

# **Treating voters as an afterthought? The legacies of a decade of electoral modernisation in the United Kingdom.**

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## **Abstract**

Over the past decade, the UK's New Labour government has been at the forefront of efforts internationally to modernise electoral procedures, promising to deliver 'an e-enabled, multi-channel general election by 2006'. This paper considers the origins and the impacts of reforms to UK electoral procedures with a particular focus on the adoption of postal voting on demand and pilots of electronic voting and counting since 2000. The paper concludes that the principal legacy of the modernisation agenda to date is likely to have been a negative impact on public confidence in the electoral process.

*Key words:* Postal voting, e-voting, e-counting, turnout, electoral fraud, electoral law.

## **Treating voters as an afterthought?**

### **The legacies of a decade of electoral modernisation in the United Kingdom.**

Recent years have witnessed growing international interest in the scope to modernise electoral processes, particularly in light of possibilities opened up by rapid technological change. As part of its wider 'modernisation' agenda, the UK's Labour government has often been seen as an international leader in this area, committing itself to a target of running 'an e-enabled, multi-channel general election by 2006'. The target underlines the ambitious nature of the electoral reforms pursued in the United Kingdom over the past decade, particularly since the passage of the Representation of the People Act (RPA) 2000, which made provision for the immediate introduction of postal voting on demand, as well as for the piloting of various forms of e-democracy, most notably electronic voting and electronic counting. The key driver of these reforms has been the government's view that remote voting in UK elections, initially through postal ballots and ultimately via 'multi-channel' elections, is crucial to reversing the sharp decline in electoral participation.

Despite initially widespread support for change, the period since 2002 has witnessed growing criticism of the new electoral arrangements. The extension of postal voting has come under scrutiny for its potential vulnerability to electoral fraud, particularly after an election court in Birmingham found that possibly thousands of postal ballots had been tampered with at the 2004 local elections. Meanwhile, pilots of alternative methods of casting and counting ballots have encountered numerous technical problems and raised concerns about the security of the vote. As a result, the Electoral Commission, created as an independent body in 2000 with a remit to monitor the electoral process and advise government on electoral law, has become increasingly vociferous in its concerns about electoral policy. Most recently, the danger of

electoral integrity being threatened as a result of serious flaws in electoral processes was dramatically illustrated by the confusion surrounding the count at the Scottish elections of May 2007, which saw a dramatic rise in the proportion of rejected ballots and a decision to abandon use of electronic counting. An independent review of the events in Scotland, led by Ron Gould, identified multiple failing in the electoral process within which ‘the voter was treated as an afterthought’.<sup>1</sup>

This article considers the legacies of New Labour’s electoral modernisation agenda, which originated in the review carried out by the Working Group on Electoral Procedures established by the incoming government in 1997. It begins by charting the rationale for electoral modernisation, and particularly the introduction of postal voting on demand, within the context of the UK’s historically conservative body of electoral law. The article then assesses the impact of electoral modernisation, with a specific focus on the evidence concerning the relative benefits and risks associated with postal voting, electronic voting and electronic counting. The article also considers two broader issues which have been neglected in academic and policy debates - the state of electoral administration and levels of public confidence in the electoral process - both of which raise serious concerns about the legacies of electoral modernisation. The article concludes that UK electoral law is no longer ‘fit for purpose’ and urges immediate action to restore public confidence in the electoral process.

### **Electoral modernisation in context**

Electoral modernisation in the UK has taken place against the backdrop of a body of electoral law built on distinctively Victorian foundations, introduced as part of broader attempts to eradicate widespread practices of corruption and malpractice in nineteenth century

parliamentary elections. The Corrupt Practices Act of 1854 (as consolidated by the Corrupt and Illegal Practices Act of 1883) outlawed a number of specific electoral practices - including bribery, treating and intimidation - and, from 1883, placed limits on the election expenditure of candidates. The Ballot Act of 1872 introduced the secret ballot, with specific requirements that each registered elector would receive, mark and deposit (in a secure box) a single, numbered, paper ballot within a designated polling station and in the presence of a 'presiding officer'. These Acts, as consolidated by the RPA 1949 and 1983, remained the central planks of British electoral law for more than 100 years and significant sections of them remain accurate descriptions of current electoral law.

Throughout the twentieth century there had been a cautious and incremental approach to the reform of UK electoral law; aside from the extension of the franchise to women in 1918 and 1928, British electoral law remained markedly conservative for over a century. The RPA 1948 provided for the entitlement to absentee ballots, previously restricted to service personnel, to members of the civilian population unable to attend a polling station on grounds of ill-health, disability or age. Under the RPA 1985, these provisions were extended to allow registered voters to request postal or proxy ballots if they would be away from their constituency on election day, while provisions for proxy votes were also introduced for registered British electors living overseas. In this context, the provisions for postal voting on demand introduced by the RPA 2000 constitute by far the most significant changes to electoral processes in the UK since the mid-late nineteenth century.

Accordingly, when the Working Party on Electoral Procedures was established shortly after New Labour's 1997 General Election victory, with a view to instigating major reforms in voting practices, it was determined that the group should include representatives from all

three main parties, and seek to form a consensus view on proposed reforms. The Working Group, chaired by the Labour MP, George Howarth, issued its final report in 1998, recommending the introduction of postal voting on demand and provision for various forms of electoral pilots. The changes proposed by the working party were advocated on two main grounds, which have been consistently reiterated in government policy ever since. First, it was widely argued that there was a need to ‘modernise’ electoral practices to bring them into line with wider social change. Second, it was suggested that such modernisation would have a positive impact on electoral participation, since the act of rendering voting more convenient would serve to increase turnout.

As a product of cross-party consensus, the proposals were translated almost wholesale into legislation through the Representation of the People Act (RPA) 2000. The introduction of postal voting on demand in 2000 was remarkably uncontroversial, particularly after the rationale for postal ballots appeared to be reinforced by turnouts of less than 30 per cent in the 1998 local elections and 1999 European elections. Nonetheless, the decision to extend postal voting was a major departure in electoral policy. The Howarth Working Group offered an interpretation of the risk of electoral malpractice starkly at odds with the conclusions of previous reviews of provisions for remote and absentee voting, which had been dominated by a concern to ensure the integrity of electoral procedures, than by concerns to maximise electoral participation. For instance, the limited extension of postal and proxy voting during the 1980s had already prompted concerns by the early 1990s about the possibility of greater levels of fraud. Although the absolute number of cases of fraud was relatively small, a Home Office Working Party in 1994 considered that instances of electoral fraud underlined the need for caution in extending the availability of proxy or postal voting:

A move to absent voting on demand might increase the opportunity for fraudulent applications to be made without the knowledge of the elector. On balance, we consider that the risk of increased fraud outweighs the potential advantage for the electorate of making absent voting available to all.<sup>2</sup>

In stark contrast, the sixty eight page final report of the Working Party on Electoral Procedures contained a single reference to electoral fraud, simply stating that the group had been careful ‘to look critically at the possible implications for electoral fraud. Overall we are satisfied that none of the recommendations we set out below will lead to any significantly higher risk of abuse’.<sup>3</sup> Based on this confidence, which reflected cross-party consensus among members of the Working Party, the report recommended that postal votes should be permitted ‘on demand’ and a simplified procedure for applying for postal ballots be introduced. These recommendations, as implemented by RPA 2000, have allowed any registered voter to request a postal ballot at every UK election since 16 February 2001.

### **Assessing the impacts of electoral modernisation**

The most apparent impact of the new provisions has been dramatic growth of postal voting. As figure 1 shows, postal ballots typically comprised 2 to 3 per cent of the votes cast at general elections between 1974 and 1997. Prompted by the introduction of postal voting on demand, the proportion of ballots cast by post rose to five per cent in 2001 and 15 per cent in 2005. Whether this sharp rise in postal voting has impacted on turnout is far less clear, however. The 59 per cent turnout in the 2001 General Election represented the lowest level of electoral participation since 1918. Moreover, turnout did not rise significantly in 2005, despite the sharp increase in the take-up of postal voting. Perhaps the most positive claim that

can be made is that postal voting on demand has stabilised general election turnout at around 60 per cent.

INSERT FIGURE 1 ABOUT HERE

There have been enormous geographical variations in the take-up of postal voting, which also serve to cast doubt on its impact on turnout. At the 2005 General Election, there were 38 constituencies where at least 25 per cent of votes were cast by post, including 15 where postal ballots comprised 33 per cent or more. Among the 15 constituencies in which postal voting accounted for at least one-third of votes cast, the change in turnout compared to 2001 varied from an increase of 23.8 per cent in Rotherham to a decrease of 14.0 per cent in Tyne Bridge. In seven cases, the percentage increase in turnout was either at or below the national average, with turnout either falling or remaining essentially static in five seats with widespread take-up of postal ballots – Jarrow, Hackney South and Shoreditch, Tyne Bridge and Don Valley. In light of such patterns in the relationship between the uptake of postal ballots and turnout at the 2005 General Election, John Curtice concluded that ‘the wider availability of postal voting had, at most, a small impact on turnout’ adding that:

lacking any stimulus to vote, many again stayed at home. Not even the prospect of being able to avoid the journey to the polling station enticed many voters to exercise their franchise. Turnout depends not on giving people a choice about how to vote but rather on what they are voting about.<sup>4</sup>

Similar issues arise from the evidence relating to the all-postal ballots piloted in local council elections after 2000. All-postal ballots pointed to strong initial evidence of postal voting

raising turnout at the local elections held from 2000-2004. However, while the introduction of postal voting did have an immediate, beneficial impact on turnout, it also appears that the ‘turnout premium’ is likely to level off, and then decline, at subsequent elections. In areas where all-postal voting has been used on multiple occasions, turnout tends to plateau and then drop. There is also evidence to suggest that UK experience reflects a widely observed international tendency for postal voting principally to provide choice to middle-class voters who would probably have voted anyway.<sup>5</sup>

Concerns about potential electoral malpractice associated with postal voting have been widely expressed, particularly since 2004. Unfortunately, empirical data relating to electoral malpractice is sketchy, and it is difficult to assess trends. Available records show that accusations of electoral malpractice have been investigated by every police force in England, with the exception of the City of London police since 2000. Convictions for electoral fraud, which represent a small proportion of the cases reported to police forces, have been brought against representatives of all three major parties, as well as minor parties such as the British National Party. In total, an estimated 42 convictions for electoral offences were made from 2000-2007. It is unlikely that there has been a significant increase in electoral malpractice since the introduction of postal voting on demand in 2000; available figures suggest that 32 convictions were made from 1994-99. In both periods, the offences arose almost exclusively from local elections, and related to a tiny proportion of all elections contested. However, cases tried since 2000 underline that the extension of postal voting has clearly enhanced the vulnerability of UK elections to *large-scale* fraud, a risk which should have been predicted on the basis of evidence of growing proxy vote fraud during the 1990s. Moreover, the potential for the political control of a major city council or the outcome of a contest for parliamentary constituency to be determined by ‘stolen votes’ has been clearly demonstrated

by recent fraud cases, most notably the offences considered by the Birmingham election court in 2005.<sup>6</sup>

While postal voting has been at the centre of recent controversy about the security of the ballot, it is important to reinforce that the government's medium-term strategy is to move to 'e-enabled' elections. Since May 2002, a variety of electronic voting procedures have been piloted across a number of local authorities in English local council elections. In their more limited form, these pilots have involved making computer terminals available within polling stations. However, there have also been numerous pilots of 'multi-channel' electronic voting, enabling voters to cast ballots remotely via the internet, telephone or SMS, often with a facility for 'advance voting' before polling day.

If the impact of postal voting on turnout has been exaggerated by politicians, the limitations of e-voting as a means of promoting electoral participation are even more striking. The most systematic piloting of electronic voting in the UK has taken place in Swindon, where pilots of remote voting via the Internet, telephones, and digital television, as well as the use of mobile electronic voting kiosks and laptops within polling stations, were run at local elections in 2002, 2003 and 2007. In March 2007, the council was awarded beacon authority status for its work in electoral services, with particular reference to its piloting of e-voting and wider promotion of e-democracy, and the council's Director of Law and Democratic Services described the May 2007 pilot as 'the most ambitious and complex e-voting pilot scheme ever undertaken in the UK'. However, evaluation reports of each pilot scheme produced by the Electoral Commission highlight significant limitations with e-voting, which are repeated in the experience of less ambitious pilots elsewhere in England. The evaluation studies suggested that e-voting pilots had little or no impact on turnout in Swindon, which continued

to hover at around 30-35 per cent. Moreover, while e-voting was found to be popular among those making use of the facility, more than three quarters of e-voters reported that they would have voted had e-voting channels not been provided. In addition, the cost of providing e-voting facilities was substantial, amounting to £102 for each voter making use of the facility in 2007, compared to a cost of £2 per elector for conventional ballots.<sup>7</sup>

Not only are the benefits of e-voting apparently modest; the potential risks are substantial. Although no clear evidence of fraud associated with electronic voting has yet emerged in the UK, the possible risks associated with hacking and virus attacks have been widely documented. Equally significant is the concern that electronic voting lacks the transparency of traditional voting procedures, particularly as there is no 'paper trail' that can be audited where disputes arise. Likewise, it is clear that the secrecy of the ballot cannot be guaranteed where remote electronic voting is permitted. Some of the most concerning anecdotal evidence to emerge is that in one local authority, party workers carrying out door-to-door canvassing assisted voters in casting their votes via SMS. Many 'e-voting' pilots have also experienced technical problems, resulting in sometimes lengthy periods during which specific e-voting channels became inoperable. Such problems have occurred even in local authorities with the most experience of running e-voting pilots, including Swindon, leading the Electoral Commission to recommend in Autumn 2007 that a much stronger regulatory and policy framework should be put in place before further e-voting pilots are contemplated.

A number of pilots have also been undertaken with electronic counting systems, designed to render the counting of votes more efficient and more accurate through the use of bespoke hardware to scan (unfolded) paper ballots. 'E-counting' has had particular appeal where new electoral systems have been introduced, requiring the recording and counting of multiple

preferences. From the very first large-scale pilot of e-counting, at the Greater London Authority and Mayoral elections of May 2000, potential problems with e-counting have been evident. Following a series of problems experienced at the count, it became evident that a very large proportion of ballot papers had been rejected. A subsequent GLA inquiry pointed to a number of wider shortcomings in the planning and management of the election process.<sup>8</sup> In particular, it was found that the election had been dogged by problems associated with insufficient time for planning, additional pressures on electoral administrators arising from the management of postal voting, a lack of clarity about roles and responsibilities and resultant poor coordination among key individuals and agencies, as well as concerns about ballot paper design, including confusion among the electorate about the simultaneous use of different electoral systems. Virtually all of the problems identified in the GLA report of 2002 re-surfaced in the Gould report on the Scottish elections, where the failure of the e-counting system resulted in a large number of counts being suspended. As with e-voting, recognition of the concerns associated with e-counting led the Electoral Commission to also recommend suspension of such pilots in Autumn 2007, just prior to the publication of the Gould report.

### **An electoral system under strain?**

While the impact of electoral modernisation on postal voting on turnout is questionable, its implications for electoral administration have been clear. In the period since 2004, growing pressures have been placed on the UK's highly localised arrangements for electoral administration by persistent legislative change. Local experience varies, but there is widespread evidence that electoral administration has long had to operate as a 'Cinderella service' within many local authorities, suffering from poor levels of resourcing and lack of dedicated personnel. Electoral modernisation has revealed significant shortcomings in the

capacity of electoral administration, particularly where new regulations have been introduced within ultra-short timescale. These problems have, in turn, been exacerbated by local variations in the capacity of the printing industry to deliver large numbers of postal ballots, both at short notice and to the specifications required. These pressures have evidently taken their toll on electoral administration as a profession. It is almost certainly not an exaggeration to suggest that in many parts of the country, systems of electoral administration may be close to breaking point. A survey of its members carried out by the Association of Electoral Administrators (AEA) following the 2007 local elections suggested a series of potentially major problems were only narrowly averted and suggested that ‘the ramifications for a General Election are indeed extremely worrying’.<sup>9</sup>

Among electoral administrators there is widespread concern that historically high levels of public trust in the integrity of electoral administration will be undermined by pressures on the system. This is a serious and fundamental concern, not least because the broader issue of public confidence in UK electoral processes merits urgent attention. Figure 2 presents data on levels of public confidence in elections for nine West European countries, including Great Britain, derived from surveys using identical questions following national elections held from the late 1990s onwards. While levels of public confidence in elections are high, by international standards, across Western Europe, the figure also points to clear variations within Western Europe. The highest rates of public confidence are found in the Scandinavian countries, closely followed by Germany, the Netherlands and Switzerland. By contrast, lower rates of public confidence are recorded in the relatively ‘new’ democracies of Portugal and Spain. However, among the countries for which data are available, Great Britain has the lowest proportion of respondents declaring full confidence in electoral processes. Only 57 per

cent of those surveyed in Britain had full confidence in the fairness of the election result, compared to 73 per cent on Germany and 88 per cent in Denmark.

INSERT FIGURE 2 ABOUT HERE

Sarah Birch has demonstrated that measures of public confidence in elections across 28 democracies have a strong positive correlation with both the use of proportional representation and with direct public financing of political parties. The absence of such measures in the UK therefore goes some way to explaining lower levels of public confidence, which it shares with other ‘majoritarian’ democracies such as Canada, New Zealand and the USA, where surveys suggest only 34-50 per cent of citizens have full confidence in electoral processes. Perhaps more surprisingly, Birch finds that the existence of independent institutions for electoral administration, such as electoral commissions, appears to have a negative impact on public confidence. While paradoxical, there may be a rational explanation for these observed correlations. Birch suggests that, in many countries, electoral commissions have struggled to assert independent authority from governing parties. Where disputes break out between governing parties and electoral commissions about the conduct of elections, public confidence may inevitably be undermined. This observation is highly significant in the British case: since 2003 the Electoral Commission has been left increasingly frustrated by the government’s refusal to accept many of its key recommendations on voter registration, definitions of new electoral offences and suspension of electoral pilot schemes.<sup>10</sup>

There are no comparative data from equivalent surveys since 2002 to assess whether there has been such a decline in overall public confidence in UK elections relative to other European countries. However, there is clear evidence to suggest that public confidence in UK

elections has declined further over the past decade where postal voting has been widely used. In June 2004, 33 per cent of those surveyed thought that postal voting was fairly or very unsafe from fraud. Eleven months later, in the wake of the Birmingham judgment, 46 per cent expressed such concerns, with virtually the same proportion (44 per cent) subsequently offering the same assessment in Spring 2006. Moreover, while the 2004 survey data had suggested that 67 per cent of the public felt postal voting to be safe from fraud, this figure fell to 51 per cent among residents in the regions where all-postal voting was piloted. Among those who had voted in 2006, almost a quarter suggested that fraud was a problem, mainly citing media coverage to justify this claim.<sup>11</sup>

### **Conclusion**

A decade on from the Howarth review of electoral procedures, the balance sheet for electoral modernisation looks less than healthy. While provisions for postal and, where relevant, electronic voting, have generally elicited high levels of satisfaction among survey respondents, there is little evidence to suggest that alternative forms of voting offer any significant scope to increase turnout. Pilots of e-voting have suggested it to be costly, with the principal benefit being the provision of greater choice to voters who would have largely voted anyway. At the same time, the vulnerability of postal voting to fraud has been clearly demonstrated, while serious concerns persist about the security and transparency of e-voting systems and their vulnerability to organised fraud. Finally, experience to date with e-counting has highlighted serious problems associated with the deployment of such technologies. Not only has e-counting frequently failed to improve on the estimated time required for a manual count, it has also highlighted the lack of transparency in such systems, particularly in comparison with manual counting. In circumstances such as the Scottish elections of 2007,

there is a very real danger that the use of such technologies may serve to undermine confidence in the electoral process.

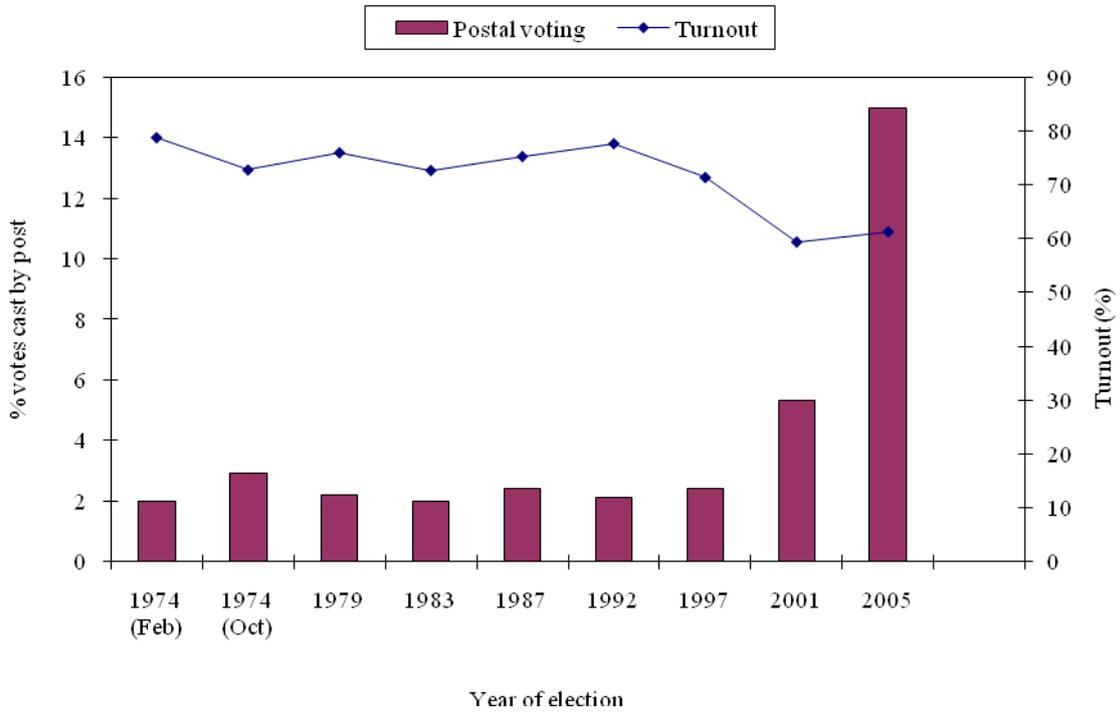
The substantial body of electoral law passed since 2000 has left the underlying legal and institutional framework for UK elections largely intact. Despite the introduction of postal voting on demand, and provision for pilots of electronic voting, the principal electoral offences remained those originally defined in the Corrupt and Illegal Practices Act of 1883. Likewise, the principal means of challenging an election result remains the Victorian mechanism of the ‘election petition’, which has been demonstrated to be an increasingly defective means of responding to allegations of malpractice and fraud. There is growing evidence of fundamental tensions between this distinctly Victorian legacy and the processes of electoral modernisation. Definitions of electoral offences are outdated, and prosecutions for electoral offences are increasingly being brought under anti-fraud legislation rather than with reference to electoral law. Moreover, the role of the Electoral Commission is evidently compromised, since it is expected to provide a framework for modernised electoral arrangements on the basis of nineteenth century legal foundations.

While the Electoral Commission has established itself as a major presence in debates on electoral processes, its capacity to lead on electoral matters has been questioned, and it has appeared to lack the legal authority enjoyed by equivalent organisations overseas. In particular, the Commission has been frequently frustrated by governmental reluctance to accept its advice on electoral matters and, as a result, its formal relationship to government requires urgent clarification. Indeed, the recent review of the role of The Electoral Commission carried out by the Committee for Standards in Public Life confirmed this interpretation. While recognising that the work of The Electoral Commission commands

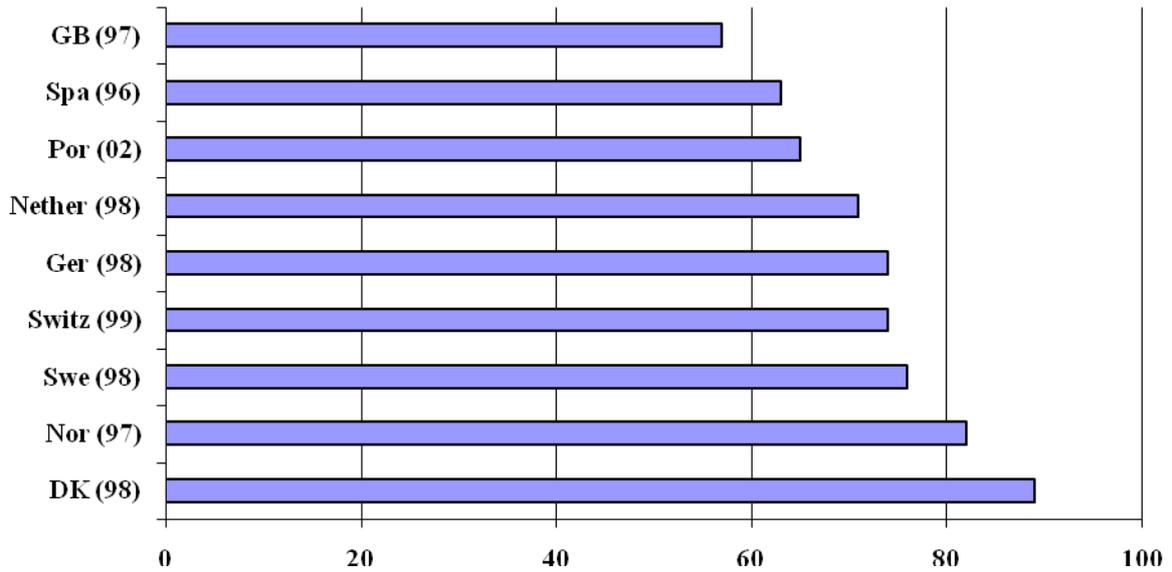
widespread respect, the Committee made 47 separate recommendations concerning its future role; these centred upon the Commission's remit being refocused on the core regulatory issues of party funding, campaign expenditure and electoral administration.

However, it is the task of rebuilding public confidence in the electoral process which emerges as the most urgent concern highlighted by the evidence presented in this paper. High-profile cases of fraud have highlighted vulnerabilities in the electoral system, which have been exposed further by investigative journalism. In turn, the apparent reluctance of government to recognise the scale and risk of electoral malpractice associated with postal voting is likely to have undermined public confidence further. In this regard, it is hugely ironic that electoral policy has taken steps to promote the ballot security in Northern Ireland, in response to concerns that accusations of electoral malpractice were undermining public confidence in the electoral processes, while simultaneously pursuing reforms which have served to undermine public confidence in the rest of the UK. When Desmond Browne MP, the Parliamentary Under-Secretary of State for Northern Ireland, introduced the second reading of The Electoral Fraud (Northern Ireland) Bill in the House of Commons on 10 July 2001, he argued that enhanced measures to secure the ballot in the province were required because 'we do not want voters in Northern Ireland to become disillusioned with politics because they fear that elections are unfair'.<sup>12</sup> Seven years on, the very same words could certainly be used to justify significant change to electoral law in the rest of the United Kingdom.

**Figure 1: Percentage of vote cast by post and overall turnout at UK general elections, 1974-2005**



**Figure 2: Percentage of respondents expressing full confidence in election outcomes across 9 West European countries, 1997-2002**



**Source:** Sarah Birch, 'Explaining Confidence in the Conduct of Elections', paper presented at the Elections, Public Opinion and Political Parties Conference, University of Essex, 9-11 September 2005.

## Notes

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<sup>1</sup> Ron Gould, *Independent review of the Scottish Parliamentary and local government elections 3 May 2007*, London, Electoral Commission, 2007.

<sup>2</sup> Home Office Working Party, 1994, cited in Nick Davies, 'Vote early, vote often', *The Guardian*, Wednesday 9 May 2001.

<sup>3</sup> Home Office, *Final Report of the Working Party on Electoral Procedures*, London, Home Office, 1999.

<sup>4</sup> John Curtice, 'Turnout: electors stay home – again', *Parliamentary Affairs*, vol. 58 (4), 2005, pp.776-785 (p.784).

<sup>5</sup> J.A. Karp, and S.A. Banducci, 'Going postal: how all-mail elections influence turnout', *Political Behaviour*, vol. 22 (3), pp. 223-239.

<sup>6</sup> Stuart Wilks-Heeg, *Purity of Elections in the UK: Cause for Concern*, York, Joseph Rowntree Reform Trust, 2008.

<sup>7</sup> The Electoral Commission, *Electoral Pilot Scheme Evaluation: Swindon Borough Council*, London, Electoral Commission, 2007.

<sup>8</sup> Greater London Authority, *Elections and Electorate Engagement: Report of the London Assembly's Elections Investigative Committee*, London, GLA, 2002.

<sup>9</sup> Association of Electoral Administrators, *Official Post Election Reports - May 2007 elections*, London:, AEA, 2007, p.11.

<sup>10</sup> Sarah Birch, 'Explaining Confidence in the Conduct of Elections', paper presented at the Elections, Public Opinion and Political Parties Conference, University of Essex, 9-11 September 2005.

<sup>11</sup> The Electoral Commission, *2006 local elections: public opinion*, London, Electoral Commission, 2006; John Curtice, Martin Boon and Melanie Rustin, *Public Opinion and the 2004 Electoral Pilot Schemes*, London, ICM, 2004.

<sup>12</sup> Hansard, 10 July 2001, Column 688.