



Electoral Law – A Practical Overview

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Overview



- Purpose of this seminar is to set out a “broad” introduction to Electoral Law
- By explaining some of the roles and processes concerned in an Election (all of which are derived from legislation and case law) you will (hopefully) have a better understanding of the machinery you are involved in as a candidate when you are standing for office
- Knowledge is key to understanding that a fair and correct process has been followed in an Election
- References to “complex” in this presentation should be taken to mean “expensive” in lawyer-speak.

Electoral Law – Why do we need it?



- As a basic statement:
 - Electoral Law provides “the rules of the game”
 - Underpins the principles of fairness, trust and confidence in the UK’s democratic processes.
 - Without a legislative basis, near impossible to ensure that the processes and results of an election can be trusted.
 - If the public cannot trust the processes and results... ...why bother with elections?

Electoral Law – Where to find it?



- Hugely (and unnecessarily) complex
- Derived almost entirely from Victorian practice and procedure
- There are more than 25 Acts of Parliament and over 27 pieces of secondary legislation governing the Electoral process.
- The Ballot Act – 1872
- The Corrupt and Illegal Practices Act – 1883

Electoral Law – Where to Find it: 2



- The Representation of the People Act – 1983
– The last consolidation of Electoral Law!
- The Representation of the People Act – 1985
- The Representation of the People Act – 2000
- Electoral Administration Act – 2006
- Two key practitioner manuals that tend to be used by Returning Officers and Lawyers – Schofield (Grey) and Parkers (Red)

Oversight and Management of Elections



- In England, this is broadly left to Local Government.
- Fulfilled by the:
 - Returning Officer;
 - acting Returning Officer; and,
 - Electoral Registration Officer (who is usually the same person as the acting Returning Officer)
- The Electoral Commission

Oversight and Management of Elections: The Returning Officer



- The Returning Officer
 - Honorary post – s.24 Representation of the People Act 1983
 - Only responsible (in reality) for the receipt of the writ (which triggers an election), declaration of the result and return of the writ
 - Very rarely (if at all) a lawyer

Oversight and Management of Elections: The Acting Returning Officer



- The Acting Returning Officer
 - Responsible for the Returning Officer’s “other duties”
 - Effectively these are all the administratively significant aspects of running the election. Set out in s.28(1) of the Representation of the People Act 1982
 - Usually a senior officer of a local authority
 - Not always a lawyer, but required to have a “working knowledge” of the legislation

Oversight and Management of Elections: The Electoral Registration Officer



- Electoral Registration Officer
 - Responsible for maintaining the Electoral Roll
 - Statutory Duty (s9A of the Representation of the People Act 1983) to ensure that the Roll is maintained and that those on it are eligible to vote
 - There can be deputy Electoral Registration Officers

Oversight and Management of Elections: The Electoral Commission



- The Electoral Commission
 - An “all powerful” Regulator?
 - Responsible for ensuring:
 - elections are well run
 - transparency in party and election finance
 - the registration of political parties
 - Powers to investigate and impose sanctions for breaches of the rules relating to finance. This includes a power (and willingness) to refer matters to the police.

The Lead Up to an Election



- An election starts (officially) when a notice of election is published
- If there are more candidates than vacancies, a poll is held. This is usually the case in National and Local Government Elections – but note that often positions in Parish Councils are filled by co-option.
- National and Local Elections have differing rules

The Lead Up to an Election: 2



- Parliamentary Elections
 - More of a formal and ceremonial process involved
- Local Government Elections
 - More relaxed

The Lead Up to an Election: Nomination



- Nomination is via a “nomination form”. For some elections this is accompanied by a deposit
- Most elections require a nomination to be supported by subscribers
- Candidate need not nominate themselves, but must consent to their nomination
- Has to be a declaration that the Candidate is not disqualified
- Political party candidates need to provide a certificate or authorisation from their party
- Obtaining subscribers can be onerous – 330 subscribers are required for a nomination to stand for Mayor of London

The Lead Up to an Election: Nomination 2



- Returning Officers will inspect nomination forms – a defective nomination that gets through can be a costly mistake.
- The nomination paper (and deposit) must be delivered to the Returning Officer at the time and place fixed in the Notice.
- Returning Officers do not “police” nominations – it is for the Candidate to satisfy themselves that they can stand.
- However, they do have responsibilities to reject nominations from serving prisoners and “sham” nominations.
- Example of a “sham nomination”: standing as a “Literal Democrat” as opposed to “Liberal Democrat”. All examples of “sham nominations” tend to be derived from case law

The Lead Up to an Election: The Polling Process



- After nominations have been received, there are a range of notices required to be published by the Returning Officer including:
 - A notice of the location of the polling stations
- The law requires such notices to be displayed in a conspicuous place – common now to be online as well.
- Returning Officers are responsible for producing and sending out (asap) poll cards

Polling Process: The Secret Ballot



- Secret Ballot has been a cornerstone of the UK's electoral process since 1872 (the Ballot Act).
- However, is it secret?
- Court has a power to trace ballots where there are fears of fraud. This is done by referencing the unique number on the ballot to the list produced by staff at the polling station.

The Count and Result



- Four key principles for counting ballots:
 - Ensuring a swift and certain outcome
 - Accuracy and audit trails for votes cast
 - Transparent neutrality
 - Maintaining voter secrecy
- Timing
 - The Returning Officer must make arrangements for the count to take place “as soon as practicable after the close of the poll”

Electoral Offences

- Representation of the People Act 1983
 - “Corrupt and Illegal Practices”
 - Bribery & Treating
 - Undue influence
- Imprinting Material
- Campaign Expenditure

Electoral Offences: Campaign Expenditure



- A complex area – many get caught out
- Controls exist as to:
 - How much a Candidate can spend at an election
 - Sources of funding
- Monitored by reporting to the Returning Officer for Local Elections.
- National elections: Returning Officers send copies of the Candidate spending to the Electoral Commission
- Breaches can result in fines from the Electoral Commission (£20,000) and possible criminal proceedings

Spending Limits



- Applies to:
 - Candidates
 - Political Parties
 - “Non-party Campaigners”
- Limits vary depending on the election
- Non-party campaigners have to register with the Electoral Commission if they plan to spend over £20,000 during a campaign in England. A lesser figure is required in Wales, Scotland and NI

Getting it Right: The Courts



- Another complex area
- Challenges are via an Election Petition – not a judicial review
- Victorian law (1868), enshrined in a 1983 Act
- Bespoke private law proceedings, commenced in the High Court and sometimes dealt with by an ad-hoc Election Court – different for Parliamentary and Local Elections
- Challenges can be brought by persons “directly concerned” by the election – except the Returning Officer
- Challenges has to be brought within 21 days of the return of the writ.
- “The Security”
- Statutory grounds for challenge
- “The Scrutiny”

Getting it Right: The Courts 2



- Powers of The Court
 - The Court can “correct” the election
 - The Court can order that the election be re-run
 - The Court can award costs (for or against a petitioner)
- Appeals
 - Court of Appeal against a decision of the High Court
 - No appeal against the decision of an Election Court –
Judicial review

A Time for Reform?



- In short – yes! And it has started.
- Law & Electoral Commission both agree that this area is complex and outdated
- The lack of review and reform has led to an increased risk to voters, candidates, campaigners and electoral administrators, Regulators and Government.
- Reform process very slow – the reform programme was published in 2011
- Law Commission published a final report in March 2020

Recommendations for Reform



- In their March 2020 report, the Law Commission recommends:
 - Implementation of single legislative framework
 - Modern system for challenging election results (with powers to limit the costs)
 - An update to existing electoral offences to ensure that the electorate, officials and prosecutors understand what constitutes an offences

Useful Resources



- Electoral Commission provides a lot of detailed guidance:
www.electoralcommission.org.uk
- Law Commission:
<https://www.lawcom.gov.uk/project/electoral-law/>
- And of course – Knights Solicitors:
www.knights-solicitors.co.uk (Legal 500 Leading Firm – Public Sector 2021)



Q&A



- Any questions?