timing of counts at Scottish parliamentary and local government elections: Report and recommendations*. January 2006. p 2.

⁵ Letter from SOLACE to Scottish Executive. *Timing of Election Counts*. 22 March 2006 and letter from SOLAR to Scottish Executive. *Timing of Election Counts*. 5 May 2006.

On 9 June 2006, the Secretary of State for Scotland announced that there would be no change to the practice overnight counting and that the count for the 2007 Scottish parliamentary elections would commence at the close of poll.⁶ A letter of 8 June 2006 from a senior official in the Scotland Office to the Returning Officer at Edinburgh City Council presaged the content of the impending press release and stated that “this decision will be reflected in due course in the secondary legislation promulgated on the conduct of elections”.⁷ In fact, the Scottish Parliament (Elections etc) Order 2007 did not contain a specific provision in relation to the exact time the count was to commence, including instead the more usual construction of ‘as soon as practicable after the close of poll’.⁸

Although there was no legal requirement to undertake the count immediately after the close of poll, discussions with practitioners have disclosed that because they had not been involved through the legislation sub-group of the Elections Steering Group in the finalisation of that Order (which was not made until 14 March 2007) and from the clear response in the 8 June letter from the Scotland Office, it had been assumed that the requirement to count at the close of polls would be in the Conduct Order. No complete drafts of the Order had been available prior to its being made in Parliament. At this stage, it would have been difficult to depart from the planning assumptions in place and the substantial preparatory work which had been undertaken since July 2006, namely to electronically count the parliamentary ballot papers at the close of the polls.

In the joint 9 June press release, the Scottish Executive advised that “decisions on when the local government result will be declared have still to be taken.”⁹ In 2003, there had been a provision in the relevant legislation that the earliest time the local government count could start was 10.00am on the day after the poll.¹⁰ This provision was not repeated in the Scottish Local Government Elections Order 2007. Rather, it stated that the Returning Officer “shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable.”¹¹

Professional associations seek clarity

The professional associations representing Returning Officers and other electoral practitioners in Scotland expressed their concern about the risks involved in commencing the count at the close of poll and continued to advocate for a next day count.¹²

⁶ Scotland Office Press Release. *E-Counting to be used in 2007 Elections*. 9 June 2006. <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3530>.

⁷ Letter from Scotland Office to Tom Aitchison and copied to SOLAR and COSLA. *May 2007 Elections: Timing of the Count*. 8 June 2006.

⁸ Scottish Parliament (Elections etc) Order 2007. rule 54.

⁹ Scotland Office Press Release. *E-Counting to be used in 2007 Elections*. 9 June 2006. <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3530>.

¹⁰ Scottish Parliament (Elections etc) Order 2002. sch 5. para 36(1).

¹¹ Scottish Local Government Election Order 2007. sch 1. para 40 as modified by Scottish Parliament (Election etc) Order 2007. sch 5. para 35.

¹² Letter from SOLACE, SOLAR and AEA to the Scottish Executive. *May 2007 Elections: Timing of the Count*. 19 June 2006.

On 12 July 2006 the Scotland Office responded to the effect that Ministers had decided to adhere to the count for the parliamentary elections commencing at the close of poll.¹³

Since both Ministers had decided to insist on an overnight count despite the finding of the Electoral Commission's review on the subject and the advice of those responsible for conducting the elections, the professional associations continued to engage with officials in the Scottish Executive to secure the maximum flexibility for Returning Officers to determine the timing of the local government count which best suited local circumstances. This correspondence culminated in a decision by Scottish Ministers to the effect that "Local government results should be available as soon as is practicable after the announcement of the parliamentary poll".¹⁴ This was consistent with the provisions subsequently contained in the legislation.¹⁵ The Scottish Ministers' decision recognised that Returning Officers needed to have discretion to manage local circumstances such as transporting ballot papers to the count, the size of the count venue and other factors which were relevant to the timing of the count in their areas.

Problems

(1) Too many count-related activities required immediately following the close of the poll

The counting process involves the receipt and registration of ballot boxes over many hours; the administration of postal votes returned on polling day; the 'rummage' to sort ballot papers into the correct boxes; the processing and counting of ballot papers; the adjudication of 'doubtful' ballot papers; handling of complaints; conduct of re-counts; resolving electronic and other problems; responding to party, candidate and media enquiries; to name a few. All of these are expected to be carried out flawlessly over as many hours as necessary, starting at 10.00pm on polling day.

(2) Unreasonable demands on key election officials and stakeholders

The most important officials involved in the count are Returning Officers and their Deputies, followed closely by other senior election staff. This group is tasked with some or all of the following: ensuring the count runs smoothly; resolving problems; responding to enquiries and complaints; ensuring that every voter's ballot paper is counted unless it is rejected after careful scrutiny; and announcing the official result.

¹³ Letter from Scotland Office to SOLACE. *May 2007 Elections: Timing of the Count*. 12 July 2006.

¹⁴ Letter from Scottish Executive to SOLACE and copied to Returning Officers, SOLAR, AEA and the Scotland Office. *Combined Elections 2007: Ballot Box/Rummage Issues*. 15 January 2007.

¹⁵ Scottish Local Government Elections Order 2007 as amended by Scottish Parliament (Elections etc) Order 2007. sch 5.

Many stakeholders in the electoral process insist and expect that these tasks be conducted efficiently, professionally and in a timely manner, starting at 10.00pm on polling day and proceeding for as many hours as the job takes. This is an unreasonable expectation. It is placed on officials, most of whom have been working long hours in the days leading up to polling day and, in most cases, for a previous 16 consecutive hours on the day itself. Stakeholders, such as party and candidate agents and other election observers, are also expected to be alert and insightful after spending long hours at the polls. No one would be expected to drive a lorry safely for these excessive hours, yet the expectation is that these individuals should be tasked with making critical decisions that affect the governance of Scotland for the next four years.

While the legislation did leave formal discretion with the Returning Officers as to when to commence the count, this had not been expected given the 8 June letter from the Scotland Office. In addition, Returning Officers were clearly under intense political pressure to count overnight on the Thursday, and so did not feel able to change their plans once the legislation was finally available.

Options

(1) *Reassess timetable for count-related activities*

Much is known in advance about the components of the counting process. It is known that all postal ballot papers to be counted will either be handed over by Royal Mail before the close of the polls or handed in at polling stations; that the polls will close at 10.00pm; and that the ballot boxes will arrive over the course of several hours after 10.00pm. With this in mind, an option would be to develop an operational plan designed to facilitate and accelerate next day counting.

A fresh team could be in place to handle the processing of postal ballot papers as the polls close, ensuring these ballot papers are ready for mixing and counting the next day. A further fresh team could be in place to receive, register and prepare all ballot boxes for the electronic count as the boxes arrive overnight. Any other preparatory actions could be carried out overnight to ensure everything is in place to start the count first thing the following morning under the supervision of the Constituency Returning Officer and with the participation of candidates, party agents and observers. This procedure was followed in several large English local authorities in May 2007¹⁶ and appears to have been the preferred approach of the Scottish professional associations.

¹⁶ Electoral Commission. *The introduction of absent voting identifiers in England and Wales: The Electoral Commission's evaluation*. July 2007.

(2) Ensure the primary objective is quality of decision-making not speed of the count

To achieve the highest level of confidence in the counting process, it is essential that all stakeholders remain convinced that a completely accurate count has been conducted. There can be no assurance of this when those responsible for the count are fatigued.

Three options might resolve this problem. A first, and most desirable from an operational standpoint, is that of conducting the necessary administrative and preparatory work overnight (with a fresh team) with the expectation that the count will begin the next morning.

A second option, which would partially resolve the problem of fatigue and diminish the potential for making errors, would be to reduce polling hours so that the polls close at 7.00pm or 8.00pm. This option involves other related considerations such as ensuring employers give staff time off for voting, advance voting options and other possible incentives to ensure electors are not disenfranchised by the shorter voting period.

A third option would be to consider changing the polling day for the local elections from Thursday to Saturday or Sunday. With this change, polling hours could probably be shortened, with polls closing at 5.00 or 6.00pm, thereby facilitating an 'overnight' count. As for the Scottish parliamentary election, we understand this option could be considered as part of the consultation on weekend voting foreshadowed in the recent green paper *The Governance of Britain*.¹⁷

¹⁷ *The Governance of Britain*. Green paper presented to UK Parliament July 2007. <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf> www.justice.gov.uk. Some of the ideas and measures proposed will apply to the whole of the United Kingdom but the devolution settlements mean that some issues are in the hands of the devolved legislatures of Scotland, Wales and Northern Ireland.

8.2 Electronic count and counting procedures

Background

New voting system required electronic counting

The Scottish local government elections 2007 used the Single Transferable Vote (STV), in accordance with the Local Governance (Scotland) Act 2004.¹ This was the first time that the STV system had been used for statutory elections in Great Britain and represented a change from the traditional system used in Scotland and the rest of Britain. Due to the additional complexity of counting STV compared to the First-Past-the-Post system, the Scottish Executive concluded that the traditional manual counting of the ballot papers would not be effective for the 2007 elections and that electronic counting technology would be required. This move was also prompted by a recommendation by the Electoral Commission to consider the potential benefits of electronic counting² and a recommendation by the Arbuthnott Commission that electronic counting and electronic voting should be introduced as soon as possible and before 2011.³

As in the two previous elections, the local government elections were held on the same day as the Scottish parliamentary elections. Although the policy and legislation for local government elections are the responsibility of the Scottish Executive, responsibility for the policy and legislation for Scottish parliamentary elections rests with the Scotland Office, as led by the Secretary of State for Scotland, who indicated that he was prepared to consider electronic counting for the parliamentary elections if a suitable supplier could be identified by the Scottish Executive. In February 2005, the 2007 Scottish Elections Steering Group was set up to oversee the preparations for combined elections,⁴ and an electronic counting sub-group was established.⁵ In August 2005, the Scottish Executive issued an invitation to tender using an open procurement route to identify a supplier capable of providing an electronic counting solution for the combined elections.⁶

¹ Local Governance (Scotland) Act 2004. part 1(2).

² Electoral Commission. *Scottish elections 2003*. para 7.24. November 2003.

³ Sir John Arbuthnott, *Putting Citizens First: Boundaries, Voting and Representation in Scotland. Commission on Boundary Differences and Voting Systems*. p 53.

⁴ 2007 Elections Steering Group minutes. 23 February 2005. Attachment SG01 (terms of reference).

⁵ 2007 Elections Steering Group minutes. 23 February 2005. It was proposed that one of the sub-groups should 'consider the issues involved in the possible introduction of e-counting and, if appropriate, the practical arrangements needed to put e-counting in place.' The first meeting of the e-counting sub-group was held on 16 June 2005.

⁶ Scottish Executive. *Invitation to Tender for Provision of Electronic Counting Facilities for Elections*. Contract Reference QLC17/1. August 2005.

Contracting services

A joint bid from DRS Data Services and Electoral Reform Services (ERS) was selected in December 2005 and the contract was awarded in January 2006. DRS acted as the lead system supplier and provided a managed solution to scan the ballot papers and a system to undertake the subsequent adjudication and counting processes. Established in 1969, the company focuses primarily on manufacturing and marketing optical mark readers and image scanning equipment. Since its role in the 2000 Greater London Authority (GLA) elections, DRS has been involved in a variety of electronic count processes in the United Kingdom, including pilot schemes in Rugby and Westminster (2002) and Shrewsbury and Atcham (2003). In 2003, the company undertook a larger scale, multi-authority pilot electronic counting project in three local authorities in Derwentside, Chester-le-Street and Wear Valley. In 2004 it provided the technology for the GLA elections, and in 2006 for the pilot schemes in Westminster and Lewisham. ERS provides ballots and election services; typically to trade unions, political parties, building societies and companies when balloting their members or shareholders. Its services include consultancy on electoral systems and the provision of electoral solutions. For the Scottish elections in 2007, ERS provided the module to perform the complex calculations for the local government STV vote.

The overall contract was divided into three stages with a decision taken at the end of each stage as to whether to proceed to the next stage. The three stages were as follows:

- **Trial stage (up to February 2006):** the objective of this stage was to test the preferred solution and gain feedback from Returning Officers and elected members;
- **Acceptance testing (up to April 2006):** following the trials, a detailed specification of facilities required for the elections was to be developed and subjected to a further acceptance test;
- **Elections stage (up to May 2007):** the final stage covered the deployment of the solution across the Scottish local authorities for the May elections.

Trial, acceptance testing and elections stages

The electronic counting trials involving Returning Officers took place in early 2006 when 31 out of the 32 constituency Returning Officers participated in the e-counting trials. These entailed an explanation of the STV electoral system and a demonstration of DRS technology counting a selection of sample STV ballot papers. Their purpose was to test the functionality of the machines. The minutes of the e-counting sub group meetings record that these trials received positive feedback, although it was noted that there remained a number of significant issues to resolve.⁷

⁷ E-Counting Sub-Group minutes. 22 March 2006. p 4.

Based on the feedback from the user trials, the Scottish Executive and Scotland Office moved to the second stage of the contract; acceptance and development of an appropriate specification.⁸

A further phase of demonstrations and acceptance testing took place in April 2006 which again involved Returning Officers. The panel undertook three sessions in Glasgow and tested the functionality and resilience of the system. These were successful, although the panel noted that not all enhancements had been demonstrated and a number of potential modifications were raised during the testing. The system was formally accepted and the project progressed to the elections stage.⁹ However, a full specification was not produced as there were a number of key issues that had not been resolved. These issues included the timing of the count, the extent to which the counts for the two elections would be combined, the design of the ballot papers and the procedures for re-counts.

In June 2006, following a Gateway review,¹⁰ a more formal approach to the project management was adopted. The E-counting Project Board was set up and comprised representatives from the Scotland Office, the Scottish Executive, a Returning Officer, a senior Depute Returning Officer and DRS. The Project Board had ultimate responsibility for overseeing the development, testing and evaluation of the proposed e-counting solution and was assisted on a practical level by the E-counting User Group (another sub-group of the Steering Committee) including representatives from the professional associations involved in electoral administration in Scotland – the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), the Society of Local Authority Chief Executives and Senior Managers in Scotland (SOLACE) and the Association of Electoral Administrators (AEA) – along with the Electoral Commission. The role of the User Group was to represent the general interests of all users and carry out a project assurance role. It could request changes, and test and measure any new releases from DRS. It was also responsible for communicating with users and other stakeholders and providing feedback from external stakeholders to the Project Board.

The Project Board organised seminars where DRS presented the technology to Returning Officers. These seminars were held in July and October 2006 and a further 'volume test' of the solution was held in October 2006 over two days. Returning Officers, local authority employees, political parties and representatives from COSLA were invited to the volume testing. In addition, members of the User Group visited DRS' premises early in October to carry out testing of the character recognition rate. A team representing the User Group visited DRS headquarters in Milton Keynes on 12 and 13 March to carry out the final User Acceptance Testing.¹¹ However, due to the late changes in the system, this was not carried out on the final version of the system and further User Acceptance Testing was undertaken in Glasgow on 28 March 2007 to sign-off the final version of the system.¹²

⁸ Letter of authority to proceed sent by the Scottish Executive to DRS. 21 April 2006.

⁹ Letter of authority to proceed sent by the Scottish Executive to DRS. 16 June 2006.

¹⁰ The Office of Government Commerce (OGC) Gateway Review delivers a 'peer review' in which independent practitioners from outside the project examine the progress and likelihood of successful delivery of the project. http://www.ogc.gov.uk/what_is_ogc_gateway_review.asp

¹¹ E-Counting User Group minutes. 15 March 2007.

¹² E-Counting Project Board minutes. 4 April 2007.

Even at this point, however, the contingency ballot paper design had not been finalised (see below) and the final element of the User Acceptance Testing, verifying the correct handling of the contingency ballot paper by the system, took place shortly after 11 April 2007.¹³

Ballot paper design and contingency planning¹⁴

At the time the trials and initial acceptance testing were being carried out, neither the Scotland Office nor the Scottish Executive had confirmed the design of either ballot paper, and an A4 sized ballot paper was used. In August 2006, the Scotland Office asked DRS to provide a fully costed business solution for a single combined parliamentary ballot paper although no final decision had yet been taken.¹⁵ Discussions took place throughout 2006 regarding the use of A3 paper for combined ballot papers and the possibility of configuring the parliamentary ballot paper in such a way as to ensure that the political parties on the regional side of the paper appeared directly opposite the constituency candidate from the same party.¹⁶

By the time of the Project Board meeting on 9 November 2006, the ballot paper design had still not been finalised for either election. DRS highlighted at this stage that the delay in finalising the functional specification and the ballot paper design was causing resource and timescale problems and impacting on their ability to discharge their obligations under the contract.¹⁷ By the time of the next Project Board meeting, on 12 December 2006, the Scotland Office had confirmed that the parliamentary ballot paper would be on a single sheet. DRS stated at that point that due to slippages in the timetable for decisions it was no longer possible to develop an A3 size ballot paper as a contingency option and it was decided that a 14 inch ballot paper (longer than standard A4) would be used, supporting up to 19 candidates.¹⁸ It was agreed that the postal ballot papers would be folded twice in order to fit into the A5 envelope, rather than incurring increased costs from the Royal Mail for a larger envelope size.¹⁹ On 15 December 2006, the design of the local government ballot paper, providing for candidates to be listed alphabetically according to surname, was confirmed by the Scottish Executive.²⁰ The final form of the ballot paper was included in the parliamentary rules laid in the Scottish Parliament in January 2007.²¹

¹³ Information provided in a telephone conversation with Sonya Anderson, DRS. 27 September 2007. This final User Acceptance Testing took place after the ballot paper had been agreed and print production had already started. The contingency, should the User Acceptance Testing fail, was to undertake a manual count for the areas affected.

¹⁴ These issues are considered earlier in Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

¹⁵ Scottish Executive. *E-count Timeline*. Email attachment from Heather Aitken. July 2007.

¹⁶ E-counting Project Board minutes. 28 August 2006, 11 September 2006, 9 October 2006 and 9 November 2006.

¹⁷ E-Counting Project Board minutes. 9 November 2006.

¹⁸ E-Counting Project Board minutes. 12 December 2006.

¹⁹ E-Counting User Group minutes. 14 February 2007.

²⁰ Scottish Executive. *E-count Timeline*. Email attachment from Heather Aitken. July 2007.

²¹ Scottish Local Government (Elections) Rules 2007. sch 1. form 4. See Chapter 2.0 Legislation.

The issue of a contingency ballot paper design for the parliamentary ballot paper, should there be more than 19 candidates, was still outstanding and was discussed further at meetings of the project board on 12 January, 21 March and 4 April 2007. At the meeting of 12 January a number of contingency options were discussed, including the possibility of removing the constituency name and instructions from the top of the ballot paper in order to fit more candidates, and DRS was given instructions to investigate the options.²² On 12 February 2007, DRS provided a contingency paper for up to 21 candidates, which had arrows missing from the instructions.²³ On 26 February 2007, DRS confirmed that it would not be possible to reinsert the arrows without reducing the number of candidates the paper would support.²⁴ At the Project Board meeting on 4 April 2007, DRS stated that they were still developing a design that would support 24 candidates on a 14 inch ballot paper, using a smaller font and more compressed candidate rows. Later that day DRS confirmed that this design had been completed and requested approval to proceed.²⁵ The design did not have arrows at the top, as these had been removed to enable all of the candidates to be listed on one page. The final decision to use this ballot paper design was made on 11 April 2007.²⁶ The Scotland Office has stated that the 24-candidate contingency ballot paper was successfully tested on 11 April by members of the Scottish Executive, Scotland Office and Edinburgh City Council which confirmed that it was suitable for scanning purposes and met the statutory requirements.²⁷

Publication of statement of persons nominated took place on 11 April 2007. In the event, two electoral regions – Glasgow and Lothians – received valid nominations from more than 19 candidates. In both cases the 14 inch combined ballot paper without arrows was used.²⁸

The electronic count: procedures

The count was conducted at 31 separate locations across Scotland. In one case, two Returning Officers shared a venue, but not a count, so there were 32 count centres. Each Returning Officer was responsible for arranging the preparation and configuration of the count centre for his or her constituencies. Each count centre was laid out in a similar manner and broadly replicated the layout of a traditional manual count. The majority of count staff and activities were located within a rectangular or square central area, while candidates, election agents and observers were situated outside the perimeter. A number of scanning machines were placed along one side of the area, while a series of PC workstations was located along two further sides. A series of racks was used for storage on the fourth side, and a further line of racking was used along the middle of the count area to hold batches of ballot papers as they proceeded through the counting process. The count was controlled by a server machine and a management PC console that was situated within the

²² E-Counting Project Board minutes. 12 January 2007.

²³ Scotland Office. *Timetable on ballot paper design and electronic counting*. Provided to Scottish Elections Review. 27 June 2007.

²⁴ Ibid.

²⁵ Email correspondence from DRS to the Scotland Office. 4 April 2007.

²⁶ Scotland Office. *Timetable on ballot paper design and electronic counting*. Provided to Scottish Elections Review. 27 June 2007.

²⁷ Scotland Office. *Ballot paper design – 24 candidate contingency paper*.

²⁸ See fig 3, chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

central area. Each count centre also had at least one large screen with a projector display to show the progress of the count. The level of equipment required varied across the count centres: Glasgow had the largest count, which involved 32 scanning machines, 47 adjudication PCs, five additional PCs and a total of 127 monitors; while the Islands councils had the smallest counts, involving two scanning machines, five adjudication PCs, three additional PCs and a total of 13 monitors.²⁹

Across Scotland, three basic models were used to electronically count the ballot papers from the combined elections.³⁰ In 22 count centres, a fully mixed scan and count were undertaken. The parliamentary and local election ballot papers were scanned together on Thursday night, with the technology identifying the type of ballot paper and managing appropriately. Parliamentary and local government election ballot papers were also adjudicated together, although typically the parliamentary ballot papers would be prioritised.

Separate counts were undertaken in five count centres. Once the ballot boxes were opened, a manual rummage was undertaken to separate out the parliamentary ballot papers. This was required because although separate ballot boxes were used for each election, some voters invariably placed ballot papers into the wrong ballot box. The parliamentary papers were then scanned and counted on Thursday night and the local election ballot papers were scanned and counted on Friday.

A hybrid approach was adopted in five count centres. The parliamentary and local government election ballot papers were scanned together on Thursday night, as carried out in the fully mixed scan approach. Following this, only the parliamentary ballot papers were adjudicated on Thursday night. The local election count was put on hold, with adjudication taking place on Friday.

Ballot papers were processed through a number of stages, including opening, registration, scanning, verification, adjudication and results consolidation. An overview of the general count process is described below.³¹

Opening ballot boxes, sorting the ballot papers

After the close of polls at 10.00pm on 3 May, presiding officers in polling stations across Scotland sealed the ballot boxes and completed ballot paper accounts detailing the number and other details of the ballot papers issued during polling day. The ballot boxes and their corresponding accounts were transported to the count centre, as were the batches of postal votes that had been received in the polling stations.

The ballot boxes were opened by Returning Officer staff, each ensuring that ballot papers were stacked with the same orientation with no folded papers. In those count centres where a separate count

²⁹ Information provided by DRS by email. 19 July 2007.

³⁰ Described in *e-Count Workflow Models and Batch Scenarios v1.0*. DRS. 5 April 2007.

³¹ Information taken from DRS. *Scotland 2007 Count Centre Handbook*. Version 3.0. 19 April 2007.

was undertaken, staff would perform a manual rummage of ballot papers and remove any that had been placed in the wrong ballot box.

Registering the ballot boxes and ballot papers

Once the ballot boxes had been opened and sorting undertaken, each ballot box and set of postal ballot papers was registered as a batch with the electronic counting system. Registration could be carried out in any order and was typically undertaken as ballot boxes arrived at the count centre. Typically, the initial set of ballot papers registered were postal ballots as many of these could be transported to the count centre ahead of the close of poll. In some count centres, certain constituencies/wards were prioritised in order to ensure that some results could be declared at an early stage.

Scanning the ballot papers

Once registered, ballot papers were taken by Returning Officer staff to the scanners. It was not possible to scan the ballot papers until they had been registered. The scanners were operated by DRS staff, who placed the ballot papers into the input hopper and initiated the scanning process. Successfully scanned ballot papers were sent to the output hopper from which they were taken and placed back in the ballot box. Ballot papers that could not be identified or scanned successfully were sent to a second reject hopper. The scanners were able to accept ballot papers in any one of four orientations and would only count ballot papers once no matter how many times they were sent through the scanner. Operators had been trained to re-try any ballot papers that were not successfully scanned in all four orientations. Any ballot papers that would still not scan successfully (for example ballot papers with significant damage) were placed into a red wallet which was placed with the batch for subsequent manual entry. The scanners were 'open' machines, with the feed path visible, and so any ballot papers that became stuck in the scanning machines could be retrieved quickly and efficiently. In general, the scanning of the ballot papers was undertaken without problems, although greater manual intervention was required in scanning postal ballot papers due to the condition of some of the returned ballot papers.

Verifying the ballot papers

Before the adjudication process could begin, the number of papers detected by the scanners was verified against the total recorded in the presiding officers' accounts to ensure that the correct number of papers had been scanned. Each Returning Officer verified the batch based on a tolerance level (e.g. within one ballot paper of the total) – this is required to account for the possibility that ballot papers are removed from the polling station by voters. Batches that failed verification were investigated by the Returning Officer.

Adjudicating the ballot papers

Once a batch had been verified, the ballot papers that could not be counted automatically were added to the standard adjudication queue. This was the first adjudication queue and was operated by Returning Officer staff. The purpose of the standard queue was to process any ballot papers where the voting intention was clear but where the technology had not been able to identify the vote. The system would process the vote automatically if it detected a fully valid vote (i.e. either a valid cross or a legitimate number sequence); otherwise the ballot paper would be passed to the standard queue.

Standard queue operators could confirm a valid vote but were not authorised to reject ballot papers. Any contentious or potentially rejected ballot papers were passed to a second queue, which was viewed on a screen by Returning Officers or Deputies who could confirm or reject each ballot paper. Following discussions with the professional organisations and Returning Officers, the Electoral Commission produced a 48-page booklet, incorporating principles of adjudication as well as details of relevant legislation and case law, and an associated chart (known as a 'placemat') which provided immediate guidance to Returning Officers on the adjudication of doubtful ballot papers.³² Returning Officers could make use of this material to make consistent adjudication decisions.

Rejected ballot papers were shown with the reason 'stamped' across them to ensure that decisions were clear to observers. Any ballot papers that could not be scanned were entered manually at this stage by the Returning Officers. This involved selecting the appropriate candidate on the screen image of the ballot paper; the ballot paper could then be counted along with the others.

Auto-adjudication

It should also be clear that the system was set to 'auto-adjudicate' blank ballot papers. Thus, ballots papers that were completely blank, or combined ballot papers that had a valid constituency vote but a blank regional vote (or vice versa) would be processed automatically by the system.

The auto-adjudication issue was discussed during the elections stage and DRS took action on 28 June 2006 to investigate options for automatic adjudication.³³ DRS has stated that the requirement to automatically adjudicate blank ballot papers was confirmed by the Scottish Executive to DRS by telephone on 6 July 2006.³⁴ On 7 July, DRS sent a document to the Scottish Executive with a proposal for

³² Electoral Commission. *Dealing with doubtful ballot papers 2007*; and associated charts *Local government doubtful ballots – allowed votes* and *Scottish Parliamentary doubtful ballots – allowed votes*.

³³ Email from DRS to the Scottish Executive. 7 July 2006.

³⁴ The confirmation of the decision to automatically adjudicate blank ballot papers was echoed back by DRS to the Scottish Executive in email of 7 July 2006. Further information on the date of confirmation was provided by DRS by email. 26 September 2007.

more advanced automatic adjudication, in which the system could be configured to automatically adjudicate blank ballot papers *and* other non-blank ballot papers (such as clear over-voting), rather than involving Returning Officers and their staff in the adjudication decision.³⁵ At the User Group Meeting on 31 August 2006, the group discussed this proposal from DRS and concluded that this was an unacceptable level of adjudication and that “auto-adjudication should not be adopted for the 2007 elections.”³⁶ However, the requirement to automatically adjudicate blank ballot papers remained and was confirmed in an annex to the User Agreement between DRS and the local authorities.³⁷

Coordinating the results

The final stage in the counting process was the Results Consolidation Process which was operated by DRS staff under the direction of the Returning Officers. Before calculating the vote totals, staff would verify that all batches from that constituency or ward had been processed correctly, with no remaining ballot papers requiring adjudication or manual entry. Once votes had been totalled, a report was produced and printed out. For parliamentary elections this would show the number of votes received by each candidate and the total number of spoilt ballot papers. For the local government elections it would also show the situation at each stage of the STV calculation process.

The count was managed through a PC console in a corner of the count area. This PC displayed the count management information and showed the status of all batches, the performance of the scanners, the sizes of the adjudication queues and estimated time of completion. Count management (both DRS and Returning Officer) staff would monitor this and could use the information to reconfigure PC workstations as appropriate in order to improve the overall performance of the count. For example if there were a large number of ballot papers in the adjudication queues, additional workstations could be configured to undertake this function.

³⁵ DRS. *Proposal: Automatic (Standard) Adjudication*. 5 July 2006.

³⁶ E-counting User Group minutes. 31 August 2006. The group agreed that this modification was “a level of adjudication too far. As this was the first time that the e-counting system had been used, it should be as transparent as possible. Auto-adjudication means that the elected members and candidates would be able to see less adjudications on screen. The perception of this may result in a lack of trust in the system. It was also thought that the time savings made by auto-adjudication would not be significant.” Action item 4.1 follows, stating that the Scottish Executive representative was “to inform DRS that auto-adjudication should not be adopted for the 2007 elections.”

³⁷ User Agreement. Annex 2a. Section B. DRS argues that the decision to auto-adjudicate blank ballot papers had already been made by the time of the User Group meeting on 31 August 2006, stating that group members “were not presented with the option of deciding auto-adjudication on blank ballot papers as this decision had already been made.” E-mail correspondence between Ron Gould and Sonya Anderson, 1 October 2007.

One or two large display screens at each count showed the percentage of batches that had been registered, scanned and verified; the number of ballot papers in the adjudication queues; and the number of ballot papers that had been adjudicated. The display screens also showed the running totals of votes cast for each candidate as the count progressed.

Sealing up of ballot papers

On the completion of the count, Returning Officers were required to seal up the ballot papers in packets with a complete electronic copy of the information stored in the electronic counting system, held in a device suitable for the purposes of its storage.³⁸ The information was provided to the Returning Officer in the form of a single hard disk containing the count database for both elections.

The legislation required the Returning Officers to forward the electronic count information for the parliamentary election to the sheriff clerk of the appointed sheriff court district and the information for the local government election to the appointed officer of the council.³⁹ As the Returning Officers only had one disk, this put them in a difficult position. We were told that Returning Officers adopted a variety of solutions in order to try to meet the requirements of the legislation.⁴⁰

Database malfunction caused delays

A database malfunction within the DRS electronic counting system occurred at some count centres, and the impact varied from centre to centre. In the most extreme cases, occurring at five count centres, all counting activities had been completed but it was not possible to produce the validated results and therefore the completion of the count had to be suspended until later on Friday. At four additional sites the problem led to a delay in an announcement of results at a number of constituencies, but did not cause such a significant delay to the overall count because scanning and adjudication could still take place for other constituencies. A side effect of this problem was that the information for the progress display screens could not be produced. This occurred at the count centres that exhibited the results consolidation problem and there is anecdotal evidence that it also occurred at other count centres. As with the main symptom, the effect varied from a momentary loss of information to more significant information outages.

The problem first came to light early on in the count where there were reports of problems within the DRS management information system. It was not until 12.30am on Friday that the problems appeared at the Edinburgh count, where the DRS central technical support team was based, and an investigation was begun. The technical support team performed a number of tests on the

³⁸ Scottish Parliament (Elections etc.) Order 2007. sch 2 (68); and Scottish Local Government Elections Order 2007. sch 1 (56).

³⁹ Scottish Parliament (Elections etc.) Order 2007. sch 2 (69); and Scottish Local Government Elections Order 2007. sch 1 (57).

⁴⁰ Anecdotal evidence from both DRS and Returning Officers.

Edinburgh servers to identify the problem. The team took a cautious approach as they did not want to disturb the ongoing count registration, scanning, verification and adjudication processes. A methodical approach was taken, focussing on the management information system. The relevant computer code within the DRS system was examined and a number of tests were run – each test designed to narrow down the search gradually until the offending code was isolated.⁴¹ A potential solution was identified between 3.00 and 4.00am; the team identified that re-creating the relevant database indexes appeared to resolve the issue.⁴²

The solution was then tested and implemented fully on the Edinburgh servers, which were operational by about 5.00am. By that time, a number of counts had already been suspended until later on Friday morning. Further testing was subsequently carried out in Edinburgh to ensure that the solution was suitable for all count centres. Senior members of the technical team travelled to the West Lothian count to undertake further testing and a patch was created and published via the DRS intranet at approximately 8.30am on Friday. This patch could subsequently be downloaded by DRS staff at each count centre and applied to the system.⁴³

A subsequent investigation undertaken by DRS following the count determined that while the fix identified on the night had resolved the issues, the team had not identified the root cause of the problem. Specifically, the problem had arisen because the database had not updated its internal statistical information. Modern databases such as the SQL Server make use of 'intelligent' rules to determine how best to undertake complex processing. Because the database had incorrect information about the sizes of various data tables, it had chosen to process the count information in a particularly inefficient manner. This meant that the queries that determined whether all ballot papers had been correctly processed could not complete. It also meant that in some cases, the system could not provide progress information within the allotted ten minute slot and therefore the system displayed 'zero' figures.

This technical problem had not occurred during the testing activities undertaken by DRS or by the Project Board. It is clear that DRS treated the robustness of their solution seriously and allocated appropriate amounts of time and effort for system testing. However, the overall time period in which full system testing could take place was limited by the delayed decisions discussed earlier. Furthermore, there were a number of small differences in the configuration of the system for the test and for the actual count that have with hindsight proved to be significant. The most significant of these differences was that the test configuration only had information relating to the set-up at a single count centre, with 50 entries in the 'contest' table (i.e. relating to the total number of wards and constituencies to be counted by that centre). The final configuration used at each count centre contained information relating to all count centres for resilience purposes. This resulted in about 550 entries in the 'contest' table.

⁴¹ The team started by running the SQL Server stored procedures and narrowed the search down to the relevant SQL query.

⁴² Database indexes are additional data structures within the database that speed up the operation of the database.

⁴³ Information on problem resolution obtained from discussion with DRS. 9 August 2007.

While this need not necessarily have caused any problems (even a table with 550 entries is small in comparison to many other tables in the database), a combination of other factors resulted in this difference causing the significant impact on the overall count described earlier.

Other technical concerns

There were at least two other technical issues that caused minor delays in the count or led to a negative perception among stakeholders and observers.

A first issue arose when a small number of ballot papers were scanned but the system did not allow the operators to adjudicate the ballot papers. This was caused by ballot papers that were damaged in such a way that the system could not determine the 'grid' of voting boxes. This had not been anticipated and the system did not provide a way of subsequently entering this information. The only way of processing these ballot papers was by manually entering them. The process involved locating the ballot papers concerned, first by identifying the batch and then searching through the ballot papers to find the actual paper as specified by the ballot number. This was a slow process and added to the overall count delays. Typically, Returning Officers would skip such 'problem' ballot papers during the adjudication process, returning to them when there were no other ballot papers left to adjudicate. The number of occurrences of this problem was low – typically of the order of two or three per count centre.⁴⁴

A second had to do with display screens alternating between the DRS-provided count progress display and council-provided displays that showed where adjudication decisions were taking place, as evidenced at the count in Glasgow. While this information was useful for political parties, candidates and other observers present, it would have been more useful to display both sets of information at the same time. The display systems appeared to break down on occasion, showing the screen of the controlling PC, which did not present a smooth and transparent image to observers.⁴⁵

Problems

(1) Political decisions had negative influence on the electronic count

Throughout the pages of this Review, we have consistently referred to the lateness with which decisions requiring political input were made in preparation for the Scottish parliamentary and local government elections, a problem best exemplified in delays related to the passing of legislation.⁴⁶ As we have already described, this problem influenced many of the subsequent components of the electoral process including the electronic count, where insufficient time was available to conduct testing on the various ballot paper designs and assemble an adequate contingency plan to deal fully with unforeseen matters such as a larger than expected number of political parties or candidates. All the delays evidenced throughout the planning cycle

⁴⁴ Information sourced from discussion with DRS. 9 August 2007.

⁴⁵ Anecdotal information noted by observers at the count.

⁴⁶ See Chapter 2.0 Legislation.

combined to result in the election being partially driven by the technology rather than by those responsible for the overall policy and management of the elections. For example, the late decisions on ballot paper design resulted in there being inadequate time to adjust the technology to accommodate a larger size ballot paper, resulting in an unsuitable ballot paper being used in Glasgow and Lothians.

The political imperative to prioritise the parliamentary count above the local government count and ensure that the parliamentary results were announced as early as possible also contributed to overall delays. In five authorities, a separate count was carried out for each election, requiring manual rummage for parliamentary ballot papers before electronic counting could start. Not only did this delay the overall process it also increased the risk of an inaccurate count as there was a risk that ballot papers for the parliamentary election might be discovered during the local government count and after the parliamentary results had been declared.

(2) Legislative and policy framework guiding electronic counting is under-developed

An important problem identified with respect to the electronic count is that both the legislative and policy frameworks that guide electronic counting are under-developed. In essence, these frameworks do not provide enough guidance to the Scottish Executive, the Scotland Office and to Returning Officers and have led to inconsistencies in implementation. A number of important decisions and approaches that should have been determined at the outset simply were not. In some instances, these decisions were left without clarity – because the institutions involved could not come to an agreement – or they were devolved to Returning Officers where decisions were made without consistency across Scotland.

A clear example is found in the approach that was pursued to ‘combine’ the parliamentary and local government counts. The operational components of the count – including the specification of the system, the management of the count, the training to be delivered to staff members and procedures for a re-count – are all very much dependent on the approach taken. Such an approach, therefore, should have been taken at the acceptance stage, but the issue was still being discussed in January 2007, less than four months before the elections. This indecision clearly had a knock-on effect on the planning and implementation of the count. The lack of clarity involved led to different decisions being made across 32 counting centres on the night of 3 May. During the planning stage for the count, local authorities and other stakeholders expressed a strong preference for a single combined count covering the two elections. During the count, however, just 22 local authorities adopted this approach, with five authorities pursuing separate counts (which required a manual rummage to ensure ballot papers were in the correct ballot boxes) and five other authorities undertaking a hybrid approach. While it is important to retain some flexibility to cope with local differences, the use of multiple methods increased the overall complexity of the solution – and hence the operational risk – and made the process of communication much more difficult, reducing the transparency of the process.

While the original plan involved the agreement of a full specification with the supplier at the acceptance stage, this was never actually produced. The final specification of the system was not developed until March 2007 and changes continued to be made to accommodate the contingency ballot papers until April 2007.

(3) Electronic counting technology involves operational risk

The database malfunction within the DRS electronic counting system caused a number of problems and highlighted the fact that the use of electronic counting technology involves some operational risk, as with any information technology solution. However, because of the high-profile political nature of the application and the requirement to produce results in a short timescale, the effect of any technical outage had a higher impact than many 'business-as-usual' computer systems. This is exacerbated by the fact that the system was set up specifically for use on a single occasion and that the count was run overnight and immediately following the busy election preparation and polling period.

(4) Problems with the scanning of postal ballot papers

While there are always greater problems with scanning postal ballot papers compared to those from polling stations due to the uncontrolled environment in which the vote is cast, the combination of design decisions caused delays in scanning them during the electronic count.⁴⁷ This included the need for two sets of perforations and the need to fold them twice in order to fit the longer than originally planned ballot papers in the existing mailing envelopes. Postal ballot papers were often the first to be scanned at the beginning of the electronic count and the very slow processing of these was a cause of concern amongst the various stakeholders, giving a false impression of the efficiency of the scanning process. Because of the late design of the 24 candidate contingency ballot paper for the parliamentary elections, a number of folds were located across a candidate box, causing an increase in the number of adjudications.

(5) Inconsistencies in the assessment of problem ballot papers

The initiative of the Electoral Commission to provide the 'Dealing with doubtful ballot papers' booklet and related 'placemats' to all Returning Officers was a commendable one, to encourage consistency in adjudication of doubtful ballot papers. From interviews and reports received we understand that these tools were widely used and followed in the counting centres. However, we were also advised that in some counting centres the placemats were not used and some ballot papers may have been erroneously accepted or rejected. Our assessment of the rejected ballot papers seen by the Returning Officers demonstrated that there were inconsistencies involved. Most, if not all, Returning Officers appointed Deputies who were also empowered to adjudicate and reject doubtful ballot papers, which might also have contributed to these inconsistencies.

⁴⁷ See Chapter 6.2 Postal Ballot Papers and Packs.

(6) Loss of confidence in the electronic counting system

In discussion with the various stakeholders involved in the electoral process, it became abundantly clear that the problems outlined above contributed to a loss of confidence in the electronic counting system amongst many of them. While the existing legislation (and decisions that had to be taken with respect to it) certainly would have had an influence on the efficiency of the counting system, the specific problems evidenced on the night of the count were referenced most often among those who contributed to our Review. Perhaps most often mentioned was the sense that the counting process was conducted in a manner in which most stakeholders (save for some Returning Officers and DRS) were left uncertain as to *how* the process was being conducted. Although this was an innovative process, it was clear that the political parties, the media and the public felt that the process was not transparent enough.

Although material had been produced explaining how the count operated and briefings were offered to candidates on the subject, it is clear that many political party agents, candidates, and other observers did not fully understand the counting process. This is not surprising: an electronic count is a complex process and many of the candidates, agents and observers have traditionally been more interested in the results than the mechanics of the counting process. While their perceptions were partially due to lack of familiarity – this was the first time electronic counting had been used in Scotland and experiences from other areas have shown that stakeholders' perceptions improve with subsequent elections as they get used to the technology – they were also affected by the information available at the count itself. The display screens contained limited information, were small in number and did not always operate correctly.

A particular issue relates to the use of auto-adjudication for blank and partially blank ballot papers. While our Review has seen no evidence that these ballot papers were dealt with incorrectly, the majority of stakeholders in the election were evidently not aware that this auto-adjudication was taking place and when they were subsequently informed of the issue, were uncertain about the criteria by which the auto-adjudication was performed.

(7) Problems in restoring electronic count information

During the conduct of this Review, we have accessed the electronic images of the face of the rejected ballot papers viewed by Returning Officers and the record of decisions taken by them.⁴⁸ This has required the relevant electronic information to be retrieved from the Returning Officers. Although the majority of this information has been retrieved successfully for analysis, it has not been possible to access a number of constituencies. In particular, one local authority was not able to provide any information, two count centres produced the electronic images but not the decisions taken by Returning Officers, and two further count centres were able to produce the decisions taken by Returning Officers but not the electronic images.

⁴⁸ See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

The information had been provided to the Returning Officers in the form of a hard disk containing a backup of the count database. No specific software was provided to the Returning Officers to enable them to easily browse the information on the disk and verify that it was complete and correct. While some Returning Officers had passed the disk to their IT department to verify the information, not all Returning Officers undertook this level of verification.⁴⁹ Furthermore, the hard disk contained a single database containing information for both the parliamentary and the local government elections. The legislation required the Returning Officers to forward the parliamentary and local government information to two different offices. This placed the Returning Officers in a position where they were not able to satisfy the requirements of the legislation. It appears that information from at least one local authority may have become corrupted between the end of the count and the retrieval of the information for this Review.

Options

(1) Minimise political decisions in implementation of electronic count

The influence of politics has already been described earlier in this Review in relation to other components of electoral processes. The electronic count was no exception as it, too, was influenced negatively by political ‘micro-management’. A number of options that could help resolve this problem – options that ensure the continued input of political parties while leaving coordination and detailed implementation matters to electoral practitioners – have previously been described and could also be applied in the context of the electronic count.⁵⁰

(2) Review legislative and policy framework for integration of election technology

Given the under-developed state of the legislative and policy frameworks that guide the electronic count, steps should be taken to ensure that they take into account all the steps that are necessary to integrate the technological process into the electoral cycle. This effort would facilitate a consistent application of election technology across Scotland. As has been proposed earlier in this Review, such Scotland-wide coordination might be assigned to a Chief Returning Officer.⁵¹

It is important that the impact on the electronic count of key aspects – such as the extent to which the different elections will be combined, the process for re-counts and the ballot paper design – are well understood by all those involved in the electoral process.

This is not to say that the counting of the ballot papers should be driven by the technology; indeed, it is important that this does not happen. During the development of the electronic counting solution, a number of modifications

⁴⁹ Telephone conversation with Sonya Anderson, DRS. 7 September 2007.

⁵⁰ For example, see Chapters 2.0 Legislation; 4.0 Planning and Timing; 6.1 Scottish Parliamentary and Local Government Ballot Papers.

⁵¹ See Chapter 3.0 Roles, Relationships and Accountability.

were requested by the Scottish Executive and the Scotland Office for which there was little or insufficient time to implement and fully test them before the election. While the requested modifications were not, in themselves, incompatible with the use of electronic counting, the need to design, plan, implement, test and demonstrate an acceptable technical solution to deliver the count necessitates key decisions to be made at an appropriate time. This would enable an effective specification to be developed, tested and agreed with the supplier in a timely manner. While it is inevitable in a complex project such as this that changes to the specifications will be required, a more structured approach would minimise the impact of these changes.

(3) Prioritise risk assessment and contingency planning

The introduction of electronic counting brings with it greater risk that the count's implementation may not necessarily proceed as planned. With this in mind, much more risk assessment should be part of the planning stages for future elections in Scotland. Once the risks involved are adequately assessed, much more contingency planning should take place than was observed as part of the 3 May 2007 electoral process.

From a practical standpoint, until electronic counting and other technology applied to the electoral process has been tried, tested, proven and unchanged over the course of several elections, this may well involve including a full manual back-up system that can be implemented quickly in instances where technology simply does not work as planned. In addition, a risk assessment might include consideration of how to better implement solutions to problems that arise. In doing so, it may be of interest to determine whether 32 count centres can be effectively managed in the context of electronic counting, or whether a reduced number of count centres applying the same and consistent management approach may be more desirable.

Specifically, there is a need to ensure that the system tests are comprehensive. This means that the testing should include: a specification that is as close as possible to the envisaged system to learn as much as possible about the expected behaviour; a specification that is greater than the envisaged system in order to test the resilience and performance aspects; and as many foreseeable problems and contingency situations as possible in order to ensure the system operates smoothly at the operation of the count.

(4) Ensure compatibility of postal ballot pack design with the electronic counting process

Discussion of the postal ballot packs can be found in an earlier chapter,⁵² the options discussed there relating also to the electronic count. The option which is most directly related to the problem defined here is the need to establish a mechanism to ensure that the design of the postal ballot paper and related envelopes is compatible with the electronic counting process. In particular, it is important to minimise the number of folds for the ballot paper

⁵² See Chapter 6.2 Postal Ballot Papers and Packs.

so as to avoid problems with scanning the postal ballot papers. Ensuring that the envelope is sufficiently large that ballot papers need only be folded once is likely to improve the overall efficiency of the count.

(5) Pursue strategies that ensure all ballot papers are adjudicated consistently

No matter where voters cast their votes in Scotland, all have the right and must have the assurance that their ballot paper will be adjudicated in the same way, without exception. This is a challenge under circumstances where electoral administration is widely dispersed among 32 Constituency Returning Officers.

One option to bring more consistency and credibility to ballot paper adjudication, and to potentially accelerate this process, concerns the guidance booklet and related 'placemats' on doubtful ballot papers provided to Returning Officers. A unique code could be assigned to each example of individual types of ballot papers which should be rejected and these codes included in the booklet and placemats. During the adjudication process, every doubtful ballot paper would be examined and those rejected marked with the applicable code from the examples in the booklet/placemat. These actions and decisions could be clearly understood by political party and candidate agents, thereby bringing more credibility to the process. The proposed option would probably increase the number of ballot papers to be adjudicated and potentially slow the process. However, the adjudication can be speeded up considerably given the fact that consistent decisions could be made by comparing examples with ballot papers. The Returning Officers could train teams of adjudicators to carry out this role, leaving only the ballot papers that don't correspond to any examples for higher level Returning Officer adjudication. This would have the additional advantage of giving more free time to the Returning Officer to focus on the overall management of the count.

We have already discussed the establishment of the position of a Chief Returning Officer for Scotland.⁵³ Such an individual could facilitate more advanced training and implementation of material similar to the guidance booklet and placemats which were used in 2007, thereby better ensuring that Returning Officers and other staff reviewing ballot papers are prepared to adjudicate them consistently.

(6) Re-build confidence in electronic counting system

The confidence that electoral stakeholders have traditionally had in the counting process was shaken on the night of 3 May 2007. In light of this, a number of steps could be taken to re-build this confidence, particularly through avenues that enhance the system's transparency and facilitate a better understanding of how it works. One option to consider is to ensure that knowledgeable Returning Officers and technical staff are always present and able to respond to questions from political party representatives, candidates and other observers as the count progresses, especially when unforeseen

⁵³ See Chapter 3.0 Roles, Relationships and Accountability.

problems arise. Second, in line with our previous suggestion, a shift in priorities should take place in relation to the counting process. The quality of the count should become the priority rather than the speed with which it is conducted.⁵⁴ A third option would involve manually examining every questionable ballot paper – including blank papers. While blank ballot papers were ‘auto-adjudicated’ as part of the counting process for the 2007 Scottish parliamentary and local government elections, a manual examination of each rejected ballot paper would go a long way to help re-build stakeholders’ confidence in the system. This could be achieved by either sending the images of the blank ballot papers to a separate queue, or by physically checking the ballot papers themselves.⁵⁵

Finally, greater emphasis should be placed on ensuring the integrity of the information being managed by working more closely with all electoral stakeholders to help them understand and follow all the steps involved in conducting the count. In this regard, it would be beneficial to have a greater number of display screens for information relating to the count, and for more information to be provided through these screens. Furthermore, there is a need for greater testing of the display screens as they are an important aspect of the system. It appears that the testing of the display information was overshadowed by the testing of the system itself and was somewhat neglected.

(7) Verify electronic count information before storage

Returning Officers or their staff should undertake a thorough verification of the electronic information provided for storage after an e-count. This should take place before the information is sealed and delivered to the appointed sheriff clerk or council officer. Furthermore, where there are combined elections it is important that the system separates the information for each election on to different media to enable Returning Officers to fulfil the obligations of the legislation. In order to undertake this verification effectively, it is essential that the Returning Officers are provided with appropriate software so that this can be carried out with a minimum of IT knowledge and specific training. The software could also support some form of electronic sealing of the information, for example using cryptographic technology, in order to protect against subsequent tampering. The proposed Chief Returning Officer could oversee this final step in the process to ensure that all required electronic and paper based data are properly and securely stored.

⁵⁴ See Chapter 8.1 Overnight Count.

⁵⁵ The advantage of undertaking a physical check of the ballot papers is that observers are able to satisfy themselves that no valid but lightly marked ballot papers are undetected by the scanners. However, in order to be undertaken efficiently, the scanners would need to be able to automatically isolate these ballot papers; it is likely that this would limit the suppliers in any procurement of the technology due to the limited number of solutions able to deliver this feature.

9.0 Conclusions and recommendations

Much of what has been described in this report is not new and should not surprise the reader. In fact, the contents of this report directly reflect the comments and criticisms, theories and conclusions that have been expressed by the electoral stakeholders we have met with and heard from over the course of this Review, including political parties and candidates, Returning Officers, the media, members of the public and others.

Throughout the report, we have been careful to shape each of the chapters (relating to issue areas identified by stakeholders) in a consistent manner. At the outset, we have attempted to offer enough background information to provide readers with a basic understanding of the issues related to the problems and the options proposed for resolving them. The goal of this Review has been to focus on those problems which we felt fit within our terms of reference and needed to be considered if the pitfalls of the 3 May 2007 elections are to be avoided at the next election. As every election is comprised of a series of integrated decisions and actions, the options put forward in one chapter will, in many cases, have to be considered for their impact on other options that are proposed elsewhere in the report.

In assembling the background material, identifying problems, considering options and then formalising our recommendations, we recognise that some of our comments will be viewed as critical and not without significant legislative, political or institutional implications. Throughout the Review, however, we have had no intention of – and, in fact, have scrupulously sought to avoid – assigning blame to individuals and institutions or questioning the legitimacy of the 3 May 2007 election results. All criticism of stakeholders involved in these elections, direct or implied, has been raised in order to identify where their roles can be clarified and strengthened for future elections.

Our discussion on electoral legislation; roles and relationships; planning and timing; the combination of these elections; the design of ballot papers; the electronic count and other issues related to the implementation of these elections has often led to questions related to jurisdictional responsibility. 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.

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.

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.

Roles, Relationships and Accountability

As with the legislative framework, our assessment has led us to conclude that the roles and responsibilities of stakeholders responsible for planning, organising and conducting these elections were extremely fragmented, to the extent that their efforts to achieve problem-free elections were hindered at almost every stage of the process.

Given the nature of organising a process as complex as an election – a process that requires careful integration of many components – the principal players responsible for these elections, namely Ministers and civil servants, Returning Officers and the Electoral Commission, require clearly defined responsibilities with the authority to carry out those responsibilities being assigned to them. It is only in this context that institutions and individuals can be held accountable for their conduct.

In light of these comments, we recommend three closely related initiatives, described earlier in this report.¹

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.

¹ See Chapter 3.0 Roles, Relationships and Accountability.

Professionalise Returning Officer positions in each consistency:

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 have already noted the need to re-assess the roles and responsibilities of all stakeholders involved in planning, organising and conducting these elections. In establishing the position of a Chief Returning Officer for Scotland, this will be all the more necessary. 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 have previously discussed the role of the Electoral Commission in these elections. In our view, its participation was indispensable in its development and provision of comprehensive manuals, the innovative 'doubtful ballot papers' booklet and related 'placemats', the VoteScotland campaign and other initiatives. 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. Earlier we outlined our view that the Electoral Commission presently fulfils three roles. One is regulatory, another advisory and another is administrative or operational. In this latter role, the Electoral Commission (itself or in conjunction with others such as Returning Officers) is directly involved in executing components of these elections, such as political party registration, public information, training, etc. 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.

Planning and Timing

We were told frequently that there were too many changes introduced for the 3 May 2007 elections with too little time available to adequately incorporate them into the electoral process. It appears that changes were introduced in what could be called an 'electoral planning vacuum,' with the expectation that such changes would simply fall into place by the date of the election regardless of when decisions were made. This determination arises from the fact that no effective planning process or document connecting legislative timetables to operational timetables (which would have clearly predicted and given warning signals concerning problems) was established.

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 Steering Group could be chaired by the Chief Returning Officer and composed of representatives of Ministers and Returning Officers. The Electoral Commission would participate as a specialist advisor on standards applicable to Scottish elections, thereby allowing them to acquire a genuine understanding of the conduct of the electoral processes in advance of their post-elections audit. Other stakeholders, including political parties, candidates and non-governmental organisations could be invited to contribute their views on relevant election matters.

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. In this way, all activities would be clearly defined and integrated into one coordinated planning process. 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. In this way the CRO would be directly involved and fully aware of every aspect of the electoral process from legislation to the announcement of results.

Combined Elections

One of the more controversial issues in the 3 May 2007 elections was whether the Scottish parliamentary and the local government elections should have been combined on the same day. We were not surprised by the concerns that were expressed to us about this issue because pursuing combined or separate elections involves a trade-off of different objectives.

If local issues and the visibility of local government candidates are viewed as a primary objective, then separating the Scottish parliamentary from the local government elections is necessary in order to avoid the dominance of campaigns conducted for the Scottish parliamentary contests. In addition, separating the two elections would result in minimising the potential for voter confusion. Yet combining the elections is not without benefits. Such an approach is less costly in terms of financial and human resources as electoral administrators, political parties and candidates and the voters are required to participate in one not two electoral processes. In addition, statistics suggest that a higher turnout can be achieved when local government elections are held at the same time as those for the Scottish Parliament.

All this considered, we are convinced that combined elections are not only a disservice to the local councils and candidates but also to the electorate as well. In essence, the local government elections are not simply about ensuring a reasonable number of voters show up at the polls on polling day. More important is that they engage with the campaign in a meaningful manner and make a knowledgeable decision on their ballot paper. Therefore, we recommend separating the Scottish parliamentary and local government elections, preferably by a period of about two years. This recommendation does not mean that concerns about voter turnout should be set aside. Institutions that are concerned about voter turnout, including the Electoral Commission, political parties and other organisations, should continue with their efforts to encourage voters to exercise their right to vote. We recommend that initiatives in other countries – where there have been significant increases in advance voting while turnout at polling stations has diminished – are explored.

Ballot Papers and Voting Issues

Significant controversy and criticism arose following the 3 May elections in relation to the ballot papers presented to voters. To gain a clearer picture of the problems involved, we explored a variety of issues, including the ballot paper designs, the combination of the Scottish parliamentary ballot papers on a single sheet, the use of two different ballot paper marking requirements and the postal ballot papers and packs.

In light of what we have learned over the course of this Review, 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.

Scottish parliamentary and local government ballot papers

Early in the Review, it became clear that an analysis of the rejected ballot papers could serve to clarify some of the basic issues that we identified in relation to the large number of rejected ballot papers. After completing this analysis, it was evident that useful information resulted which otherwise would not have been available. As the ability to carry out ballot paper analyses by electoral practitioners, researchers and academics could potentially make a significant positive contribution to future electoral policies and practices, 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.

With respect to the ballot papers, we recommend a variety of measures aimed at minimising the possibility of confusing or misleading voters while facilitating a level playing field for all political parties. It is our recommendation that related 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. 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 following close of nominations to determine ballot paper positioning. These recommendations and related matters are more fully described in the relevant chapter.²

Our analysis of the face of the images of the rejected ballot papers viewed by the Returning Officers provided strong evidence that combining the Scottish parliamentary ballot papers onto one sheet was primarily responsible for the high level of rejected ballot papers. Given this, 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.

Postal ballot papers and packs

The clear growth in the popularity of postal voting has brought with it increased demands on the system for administering elections in Scotland, particularly where electronic counting has been introduced. The administration of postal ballot papers has become increasingly complex, and the requirement that they be compatible with scanners for electronic counting has only added to this complexity. The combination of these challenges, augmented by requirements for signature verification that will be expected as part of the 2011 elections, argue for a review by the proposed Elections Steering Committee of postal voting issues, keeping in mind the need to involve Returning Officers.

² See Chapter 6.1 Scottish Parliamentary and Local Government Ballot Papers.

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. With this in mind, we would recommend amending the existing legislation to provide for the close of nominations on the 23rd day (instead of the 16th 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.

As has already been noted, voter turnout levels should remain a concern for all electoral stakeholders. It is encouraging to note that voter turnout related to postal voting has been steadily increasing during Scottish elections, rising to approximately 11% of the electorate for the 3 May 2007 elections. Keeping in mind that an increase in the number of postal voters results in corresponding increases in related costs and administrative demands, 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.

The combination of options outlined here could result in a significant reduction in the demand for postal votes while also reducing operational pressures and related costs. 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.

The alternatives outlined here will have some effect on the campaign strategy that political parties and candidates will want to pursue over the course of the campaign period, but the large number of electors choosing to vote by post has already caused such a change. Such a paradigm, if established well in advance and well advertised among political parties and candidates, would allow them to adapt their campaigns accordingly.

Ballot boxes, security and secrecy

With the problems identified during the 3 May elections, a clear challenge exists to rebuild the confidence of political parties, candidates and the public in all areas of electoral administration. One specific step that facilitates this would involve enhancing the secrecy of the vote and the security of the ballot papers. In this regard, 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. This becomes increasingly important in relation to the recommendations relating to advance voting (above).

Public Information

Given the innovations introduced as part of the 2007 Scottish parliamentary and local government elections – the combining of regional and constituency ballot papers for the parliamentary election on one sheet and the introduction of the STV system for local government elections, with a different ballot paper marking requirement – it was clear that the institutions tasked with disseminating public information had a difficult job ahead of them in facilitating the electorate's understanding of how to successfully cast their vote. The Electoral Commission and Scottish Executive (responsible for the VoteScotland campaign) and Returning Officers with support from the VoteScotland campaign (responsible for voter information within polling places) all faced unique challenges in conducting public information for the 3 May 2007 elections.

Much time and effort was expended on developing and conducting a Scotland-wide campaign involving multimedia advertising and the distribution of written material. The execution of the VoteScotland campaign was for the most part commendable, but the efforts of the campaign were frustrated by an inability to provide more detailed information to voters due to the late decisions of Ministers regarding the design of the ballot papers. Still, the campaign could have been strengthened had the Electoral Commission pursued the findings of the research completed by Cragg Ross Dawson on the Scottish parliamentary ballot paper design which showed a ballot paper rejection rate not unlike that which unfolded on polling day.

The VoteScotland campaign is also to be commended for working with Returning Officers to place Information Officers in each polling station. While we were told that the quality of the performance of Information Officers varied widely, it is our view that Information Officers should continue to be used in any future combined elections or where there are major changes to existing voting practices or requirements. It is recommended that the proposed Chief Returning Officer develop standard selection criteria and training programmes for this role.

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.

The Count

Overnight count

During the Review, we received strong representations from Returning Officers arguing that the overnight count for the Scottish parliamentary and local government elections should be replaced by a count that starts early the following day. This view was supported by some of the media and political party representatives with whom we met.

After carefully weighing the pros and cons of the alternatives, we recommend that if the polls continue to close at 10.00pm, there should be no overnight count of the ballot papers. A number of steps could be implemented to facilitate a count the following day. A 'fresh' team of Returning Officer staff could work overnight to receive ballot boxes and prepare for an immediate start of the count the following morning. At the same time, we have put forward other options for consideration which would involve earlier closing hours or a change of polling day for local government elections.

In general, we feel it is necessary to make one principle clear. To achieve the highest level of confidence in the counting process, it is essential that the emphasis is on the quality of decision-making related to the count, not on the speed with which the count is conducted. Returning Officers and their staff make decisions that have a lasting impact as they consider the ballot papers cast by voters. Every single vote is important. We cannot expect Returning Officers to make accurate decisions when they are overly fatigued.

Electronic count and counting procedures

The electronic count and procedures related to it came under particular scrutiny following the close of polls on 3 May 2007. We have found that many of the problems identified, as well as earlier incidents where it seemed that technology was the driving force behind electoral procedures (rather than the reverse), were directly attributable to legislative delays. Such delays would ultimately influence the ballot paper design and thus the count, given the need for ballot papers to be compatible with the electronic scanners.

If the STV electoral system is here to stay, the electronic count cannot be reasonably abandoned. While there were some problems with the electronic count on the night of 3 May 2007, such as the database malfunction specific to the DRS system that occurred at some counting centres, there is little doubt that the electronic count facilitates the counting of STV ballot papers and, in this respect, is preferable to a manual count. It is important to note that our assessment has not found any evidence that the electronic count contributed to the number of rejected ballot papers.

All this considered, we would 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.

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.

In order to facilitate electronic counting for future elections, we recommend that the proposed review of existing legislation and political involvement described above 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.

We raised concerns earlier about reduced confidence in the electoral process and the need to consider initiatives to restore confidence among stakeholders. For this reason 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 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. Such an approach would facilitate greater consistency of adjudication across Scotland; provide a clear rationale for every rejected ballot paper, which could be observed and challenged if necessary by party agents; and reduce the workload on Returning Officers and their Deputies, as trained adjudication teams could carry out this function, leaving only uncertain and disputed ballot papers to the Returning Officer to deal with. We believe that all of the above would lead to increased confidence in and credibility of the electronic count and the electoral results process as a whole.

Conclusions

In considering the circumstances surrounding the planning, organising and implementation of the 3 May 2007 elections in Scotland, we have observed an unfortunate pattern. Almost without exception, the voter was treated as an afterthought by virtually all the other stakeholders. Numerous factors – such as combining the ballot papers for the Scottish parliamentary elections, introducing a new voting system with different ballot paper marking requirements, the failure to conduct adequate research and testing on the impact this new system would have on the electorate, the insistence on conducting an overnight count – all indicate to us that voters were overlooked as the most important stakeholders to be considered at every stage of the election. We obviously recommend that all those with a role in organising future elections consider the voters' interests above all other considerations.

Our mandate in carrying out this Review was to describe the issues, to identify important problems and to propose options for future avoidance or resolution of those problems encountered during the Scottish parliamentary and local government elections. Meeting this objective has led to a report that is somewhat negative and critical in nature.

In all fairness, however, it is important not to lose sight of the many positive aspects and good intentions of those involved in assembling and conducting the 3 May 2007 elections. In addition, it must be clear that by far the majority of the voters understood the new aspects of the voting process and voted correctly, despite its complexities. The results of the election, though criticised, were accepted by political parties, candidates and the public without legal challenges or public demonstrations. Much credit is due to all involved in the election for the degree of success achieved despite the hurdles involved.