



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

ACCESS TO ELECTORAL RIGHTS *UNITED KINGDOM*

Lamin Khadar

June 2013



US
University of Sussex



<http://eudo-citizenship.eu>

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

***Access to Electoral Rights
United Kingdom***

Lamin Khadar

June 2013

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2013/10
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© Lamin Khadar

This text may be downloaded only for personal research purposes.
Additional reproduction for other purposes, whether in hard copies or electronically,
requires the consent of the authors.

Requests should be addressed to eudo-citizenship@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as
the official position of the European Union

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times,
by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT,
by the European Parliament and by the British Academy Research Project CITMODES (both projects co-directed
by the EUI and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Access to Electoral Rights

United Kingdom

Lamin Khadar

1. Introduction

The scope of the franchise is a hotly debated topic in the UK, often gaining national salience in the press. The most prominent issues in recent times have revolved around citizenship and the voting rights of third country nationals, prisoners' voting rights, expatriates' voting rights and, most recently, the minimum voting age (in the context of the ever looming Scottish Independence referendum).

In the UK, over the course of the past 5 years or so, in concert with the trends in other Western European states, there has been growing interest in 'citizenship' and, more specifically, who deserves to have it and who does not. As will be discussed further below, there have been suggestions from the left and right of the political spectrum that the right to vote should be the constitutive hallmark of UK citizenship and hence, restricted to UK citizens only (a move that would rob Irish and Commonwealth citizens of the right to vote nationally in the UK). However, in spite of all the talk, there do not appear to be any concrete proposals to circumscribe the franchise in this manner.

Meanwhile, the debate around the rights (or, to be precise, the lack thereof) of prisoners to vote has refused to die down in the wake of the 2005 European Court of Human Rights Decision in *Hirst (No. 2) v the United Kingdom*¹ in which the UK was found to be in breach of its obligations under the European Convention of Human Rights by applying a blanket disenfranchisement to all prisoners. However, as will be discussed in more detail below, the current government shows no interest in changing the status quo.

The debate around expatriates' voting rights concerns the application by the UK of a fifteen-year rule, disenfranchising British citizens who have been living abroad for over fifteen years. There have been calls for it to be abolished both from within Parliament and from the citizenry through the court system. However, again, the current government does not seem inclined to expand the franchise.

An exception to this generally conservative stalemate has come to pass in the context of the Scottish independence referendum. In this context, it appears that the franchise will be extended to sixteen and seventeen year olds (in general the minimum voting age in the UK is eighteen). However, as will be explained in detail below, this is not without complications.

Looking to the legal community, in recent UK case law, British lawyers have shown admirable ingenuity in trying to extend the franchise to both expatriates (who have resided

¹ *Hirst v United Kingdom (No 2)*, N° 74025/01 (2006).

outside the UK for more than 15 years) and prisoners by reference to EU law principles and rights. However, the Courts have been reluctant to move beyond Parliament's mandate.

All in all, although the current government seems unlikely to make any major moves, the UK appears to be engaged in a healthy debate on the proper scope of the franchise, which, it should be added, is to be expected in a vibrant democratic society.

2. Eligibility: Who has electoral rights under national law?

2.1 Citizen residents

2.1.1. Age

Under current legislation², for all UK elections (with the exception of a proposal in respect of the 2014 Scottish Independence Referendum), persons are eligible to vote if they are eighteen years of age or over on the relevant election day. Furthermore, persons are permitted to register to vote provided they are over the age of sixteen at the time of registration. A number of organisations³ have argued that the minimum voting age should be reduced to sixteen, reflecting the fact that young people acquire other key rights and duties at this age (e.g. at the age of sixteen an individual is able to leave school, get married, join the armed forces and pay tax).⁴

This issue has gained recent currency in the UK in the context of the Scottish Independence Referendum (the 'Referendum') scheduled for October 2014.⁵ The Scottish government had been lobbying Westminster to secure the power to hold the Referendum for some time. The Scottish government did not previously have the necessary powers to hold the Referendum. However, by virtue of an agreement reached between the UK and Scottish heads of government on 15 October 2012 (the 'Edinburgh Agreement'), such powers will now be devolved.⁶ The powers will be devolved under Section 30 of the Scotland Act 1998 by way of a legal instrument that is subject to the approval of both the UK Parliament (House of Commons and the House of Lords) and the Scottish Parliament (a 'Section 30 Order').⁷ Once the Section 30 Order has been passed in the relevant UK legislatures, it will be for the Scottish parliament to develop legislation in Scotland setting the terms of the Referendum.⁸

² European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 s3(1)(d); the European Parliamentary Elections Act 2002 s8; the Representation of the People Act 1983, ss 1 and 2; the Scotland Act 1998 s11; the Government of Wales Act 2006 s12; the Northern Ireland Assembly (Elections) Order 2001 s4(1); the Elected Authorities (Northern Ireland) Act 1989 s1(b); and the Local Government Act 2000 s43(1)(a).

³ E.g. *Electoral Reform Society, Barnardos, Children's Society, YMCA, National Youth Agency, National Children's Bureau, Children's Rights Alliance for England, Liberal Democrats Youth and Students, Scottish National Party, London Young Labour, Plaid Cymru, National Union of Students, United Kingdom Youth Parliament, Children's Parliament in Scotland, British Youth Council, Care Leaver's Alliance, Black Youth Forum, Electoral Reform Society, and the Carnegie Institute for Young People.*

⁴ The House of Commons Library Standard Note, 'Voting age', SN/PC/1747, 17 May 2011.

⁵ See e.g., 'Alex Salmond loses battle for all 16-year-olds to vote in Scottish independence referendum', *The Telegraph*, 11 October 2012.

⁶ The Edinburgh Agreement is available from: www.number10.gov.uk/news/scottish-independence-referendum.

⁷ 'Scottish independence youth vote meets praise and problems', *The Guardian*, 11 October 2012; 'Alex Salmond hails historic day for Scotland after referendum deal', *The Guardian*, 15 October 2012; and see also the Edinburgh Agreement, 1.

⁸ *Ibid.*, the Edinburgh Agreement.

Controversially, the Edinburgh Agreement gives the Scottish government the power to extend the franchise for the purpose of the Referendum,⁹ such that sixteen and seventeen year olds would be eligible to vote.¹⁰ However, the Agreement leaves open the question of which electoral register will be used for the purpose of the Referendum i.e. the existing register as used for Scottish parliament and local government elections (as hinted at in the Edinburgh Agreement)¹¹ or some other special purpose ‘Referendum register’. While the Scottish government may have the power to determine the franchise, the power to alter the electoral register for local government and Scottish parliamentary elections is not devolved to the Scottish government and remains reserved to the UK government.¹² The problem is that if the existing register is used, not all sixteen and seventeen year olds will be eligible to vote under the current UK electoral registration law. Current UK electoral registration law permits anyone to register to vote that is due to attain the age of eighteen within twelve months of 1 December following any ‘relevant election date’ (i.e. September 2014 in the case of the Referendum). For the purposes of the Referendum, this means that anybody who is not eighteen by December 1 2015 will not be able to vote. I.e. only those sixteen year olds born on or before December 1 1997 will be eligible to vote.

Some members of the legal community in the UK have warned that defining the franchise in this fashion may be subject to legal challenge on both judicial review and human rights grounds.¹³ However, it remains to be seen how the extension of the franchise will actually be implemented in practice. As just indicated, the Scottish government may propose the creation of a new special purpose ‘Referendum register’; however, as will be discussed below, this could create many more difficulties.¹⁴ Furthermore, some Westminster MPs are of the opinion that the Scottish government does not have the power to create a new register.¹⁵

2.1.2. Mental disabilities

In general, patients resident in mental hospitals are entitled to vote. However, this was not always the case. While persons with mental disorders were originally enfranchised by virtue of the Representation of the People Act 1949, many such individuals remained unable to exercise their electoral rights because the Act made it impossible for patients with mental

⁹ See the Edinburgh Agreement Clauses 9 to 10: ‘*The Referendum Bill introduced by the Scottish Government will create a franchise for the referendum. Both governments agree that all those entitled to vote in Scottish Parliamentary and local government elections should be able to vote in the referendum [...] the Scottish Government’s consultation on the referendum also set out a proposal for extending the franchise to allow 16 and 17 year-olds to vote in the referendum. It will be for the Scottish Government to decide whether to propose extending the franchise for this referendum and how that should be done. It will be for the Scottish Parliament to approve the referendum franchise, as it would be for any referendum on devolved matters.*’

¹⁰ Extending the franchise to include sixteen and seventeen year olds has been a policy of the Scottish National Party for some time.

¹¹ The Edinburgh Agreement makes clear that, ‘[b]oth governments agree that all those entitled to vote in Scottish Parliamentary and local government elections should be able to vote in the referendum’.

¹² Scotland Act 1998, Schedule 5, Head B3.

¹³ Niall McClusky QC has commented that limiting the franchise in this fashion is potentially unreasonable and therefore subject to judicial review on grounds of irrationality and further that it may even be contrary to Article 3 of Protocol No. 1 of the ECHR. See ‘Alex Salmond loses battle for all 16-year-olds to vote in Scottish independence referendum’, *The Telegraph*, 11 October 2012.

¹⁴ See A Trench, ‘The section 30 order and under-18s voting in a Scottish referendum’, Devolution Matters Blog, 11 October 2012. Available at <http://devolutionmatters.wordpress.com/2012/10/11/the-section-30-order-and-under-18s-voting-in-a-scottish-referendum/#more-3468>.

¹⁵ See ‘Sir Malcolm Rifkind: Referendum deal is ‘comprehensive defeat’ for Alex Salmond’ *The Telegraph*, 14 October 2012; and ‘Alex Salmond loses battle for all 16-year-olds to vote in Scottish independence referendum’, *The Telegraph*, 11 October 2012.

disorders to register to vote whilst under the care of psychiatric institutions. It was forbidden for a patient to give as his/her address, for the purposes of voter registration, the address of a hospital in which s/he was receiving medical treatment. This position did not change until the Electoral Administration Act 2006 abolished the common law notion of incapacity to vote on grounds of a diagnosed mental disorder.¹⁶ It is now permitted for both informal patients and those detained on ‘civil’ (but not criminal) grounds to register to vote either at the address of their hospital or at another address with which they have a local connection.¹⁷ However, those persons detained in hospital as a result of criminal activity (or who would be so detained were they not unlawfully at large) continue to be disenfranchised under the present law.¹⁸

2.1.3. Persons convicted of criminal offences

Under current legislation,¹⁹ prisoners serving a custodial sentence do not have the right to vote in UK elections. However, prisoners on remand are able to vote under the provisions of the Representation of the People Act 2000.

In October 2005, the European Court of Human Rights (the “ECtHR”) held²⁰ that the UK’s current ban on all serving prisoners from voting contravenes Article 3 of Protocol No 1 of the European Convention on Human Rights. The Labour government carried out a two stage consultation process on options for a change in policy, but nothing was done to change the law before the general election on 6 May 2010. In June 2010 the Council of Europe’s Committee of Ministers expressed ‘profound regret’ that the ban had not been lifted in time for the 2010 general election. On 20 December 2010 the coalition Government announced that it would bring forward legislation to allow those offenders sentenced to a custodial sentence of less than four years the right to vote in UK Parliamentary and European Parliament elections, unless the sentencing judge considered this inappropriate. However, a debate was held in the House of Commons on 10 February 2011 and a motion, which supported the continuation of the current ban, was agreed with 234 in favour and 22 against. This effectively halted progress in the implementation of legislation extending the franchise.

Recently, in another case on the subject of prisoners voting rights,²¹ the ECtHR has confirmed its position (from *Hirst (No.2)*) that a general and automatic disenfranchisement of all serving prisoners, as in place in the UK, is incompatible with Article 3 of Protocol No 1 of the ECHR, but accepted the UK Government’s argument that member states should have a wide discretion in how they regulate a ban on prisoners voting. This most recent judgment had the effect of giving the UK Government six months from 22 May 2012, to introduce legislative proposals to amend the law in relations to the prisoners’ franchise.²² However, during Prime Minister’s Questions on 23 May 2012, Prime Minister David Cameron said to the House of Commons:

¹⁶ Electoral Administration Act 2006, s73.

¹⁷ MHAC Risk, Rights, Recovery: Twelfth Biennial Report 2005-7, TSO, Norwich, 2008, at paragraphs 2.139-2.141.

¹⁸ Mental Health Act ss 37, 38, 44, 51(5), s45A, or s47; s5(2)(a); and Criminal Procedure (Insanity) Act 1964 s6(2)(a) and 14(2)(a) Criminal Appeal Act 1968.

¹⁹ Representation of the People Act 1983 ss2 and 3; Scotland Act 1998 s11; Government of Wales Act 2006 s12; Northern Ireland Assembly (Elections) Order 2001 s4(1); Elected Authorities (Northern Ireland) Act 1989 s1(b); and Local Government Act 2000 s43(1)(a).

²⁰ Op. cit. *Hirst v United Kingdom*.

²¹ *Scoppola v Italy (No.3)*, N° 126/05 (2012).

²² The House of Commons Library Standard Note, ‘Prisoners’ voting rights’, SN/PC/01764, 26 September 2012; and the House of Commons Library Standard Note, ‘Prisoners’ voting rights’, SN/PC/1747, 17 May 2011.

I have always believed when you are sent to prison you lose certain rights and one of those rights is the right to vote. Crucially, I believe this should be a matter for Parliament to decide, not a foreign court. Parliament has made its decision and I completely agree with it.²³

Furthermore, even more recently, again during Prime Minister's questions, on 24 October 2012, David Cameron told MPs that, '*No one should be under any doubt - prisoners are not getting the vote under this government.*'²⁴ This was despite a warning from the attorney general that Britain's reputation would be damaged if it did not respond to the ECtHR ruling.²⁵

Nevertheless, in November 2012, by way of the Voting Eligibility (Prisoners) Draft Bill, the Government put forward three options to a Committee of both Houses for Parliamentary scrutiny. These three options are:

- A ban for prisoners sentenced to four years or more.
- A ban for prisoners sentenced to more than six months.
- A ban for all convicted prisoners – a restatement of the existing ban.

The Government presumably hopes that this measure will technically meet the UK's obligations to introduce legislative proposals. However, the Government is also under pressure to amend the prisoner disenfranchisement provisions from another front.

In 2011, in a case heard in the Scottish courts, *McGeoch v Lord President of the Council Court of Session*,²⁶ an attempt was made by lawyers for the claimant to extend the franchise to prisoners in Scotland by arguing that the convicted prisoner disenfranchisement provisions under UK law were incompatible with rights granted under the Treaty on the Functioning of the European Union (the 'TFEU') Article 20(2)(b) and the Charter of Fundamental Rights of the European Union, Article 40 (i.e. providing that '*every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State*'). However, the Scottish courts held that EU law did not confer upon the nationals of a Member State the right to vote in municipal elections *in that state*.²⁷ The court was, however, very careful to distinguish the right to vote in municipal elections from the right to vote in European parliamentary elections, noting that while the franchise for municipal elections did not fall within the scope of EU law, the franchise for European elections did, under Article 14 TFEU. This begged the question of what would happen if European Parliament elections were brought into play, and this is precisely what has happened in relation to the conjoined appeals to the UK Supreme Court in *McGeoch* and the English case of *Chester*.²⁸ It is possible that the next stage in this saga might then be a reference to the Court of Justice of the European Union (CJEU) by the UK Supreme Court. If the CJEU was to determine that UK prisoners should have the right to vote in European Parliament elections under EU law, it would be very difficult for the UK to then maintain disenfranchisement with respect to national, 'regional' and local elections.

²³ 'Cameron vows to defy Europe on prisoner voting', *The Telegraph*, 24 May 2012.

²⁴ 'Prisoners will not get the vote, says David Cameron', *BBC News*, 24 October 2012.

²⁵ This has sparked a row over UK sovereignty in the context of disregarding ECtHR judgments on policy grounds. See 'Prisoner votes: Strasbourg should give way to national independence', *The Guardian*, 29 October 2012.

²⁶ See *McGeoch v Lord President of the Council Court of Session* [2011] CSIH 67.

²⁷ *Ibid.*

²⁸ *Chester v Secretary of State for Justice* [2010] EWCA Civ 1439.

It should be noted that the UK (and the Scottish government more precisely) is not under any obligation to extend the franchise to serving prisoners under the ECHR for the purpose of the Scottish Independence Referendum, discussed at 2.1.1. above. This is because referenda have been held not to fall within the scope of Article 3, Protocol 1 ECHR. An application by a serving prisoner following the 1975 European Communities referendum was declared inadmissible by the European Commission on Human Rights.²⁹

2.1.4. Others

Members of the House of Lords are not permitted to vote in national elections in the UK (i.e. they are prohibited from voting for MPs).³⁰ However, they are permitted to vote at elections to local authorities, devolved legislatures and the European Parliament. Church of England archbishops and bishops and anyone found guilty, within the previous five years, of corrupt or illegal practices in connection with an election are also disenfranchised by law.

2.2 Citizens abroad

2.2.1. Residence requirements

British citizens living overseas are entitled to be registered to vote in UK Parliamentary elections for up to fifteen years subsequent to their departure from the UK.³¹ However, this was not always the case. Prior to 1985 expatriate citizens were not permitted to register to vote in UK national elections. The Representation of the People Act 1985 extended the franchise to expatriate citizens and enabled them to register as ‘overseas voters’ in the constituency for which they were last registered. This entitlement was initially only available for those expatriates who have lived abroad for no longer than a period of five years. Later, this was extended to 20 years by the Representation of the People Act 1989, and, most recently, reduced to fifteen years by the Political Parties, Elections and Referendums Act 2000.³²

Currently, as just noted, expatriate citizens are entitled to vote only in the constituency in which they were registered before leaving the UK.³³ They are not entitled to vote in UK local elections or elections to the devolved assemblies in Wales, Scotland and Northern Ireland. Furthermore, persons who have never been registered as an elector in the UK are not eligible to register as an overseas voter unless they left the UK before they were eighteen, and providing that they left the country no more than fifteen years prior to the date of poll in which they wish to vote.³⁴

There have been recent calls for the UK Government to abolish the fifteen year rule. The issue was raised recently during the passage of the Electoral Registration and Administration Bill 2012-13 in the House of Commons. A Conservative MP proposed that a new clause should be added to the Bill to abolish the fifteen year rule altogether. The argument in favour of abolishing this rule takes the position that all British citizens should qualify as overseas voters, regardless of when they were last resident in the UK.³⁵ A member

²⁹ See *X v UK* (1975) 3 DR 165 and also *X v Germany* (1975) 3 DR 98.

³⁰ See e.g. *Earl Beauchamp v Madresfield* [1872] LR 8 CP 245.

³¹ Representation of the People Act 1985 s1.

³² The House of Commons Library Standard Note, ‘Overseas voters’, SN/PC/05923, 18 September 2012.

³³ Representation of the People Act 1985 s2.

³⁴ Representation of the People Act 1985 s1.

³⁵ Op. cit. the House of Commons Library Standard Note, ‘Overseas voters’, 18 September 2012.

of the cabinet for the coalition Government responded to a proposal by suggesting that the Government would give the issue ‘*serious consideration*’ but that it would not rush into a decision ‘*not because of any wish to obstruct, but simply because the question of extending the franchise is a fundamental one, and both the Government and the House would have to feel comfortable with doing that*’.³⁶ The amendment was subsequently withdrawn.

Calls for the abolition of the fifteen year rule have also been heard recently in other institutional forums. In a recent Court of Appeal case³⁷ that received some attention in the press³⁸, a British citizen (“Preston”) living in Madrid, Spain, was denied judicial review of a decision taken by a local council, refusing to process his electoral registration form. The local authority had rejected Preston’s registration application on the ground that under the Representation of the People Act 1985 s1(3), he had lost his entitlement to vote in UK parliamentary elections after residing overseas for over fifteen years.

Preston submitted that the refusal of the local authority to enter him on the register was an unjustified and discriminatory restriction on the exercise of his right to free movement within the EU (contrary to the Article 21 TFEU). He further argued that the UK courts had to either interpret s1(3) in conformity with EU law or disapply it.

The High Court³⁹ had found against Preston, reasoning that he had failed to show that the fifteen year rule deterred persons from exercising their free movement rights under EU law and that it was unrealistic to suggest that the possibility of being denied the right to vote in fifteen years’ time would deter anyone from leaving the UK.

The Court of Appeal affirmed the decision of the High Court, noting that it was undisputed that the conferral of the right to vote upon overseas residents was a matter of national sovereignty. However, the Court of Appeal went on to say that it did not follow from the fact that the right to vote in such elections was outside the ambit of the TFEU that Member States could lay down, in their electoral law, conditions which might have an impact on the exercise of fundamental rights under that Treaty.

The Court put it in the following terms:

[T]he 15 year rule is not in terms an express restriction on free movement. Nor is it in substance a disguised or inherent restriction on free movement. The claimant therefore needs some evidence of potential restriction. His problem is lack of evidence.

[...]

[S]uspension of the right to vote of those British citizens who voluntarily choose to reside in another Member State for more than 15 years can be characterised as a “disadvantage.” It does not follow, however, that every disadvantage of non-residence in the UK is a restriction on or deterrent to free movement.⁴⁰

³⁶ House of Commons Debate, 27 June 2012, c353 and 354.

³⁷ *R. (on the application of James Alistair Preston) v The Lord President of the Council* [2012] EWCA Civ 1378.

³⁸ ‘Still no voting rights in UK for British expats’, *The Telegraph*, 16 December 2011.

³⁹ *R. (on the application of James Alistair Preston) v Wandsworth LBC* [2012] 2 W.L.R. 1134.

⁴⁰ *R. (on the application of James Alistair Preston) v The Lord President of the Council*, at paragraphs 78 and 79.

Moreover, the Court was of the opinion that even if the 15 year rule was a restriction, it was objectively justified in any event by reference to considerations of proportionality, rationality and practicality.⁴¹ The court concluded:

The issue of justification is a matter for the decision of the domestic courts in accordance with well-established general principles of EU law. The ruling on justification alone is decisive of this case.⁴²

The line of argument pursued by the Court in *Preston* is in contradiction with recent academic opinion on whether such disenfranchisement of Member State nationals in national elections causes a restriction on the right to free movement guaranteed under Article 21 TFEU (and whether it is objectively justified). Kochenov, for example, makes the argument that the CJEU should pursue ‘negative integration’ by viewing the disenfranchisement of Member State nationals, who choose to exercise their rights of free movement, as a restriction on the exercise of that right which must be objectively justified by considerations of public interest.⁴³ Kochenov, contrary to the Court of Appeal, considers that disenfranchisement of this kind clearly constitutes a restriction and notes that:

[i]t is clear that the prospective of losing a key right associated with nationality [i.e. the right to vote in national elections] as a consequence of moving from one Member State to another using the right provided in Article 18 EC [Article 21 TFEU]) is likely to discourage EU citizens from using this right.⁴⁴

Kochenov, again contrary to the Court of Appeal, also doubts whether such restrictions are objectively justifiable as in the public interest and goes on to say that it:

is very doubtful that the Member States restricting expatriate enfranchisement at the national level will be able to come up with objective considerations of public interest which will be able to convince the Court that the main democratic right [i.e. the right to vote in national elections] pertaining to the nationality of a Member State should really be removed from those who exercise their free movement [.]⁴⁵

However, the *Preston* cases suggests that, the UK Courts at least, may not be ready to challenge Member State sovereignty by departing from the *status quo* in which, the right to vote in national elections emphatically does not fall within the scope of EU law.

The fifteen year rule has also come under attack recently in the context of ECHR litigation. In the case of *Shindler v United Kingdom*⁴⁶, relying on Article 3, Protocol 1 of the ECHR, the applicant (a UK national resident in Italy, prohibited from voting in UK national elections by virtue of the fifteen year rule) claimed that no time-limit should be imposed on the right of EU citizens resident abroad to vote in their country of origin while they retained the nationality of that country. The Court, however, relying on the ‘margin of appreciation’ doctrine, held that the Representation of the People Act 1985 s1(3), did not go too far in restricting the right to free elections under the ECHR. The Court was satisfied that the fifteen year rule:

⁴¹ Ibid. at paragraphs 88 to 95.

⁴² Ibid. at paragraph 96.

⁴³ D Kochenov, ‘Free Movement and Participation in the Parliamentary Elections in the Member State of Nationality: An Ignored Link?’ in *Maastricht J. Eur. & Comp. L.*, vol. 16, 2009 at pages 23 to 32.

⁴⁴ Ibid. at page 30.

⁴⁵ Ibid. at page 31.

⁴⁶ *Shindler v United Kingdom*, N° 19840/09 (2013).

pursued the legitimate aim of confining the parliamentary franchise to those citizens with a close connection to the United Kingdom and who would therefore be most directly affected by its laws.⁴⁷

There have also recently been calls for a Member of Parliament specifically for British citizens living overseas (a so called ‘Diaspora MP’).⁴⁸ However, it is doubtful whether such proposals would be supported by the present coalition Government which has already legislated to reduce the number of Members in the House of Commons.⁴⁹

2.2.2. Temporarily absent citizens

In relation to all elections in the UK, those citizens who are normally resident in the UK, but away from home on Election Day, can apply to vote by post or by proxy.

2.2.3. In-Country voting

This is not an option that is foreseen in the UK. Persons can either vote as a resident (even if they are temporarily absent (i.e. by postal ballot)) or, alternatively, they may vote as an overseas voter, in which case they would also vote by post in the constituency where they were most recently registered. There is also no facility, as in some states, for long term non-residents to return home to vote.

2.3 Foreign residents

Foreign residents who are neither EU citizens nor Commonwealth citizens do not enjoy any voting rights in the UK. By contrast, All Commonwealth⁵⁰ citizens who are resident in the UK and who have leave to enter or remain in the UK, or do not require leave to enter or remain in the UK, are entitled to vote in all forms of elections in the UK.⁵¹ Furthermore, Cypriot and Maltese citizens (as Commonwealth citizens) and Irish citizens (under the Ireland Act 1949)⁵² enjoy a position of double privilege, having rights to vote at all levels of

⁴⁷ Ibid. at para 118.

⁴⁸ ‘Give a Commons seat to the member for the Costa del Sol’ *The Guardian*, 1 November 2009.

⁴⁹ Op. cit. the House of Commons Library Standard Note, ‘Overseas voters’, 18 September 2012.

⁵⁰ N.B. the definition of ‘Commonwealth citizens’ includes: *Commonwealth countries*: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Fiji Islands, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, St Kitts & Nevis, St Lucia, St Vincent & The Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tonga, Trinidad & Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia, Zimbabwe
British Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Island, St Helena and dependencies (Ascension Island and Tristan da Cunha), South Georgia and the South Sandwich Islands, Sovereign base areas on Cyprus, Turks and Caicos Islands,
British Crown Dependencies: Isle of Man, The Channel Islands (including Jersey, Guernsey, Sark, Alderney, Herm and the other inhabited Channel Islands).

⁵¹ Representation of the People Act 1983 ss1 and 2; Scotland Act 1998 s11; Government of Wales Act 2006 s12; The Northern Ireland Assembly (Elections) Order 2001 s4(1); Elected Authorities (Northern Ireland) Act 1989 s1(c); Local Government Act 2000 s43(1)(a); and Local Government Act 2000 s45(4).

⁵² It is also worth noting that, in the case of the Republic of Ireland, there has been some level of reciprocity. In 1985, following a Supreme Court Case, legislation was introduced in Ireland permitting UK citizens to vote in *Dáil* (i.e. lower house) elections, although not to stand.

election in the UK and also enjoying the limited range of EU electoral rights. In addition, they are not subject to immigration control in the same way as other Commonwealth citizens. Both Commonwealth and Irish citizens may also stand for election, but in the case of Commonwealth citizens (other than Cypriot and Maltese citizens) this is again on the condition that they have leave to enter or remain in the UK or do not require leave to enter or remain in the UK.⁵³ The privileged position of these categories of non-nationals is, in general, a consequence of the UK's imperial history rather than any particular cultural or linguistic ties. As Ireland and the countries of the Commonwealth gradually became independent states throughout the course of the twentieth century, the franchise arrangements were preserved and updated.⁵⁴

There have, however, been recent calls to strip back the UK franchise to what is strictly required by EU law. In 2007, then Prime Minister Gordon Brown, asked Lord Goldsmith QC, to carry out a review of British citizenship. His final report, entitled *Citizenship: Our Common Bond*, suggested:

that government gives consideration to making a clear connection between citizenship and the right to vote by limiting in principle the right to vote in Westminster elections to UK citizens. This would recognise that the right to vote is one of the hallmarks of the political status of citizens; it is not a means of expressing closeness between countries. Ultimately, it is right in principle not to give the right to vote to citizens of other countries living in the UK until they become UK citizens.⁵⁵

Even more recently, during the passage of the Parliamentary Voting System and Constituencies Bill 2010, a Conservative MP called for the elimination of voting rights for all non-UK citizens in Westminster elections:

There are 54 Commonwealth countries, including the UK. This means that, at the moment, citizens from 53 countries around the world, living, working or studying in the UK have the right to vote in all our elections [...] even though some of them have only arrived in the UK recently and cannot speak English very well, let alone understand our democratic procedures. [O]nly 14 out of 53 Commonwealth countries offered reciprocal arrangements for British citizens to vote in their countries. [I]n the 21st century I think that it would be inconceivable to suggest that Commonwealth citizens from all over the world should have the right to vote in elections and referendums in every other Commonwealth country where they may be living, working or studying. This would totally undermine the right of the citizens of each independent country to determine which political party governed them in the best interests of their country. [...] Is it not time to consider [whether] this outdated relic from British's [sic] Empire and colonial past, which enables Commonwealth citizens to vote in all UK elections or referendums, should be removed?⁵⁶

It is not apparent, however, whether these calls for change will actually materialise into any concrete legislative proposals. Furthermore, operating as a distinct disincentive to

⁵³ See the Act of Settlement 1700 s3; Electoral Administration Act 2006 s18; Local Government Act 1972 s79; Local Government (Scotland) Act 1973 s29; Local Government Act (Northern Ireland) 1972 s3; and Greater London Authority Act 1999 s20.

⁵⁴ J Shaw, *Citizenship and Electoral Rights in the Multi-Level 'Euro-Polity': the case of the United Kingdom*, in H Lindahl (eds) *A right to Inclusion and exclusion?*, Hart, London, 2009, at pages 241-259.

⁵⁵ Lord Goldsmith QC, *Citizenship: Our Common Bond*, Citizenship Review, March 2008; available from www.justice.gov.uk/reviews/citizenship.htm, at pages 75-6.

⁵⁶ Written evidence submitted by Dame Marion Roe DBE, Member of Parliament for Broxbourne, 2010; available from www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/437/437we29.htm.

change is the fact altering the scope of the franchise cannot be done in a vacuum; changes to the franchise will inevitably trigger broader and related legal reforms, policy discussions and public debates.

2.4 Standing as a candidate

In order to be eligible to stand as a candidate to be a Member of Parliament for the UK, a person must be: at least eighteen years old; either a British citizen or a citizen of the Republic of Ireland or a citizen of a Commonwealth country and either have leave to enter or remain in the UK or not require leave to enter or remain in the UK.⁵⁷ There is no requirement for a person to be a registered elector in the constituency.

Citizens of other countries (including other EU member states) are not eligible to become a Member of the UK Parliament. However, citizens of other EU Member States *are* eligible to become Members of Parliament (or Assembly Members, as the case may be) for the devolved bodies in the UK: the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly. Persons can become disqualified from running as a candidate in national and ‘regional’ (i.e. to the devolved bodies) elections on grounds of bankruptcy, serving a prison sentence with a duration of over twelve months, serving in the armed forces, as a policeman or as judge, and on a number of other grounds which will not be dealt with further here.⁵⁸

The qualification requirements for local elections will be dealt with at 3.1 directly below.

3. Electoral rights of EU citizens

3.1 Local elections

In relation to EU Council Directive 94/80/EC on local elections, the UK was one of the first four Member States to adopt a full set of transposition measures within the deadline (1 January 1996). In the case of the UK the relevant statutory instrument was the Local Government Elections (Changes to the Franchise and Qualification of Members) Regulations 1995.

While the Directive provides the possibility for the Member State to restrict a number of offices in the local administration to its own nationals, namely those related to the executive of the municipality, the United Kingdom currently does not apply any restrictions.⁵⁹

In general, a person is entitled to vote as an elector at a local election in the UK if s/he is a British or Commonwealth citizen who is resident in the UK; a citizen of the Irish Republic who is resident in the UK; or a citizen of another EU Member State who is resident in the UK. Furthermore, the usual restrictions apply in relation to voting age, legal

⁵⁷ Electoral Administration Act 2006 ss7 and 8; Act of Settlement 1700 s3; and British Nationality Act 1981 s52(6).

⁵⁸ See the Guidance for Candidates and Agents generally, on the UK Electoral Commission website, available at <http://www.electoralcommission.org.uk>.

⁵⁹ See *Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals*, COM (2012), Brussels, available from <http://ec.europa.eu>.

incapacities to vote and the immigration status of Commonwealth citizens.⁶⁰ Non-national citizens of the Union have to apply to be entered on the electoral roll in the UK, but this position is the same for UK citizens who are required to submit registration forms each year during the ‘annual canvass’.

In terms of standing as a candidate, the conditions of eligibility are set out in various pieces of legislation applying to England and Wales, Scotland, Northern Ireland and Greater London.⁶¹ In general, candidates must be at least 18 years old, be a British citizen, a qualifying Commonwealth citizen (i.e. not subject to immigration control), or a citizen of any other Member State of the European Union. In addition, candidates must meet at least one of the following four qualifications on the day they are nominated and on the Election Day: they must be registered as a local government elector for the local authority in which they wish to stand; have occupied, as owner or tenant, any land or other premises in the local authority area during the whole of the twelve months before the day they are nominated; have their main or only place of work during the last twelve months in the local authority area; or have lived in the local authority area during the whole of the last twelve months.

3.2 EP elections for EU citizens residing in the country

EU Council Directive 93/109/EC on European Parliament elections was implemented in the UK by the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001.

The UK took advantage of the derogation provided for in Article 14(2) of the Directive, which permitted a dispensation from the registration formalities in relation to Irish nationals as the citizens of this Member State were already able to take part in national elections in the UK and so were already on the electoral register.⁶² As discussed at 2.3.2 above, this is on account of the special arrangements for Irish citizens living in the UK who are permitted to vote in all forms of elections.

Furthermore, the UK, along with the Netherlands and Sweden, did not make use of the option in Article 9(3a) which permitted Member States to request that voters state in a formal declaration that they had not been deprived of their right to vote in their Member State of origin.⁶³

There was some initial confusion in Great Britain (i.e. Scotland, England and Wales) as to how to legally implement the ex-post control mechanism to prevent double voting as required by the Directive. This was because, unlike in Northern Ireland,⁶⁴ in Great Britain, there is no legal requirement or even common practice which requires voters to confirm their identity when they present themselves at the polling station).

⁶⁰ Representation of the People Act 1983 s2; and Local Government Act 2000 s43(1)(a).

⁶¹ Local Government Act 1972 s79; Local Government (Scotland) Act 1973 s29; Local Government Act (Northern Ireland) 1972 s3; and Greater London Authority Act 1999 s20.

⁶² *Report from the Commission to the European Parliament and the Council on the application of Directive 93/109/EC*, COM (1998), Brussels, available from <http://ec.europa.eu>.

⁶³ *Ibid.*

⁶⁴ Northern Ireland has a long history of electoral malpractice. Persons have deployed fraudulent practices such as making multiple entries on the register, impersonation, abuse of proxy voting and the use of undue influence on the elderly and frail. Consequently, individual registration was introduced in Northern Ireland (as opposed to the system of household registration which still prevails in Great Britain today) by the Electoral Fraud (Northern Ireland) Act 2002. Individual registration required identifiers (e.g. a signature and date of birth) that could be used for checking.

However, the problem was resolved to some extent and, under the European Parliamentary Act 2002⁶⁵, it is now an offence if, on any occasion when elections to the European Parliament are held in all the Member States, a person votes as an elector more than once in those elections, whether in the United Kingdom or elsewhere. However, this is merely a ‘legal bar’ to double voting and, practically, does not provide any form of administrative check.

In general, a person is entitled to vote as an elector at a European Parliamentary election in the UK if s/he is a British or Commonwealth citizen who is resident in the UK; a citizen of the Irish Republic who is resident in the UK; or a citizen of another EU Member State who is resident in the UK. Furthermore, the usual restrictions apply in relation to voting age, legal incapacities to vote⁶⁶ and the immigration status of Commonwealth citizens.⁶⁷

It should be noted that in Northern Ireland, there is an additional requirement that electors must have been resident in Northern Ireland during the whole of the three-month period prior to the relevant date of 15 October.⁶⁸

In terms of standing as a candidate, the conditions of eligibility are set out in the European Parliamentary Elections Act 2002.⁶⁹ A candidate must be at least eighteen years old, be a British citizen, a qualifying Commonwealth citizen (i.e. not subject to immigration control), or a citizen of any other Member State of the European Union who has a home address within the UK.⁷⁰

A candidate who is a national of a Member State of the European Union but who is not also a Commonwealth citizen (for these purposes ‘Commonwealth citizen’ means a citizen of the UK, Malta or Cyprus) or a citizen of the Republic of Ireland must complete a declaration stating: his nationality; his home address in the United Kingdom or Gibraltar in full; that he is not standing as a candidate for election to the European Parliament in any other Member State at elections held in the same period; and where his name has been entered in a register of electors in a locality or constituency in the Member State of which he is a national, the name of the locality or constituency where, so far as he knows, his name was last entered.⁷¹

There have been some interesting cases arising both in the ECtHR and the CJEU in the context of the European parliamentary election voting rights of Commonwealth citizens resident in Gibraltar. In 1999, in *Matthews v United Kingdom*⁷², the ECtHR found that the UK had violated Article 3 of Protocol 1 of the ECHR (by virtue of which states are obligated to hold free and fair elections ensuring the free expression of the people in the choice of the legislature) on the basis that it had limited European Parliamentary elections to the UK territory alone and, in so doing, excluded Gibraltarians from voting.⁷³ The ECtHR accepted

⁶⁵ European Parliamentary Elections Act 2002 s7.

⁶⁶ See 2.1.2 and 2.1.3 above.

⁶⁷ See the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 s3(1)(d); and the European Parliamentary Elections Act 2002 s8.

⁶⁸ *Study on possible developments of EU legislation in the field of electoral matters including possible modification of Directive 93/109/EC: National Report of the United Kingdom*, Instituto Europeo de Derecho, 2010, at page 9.

⁶⁹ European Parliamentary Elections Act 2002, s 10.

⁷⁰ *Guidance on standing for election to the European Parliament*, The Electoral Commission, 2009, at page 22.

⁷¹ Op. cit. *Study on possible developments of EU legislation in the field of electoral matters including possible modification of Directive 93/109/EC: National Report of the United Kingdom*, at page 10.

⁷² *Matthews v United Kingdom*, N° 24833/94, (1999).

⁷³ Gibraltarians were unable to vote in European parliamentary elections by virtue of the second annex of the original 1976 Act on direct elections to the European Parliament. The annex restricted the application of the Act

the argument that although Gibraltar was not part of the EU as such, it was sufficiently affected by large portions of EU law that the European Parliament could fairly be construed as a legislature for the jurisdiction.⁷⁴ Spain objected to a number of measures that the UK adopted to implement *Matthews*⁷⁵ and requested the Commission to bring an enforcement action against the UK on the basis that in extending the right to vote in European parliamentary elections to the territory of Gibraltar, the UK had failed to observe primary EU law. While this was true, Spain had blocked UK efforts to amend the relevant EU law. Making no headway with the Commission, Spain brought an enforcement action itself under Article 226 EC (now Article 258, TFEU).⁷⁶ Ultimately the ECJ found in favour of the UK reasoning that there was no EU law to suggest that the right to vote in European Parliament elections had to be limited to EU citizens alone.⁷⁷

3.3 EP elections for national citizens abroad

As with parliamentary elections at the UK national level, UK citizens living overseas who wish to vote in the European Parliament elections are entitled to vote for up to fifteen years after moving abroad. An overseas voter is required to register in the constituency covering the address under which they were last registered within the UK. However, someone who has never been registered as an elector in the UK is not eligible to register as an overseas voter unless they left the UK before they were eighteen and providing that they left the country no more than fifteen years ago.⁷⁸

3.4 Regional and other elections

With respect to regional elections, the situation in the UK is somewhat interesting in that resident EU citizens are eligible to vote in the Scottish Parliament, Welsh and Northern Irish Assembly elections. This is because the local electoral registers (which included resident EU citizens as a consequence of EU Council Directive 94/80/EC) were used to establish the registers for elections to the devolved bodies. It should be recalled that there was no obligation on the UK to extend voting rights to resident EU citizens at the regional level. In fact, the UK went even further and, with the exception of the devolution referendum in Northern Ireland, resident EU citizens (i.e. resident in the relevant part of the UK) were able to vote in the referendums which established the devolved bodies in the UK (i.e. the Scottish Parliament and the Welsh Assembly).⁷⁹ In terms of explaining why the UK opted for this liberal approach to the implementation of EU Council Directive 94/80/EC on local elections, Shaw has suggested that the decision may have been premised on an intuition that devolution marked the extension of what constituted the ‘local’ within UK constitutional politics.⁸⁰ However, what is clear at the current constitutional juncture in the UK is that the devolved

to the United Kingdom of Great Britain and Northern Ireland only, to the exclusion of other UK territories such as Gibraltar, the Channel Islands and the Isle of Man, to which the EC treaties apply in part.

⁷⁴ Op. cit. J Shaw, *Citizenship and Electoral Rights in the Multi-Level ‘Euro-Polity’: the case of the United Kingdom*, at page 256.

⁷⁵ For example the UK opted not only to give voting rights to Gibaltans, but also to other Commonwealth citizens residing in Gibraltar (around 100-200 people).

⁷⁶ Case C-145/04, *Spain v the United Kingdom* (Gibraltar) [2006] ECR I-7917.

⁷⁷ Op. cit. J Shaw, *Citizenship and Electoral Rights in the Multi-Level ‘Euro-Polity’: the case of the United Kingdom*, at page 257.

⁷⁸ See Representation of the People Act 1985 s1; and European Parliamentary Elections Act 2002 s8.

⁷⁹ Op. cit. J Shaw, *Citizenship and Electoral Rights in the Multi-Level ‘Euro-Polity’: the case of the United Kingdom*, at page 248.

⁸⁰ Ibid.

bodies of the UK, as they take more and more power from Westminster, increasingly begin to resemble the ‘national’ more than the ‘local’. Certainly, in Scotland, there is even the likelihood that resident EU citizens will vote both in the Independence Referendum and, if it comes to pass, for the national parliament in an independent Scotland.

4. Exercising electoral rights

4.1 National, regional and local elections

4.1.1. Voter registration

Throughout the UK, local ‘Electoral Registration Offices’ deliver registration forms to the homes in their area once each year during the ‘annual canvass’. One person in every household is responsible for registering everyone else who is eligible to vote and lives at that address by completing the form. Such individuals will then be added to the ‘Electoral Register’. If an individual misses the annual canvas, registration can also be effected at the individual’s own initiative throughout the year. The registration process does not differ across the UK or across the various forms of election, although there are separate forms for overseas and armed services voters. Overseas voters are required to submit an ‘overseas voter’s declaration’ to the ‘Electoral Registration Officer’ for the constituency in which the individual most recently resided.

In terms of the requirements which need to be met by persons wishing to register, residence remains a key concept in the UK. A person’s name may appear on the electoral register only if they are resident at an address within the specified electoral region on the ‘relevant date’ (i.e. the date on which the voter registration application is deemed to have been made).⁸¹ With the exception of voters in Northern Ireland, there is no specified period of residence required to be established before an entitlement to be registered arises.⁸² Furthermore, residence is not defined in law, but it has been held by the courts to entail a ‘considerable degree of permanence’.⁸³ Being resident does not, however, require actual occupation and so the applicant does not need to be physically present at the address on the relevant date. For example, students, those with two homes and those who work away from home, in general, all satisfy the residence requirement.⁸⁴

Homeless persons are now enfranchised, but this is thanks to a relatively recent legal innovation. While homeless persons were never explicitly disenfranchised, prior to the Representation of the People Act 2000, the majority of homeless persons were disenfranchised by virtue of the above described requirement of residence on the ‘relevant date’. While a few homeless persons managed to get registered by, for example, establishing residence at hostels, many more remained disenfranchised.⁸⁵ However, the Representation of the People Act 2000 introduced the novel concept of ‘notional residence’ which means that homeless persons can now make a declaration of local connection with an address where they

⁸¹ Representation of the People Act 1983 s4(1)(a).

⁸² Citizens residing in Northern Ireland are required to have been resident there for at least three months prior to the date of the registration. See Representation of the People Act 1983 s4(2).

⁸³ *Fox v Stirk* [1970] 2 QB 436.

⁸⁴ *Ibid.*

⁸⁵ See e.g. *Lippiatt v Electoral Registration Officer for Penwith District Council*, 21 March 1996, unreported; and ‘Builder without a home to stand as MP’ *The Guardian*, 30 August 1996.

spend a substantial part of their time or to which mail is sent and establish ‘notional residence’ for the purposes of registration.⁸⁶

Voter registration has gained currency in the media recently in the context of the Scottish Independence Referendum (discussed in more detail above at 2.1.1.). In general, during the ‘annual canvass’ just described above, all sixteen to seventeen year olds should be included on the electoral registration form for the respective household.⁸⁷ However, for the purposes of appearing on the register, current UK electoral registration law (applicable to the Scottish parliamentary and local government register) makes it clear that only those who will attain voting age before the end of the period of twelve months following the relevant election date are entitled to be registered. Therefore, although the names and dates of birth of all sixteen to seventeen year olds should be collected in each annual canvass, only those who turn eighteen before the relevant date are added to the register.

However, if as discussed above in section 2.1.1., the Scottish government opt to create a new special purpose ‘Referendum register’ so as to allow *all* sixteen and seventeen year olds to vote in the Referendum (i.e. including those who will not attain the age of eighteen before 1 December 2015), this could create significant administrative problems in terms of canvassing such persons. This is because the last annual canvass to occur before the Referendum, taking place in autumn 2013, would only record on the register those individuals who are due to turn eighteen by 1 December 1 2015 and a great deal of the sixteen year olds (i.e. all those persons who, although sixteen on the date of the Referendum, were born after the 1 December 1997 cut-off date – which means anyone younger than sixteen years and nine months) would need to be individually canvassed because the current canvass system would not register all of them in time to vote. This could be a costly option for the Scottish government.

4.1.2. Casting the vote

The voting methods available do not vary across the UK or across the forms of election. Voters can vote at the polling station in the district where the voter is registered, by proxy and by post.

Persons on the electoral register receive a polling card before the election telling them where and when to vote. The polling station will often be at a school or local hall near where the individual lives. To vote by proxy, individuals must be on the electoral register and are required to complete a form, sign it, and send it back to their local electoral registration office. As with proxy voting, to vote by post, individuals must be on the electoral register and are required to complete a form, sign it, and send it back to their local electoral registration office. Postal vote ballot papers are usually sent out about a week before the relevant Election Day. Once received, votes are to be marked on the ballot paper which should be sent back so that it arrives by close of poll (which is 10pm on the relevant Election Day). Ballot papers that arrive later than this are not counted.

4.1.3. Running as candidate

In order to run as a candidate, an individual is required to contact the Returning Officer (i.e. the person who is responsible for overseeing elections in the relevant constituency) and obtain a ‘nomination pack’ (essentially a number of forms and information sheets). Individuals are then required to complete the required nomination papers and ask ten

⁸⁶ See Representation of the People Act 1983 s7B.

⁸⁷ Form of Canvass Regulations 2006.

registered electors in the constituency to support their nomination. Following this, a written request will need to be made for a copy of the relevant electoral register(s) to allow the individual to check whether the subscribers are registered electors and in order to retrieve their elector numbers to be included on the nomination forms. Finally, the completed nomination papers and a £500 deposit (which is refunded if the candidate secures over five per cent of the vote) must be submitted to the Returning Officer by 4pm on the eleventh working day before Election Day.⁸⁸

4.1.4. Assimilated or special representation of citizens residing abroad

The UK operates a system of ‘assimilated representation’ for expatriate citizens. Expatriate votes are incorporated into the broader voting total and the overseas voters’ vote is included in the total for the constituency in which they most recently resided and/or were registered to vote.

However, as mentioned above at 2.2.1, it has been recently proposed that there should be a MP specifically for British citizens living overseas, which would presumably operate on a model of discrete representation with no geographical division.⁸⁹

⁸⁸ See the Guidance for Candidates and Agents generally, on the UK Electoral Commission website available at <http://www.electoralcommission.org.uk>.

⁸⁹ Op. cit. the House of Commons Library Standard Note, ‘Overseas voters’, 18 September 2012.

