

RESEARCH PAPER: LEGAL CHALLENGE TO ELECTIONS

The law stated in this research paper may be in parts out of date. This paper is made available online for the benefit of those who are interested in fuller exposition of electoral law than is contained in our Consultation Paper.¹ Our definitive statement of the law is contained in that paper, however, and readers should beware that the law and citations in this paper may not be fully up to date, as our work researching electoral law commenced in 2012.

- 1.1 The conduct rules for elections and the regulation of the local campaign are underpinned by:
 - (1) a mechanism for legal challenge before the courts which can annul an election or declare a different candidate elected; and
 - (2) the criminal law, with some electoral offences doubling up as both criminal offences and grounds for invalidating elections via the challenge process at (1) above.
- 1.2 The legal mechanism referred to above is called the election petition, and is a mechanism unique to electoral law. We will investigate the history of the mechanisms for enforcing electoral law before considering the detailed law and proposals for its reform.

THE ELECTION PETITION AND ELECTION COURTS

- 1.3 At the scoping stage, we considered the law on challenging the outcome of an election by filing an election petition. We noted that the process had its origins in the House of Commons' own procedures for adjudicating "controverted" UK Parliamentary elections. In 1868 the election petition jurisdiction was transferred to election courts presided over by judges. It retains many unique features due to this particular history, which we will presently outline.

The origins of the election petition

- 1.4 Modern electoral law was shaped by 19th century extensions to the parliamentary franchise which, combined with changing demographics, strained the free and fair conduct of elections. Corruption was seen as having increased, particularly in urban boroughs, after the liberalisation of the franchise. Some who had acquired the franchise continued to view it as a commodity, and the costs of campaigns in some areas had grown unsustainable as candidates sought to outspend one another.

¹ Electoral Law: A Joint Consultation Paper (9 December 2014)

- 1.5 The legislative response over time was to lay down detailed prescriptive rules governing the administration of elections and the conduct of candidates. The breach of these rules was discouraged through the criminal law. After 1868, the venue for resolving disputes about the lawful conduct of elections and candidates became what would be known as the parliamentary election court, presided over by High Court judges. Considering the position before 1868 helps understanding of the modern features of the election court and its place in the constitutional settlement in the United Kingdom.

House of Commons Election Committees

- 1.6 Before 1868, the election petitions jurisdiction was an exclusive privilege of the House of Commons. As far back as 1604 affirmations were made that the House of Commons was “the sole proper judge” of its members’ returns, “without which the freedom of election were not entire”.² This was later accepted by the King.³ In Scotland the jurisdiction of the Court of Session in electoral disputes ceased with the Act of Union in 1707, to be resumed in restricted form as to franchise disputes between 1742 and 1832.⁴
- 1.7 The House of Commons generally retained exclusive competence to consider the propriety of its members’ elections, and that function was exercised by the whole House. In due course it was recognised that partisanship was affecting the impartial and just disposal of disputed election results at Westminster.⁵ From 1770 onwards several attempts were made to remedy the problem, until the Election Petitions Act 1848 established a Committee of Elections, whose functions had a more legal character.
- 1.8 Despite these attempts, electoral corruption continued to undermine public confidence. Royal Commissions of inquiry into certain constituencies had unearthed evidence of corruption, which the House of Commons’ election petition committees had overlooked. A list of all the Royal Commissions held between 1852 and 1906 can be found at Appendix A. There was consternation at the level of corruption in some constituencies and the increased cost of elections. The conclusions were twofold: first, the House of Commons was not the right venue for unearthing fraud, due to partisan determination of disputes; secondly, the inquisitorial approach had yielded results where the adversarial petition process had not.

² An extract of the “The Form of Apology and Satisfaction”, a committee document drafted in 1604, is quoted in *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [22].

³ C O’Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1961) p 8.

⁴ See the Stair Memorial Encyclopaedia (Reissue) “Elections and Referendums” paras 9 to 15.

⁵ See, for example, a speech made by the former prime minister, George Grenville, in 1770 quoted in T Erskine May, *A Practical Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (2nd ed 1851) pp 437 to 438.

- 1.9 In due course, the House of Commons proposed to delegate the hearing of election petitions to a tribunal presided over by judges. In the run up to the passage of the Election Petitions and Corrupt Practices Act 1868, several options as to the make-up of the would-be independent petitions tribunal had been considered. The result was the product of compromise, not least with a very reluctant judiciary. The judge-staffed election court's process mirrored the traditional (adversarial) election petition process while incorporating elements of the inquisitorial approach which had proved successful.
- 1.10 The single judges⁶ who heard the first election petitions faced a difficult task, as one of the leading scholars observed:

The election judges were required to try as a private lawsuit between petitioner and respondent what was really a quasi-criminal proceeding in which the constituency in particular and the public generally were interested. They could not go beyond the charges made in the petition, and if the petitioners wished at any stage to withdraw their case, they could do so on payment of costs. If the judges thought that they had not unearthed the full facts their only remedy was to report to the Speaker that corrupt practices prevailed extensively.⁷

- 1.11 Nevertheless, election courts heard 93 election petitions between 1870 and 1911. The judges were aided by a contemporary legislative drive. The introduction of the mechanism of the secret ballot by the Ballot Act 1872 hampered the effectiveness of corruption, while the Corrupt and Illegal Practices Act 1883 regulated election expenses by channelling them through the election agent. These measures along with the transfer of petitions to the judiciary, were considered to have been a thorough success, and continue to form the backbone of the law's approach to regulating the propriety of elections.⁸
- 1.12 Above all, the fundamental design problem of the petitions process noted by O'Leary above persisted, irrespective of the perceived success of the measures. The challenge process for elections remains a private one which performs a public function, namely, policing elections and enforcing the law's regulation of electoral contests. Allied with other factors, such as out of date procedures, and

⁶ The court established to try parliamentary election petitions was constituted by two judges only from 1879 onwards, and was not referred to as an "election court" until 1883. For a summary of the development of the constitution of parliamentary election courts see *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [26] to [30] GIVE QB REFERENCE.

⁷ C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1961) p 47. For references to the Royal Commissions and the need for inquisitorial powers, see pp 31 and 39.

⁸ D Butler, "Elections, Litigation and Legislation" in D Butler, V Bogdanor and R Summers (Eds), *The Law, Politics and the Constitution: Essays in Honour of Geoffrey Marshall*, (1999) p 173.

possible fall into disuse, this problem underlies much of what is wrong with the electoral law challenge process.

The jurisdiction of the parliamentary election court

- 1.13 As a consequence of its historical roots, the modern UK Parliamentary election petition process has certain unique features.

A civil process aimed at a candidate's return or the election as a whole

- 1.14 The election petition is a private legal process, brought by persons directly concerned by the election in question. The elected candidate and, if the petition questions the administration of the election, the returning officer are respondents to the petition. Petitions are tried by an election court made up in parliamentary election petitions of two senior judges. The default position is that trial takes place in the constituency concerned, although in practice hearings are in the main seat of the courts in London, Edinburgh or Belfast. For all intents and purposes, for those who are not familiar with electoral law, it looks like election proceedings challenging UK Parliamentary elections are heard by the High Court in England and Wales, for example.
- 1.15 That impression is misleading, because the election court is a special one within the court system. It is best thought of as a tribunal presided over by High Court judges. The parliamentary election court produces, at the end of the trial, a certified determination to the Speaker of the House of Commons as to the correctness of the outcome and the validity of the election. The court additionally makes a report to the Speaker, if it concludes that corrupt or illegal practices were perpetrated or widely prevailed at the election. Having made the determination (and perhaps a report), the election court is dissolved.⁹ There is no appeal on issues of fact though a special case may be stated on any question of law to the High Court in England and Wales, Inner House of Court of Session in Scotland, and Court of Appeal in Northern Ireland.¹⁰ In *R (Woolas) v The Parliamentary Election Court* an election court was held to be subject to judicial review for error of law.¹¹
- 1.16 As well as the election court's interactions with the House of Commons, and its nature as a temporary court with no permanent standing, there are other features of election petitions which are unique.

⁹ In legal terms it is *functus officio*: *R v Cripps ex parte Muldoon* [1984] QB 686. There is therefore no "standing" election court.

¹⁰ Representation of the People Act 1983, ss 144 and 146(4). That the procedure amounts to an appeal on a point of law was confirmed in *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [25], [29] and [41].

¹¹ [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362.

Invoking pre-1868 principles and practice

- 1.17 When the jurisdiction to try election petitions was transferred to the judiciary in 1868, there was concern for some measure of continuity of the practices of House of Commons election committees. The legal measure taken to preserve those practices survives in section 157(2), whereby the election court hearing an election petition must observe the principles, practice and rules followed by the House of Commons committees in dealing with election petitions.
- 1.18 This invocation cannot, of course, override express provisions requiring the election court to take a different approach to the historical one. Nevertheless, there is an awkward reference to pre-1868 practices in the 1983 Act, which is very difficult to give effect to. Section 157(2) refers particularly to the rules developed by these committees relating to agency, injunction and evidence, and, crucially, the scrutiny jurisdiction. In practice, the courts have developed their own jurisprudence and there is no need to continue to refer to pre-1868 practices.

Inquisitorial features

- 1.19 The adversarial system of adjudication places judges as arbiters deciding a case argued by opposed parties. The election petition process, as O'Leary noted above, is essentially adversarial. However, after the success of the Royal Commissions of inquiry, the petitions process acquired certain discrete inquisitorial characteristics, asking election judges to go beyond the case brought by private parties and investigate matters with wider public importance, in particular fraud and corruption. One of these characteristics is that the election court sits and tries the petition in the constituency or local authority area in question. The others include the following.

A LOOMING NEW ELECTION DOES NOT RENDER PROCEEDINGS MOOT

- 1.20 A Parliamentary election petition must proceed notwithstanding the resignation of the respondent MP or the prorogation of Parliament. Similarly, at other elections where the respondent has ceased to be a member of the elected body the petition will nonetheless continue.¹² Ordinarily, if the object of a challenge is to unseat the successful candidate or annul and re-run the election, the fact that a new election is bound to occur would ordinarily render the proceedings otiose. However, the election court's brief includes investigating corruption. Continuing

¹² Representation of the People Act 1983, s 139(3); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 96(3); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 87(3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 139 to Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 95(3); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 139); Electoral Law Act (Northern Ireland) 1962, sch 8 para 11(3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 139 to Police and Crime Commissioner elections).

with proceedings means the court can safeguard the public interest in exposing corruption, and if a candidate is guilty of it, reporting that fact and ensuring that the candidate cannot stand for election for a period of three or five years.

EXAMINING WITNESSES NOT CALLED BY THE PARTIES

- 1.21 An election court has the power unilaterally to examine any person in attendance at the court, even if they are not called or examined by any party to the petition. The court may also require any person who appears to it to have been concerned in the election to attend as a witness.¹³ This is another vestige of the intended inquisitorial character of the election court, although it is not clear that this power has been used in the modern era.

PROMOTING TRUE INQUIRY INTO THE ELECTION

- 1.22 One of the perceived reasons for the success of Royal Commissions of inquiry was their ability to extract the truth from witnesses in return for immunity from prosecution for any crimes they may admit to. The election petition process eventually acquired some features which sought approximately to achieve the same end. Until recently election courts could provide witnesses with “certificates of immunity” from prosecution, in return for true and possibly self-incriminating evidence. In the modern law witnesses are prohibited from invoking privilege against self-incrimination before an election court in order to excuse themselves from answering a question at trial. As an adjunct to that, any answer given by a witness in election proceedings is not admissible evidence against them in any subsequent proceedings, except those for perjury in respect of evidence given at the trial of the petition.¹⁴ In other words, witnesses must answer questions in election court proceedings; in order to promote truthfulness, their answer cannot

¹³ Representation of the People Act 1983, s 140(2) and (3); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 97(2) and (3); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 88(2) and (3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 140 to Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 96(2) and (3); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 140); Electoral Law Act (Northern Ireland) 1962, sch 8 para 12(2) and (3); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 140 to Police and Crime Commissioner elections).

¹⁴ Representation of the People Act 1983, s 141; European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 98; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 89; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 141 to Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 97; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 141); Electoral Law Act (Northern Ireland) 1962, sch 8 para 12(7); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 141 to Police and Crime Commissioner elections).

be used against them in subsequent criminal proceedings, unless it is a lie amounting to perjury.

Quasi-criminal characteristics

- 1.23 The other key aspect of the election court was that it was a one-stop venue for investigating the propriety of elections. The court had, until recently, a dual civil and criminal jurisdiction. Its criminal function under section 171 of the 1983 Act remained until repeal in 1985. It retains certain quasi-criminal characteristics.
- 1.24 Given that a finding by an election court that a person has committed a corrupt or illegal practice has serious consequences, and that these can also be prosecuted through the ordinary criminal courts, it has been held that the standard of proof required to establish these is the criminal one: proof beyond reasonable doubt. This was confirmed in the case of *R v Rowe ex parte Mainwaring*, which focused on the importance of using the word “guilty”.¹⁵ By contrast, the Privy Council considering a Mauritian election case noted that the legislation, though based on the British tradition, did not use the word “guilty” and so proof to the civil standard of balance of probability was sufficient.¹⁶

THE INVOLVEMENT OF A PUBLIC PROSECUTOR

- 1.25 There is an active role in England, Wales and Northern Ireland for the Director of Public Prosecutions (DPP) in election petitions prescribed in electoral law. The DPP may and if requested by the court must attend the trial of every election petition, whether in person or through a representative. If the DPP believes the circumstances require it, he is under a duty to make inquiries and to institute prosecutions if informed that an offence under the 1983 Act has been committed.¹⁷ Except in the case of petitions relating to European Parliamentary elections, the DPP is obliged to request any person who appears to be able to give material evidence to attend the trial and, with the court’s permission, to

¹⁵ *R v Rowe ex parte Mainwaring* [1992] 1 WLR 1059, 1068B to D.

¹⁶ *Jugnauth v Ringadoo* [2008] UKPC 50 (unreported, 5 November 2008) at [19].

¹⁷ Representation of the People Act 1983, s 181; European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 119; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 109; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 133; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 181); Electoral Law Act (Northern Ireland) 1962, ss 72 and 120; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 181 to Police and Crime Commissioner elections).

examine that person.¹⁸ This appears to be a vestige of the dual criminal and civil nature of election petitions.

- 1.26 The position in Scotland is slightly different. One of the Advocate deputes or the procurator-fiscal of the district to which the petition relates may, or if the Lord Advocate so decides, must attend the petition trial as part of their official duty.¹⁹ The duty to make enquiries and institute prosecutions applies equally to the Lord Advocate.²⁰ However there is no power to call or examine witnesses.²¹

THE INTERRELATIONSHIP BETWEEN CIVIL AND CRIMINAL JURISDICTIONS

- 1.27 Despite the fact that the election court ceased to have dual civil and criminal law functions after 1985, it remains the case that the civil election petition process involves some interplay with the possibility of conviction in the criminal courts for election offences. In assessing the outcome and validity of an election, the election court may determine whether a corrupt or illegal practice has occurred. Such a determination brings into effect certain disqualifications from candidacy and voting for the person found to have committed the practice in question. The election court does not have the power to convict or sentence a person, but the same corrupt and illegal practices can be prosecuted as offences in the ordinary criminal courts.

Reporting on corrupt and illegal practices

- 1.28 At the conclusion of the election court hearing, a court hearing a Parliamentary election petition must send a report to the Speaker of the House of Commons, setting out details of any corrupt and illegal practices found to have been committed.²² This requirement has been in place since the jurisdiction to hear election petitions was transferred to the courts, and was probably seen at the

¹⁸ Representation of the People Act 1983, s 140(6); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 96(5); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 140); Electoral Law Act (Northern Ireland) 1962, sch 8 para 12(6); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 181 to Police and Crime Commissioner elections).

¹⁹ Representation of the People Act 1983, s 140(7); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 97(5); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 140(7) to Scottish Parliamentary Elections).

²⁰ Representation of the People Act 1983, ss 181(1) and 204(5); European Parliamentary Elections Regulations 2004 SI 2004 No 293, regs 119(1) and 4(4); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 181(1) to Scottish Parliamentary elections).

²¹ Representation of the People Act 1983, s 140(7); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 97(5); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 140(7) to Scottish Parliamentary elections).

time as a figurative measure to preserve the House of Commons' prerogative to determine its own constitution.²³ In reality the report of the parliamentary election court to the Speaker of the Commons sparks the ordinary process which leads to a new, or by-election, in the constituency concerned. The 1983 Act provides that the House of Commons shall "give the necessary direction" for confirming or altering the return, or issuing a writ for a new election, or for carrying the court's determination into execution.²⁴

- 1.29 For most other elections, this requirement has simply been adapted. The reference to the Speaker of the House of Commons substituted by the courts, the Secretary of State or officer of the legislative body in question who is equivalent to the Speaker in the Commons.²⁵ No report is required at the conclusion of a petition relating to a European Parliamentary election or a Scottish local government election. In the latter case, the obligation is simply to "determine matters" in relation to the disqualifications which arise on a finding of corrupt or illegal practices.²⁶

How often are these features used in practice?

- 1.30 There is a question as to how much use is made of the special features of the election petition process.
- 1.31 Even in the earliest cases, courts were reluctant to take on an inquisitorial role, affirming the judicial character of the proceedings, in contradistinction to a Commission of inquiry.²⁷ With the passage of time, the election court has developed a distinctly judicial character. While modern courts have voiced concerns about the likelihood of wider corruption at an election, they have concentrated on the cases pleaded by the parties, and the evidence presented by them. We are not aware of a recent use of the power of the election court

²² Representation of the People Act 1983, ss 144(4) and 160.

²³ Parliamentary Elections Act 1868, s 11(13) to (16); C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868-1911* (1962) pp 36 to 43.

²⁴ Representation of the People Act 1983, s 144(7).

²⁵ Representation of the People Act 1983, ss 145(3) and 160; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, ss 144(4) and 160 to Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 99(5) and 110; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, ss 144(4) and 160 to Northern Ireland Assembly elections); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, arts 74 and 75 and sch 9 (applying Representation of the People Act 1983, ss 145(3) and 160 to Police and Crime Commissioner elections); Electoral Law Act (Northern Ireland) 1962, s 81(3) and 96.

²⁶ Representation of the People Act 1983, s 145(7) and 160.

²⁷ *Windsor Case* (1869) 1 O'M&H 1, 7 and *Taunton Borough Case* (1874) 2 O'M&H 66, 74.

unilaterally to call and examine a witness.

- 1.32 Similarly, as regards the quasi-criminal aspects, the prosecuting authorities do not, we understand, routinely attend election petitions. If they do, they tend to be passive observers ready to investigate any criminality that emerges from the petition process. We have not seen any evidence of the Director of Public Prosecutions calling or examining witnesses in petition proceedings.

The object of the modern election petition

- 1.33 The result of an election can only be challenged by an election petition.²⁸ A petition may either challenge an “undue return” or “an undue election”. These terms are not defined, but are best understood by reference to what is being questioned. If the return is questioned, the petition seeks the return of another candidate while preserving the validity of the election. The court has the power to substitute the name on the return while upholding the election. If the election itself is challenged, it is annulled. In the second case, the election itself is questioned, and the consequence of a successful petition is that a new election must be held. In our view, it is more helpful to refer to the election court’s power to *correct* the result of an election, or to *invalidate* the election.
- 1.34 We note that the generality of the above statement is not at all obvious from the 1983 Act. For local government elections, section 127 of the 1983 Act sets out undue election and the winning candidate’s disqualification at the time of election as grounds for questioning local elections. There is no mention of undue return. In practice, it has been assumed that the election courts, whether parliamentary or local, may question an election on the same grounds. The difference in the wording of the grounds of challenge is likely explained by the nature of the 1983 Act as a consolidation measure.²⁹
- 1.35 The parliamentary election court’s objective is to provide a certificate to the Speaker of the House of Commons of its determination as to whether the winning candidate was duly returned or elected, or whether the election was void and, if

²⁸ Representation of the People Act 1983, ss 120(1), 127 and 204(1); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 88(1); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 79(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 120 to Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 86(1); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 120); Electoral Law Act (Northern Ireland) 1962, s 78; Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 127 to Police and Crime Commissioner elections).

²⁹ Section 157(2), which we set out further below, moreover extends the scrutiny and declaring another to be duly elected to the local government election petition as well as the parliamentary one, confirming that the local government election court can correct results as well as invalidate elections.

applicable, to report whether a candidate or any other person is personally guilty of a corrupt or illegal practice, and whether corrupt or illegal practices have extensively prevailed at the election. With adaptation as to who receives the certificate, that is the object of election petitions at other elections.

Overview of the classical grounds for bringing a petition

- 1.36 For the sake of simplicity, we start with the classical UK parliamentary election petition. The 1983 Act does not positively set out the grounds upon which a UK parliamentary election can be questioned. Section 120(1) of the 1983 Act provides:

No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (“a parliamentary election petition”) presented in accordance with [Part III] of this Act.

- 1.37 Section 120(2) of the 1983 Act curiously provides that a “petition complaining of no return”, should be “deemed to be a parliamentary election petition”. “No return” must mean that the returning officer did not return a writ at all. This section envisages that the High Court would hear such a complaint. It can compel a return or allow the election court to hear the case “as provided with respect to ordinary election petitions”. It is doubtful whether anything turns on the peculiar language of this provision.

- 1.38 Section 144 of the 1983 Act provides that the election court must, at the conclusion of the trial of the petition:

Determine whether the member whose election or return is complained of, or any and what other person, was duly returned or elected or whether the election was void...

- 1.39 Section 157(2) (headed “Appeals and jurisdiction”) adds:

Subject to the provisions of this Act and of the rules made under it, the principles, practice and rules on which committees of the House of Commons used to act in dealing with election petitions shall be observed... and in particular the principles and rules with regard to –

(a) agency,

evidence,

a scrutiny, and

declaring any person elected in place of any other person declared not to have been duly elected,

shall be observed, as far as may be, in the case of a petition questioning an election under the local government Act as in the case of a parliamentary election petition.

1.40 To these disparate and opaque statements of the role and powers of the election court, one must add the precedents established by the election courts (which were most productive in the period between 1868 and 1911), and practitioners' works which digest that case-law.³⁰ It is from these that we can reduce the various sets of statutory provisions, judicial statements and practices into the essence of the election court's jurisdiction. This jurisdiction is twofold:

- (1) the election court can *correct* the result of the election by reviewing the votes in a scrutiny, unseating the winning candidate and declaring another elected as the person having the most lawful votes; or
- (2) the court can *annul* the election resulting in the elected candidate being unseated and a new election being called. An election can be invalidated on one of three heads of challenge:
 - (a) a breach of electoral law during the conduct of the election which was either:
 - (i) fundamental, or
 - (ii) materially affected the result of the election;
 - (b) corrupt or illegal practices were committed at the election either
 - (i) by the winning candidate personally or through that candidate's agents, or
 - (ii) by anyone else, to the benefit of the winning candidate, where such practices were so widespread that they could be reasonably supposed to have affected the result; and
 - (c) the winning candidate was at the time of the election disqualified from office.

1.41 We will consider these grounds in turn, before moving on to how they are adapted across other elections, particularly those using a different voting system to first past the post which the classical rules on challenge evolved for. For now we must note that the above outline of the court's jurisdiction is a gloss and not obvious even on a careful reading of the 1983 Act. The law on challenging elections is complex and inaccessible.

³⁰ R Price (ed), *Parker's Law and Conduct of Elections*, loose-leaf, issue 45, vol 1 ch 19; P Gribble (ed), *Schofield's Electoral law*, loose-leaf 17th reissue, vol 1 ch 17.

Correcting the result of the election

THE "SCRUTINY" OF BALLOT PAPERS AND JURISDICTION TO CORRECT RESULTS

- 1.42 The court can correct the outcome of the election by deciding for itself, after a detailed and adversarial court process, which votes should lawfully be counted, and consequently who ought to have been returned as the winning candidate. The court is not restricted to a simple recount; it can come to its own view about the true result of the election. This process is called a "scrutiny". As we noted above the court is bound by section 157(2) of the 1983 Act to observe the "principles, practice and rules" of the House of Commons committees before 1868, with regard to the scrutiny in particular.
- 1.43 The term "scrutiny", however, remains unclear. There are two dimensions to its meaning.
- (1) In a technical sense, the "scrutiny" is a term of art to describe the process of court-supervised inspection and counting of ballot papers.
 - (2) However, in a more general sense, the scrutiny can refer also to the court's jurisdiction to decide for itself what the true count of votes is and, if necessary, declare a different candidate to be duly returned.
- 1.44 The court after a scrutiny can exercise its own judgement about doubtful ballot papers, and override the returning officer's decision. It can also count votes the returning officer could not, and discount those that the returning officer was legally bound to accept. For example, a voter in fact disqualified from voting on the ground of age or nationality may nevertheless appear on the polling station register. Such a voter cannot be prevented from voting, but their vote may be rejected on scrutiny under section 49(5) of the 1983 Act. Similarly, a tendered ballot paper cannot lawfully be counted by a returning officer, but the election court can decide that it is the vote cast by the true voter, and count that vote while tracing and discarding the ballot paper cast in their name.
- 1.45 The court will also take into account its own findings as to whether corrupt practices have been committed. If a candidate is proved to have been personally or through agents guilty of bribery, treating or undue influence, the votes of the persons who were the object of these offences will not be taken into account. The vote of any person who is guilty of a corrupt or illegal practice is void generally under section 166(2) of the 1983 Act.

The adversarial scrutiny process

- 1.46 There is no legal guidance in the 1983 Act as to how to conduct a scrutiny beyond enjoining courts to observe the principles and practices of the House of Commons committees. In actual fact, it is the principles and practices of the election courts, based on their understanding of the pre-1868 practice, which are

followed. Leading practitioners' textbooks summarise the process as an adversarial trial of each ballot paper, with petitioner and respondent making their case as to each ballot paper. Witnesses may be called in relation to each ballot paper, but no witness may be asked for whom they voted (although they may volunteer that information).³¹

The scrutiny, numbered ballot papers, and vote tracing

- 1.47 In order to make up its mind about cases of personation, or to invalidate the votes of incapacitated or corrupt electors, the election court will use the vote tracing mechanism fully, by using the corresponding number list to find the person's electoral number and the ballot paper number, then finding the ballot paper. In order to consider votes at a particular polling station, it will use the vote tracing facility only in part. Since ballot papers are numbered and allocated to polling stations, the court can isolate all the ballot papers emanating from a particular polling station. In doing so it is not using vote-tracing to its full extent, because it need not also identify the elector to whom each ballot paper corresponds.

THE DOCTRINE OF "VOTES THROWN AWAY"

- 1.48 One ground of intervention which survives today by reason of section 157(2) of the 1983 Act is the doctrine of "votes thrown away". Where a candidate gives public notice to the electorate that a rival is disqualified from election, and the court subsequently agrees, votes cast for the disqualified candidate after due notice was given are discounted or "thrown away" for the purposes of determining the outcome.³² It appears the doctrine applies only to disqualification and not to other legal defects in the candidate's conduct, like the commission of a corrupt practice.
- 1.49 The classic example of this doctrine is the Bristol South-East petition.³³ On the death of his father, the candidate, Mr Tony Benn, became a hereditary peer and was thus disqualified from election to the House Commons. The court, once it had rejected Mr Benn's arguments that he had effectively renounced his peerage, held that as the electorate was aware of the facts on which the disqualification was based, and as the petitioning candidate had given notice of it, it had no option but to declare the votes for Mr Benn thrown away.
- 1.50 The result in the Bristol South-East petition was that a majority of eligible electors were taken to have "thrown their votes away" in circumstances where their favoured candidate vehemently maintained that he was not disqualified and the correctness of his stance turned on technical issues as to renouncing peerages

³¹ Paul Gribble (ed) Schofield's electoral law (looseleaf) vol 1 paras 17.065 and 17.066. Election Petition Rules SI 1960 No 543 r 12; Act of Sederunt (Rules of the Court of Session 1994) SI 1994 No 1443 r 69.15.

³² The returning officer has no power to do this.

³³ *Re Bristol South-East Parliamentary Election* [1961] 3 All ER 354.

that are not easily understood by most voters.³⁴

- 1.51 The doctrine of votes thrown away was developed in a different age. Crucially, voting would take place over several days, and the logic of the doctrine is that after the point where “due notice” of the disqualification is given, votes cast for the disqualified candidate would not count. In the modern context, polling takes place in one day. If due notice is given before polling day, all of the votes for the disqualified candidate are discounted (apart from postal votes cast before notice), and the next highest polling candidate will win the seat. If it is given during polling day, it will be impossible in practice to decide at which point votes should be regarded as thrown away.
- 1.52 The reality, however, is that many of those who vote for the disqualified candidate may vote along party lines. In the context of death of a party candidate during polling, we noted that the law ensures that the election is countermanded, and a new one called at which the deceased’s party can field a new candidate.³⁵ The possibility that electors may be unable to vote for their preferred party’s candidate due to the doctrine of “votes thrown away” appears to be an anachronism. As we will see, a disqualified candidate’s election can be challenged, and the election annulled, resulting in a new one being called. The doctrine of votes thrown away is an uneasy alternative to this simpler and fairer remedy.
- 1.53 There is also a reference to votes thrown away in section 165 of the 1983 Act, which relates to the annulment of the election of a candidate who knowingly employed a canvasser or agent who was disqualified for corrupt or illegal practice. The purpose of this is to oust the doctrine of votes thrown away, so that the result is the nullity of the election not the election of the next candidate. However the ouster is not absolute, because the doctrine of votes thrown away can apply to votes given for the candidate after an election court has decided that he was incapable of being elected to fill the vacancy. This even prompted an additional subsection (4) which expressly states that the votes thrown away should only be the first or second choice votes at London Mayoral elections. We consider section 165 further below.³⁶

Reviewing the validity of the election

- 1.54 The election court can more generally examine the validity of the election, and may annul it, requiring a new one to be called. There are broadly three grounds for annulling an election: first, a breach of electoral administration law, secondly, corrupt or illegal practice by the winning candidate, and thirdly, disqualification of the winning candidate.

³⁴ The factual context in the Bristol South East case is now dealt with by s 1 of the Peerage Act 1963, which enables a hereditary peer to renounce their peerage.

³⁵ Electoral Law Consultation paper, Chapter 8 Polling.

³⁶ See para 1.100 below.

BREACH OF ELECTORAL ADMINISTRATION LAW

- 1.55 We have noted elsewhere that electoral administration law lays down detailed and prescriptive rules governing the conduct of an election. What is the effect of an established breach of these rules? If the validity of the election was affected by any breach, electoral outcomes might become extremely uncertain. Polls that were essentially sound might nevertheless be invalidated on a technicality. On the other hand, the law must give teeth to its rules. A balance must be struck, and the law has placed some restraints on the consequences of breach which focus on whether the breach affected the result of the election and the seriousness of the breach. However the way these restraints are set out in legislation is not straightforward. It has led to difficulties in judicial interpretation, and some confusion as to what kind of administrative irregularity might invalidate the election.
- 1.56 Section 23(3) of the 1983 Act provides that:

No parliamentary election shall be declared invalid by reason of any act or omission by the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the parliamentary elections rules if it appears to the tribunal having cognizance of the question that

- (a) the election was so conducted as to be substantially in accordance with the law as to elections; *and*
- (b) the act or omission did not affect the result.

(emphasis added)

- 1.57 Section 23(3) seeks to save the validity of the election from breaches of electoral administration law. Such a breach will not invalidate the election if (a) the election was run “substantially in accordance with” electoral law *and* (b) the breach did not affect the result. While this provision appears plain, it has proved very difficult to apply and interpret.

What is a breach of electoral law?

- 1.58 Firstly, the wording as to what breaches of electoral law are actionable is opaque. An “act or omission” in breach of official duty by the returning officer or any other person in connection with the election, might be a reference to the offence of breach of official duty. It is unlikely, however, that the court must establish an offence before section 23 is engaged. In practice, a mere breach of electoral law by an electoral administrator engages this ground of challenge. That includes, notably:
- (1) a breach of conduct rules (which are usually located in elections rules, but may also be in the registration regulations, for example concerning the issue and receipt of postal votes); *and*
 - (2) a breach of electoral law generally which extends to wrongly registering an elector, an act of the registration officer “in connection with the election”.

1.59 Section 23 extends to “any act or omission by the returning officer *or any other person* in breach of his official duty or *otherwise of the parliamentary elections rules*”. This means that this ground is not confined to breach of electoral law by an electoral administrator. Some election rules are targeted at candidates. Chief among those are requirements relating to nomination papers, which we will turn to further below. These cause particular problems because in this context there is a demarcation between:

- (a) substantive requirements as to what the nomination paper should contain, for example the full name of the candidate; and
- (b) the grounds on which the returning officer may refuse to accept a nomination paper (which may include the lack of a name, but not a substantive determination as to whether it is the true or full name of the candidate).

Substantial departure from electoral law

1.60 Secondly, what kind of breach will result in an election not substantially in accordance with electoral law? In *Morgan v Simpson* [1975] QB 151, issuing 44 ballot papers without the official mark was held not to pass the threshold; that required a “substantial departure” such as to make “the ordinary man condemn the election as a sham or a travesty of an election by ballot”.³⁷ The court gave the examples of allowing voters to vote for a person who was not in fact a candidate, refusing to accept a qualified candidate on some illegal ground, or disenfranchising a substantial proportion of qualified voters.³⁸ Less serious errors, such as on the facts before the court in *Morgan v Simpson*, or the giving out of fourteen ballot papers outside polling hours,³⁹ did not reach the high threshold. The bar was thus set very high for an administrative breach to invalidate an election irrespective of its impact on the result.

Material breach of electoral law

1.61 Thirdly, the negative phrasing of section 23 is troublesome: all it mandates is that the election should not be declared invalid if the stated provisos, substantial accordance to law and absence of effect on the result, are made out. What happens if a breach does not pass the threshold of “substantial departure” from electoral law, but nevertheless affects the outcome? In other words, what about material breaches short of substantial departures from electoral law?

³⁷ [1975] QB 151, 168 by Lord Justice Stephenson.

³⁸ *Morgan v Simpson* [1975] QB 151, 168 (Lord Justice Stephenson).

³⁹ *Islington West Division Case, Medhurst v Lough and Gaskett* (1901) 5 O'M & H 120.

- 1.62 This was also considered by the Court of Appeal in *Morgan v Simpson* [1975] QB 151. A local government election⁴⁰ went largely well but 44 out of 23,691 ballot papers put into boxes lacked the official mark. It was accepted that this was due to a breach of the local government election rules by those administering the poll. If the purported votes cast by these unmarked ballot papers could lawfully have been counted, the petitioner would have won the election. But the court could not give effect to those votes and declare the petitioner duly elected: the breach of one election rule as to the marking of the ballot paper did not sanction the breach of another as to which ballot papers could lawfully be counted.
- 1.63 The Court of Appeal declared the election invalid because the breach affected its result. Any such material breach of electoral law was by itself enough to compel the tribunal to declare the election void. It was not also necessary that the election was not conducted substantially in accordance with electoral law. The negative phrasing of the provision now in section 23 of the 1983 Act emphasised that elections were serious and expensive matters not lightly to be set aside, but the court had no discretion to declare a candidate duly elected once a material breach of the rules had occurred.

Restating the section 23(3) test in positive terms

- 1.64 Lord Denning MR went further than the other two members of the Court and restated the section through three positive propositions:

I suggest that the law can be stated in these propositions:

(1) If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected, or not. That is shown by the *Hackney case*⁴¹, where two out of 19 polling stations were closed all day, and 5,000 voters were unable to vote.

(2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls - provided that it did not affect the result of the election. That is shown by the *Islington case*⁴² where 14 ballot papers were issued after the close of the poll.

(3) But, even though the election was conducted substantially in accordance with the law as to elections, nevertheless if

⁴⁰ The equivalent saving provision in local government elections is s 48(1) and is materially identical to s 23(3).

⁴¹ (1874) 2 O'M&H 77.

⁴² *Islington West Division Case, Medhurst v Lough and Gaskett* (1901) 5 O'M & H 120.

there was a breach of the rules or a mistake at the polls - and it did affect the result - then the election is vitiated. That is shown by *Gunn v. Sharpe* [1974] 2 All ER 1058, where the mistake in not stamping 102 ballot papers did affect the result.

- 1.65 The other members of the court declined to go so far as to re-state the provision in positive terms but the Court was unanimous as to its effect and Lord Denning's statement has proved to be authoritative. Any breach of the rules, which affected the outcome of the election, must result in its nullity no matter how trivial.
- 1.66 What emerges from the above is that the election court's jurisdiction to assess the validity of an election for breach of electoral administration law is essentially based on the error having materially affected the result. The threshold must be high before a court will conclude that the conduct of the election was not substantially in accordance with electoral law, but such a breach would invalidate the election without also having to show that it affected the result.
- 1.67 The 1983 Act continues to express the test in its negative form, even though judicial authority pre-dating the Act turned that wording on its head. There has been no sign that the judicial approach has upset any proper balance between upholding electoral laws and achieving certainty of outcomes, and in particular the need for most breaches materially to affect the result has saved elections that were on the whole correctly run from legal challenge and the need for a new election.
- 1.68 However, election petitions are the exclusive means of examining the propriety of elections, and the fact that they, as respects electoral administration, focus on a breach having affected the result in practice means there is no forum for hearing complaints about breaches that do not affect the result. We will consider this issue further below.

A DISCRETE GROUND OF CHALLENGE FOR DEFECTIVE NOMINATION?

- 1.69 A consequence of the patchwork way in which the election court's jurisdiction is laid out is that some discrete grounds relating to nomination of candidates subsist. The practitioners' books *Schofield* and *Parker* continue to document these, even though they are difficult to fit within the headings of challenge that emerge from Part III of the 1983 Act. The wider question is: on what ground can a candidate's election be invalidated because their nomination is defective?
- 1.70 There is a converse question which is much more easily resolved. If a candidate was not nominated, in breach of electoral law, that is a straightforward ground for challenging the election. This is because they were not permitted to face the electorate despite being entitled to. The difficulty arises purely where a candidate is nominated and has won the votes required for election. If there is a defect in the nomination, should the election stand?

Incorrect home address on nomination papers

- 1.71 One aspect of that question is whether a candidate whose nomination paper gives an untrue home address can be unseated. In our research paper on the law governing the stages from notice of election to nominations, we noted an

apparently long-established principle that giving an incorrect address on a nomination paper is a ground for annulling a winning candidate's election.⁴³ This is stated to be so irrespective of whether the candidate's true address is in the same area as the given address, so that voters were arguably not misled as to whether the candidate was claiming to be "local" to the constituency or electoral area in question. We also noted in our paper that most of the case law cited in support of this principle harks back to a different age, with many cases pre-dating the abolition of property-owning qualifications for office. A candidate's home address may have played a more significant role in identifying the candidate to the electorate in those times than it might now.⁴⁴

1.72 In the more recent case of *R v An Election Court ex parte Sheppard*, the High Court held that a candidate's election was invalid because the address given in the nomination paper was not his true home address. The Victorian cases were not cited before the Court. Dealing with the issue in one paragraph, it held that there was an "undue election" because no election can be valid if the nomination was not.⁴⁵

1.73 The summary nature of the court's reasoning in *Sheppard* is unhelpful. Analysing the issue through the grounds of challenge under the 1983 Act, we proceed as follows.

- (1) First, it is a corrupt practice to cause or permit to be included in a nomination paper a statement, including of a home address, which the person knows to be false. The election of a candidate guilty or responsible for such a practice may be annulled by the election court.⁴⁶
- (2) Secondly, if the nomination was accepted in breach of electoral law, the election court may invalidate the election for breach of electoral law (failing to refuse the nomination paper) which materially affected the election (because the nominated candidate won it). On the facts of the *Sheppard* case, however, it was clear that the returning officer's decision to accept the nomination paper was impeccable. It was not for the officer

⁴³ Research Paper, Notice of election to nominations available at <http://lawcommission.justice.gov.uk/electoral-law.htm>.

⁴⁴ P Gribble (ed) *Schofield's Electoral law*, loose-leaf, 6th reissue volume 1 at para 9-009 to 9-010 on the subject of candidate's residence, cites some 23 petition cases decided between 1838 and 1892. Property qualifications were abandoned in 1858. Furthermore, some cases were examining the question of a voter's residence (and thus eligibility to vote), not the candidate's. A case which is given prominence is *R v Hammond* (1852) 17 QBD 772 is illustrative. The case predates both the abolition of the property and residence qualification and the detailed conduct rules introduced in the Ballot Act 1872. The extract of the judgment cited in *Schofield* at para 9.009 makes clear that the court was concerned with a requirement to give a place of abode which is sufficient truly to identify the candidate, as opposed to other places where the candidate may be less well known.

⁴⁵ [1975] 1 WLR 1319, 1325D, by Lord Widgery CJ.

⁴⁶ Representation of the People Act 1983, s 65A(1)(a).

to determine whether the address given was the true one.

- (3) Thirdly, breaches by *candidates* of election rules are also caught by the words of section 23. Rule 6 of the Parliamentary Elections Rules, at the time when *Sheppard* was decided, required the nomination paper to state the candidate's home address in full. It seems to us open to reason that the giving of an untrue address breached rule 6, engaging the ground for annulling elections based on "breach ... otherwise of the parliamentary elections rules."

1.74 Rule 6 now only requires the nomination paper to state the candidate's full names and, if desired, description. The nomination paper must be accompanied by a "home address form" which gives candidates the option of revealing only which constituency they reside in. However at local government elections, the equivalent election rule continues to require nomination papers to state the home address in full.⁴⁷ It appears to us possible to reach the result in *Sheppard* with recourse to the standard ground of challenge for breach of electoral administration law. However, there is a complicating factor, which we turn to presently.

THE OUSTER OF CHALLENGE OF A DECISION TO ACCEPT A NOMINATION PAPER

1.75 When reviewing the law on nomination we noted that rule 12 of the Parliamentary Elections Rules, which is replicated for other elections, states:

(5) The returning officer's decision that a nomination paper is valid shall be final and shall not be questioned in any proceedings whatsoever.

(6) Subject to paragraph (5) above nothing in this rule prevents the validity of a nomination being questioned on an election petition.⁴⁸

⁴⁷ Representation of the People Act 1983, s 23 and sch 1 r 6; Local Elections (Principal Areas) (England and Wales) Rules SI 2006 No 3304, Sch 2 r 4.

⁴⁸ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 13(10) and (11); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 1 r 11(6) and (7); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 14(6), (7) and 15(5), (6); Northern Ireland Assembly (Elections) Order 2001 SI 2001 No 2599, sch 1; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 5 rr 13(6), (7) and 14(9),(10); Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 8(7) and (8); Local Elections (Parishes and Communities) (England and Wales) Rules 2006 SI 2006 No 3305, sch 2 r 8(7) and (8); Greater London Authority Elections Rules 2007 SI 2007 No 3541, sch 1 r 9(7) and (8), sch 2 r 11(10) and (11), sch 3 r 10(7) and (8); Scottish Local Elections Order 2011 SSI 2011 No 399, sch 1 r 7(7) and (8); Electoral Law Act (Northern Ireland) 1962, sch 5 r 10(5) and (6); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 3 r 11(7) and (8); Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, sch 1 r 11(7) and (8).

- 1.76 Materially identical provision was made in the Representation of the People Act 1949. A similar provision appeared in the Ballot Act 1872, albeit that the rule related to the returning officer's decision as to the validity of an *objection* to a nomination paper. If the objection was disallowed, that decision was final; but if it was allowed (and the nomination paper was thus invalid), the decision was "subject to reversal on petition questioning the election or return".⁴⁹
- 1.77 When considering the effect of these provisions, it is useful to distinguish between a legal challenge while the election is ongoing, which would be by judicial review, from challenge after the election through a petition.

Judicial review of a decision as to nomination

- 1.78 Judicial review does lie against a decision to refuse a nomination paper, although the courts will be slow to interfere with the decision of the returning officer.⁵⁰ Rule 12(5) excludes judicial review of a returning officer's decision to accept a nomination paper. If, however, in arriving at that decision the returning officer made an error of law, the decision is a nullity and the ouster of legal challenge under rule 12(5) would be ineffective.⁵¹
- 1.79 The exclusion of judicial review, and the reluctance with which a court might interfere with a returning officer's decision if judicial review is not excluded, are explicable by the fact that judicial review here is a means of collateral challenge of the election. The primary way of reviewing the validity of elections is challenge by election petition.

Challenge by petition of a decision as to nomination

- 1.80 Rule 12(5) excludes legal challenge of a decision that a nomination *paper* is valid. Rule 12(6) adds that this does not prevent the validity of a *nomination* being questioned on an election petition. It appears that rule 12 therefore distinguishes between the validity of the nomination paper and the nomination. As to the nomination paper, only a decision that it is invalid can be challenged by election petition.⁵²

⁴⁹ Representation of the People Act 1949 sch 2 r 13(5) and (6); Ballot Act 1872 35&46 Vict sch 1 r 13. Under the Ballot Act 1872 scheme, no grounds for invalidating a nomination paper were specified; a nomination was deemed valid unless objected to, and the returning officer was obliged to decide on the validity of an objection.

⁵⁰ *R (De Beer) v Returning officer for London Borough of Harrow* [2002] EWHC 670; [2002] ACD 83 at [36] to [38].

⁵¹ *Sanders v Chichester* (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, *Schofield's Electoral law*, loose-leaf, 6th reissue volume 5 p E99 at p E116 to E118, applying *Anisminic Limited v Foreign Compensation Commission* [1969] 2 AC 147 on the effect of ouster clauses to prevent judicial review.

⁵² *Re Melton Mowbray (Egerton Ward) Urban District Council Election* [1969] 1 QB 192.

1.81 Rule 12 was considered in *Sanders v Chichester*, where Dyson J (as he then was) considered the distinction between the nomination paper and nomination. He rejected a submission seeking to confine the effect of rule 12(5) to legal challenge in advance of an election by judicial review. He also held that the validity of the nomination paper, once accepted, could not be challenged in any proceedings, including by election petition:

The relevant distinction, recognised by the Rules is between the validity of a nomination paper and the validity of a nomination. It is unhelpful to introduce a different distinction which is not recognised by the Rules, namely that between form and substance... Rule 12(5) clearly provides that the returning officer's decision that a nomination paper is valid shall be final and shall not be questioned in any proceedings whatsoever. Rule 12(6) provides that subject to Rule 12(5), nothing in Rule 12 prevents the validity of a nomination being questioned on an election petition. Thus it is not possible to challenge a decision as to the validity of the nomination paper in any proceedings (including an election petition). It is, however, possible on an election petition to challenge any decision that a nomination paper is invalid and also to challenge the validity of the nomination (as opposed to the validity of the nomination paper) on any ground whatsoever.⁵³

1.82 A decision to accept a nomination paper as valid is thus unassailable. However, as we noted above, Dyson J did not think this ouster of jurisdiction was absolute. If the returning officer erred in law, the decision was a nullity, applying general principles of public law laid down in *Anisminic Limited v Foreign Compensation Commission* [1969] 2 AC 147. The case did not turn on this point. Dyson J held that the returning officer could not in law go behind the nomination paper in order to refuse a nomination on the grounds that the description "literal democrat" would spoil the Liberal Democrat candidate's campaign. Had the returning officer erred in law, Dyson J thought that decision would be subject to challenge.

1.83 The grounds on which returning officers are entitled to find a nomination paper invalid relate to the form of the paper, and if they err in failing to consider any defect in the nomination paper, it appears to be strongly arguable that Dyson J's reasoning would apply so that the court would be able to intervene in a defective decision to accept a nomination paper notwithstanding the exclusion in rule 12(5). It is hard to escape the conclusion that the only decisions that are immune, under rule 12(5), from challenge are those that are legally correct, and could not successfully be challenged in any event.

⁵³ *Sanders v Chichester* (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, *Schofield's Electoral law*, loose-leaf, 6th reissue volume 5 p E99 at p E116 and E117.

1.84 The reasoning involved in following the implications of the ouster clause and Dyson J's decision is very complex. No consideration was given in the judgment in *Sanders v Chichester*, when considering and rejecting the submissions of counsel for the returning officer, of the general grounds of challenge under Part III of the 1983 Act. As we noted, one of those grounds is material breach of electoral law. Perhaps the difficulty with that is that rule 12's grounds for rejecting a nomination are expressed in terms of "entitlements" of the returning officer to hold nomination papers invalid, rather than a duty so to hold if the returning officer concludes the grounds are engaged. One can read the strict words and come to the view that a failure to invalidate a nomination paper on an available ground does not, strictly, breach rule 12 and engage the orthodox ground of challenge based on breach of electoral law.

Why should defects in the nomination paper not invalidate an election?

1.85 Where a returning officer could and ought to have rejected a nomination paper on formal grounds but did not do so, their decision is unassailable according to rule 12(5) above, subject to the possibility of an error of law opening up the decision to challenge. What principle might there be to justify that outcome? We noted that in the *Sheppard* case, the court reasoned quite simply that a candidate was unduly elected if their nomination was defective.

1.86 The editors of *Parker's Law and Conduct of Elections* argue that the requirements about subscribers' signatures and electoral numbers only concern the form of the nomination paper. Even if an election petition on those formal grounds is not ousted by rule 12(5), they argue that a winning candidate's election should be saved by the provision of section 23 of the 1983 Act (the error not materially affecting the outcome of the election) if the election was otherwise in order. In support of that argument, they note that:

the requirement that electors should subscribe the nomination paper of a candidate can only be intended to indicate that there is some support for the candidate standing (subscription carries no commitment to vote for the candidate). If that candidate is elected (thereby showing that he is supported), it would be absurd to set aside the election because of an irregularity in the particulars of the subscribers.⁵⁴

1.87 This rationale is inapplicable, of course, to the converse case of a nomination paper being wrongly rejected for being inadequately subscribed. In such a case, the election was not sound since the electorate were not given the option of

⁵⁴ R Price (ed), *Parker's Law and Conduct of Elections*, loose-leaf, issue 37 volume 1 at para 12.28.

voting for the candidate whose election was rejected.⁵⁵

- 1.88 The argument in *Parker's* appears to us to be sound. It is hard to justify to voters why they must go back to the polls, potentially weighing up the same candidacies, when a perfectly free and fair election revealed who their preferred representative should be. Bad subscribers are a formal defect; at the nomination stage we noted that the deposit and subscription requirements performed the formal function of testing the seriousness of a candidate's bid to get on the ballot paper. Once they have been allowed on the ballot paper and obtained a democratic mandate, invalidating their election would legitimately be seen by the electorate as frustrating their verdict based on formalistic arguments.
- 1.89 There is some tension, however, between this position and our analysis of the law on challenging elections based on an untrue home address in a candidate's nomination papers.⁵⁶ We reasoned there that, because this was a requirement of rule 6 of the Parliamentary Elections Rules, any breach (by the candidate) was actionable if it affected the result of the election. However, rule 7 requires that the nomination paper "shall be subscribed" by ten electors. The distinction which the editors of *Parker* draw between subscription and other requirements must be based not on the language of the law, but its purpose. The point of subscribers is that they are purely a formality designed to test the seriousness of a candidacy, whereas a home address is required to identify the candidate in question.
- 1.90 Accordingly, one must be careful not to over-extend the argument that breaches of formal requirements as to nomination should not overturn a democratic election. It does not apply to defects which have a substantive impact on the election. For examples of defects that may appear to be formal but in fact are substantive:
- (1) If the defect related to the name of the candidate or their address, and that affected the accuracy or quality of the information available to voters – as to the identity of the candidate, or their location (if that is a factor) – it is not saved by the above argument. Section 50 of the 1983 Act already saves nomination papers from being impugned due to a misdescription or misnomer of a person or a place.
 - (2) If the defect is the candidate's disqualification from the electoral office in question, their incapacity to assume office substantively frustrates their election.
 - (3) Even in the context of subscribers or another formality, if the defect was

⁵⁵ For an example, see *Re Melton Mowbray (Egerton Ward) Urban District Council Election* [1969] 1 QB 192 where the returning officer rejected a nomination paper for inadequate signature by one of the subscribers. The court disagreed and annulled the election, which allowed the would-be candidate to stand for election by the electorate.

⁵⁶ See above, paras 1.71 to 1.74.

the result of a knowing misstatement or fabrication by the candidate, then their wrongful conduct means that their election cannot stand.

- 1.91 These nuanced arguments reveal that the current grounds upon which election courts will annul an election for defective nomination are extremely unclear. A simple assertion that a bad nomination paper will invalidate the election is too simplistic an analysis. We will return to this issue further below when considering our provisional reform proposals.

CORRUPT AND ILLEGAL PRACTICE

- 1.92 The second ground for annulling an election is to do with corrupt or illegal practices. It divides into two limbs. First, there is corrupt or illegal practice committed by or attributable to the winning candidate, which invalidates their election absolutely, and brings in the relevant disqualification attaching to the practice. Secondly, there is the invalidation of an election for widespread corruption such that it may reasonably be supposed to have affected the result.

Corrupt or illegal practice by the winning candidate

- 1.93 Classically a report that the returned candidate was personally or by their agent guilty of a corrupt or illegal practice is sent to the Speaker. At other elections, there is a different recipient for the court's decision.⁵⁷ Corrupt and illegal practices can be tried on election petitions because of their dual nature as both criminal offences and "vitiating factors" that invalidate an election.
- 1.94 Section 159 of the 1983 Act is clear about the effect on the election of a corrupt or illegal practice attributable to the winning candidate. If a winning candidate is found by an election court "personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void". However there is an important distinction between personal guilt and guilt by agents.
- 1.95 "Personal" guilt is defined by reference to commission of the offence with the knowledge and consent of the candidate. There are two excepted corrupt practices, treating and undue influence, for which personal guilt means actual commission by the candidate. The reasons for this appear historical since this

⁵⁷ Representation of the People Act 1983, s 159(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pt 1 (applying Representation of the People Act 1983, s 159 to the constituency contest at Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 109; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 159 to Northern Ireland Assembly elections); Electoral Law Act (Northern Ireland) 1962, s 95(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 159(1) to Police and Crime Commissioner elections). The end product of the election court's determination is not always called a "report" in those provisions.

has always been the law.⁵⁸

- 1.96 “Guilty by his agents” refers to non-personal guilt. The key to this distinction is that personal guilt both invalidates the election and engages the disqualifications from the electoral process for the period of 3 or 5 years. Guilt by agents can only establish the nullity of the election – in other words, it serves purely to vitiate the election, in public law terms, of the candidate found guilty by association.⁵⁹
- 1.97 In relation to guilt by agents, section 158(3) does offer a way to escape stringent liability in public law for the act of agents in narrow circumstances. The candidate can avoid the nullity of the election if they show that the offences were committed against orders and without their sanction, that they took all reasonable steps to prevent their commission, that the offences were of trivial character and that the election was otherwise free from corrupt or illegal practices.⁶⁰ The burden of proof is on the candidate to show they satisfy all of these conditions.

Who is an agent for the candidate?

- 1.98 Part of the regulatory approach of electoral law to campaign behaviour is to hold a candidate responsible for all the acts and omissions of their agents. The private law principles of agency are not applicable, and electoral law’s notion of agency, which continues to be relevant by virtue of section 157(2) of the 1983 Act, was described in the earliest cases as “a stringent, harsh and hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate agent.”⁶¹ Since guilt by agents impugns only the public law validity of the candidate’s election, the corrupt and illegal practices scheme, when it was established in 1883, sought to incentivise compliance with its regulations. This rationale was clearly understood by election judges:

Candidates put forward agents to act for them, and it cannot be permitted that these agents should play foul and the members should have all the benefit of their foul play without being responsible for it.⁶²

- 1.99 Thus if a candidate or their election agent has embraced a person as part of their campaign, engaged them to support their candidacy, they will be responsible for that person’s action irrespective of notions of actual or ostensible authority. Since the term “agent” is imprecise, the approach was to start from cases of express authority or engagement of a person to act for the candidate – such as a canvasser or polling agent. However others, including unpaid volunteers, could

⁵⁸ Corrupt and Illegal Practices Act 1883, s 4.

⁵⁹ An exception to this general scheme is Scottish local government elections. See para 1.98(2) below.

⁶⁰ Not for bribery or personation.

⁶¹ *Westminster election petition* 1 O&H 95 by Martin B.

⁶² *Staleybridge election petition* 1 O&H 66 by Lord Blackburn.

fall under the category of someone expressly authorised as an agent by the candidate or their election agent. Finally, if there was no express authority, agency could still be established as a matter of fact at trial, and could be restricted in scope. For example, a factory owner whose vote and “interest” were solicited by the candidate could be an agent in respect of any acts regarding the factory owner’s employees; however wider acts might not engage the candidate’s responsibility.⁶³ For more recent restatements of the law on agency, one can refer to the judgments of Commissioner Mawrey QC in the Slough and Woking election petitions of 2008 and 2012 respectively.⁶⁴

Employing a corrupt agent

- 1.100 Section 165 of the 1983 Act effectively adds another vitiating factor that ranks alongside corrupt or illegal practice by or attributable to the winning candidate. This is the engagement by the candidate or their election agent of a person they know or have reasonable grounds to suppose is incapacitated from voting at the election because they were convicted or reported for corrupt or illegal practice under either the 1983 Act or, as subsection 165(a) adds, the law relating to the Northern Ireland Assembly.
- 1.101 The singling out of just a single other election is an indicator that this is a provision where things have gone awry. Indeed, the provision applies only to persons “incapacitated from voting” at the election due to a finding of past corrupt or illegal practice. When the 1983 Act was enacted, that caught all persons guilty of a corrupt or illegal practice; now only those guilty of personation or voting offences under section 62A and 62B of the 1983 Act are incapacitated from voting. This is a further indicator that this is not a provision that much thought has been given to, and that it has been overtaken by other amendments.
- 1.102 We have already noted the peculiar reference in section 165(3) to votes thrown away, which doctrine can only apply to votes cast for the “employing” candidate after an election court has decided that the candidate was incapable of being elected because they employed an incapacitated agent. This is extremely hard to interpret and apply. In order for the provision to work, it must be the case that not only is the initial election of the employing candidate void, but any subsequent candidacy must also be void, irrespective of whether they continue to employ the disqualified person or not. This is the only way to give this provision any sense.

⁶³ A compendium of the contemporary case law on agency when the 1883 Act was passed is available in *Parliamentary Elections Corrupt and Illegal Practices Prevention Act 1854 to 1883*, Vansittart Conybeare (1884) at pp 113 to 127. A manuscript in pdf format is readily searchable online.

⁶⁴ *Simmons v Khan* [2008] EWHC B4 (QB) (unreported) at [56] to [59]; *Ali v Bashir* [2013] EWHC 2572 (QB) (unreported) at [71] to [76].

Extensive corruption

- 1.103 There is a more general way in which corrupt and illegal practices affect the validity of an election. Where corrupt or illegal practices committed (by anyone) to promote or procure the election of a candidate have “so extensively prevailed that they may reasonably be supposed to have affected the result” of the election, that candidate’s election is void. They also cannot be elected to fill the consequent vacancy.⁶⁵
- 1.104 The difference between this ground for annulling elections and the operation of corrupt or illegal practices as vitiating factors considered above is this. The corrupt or illegal practices need not be personally committed by or attributable to the winning candidate. On the other hand, there is the need to show that the extensive corruption may reasonably be supposed to have affected the result. This is not the same as the materiality requirement for non-substantial breaches of electoral administration law; what is required is reasonable supposition, not certainty. Indeed, in a close election won by a narrow margin, if extensive corruption for the winning candidate is shown, the requirement may be academic.⁶⁶
- 1.105 Examples of elections which were annulled for widespread general corruption include three decisions of Commissioner Mawrey QC: in 2004 at local government elections for the Aston and Bordesley Green Wards in Birmingham;⁶⁷ in Woking in 2013;⁶⁸ and in Slough in 2008. In the last petition, the election commissioner doubted whether it was proper to require that corruption affected the result if general corruption was established. He said:

This unsatisfactory state of affairs is highlighted in cases where, as here, there are allegations of widespread fraud in the use of postal votes. If a petitioner is able to establish such widespread fraud, ought he to have to prove that there were sufficient bogus votes to account for whatever margin of victory the successful candidate enjoyed? If the winner won by, say 100 votes, ought the petitioner to have to prove in court that it was likely that there were 101 or more bogus votes, with the result that, if he can only show 99 bogus votes, the

⁶⁵ Representation of the People Act 1983, s 164(1); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pts 1 and 2 (applying Representation of the People Act 1983, s 164 to both contests at Scottish Parliamentary elections); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 116(1); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 164 to Northern Ireland Assembly elections); Electoral Law Act (Northern Ireland) 1962, s 98(1); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 164(1) to Police and Crime Commissioner elections).

⁶⁶ *Ali v Bashir* [2013] EWHC 2572 (QB) (unreported) at [57].

⁶⁷ *Akhtar v Jahan* [2005] All ER (D) 15; *R. (Afzal) v Election Court* [2005] EWCA Civ 647.

⁶⁸ *Ali v Bashir* [2013] EWHC 2572 (QB) (unreported).

successful candidate can thumb his nose at both the petitioner and, more importantly, the electorate?⁶⁹

- 1.106 The requirement here is not absolute proof that the widespread corruption actually affected the result, but merely a reasonable suspicion that it did. That requirement is there to balance the lack of a requirement that the candidate be shown to be responsible for the corruption. Widespread corruption is a flexible term, and courts can interpret the provision so that the more serious the corruption shown, the less will be needed reasonably to suppose that it affected the result. However, Commissioner Mawrey QC also thought that, in a transparent, 21st century democracy, proof of widespread fraud in favour of the winning candidate should result without more in the annulment of the election, and that is a different point.

APPLICATIONS FOR “RELIEF”

- 1.107 While corrupt and illegal practices are grounds for invalidating the result of an election by way of election petition, they are also criminal offences for which candidates and agents can be prosecuted and convicted. Given the risk of challenge or prosecution, there is a mechanism by which candidates can proactively seek to be exonerated from innocent or accidental breaches of the law’s regulation. If successful, they are immune from criminal prosecution (and unseating through a petition). The application may be made to the High Court or Court of Session, an election court, or if the offence relates to the time for the sending in and payment of election expenses, a county court or sheriff. The court has discretion to exempt an innocent act from being an illegal practice, payment or employment if it is shown that it arose from inadvertence, accidental miscalculation or some similar reasonable cause. The court can also excuse breaches of duty in respect of the return, declaration and statements as to election expenses, where some additional excuses can be invoked, and where the relief is mandatory if the application is made out.⁷⁰

Disqualification of candidates

- 1.108 Election courts may invalidate the election of a candidate who is not qualified to take up their seat. For UK Parliamentary elections, this ground of challenge is not expressly spelt out in the 1983 Act. Nevertheless the election court’s competence to invalidate an election for disqualification of the winning candidate is not in doubt. While an election may only be questioned under Part III of the 1983 Act, the generality of the term “undue election” would appear to cover invalidity by reason of another provision. Section 6(1)(a) of the House of Commons

⁶⁹ *Simmons v Khan* [2008] EWHC B4 (QB) (unreported) at [36] to [41].

⁷⁰ Representation of the People Act 1983, ss 86 (authorised excuse) and 167 (general relief). See also *McCrorry v Hendron* [1993] NI 177 (QBD of Northern Ireland) and *Finch v Richardson* [2008] EWHC 3067 (QB), [2009] 1 WLR 1338; Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pts 1 and 2 (applying Representation of the People Act 1983, s 167 with modifications).

Disqualification Act 1975 (the 1975 Act) voids the election of any person disqualified *under that Act*, and expressly refers to the election court jurisdiction under the 1983 Act. Other disqualifications include being under 18 years of age on the day of nomination, or being an alien. Here law outside the 1983 Act can be taken into account by the election court in deciding whether a MP was duly elected.⁷¹

- 1.109 The way the 1983 Act deals with disqualification for election to local government is much less tortuous; it is expressly stated in the 1983 Act that local elections may be questioned on the ground that the elected candidate was at the time of the election disqualified.⁷²

Initial and supervening disqualification

- 1.110 Substantive disqualifications from elected office define the proper holders of that office. In the context of UK Parliamentary elections, these are listed in the House of Commons Disqualification Act 1975. Most disqualifications are for holding of public offices which are considered incompatible with membership of the legislature. They are therefore not mainly a matter of electoral law, but principally to do with the law governing holding of the elected office in question, in this case the UK Parliament. They operate and apply throughout the tenure of the office. A perfectly qualified and validly elected candidate may subsequently become disqualified. The legal processes for dealing with a supervening disqualification belong to the laws governing membership of the office or legislative body in question, and are therefore outside the scope of this review.
- 1.111 The electoral law question is how to apply these disqualifications in the context of an election. Since the disqualified person is unable to take up their seat, the election is frustrated and nullity is a just outcome. In other words, electoral law is concerned with the initial disqualification of the candidate at the time of election.
- 1.112 Two other forums also deal with disqualification, including supervening disqualification after the election.
- (1) The House of Commons itself may by order direct, under section 6 of the 1975 Act, that a disqualification shall be disregarded, if it appears that the disqualification has been removed, and it is otherwise proper to do so.
 - (2) Individuals can make an application to the Privy Council for a declaration as to an MP's disqualification. Equivalent remedies exist in elections to

⁷¹ The age qualification derives from the Electoral Administration Act 2006, s 17; the disqualification of aliens exists at common law and under the Act of Settlement 1700, s 3, subject to provisions of the British Nationality Act 1981 and the Ireland Act 1949 s 4(1).

⁷² Representation of the People Act 1983, s 127(a).

the Scottish Parliament and Northern Ireland and Welsh Assemblies.⁷³

The material time at which initial disqualification bites

- 1.113 Since the election of a disqualified candidate is void, the starting point is that disqualification must be judged at the time of the election. However, there is some confusion arising out of the complexity of electoral law and judicial decisions made in the context of different and evolving legislative backgrounds.
- 1.114 One may take the view that there is authority in case law suggesting an election must be annulled if the winning candidate was disqualified at the time of nomination, at least in the context of local government elections.⁷⁴ However this is not in our view necessarily the case.
- 1.115 All that the law strictly states is that the election of a disqualified person shall be void. A returning officer generally has no power to refuse the nomination paper of a disqualified person; the officer's powers are prescribed in election rules and are restricted, with two exceptions,⁷⁵ to the formal validity of the nomination paper. However, this was not always the case. In early election legislation, the grounds for refusing a nomination paper were not spelt out. Cases arose in which returning officers refused the nomination of a candidate who in their view was patently disqualified. This was the legislative context of the decision in *Harford v Linskey*, which upheld the refusal of nomination papers on the basis of disqualification of the candidate. Accordingly, its authority is doubtful.⁷⁶ We do not consider it authority for the proposition that the court can annul the election of a candidate simply for their disqualification at the time of nomination, when the legal provisions refer only to disqualification at the time of "election".
- 1.116 A further nuance must be considered. When consenting to their nomination, candidates must declare to the best of their knowledge and belief that they are

⁷³ House of Commons Disqualifications Act 1975, s 7; Scotland Act 1998, s 18; Northern Ireland Act 1998, s 38; Government of Wales Act 2006, s 19.

⁷⁴ Electoral Commission consultation paper, *Standing for Election in the UK*, September 2013, citing *Harford v Linskey* [1899] 1 QB 852 and *Harrison v Gupta* (unreported, 4 May 2006).

⁷⁵ See Electoral Law (2014) Law Commission Consultation Paper No 218; Scottish Law Commission Discussion Paper No 158; Northern Ireland Law Commission No 20, Chapter 7 Notice of election to nomination, paras 7.61 to 7.68 The exceptions are serving prisoners and the doctrine of sham nominations.

⁷⁶ This was emphasized in a different context, sham nominations, in both *Sanders v Chichester* (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, Schofield's Electoral law, loose-leaf, 6th reissue volume 5 p E99 and *R v Bennett, ex parte "Margaret Thatcher"* (unreported, 3 June 1983).

not disqualified from taking office.⁷⁷ Knowingly making a false statement is a corrupt practice, guilt of which annuls the winning candidate's election. Crucially, it is the commission of the corrupt practice, not the disqualification at the time of the nomination, which vitiates the validity of the election in those circumstances.

- 1.117 In the England and Wales local government election context, one decision suggests the court has jurisdiction simply to avoid the election of a candidate disqualified at the time of nomination. In *Harrison v Gupta*, a petition arising out of council elections in Brent, the disqualification was due to a contract of employment with the council. The Commissioner reasoned that the mischief addressed by the disqualification was the ability of a council employee to use their connection while standing for election. In other words, that is a disqualification from campaigning for election, as well as taking office once elected. In reaching this conclusion, the Commissioner relied on *Harford v Linskey*, although he said he would have come to the same view had he not done so. No consideration was given to whether the disqualified candidate had knowingly made a false statement in their declaration that they were not disqualified.⁷⁸
- 1.118 In reality, few candidates will be in a position where they do not know about their disqualification when consenting to nomination, but cease to be disqualified at the time of election. Most will know they are disqualified when declaring they are not, or will be oblivious to the disqualification and assume office while still suffering from it. In either case, the election court can only annul the election.
- 1.119 The rationale for disqualification biting at the time of election is that the candidate will be unable to take up their seat. This frustrates the exercise of the franchise by voters and leaves them with no democratic representation in the elected body in question. We can call this the "frustrated election" rationale.
- 1.120 In the context of some disqualifications, however, the rationale may be different. It may be that persons suffering from such disqualifications should not only be incapable of election, they should also be incapable of standing and campaigning for election while suffering from the disqualification. An example might be a judge who compromises the independence of their office by running for election, or Commissioner Mawrey QC's example of a powerful local housing official being able to stand for election without divesting themselves of their office, and the

⁷⁷ Representation of the People Act 1983, sch 1 r 8(3)(b). Equivalent requirements are in discrete election rules, such as the National Assembly for Wales (Representation of the People) Order 2007, sch 5 r 9(4)(c). Notably, the prescribed form of consent to nomination for local government election requires the declaration to apply to both nomination and election. Local Elections (Principal Areas) (England and Wales) Rules 2006 SI No 3304 sch 2 form for rule 7 (Consent to Nomination). However the section 65A offence extends to disqualification at the election only: Representation of the People Act 1983 s 65A(1B).

⁷⁸ *Harrison v Gupta* (unreported, 4 May 2006), paras 66 to 74. The example given is vulnerable voters asked to vote for a powerful figure in the housing department and being bullied into compliance.

power it might sway over vulnerable voters. We can call this rationale “incompatibility with campaigning for election”.

1.121 In general, the law deals with the disqualification rationales through two parallel mechanisms:

- (1) The frustrated election rationale is dealt with through the election and other courts’ jurisdiction to unseat the winning candidate if they are disqualified on election.
- (2) Incompatibility with campaigning for election is dealt with through the declaration mechanism at the time of nomination. Crucially, at this stage, the mental state of the applicant is important – they must know about it in order to be unseated.

Relationship with legislatures’ internal disqualification mechanisms

1.122 We noted that the House of Commons may, under section 6 of the 1975 Act, direct that a disqualification be disregarded if it has been removed after the election. That seems to be a way of dealing precisely with the scenario of unknown disqualifications; however if an election court is seized of the election, it appears that the House of Commons’ order will not affect the election court’s proceedings. The election court is unable to consider whether the disqualification has lapsed and whether it is proper to disregard it. Indeed if hearing an election petition, it must annul the election of the disqualified candidate even if the House of Commons has directed, or might direct, that the disqualification should be disregarded on the above grounds.

Transposing the classical grounds of challenge to other elections

1.123 The foregoing has examined the grounds on which a parliamentary or local government election has been challenged. These grounds evolved over the course of the 19th and 20th centuries to fit the first past the post voting system. From 1997 onwards, many new elections were introduced, none of which used first past the post exclusively. Other than Greater London Authority elections, which were brought under the 1983 Act scheme as concerns legal challenge, discrete provision is made for European Parliamentary, Scottish Parliamentary, National Assembly for Wales, Northern Ireland Assembly, Mayoral and Police and Crime Commissioner elections, as well as for local government in Scotland and Northern Ireland.

1.124 The task for those drafting discrete provisions on challenging elections was therefore how to adapt – or transpose – the classical ground of challenge to the new voting systems. We will turn to two of those grounds in particular – correcting outcomes after a scrutiny, and invalidating elections due to corrupt or illegal practice.

CHALLENGING LOCAL GOVERNMENT ELECTIONS IN SCOTLAND

1.125 First, however, we note the position of the rules on challenge for Scottish local government elections. These are set out in the 1983 Act, partly through incorporation in the rules relating to local government elections in England and Wales⁷⁹ and partly through separate provisions applying only to Scottish local government. No transposition is made of the classical grounds due to the use of the STV voting system. Two differences are however worth noting.

- (1) The provision which sets out the consequences of a local election being declared void – that a new election shall be held – is not applied to Scotland.⁸⁰ Plainly a new election must be held if there is a vacancy, but there is no provision in the 1983 Act requiring one.
- (2) A more subtle range of disqualifications apply where a person is found guilty – either personally or by their agents – of a corrupt or illegal practice. A candidate is disqualified from holding the office of councillor in Scotland:
 - (a) for 10 years, if reported personally guilty of a corrupt practice;
 - (b) for three years, if reported guilty by their agents of a corrupt practice; and
 - (c) for the period they were elected to serve or would have served if elected, if reported personally guilty or guilty by their agents of an illegal practice.⁸¹

THE SCRUTINY AND CORRECTING OUTCOMES AT PARTY LIST ELECTIONS

1.126 We have noted that the classical grounds include the jurisdiction to correct outcomes by declaring another candidate elected, after conducting a scrutiny. Section 157(2) of the 1983 Act enjoins the election court to follow the practices of the pre-1868 House of Commons committees, including with regard to a scrutiny, but also including agency.

1.127 Where individuals are running against one another (at the first past the post contest within an additional member system election, or at elections using the supplementary vote or single transferrable vote) transposing section 157(2) is straightforward. In general, the discrete election rules employ the same grounds,

⁷⁹ Representation of the People Act 1983, s 204(1).

⁸⁰ Representation of the People Act 1983, s 135.

⁸¹ Representation of the People Act 1983, s 159(3).

and the effect is to apply classical scrutiny principles to the new elections.⁸²

- 1.128 But where a party is running for election against other parties and individuals (whether at party list elections for the European Parliament, or the party list component of elections to the Scottish Parliament, National Assembly for Wales, or London Assembly), it appears that the discrete legislation transposes the scrutiny jurisdiction inconsistently.
- 1.129 At Scottish Parliamentary elections, the principles and practices on which the Parliamentary election court acts only need be applied to both constituency and regional election petitions “so far as appropriate having regard to the different system of election”⁸³.
- 1.130 No reference is made at all to these practices in the case of European Parliamentary elections in Great Britain.⁸⁴ This prompts the editors of *Parker’s Law and Conduct of Elections* to conclude that the scrutiny jurisdiction was excluded because of the difference between the regional party list and first-past-the-post systems.⁸⁵ And yet section 157(2) is applied to the election of London members for Greater London Authority elections and the election of regional members of the National Assembly for Wales. Both use the party list system.
- 1.131 In our view the scrutiny, both in its technical sense of adversarial, court-supervised inspection and counting of ballot papers and in the wider sense of judicial correction of results, has a role to play in party list elections. The court must be able to track ballot papers and strike off bad votes or count tendered ballot papers, after hearing arguments on the issue. Once it has come to a view of the true count of votes, it should be able to correct the result by applying the modified d’Hondt formula to establish a true regional or London return. All that has changed is the magnitude of the task, which is a much simpler one in smaller, first past the post contests.

⁸² National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 107(2); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 74 and sch 9 (applying Representation of the People Act 1983, s 157(2) of the Representation of the People Act 1983 to Police and Crime Commissioner elections); Electoral Law Act (Northern Ireland) 1962, s 96(1); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 96(1); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 (applying Representation of the People Act 1983, s 157(2) with modifications to Northern Ireland Assembly elections); Scottish Parliament Elections Order 2010 SI 2010 No 2999, art 84 and sch 6 (applying Representation of the People Act 1983, s 157(2) with modifications to Scottish Parliamentary elections).

⁸³ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pts 1 and 2 (applying with modifications Representation of the People Act 1983, s 157(2) to Scottish Parliamentary elections).

⁸⁴ European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 106.

⁸⁵ European Parliamentary Elections Regulations 2004 SI 2004 No 293, regs 23, 24, 88(3), 100(1), and 107; R Price (ed), *Parker’s Law and Conduct of Elections*, looseleaf, issue 23, para 19.30.

CORRUPT AND ILLEGAL PRACTICES

- 1.132 A greater transposition challenge occurs in the context of corrupt and illegal practices as factors that vitiate an election. In a first past the post context, the commission, personally or by their agents, of a corrupt or illegal practice by the winning candidate can intelligibly invalidate their election. In other voting systems where an individual stands, such as the supplementary vote or STV, the same is true. However, in a voting system where the parties are the candidates, this is less intelligible. If one of the party's list candidates is guilty personally or through agents of a corrupt and illegal practice, should that affect their election only, or should it taint the election of all of the party's list candidates?
- 1.133 The current challenge rules for elections using the party list system offer inconsistent answers to this question. The party list elements of Greater London Authority and National Assembly for Wales elections apply the classical rule that corrupt and illegal practices vitiate the election. At European Parliamentary elections, only voting offences (including personation) can operate as vitiating factors, while for the party list element of Scottish Parliamentary elections, corrupt and illegal practices cannot operate so as to invalidate an election.⁸⁶

London Members of the London Assembly elections

- 1.134 The election of London Members of the London Assembly, conducted under the party list component of AMS, is brought within Part III of the 1983 Act. The grounds for challenging local government elections are thus adopted in relation to the election of London Members, and the crucial adaptation is made in respect of the order which the election court can make.
- 1.135 There are two possible options where a party list election is voided:
- (1) the entire election is held void, and must be re-run; or
 - (2) the return of the candidate is held void, and their vacancy may be filled by taking the next person on the party's list.
- 1.136 As to the election of London members both options are applied: the rules distinguish between the election being declared void and the return of the candidate being declared void. Where an election is declared void, it must be re-run as an ordinary election (for the entirety of London); where a candidate's return is void, their place may be filled following the normal rules for a casual

⁸⁶ Representation of the People Act 1983, ss 157(2) and 203; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 99(2) and 109; European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 88(3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pt 2 (applying Representation of the People Act 1983, s 120 with modifications to Scottish Parliamentary elections).

vacancy.⁸⁷ In effect, the court has the option as to which remedy to use.

National Assembly for Wales elections

- 1.137 By contrast, at National Assembly for Wales elections, if the return of any regional member is held void, the election in that region is also void, and a new election must be held.⁸⁸ Corrupt and illegal practices operate as vitiating factors for both constituency and regional elections, and so can result in the election being void.⁸⁹ Should the election be void because of personal guilt by candidate(s) of a corrupt or illegal practice, they are precluded from standing for the new election, or any election for the duration of the disqualification period. In the case of general corruption at the regional contest, which uses a party list voting system, every list candidate's election is void, and none shall be capable of standing at the new election.⁹⁰

Scottish Parliamentary elections

- 1.138 As explained above, for the regional contest at a Scottish Parliamentary election the transposition approach to corrupt and illegal practices at the regional contest is simply to exclude them from the election court's jurisdiction.⁹¹ Corrupt and illegal practices committed in the course of the regional contest at Scottish Parliamentary elections can only be prosecuted through the criminal courts. A conviction will result in disqualification from holding elective office for a specified period, and a requirement to vacate a seat if already elected.⁹² The normal provisions on the occurrence of a vacancy will be engaged – the next person on the party's list will be invited to take the seat, or the seat will remain empty until the next election.⁹³ The crucial difference is that there is no public law mechanism for invalidating the election of candidates for guilt by agents of corrupt and illegal practice, while personal guilt is left solely to the criminal courts. Nor is there any provision for avoiding the election for general corruption intended to procure the election of a particular party, as there is at National Assembly for Wales elections.

⁸⁷ Representation of the People Act 1983, s 135A.

⁸⁸ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, arts 99 and 101.

⁸⁹ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 109.

⁹⁰ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 116

⁹¹ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pt 2 (applying Representation of the People Act 1983, s120 with modifications to Scottish Parliamentary elections).

⁹² Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 84 and sch 6 pt 2 (applying with modifications Representation of the People Act 1983, s 160 to the regional contest at Scottish Parliamentary elections).

⁹³ Scotland Act 1998, s 10.

European Parliamentary elections

- 1.139 As noted above, at European Parliamentary elections the outcome of the election need simply be certified to the Secretary of State; there is no provision for the election court to report whether corrupt or illegal practices have been committed. As we saw, only personation and voting offences serve as vitiating factors in the European Parliamentary electoral context. It would be odd if the European Parliamentary election court could not report their commission, and this may be a drafting slip.⁹⁴
- 1.140 Similarly to the position at Scottish Parliamentary elections, a regional candidate's election will still be invalidated if they are convicted by a criminal court of committing a voting offence, the disqualification provisions apply and their seat will fall empty; the ordinary provisions on filling vacancies should apply. The seat will be filled from the party's list or a by-election will be held.⁹⁵ There is no provision for a European Parliamentary election to be voided on the ground that general corruption has taken place.
- 1.141 The classical regulation of campaign behaviour focuses on individual candidates, not parties. Transposing the classical approach to elections where parties stand, is a tricky issue. Corruption in relation to one of the winning candidates may not justify the avoidance of the entire election. An election to fill a vacancy in respect of one or more candidates may be more realistic, but will still take place over the entirety of the regional constituency, which is a large undertaking.

Consequences of an invalidated election

- 1.142 At UK Parliamentary elections, the House of Commons must give effect to the election court's certified determination and report, resulting in a new election. The rules for local government elections state explicitly that where an election is held to be void, a new election must be held.⁹⁶ This applies to Greater London Authority elections and Mayoral elections in England and Wales, which are also covered by the 1983 Act, but separate provision is made for the party list element of the Greater London Authority elections. Similar provision is made for Police and Crime Commissioner elections; where an election is declared void on a

⁹⁴ In the case of regional elections to the Scottish Parliament, corrupt and illegal practices cannot be considered on election petition. Thus the provisions on disqualification only arise on a criminal conviction. Scottish Parliament Elections (etc.) Order 2010 SI 2010 No 2999, sch 6 pt 2. See discussion above at paras 1.133 and 1.138.

⁹⁵ European Parliamentary Elections Regulations 2004 SI 2004 No 293, regs 82 to 85; European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2001 No 1267, regs 76 to 76l.

⁹⁶ Representation of the People Act 1983, s 135; Electoral Law Act (Northern Ireland) 1962, s 82. As noted in para 1.125, s 135 of the 1983 Act is not applicable in Scotland.

petition, a vacancy is held to have occurred.⁹⁷

- 1.143 At other elections, there is no equivalent to sections 135 and 144(7) – the assumption must be that where the election is held to be void, the provisions on filling a vacancy are triggered. This is the case for European Parliamentary elections, Scottish Parliamentary elections and the constituency contest at National Assembly for Wales elections.⁹⁸ Special provision is made in the cases of the election of London members of the Greater London Assembly and regional members of the National Assembly for Wales, which indicate different ways of transposing the classical provisions for party list elections.

Challenging elections in Northern Ireland

- 1.144 In general, the law on challenge in Northern Ireland, while complex and fragmented, replicates the classical law in Great Britain. The 1983 Act applies, of course, to UK Parliamentary elections in Northern Ireland while its provisions are applied by the legislation governing Northern Ireland Assembly elections and local elections in Northern Ireland. The challenge rules for European Parliamentary elections in Northern Ireland follow those applying to Great Britain.

THE GROUNDS FOR CHALLENGE

- 1.145 This means that the classical law in the 1983 Act applies to Northern Ireland Assembly and local government elections in Northern Ireland, regardless of the fact that a different voting system – the single transferable vote – is used for those elections.⁹⁹ The same grounds for challenge apply as for a UK Parliamentary and local government election in England and Wales respectively.
- 1.146 For European Parliamentary elections, similar grounds for challenge apply in Northern Ireland as in Great Britain; of all corrupt and illegal practices, only the voting offences may ground a European election petition in Northern Ireland. Nevertheless, the rules on scrutiny and agency incorporated by section 157(2) of the 1983 Act do apply to European Parliamentary election petitions in Northern Ireland.¹⁰⁰

THE EFFECT OF A SUCCESSFUL CHALLENGE

- 1.147 In most cases, the law does not explicitly specify the effect of a successful election petition. Where the election is held to be void, a vacancy arises and this

⁹⁷ Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, art 80; Police Reform and Social Responsibility Act 2011, s 75.

⁹⁸ See para 1.125 above.

⁹⁹ Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying provisions of the 1983 Act; Electoral Law Act (Northern Ireland) 1962, ss 58 and 72 to 102 and sch 8.

¹⁰⁰ European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, reg 6(3) and pt 4 in particular regs 79(3) and 96(1).

must be filled in some way. The STV voting system would enable a returning officer to re-determine the result of an election, disregarding votes given by a winning candidate who was reported guilty of corrupt or illegal practices. However, this would require the returning officer to conduct a complete recount of the election, and carry out all the associated calculations. Furthermore, it would deprive the candidate's party of a chance to contest the election with a new candidate. The better approach is to re-run the election as one for a single vacancy, and the law for local elections in Northern Ireland states that where an election is declared void and the election court has not found another person to be elected instead, a new election must be held.¹⁰¹

THE 1962 ACT'S OUTDATED PROVISIONS

1.148 The conduct of election petitions in Northern Ireland is largely the same as in Great Britain. A few differences do pertain in the Electoral Law Act (Northern Ireland) 1962 which relate to local government elections, and are probably unintentional. These are:

- (1) **Witnesses.** The 1962 Act still contains the old provisions on witnesses to Parliamentary election petitions, which allow the election court to issue a witness with a certificate of indemnity if they answer the questions they are asked by the election court truly.¹⁰² This is one of the remnants of the evolution of the election court to incorporate some of the inquisitorial features of the Royal Commissions before 1868. These are not applied to local elections, nor are the modern rules which specify that an answer to a question put by or before any election court will not be admissible in evidence in further proceedings against that person. This leaves a gap as to the protection of witnesses in local election petitions in Northern Ireland.
- (2) **Disqualification for voting offences.** The consequences of a finding on a local election petition that a person has committed voting offences is that they are disqualified from being registered and voting at local government elections in Northern Ireland, but not in any other elections in the UK.¹⁰³

The procedure for bringing an election petition

1.149 The procedure for parliamentary and local election petitions is governed in part by Part III of the 1983 Act, section 182 of which empowers the Senior Courts to make rules of procedure. Different procedural arrangements exist in the three jurisdictions of the UK. Our focus will be on the procedural laws in England and

¹⁰¹ Electoral Law Act (Northern Ireland) 1962, s 82(1).

¹⁰² Electoral Law Act (Northern Ireland) 1962, sch 8 para (7) to (11); Representation of the People Act 1983, s 140.

¹⁰³ Electoral Law Act (Northern Ireland) 1962, s 96.

Wales, turning to the differences in the other two jurisdictions as required.¹⁰⁴

The parliamentary election court

- 1.150 The trial of a parliamentary election petition takes place in open court without a jury. The court consists of two judges of the Queen's Bench Division (in England and Wales), the Court of Session (in Scotland), or the High Court or Court of Appeal (Northern Ireland) who are on a rota for the trial of parliamentary election petitions. The election court has the same powers, jurisdiction and authority as the High Court or the Court of Session.
- 1.151 The election court is not a "standing" court which is permanently in existence. The court is constituted by a petition; it conducts the trial at the end of which it provides a certified determination and report to the Speaker of the House of Commons. In *R v Cripps ex parte Muldoon* [1984] 1 QB 68, the High Court held that once the determinations have been made, the election court had performed its function and had no further legal authority to revisit or add to its decision at a later date.¹⁰⁵
- 1.152 The election court is required to sit in the constituency for which the election was held, unless the High Court finds special circumstances render it desirable that the hearing should take place elsewhere.¹⁰⁶ It is not at all clear, however, that hearing the trial within the constituency is the norm rather than the exception for parliamentary election petitions. It appears that the local election court sits routinely in the local government area in question. Notice of the time and place of the trial must be given not less than 14 days before the day of trial.¹⁰⁷ A House of Commons shorthand writer attends the trial and a transcript of the evidence accompanies the court's certified determination to the Speaker.¹⁰⁸

¹⁰⁴ Election Petition Rules SI 1960 No 543 ; in Scotland, the Act of Sederunt (Rules of the Court of Session) 1994, Ch 69 and Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999, Pt XI; in Northern Ireland, the Election Petitions Rules 1964 SR 1964 No 347. In Northern Ireland, these are not available on private or public online portals. See Electoral Office for Northern Ireland, Local Government Elections 5 May 2011: Guide for Candidates (2011) p 4.

¹⁰⁵ Representation of the People Act 1983 ss 123, 139(1); The court found that an election commissioner (the court adjudicating on local government elections) was, in legal terminology, "*functus officio*". The same reasoning applies to the parliamentary election court. The historical fidelity of this conclusion can be doubted – at its inception the election court can be considered to have been a standing court, so that obligations to pay "in default of recognizance" could accrue more than 18 months after trial, and could be claimed in the "Court of Elections". Corrupt and Illegal Practices Act 1868 s 42.

¹⁰⁶ Representation of the People Act 1983, s 123(3).

¹⁰⁷ Representation of the People Act 1983, s 139.

¹⁰⁸ Representation of the People Act 1983, s 126.

The parties to a petition

- 1.153 The election petition is a civil process which is commenced by an individual directly concerned by the election whose result or validity is challenged. The petitioner must be a person who voted or had a right to vote at the election or a person who was, or claimed to have had a right to be, a candidate at the election. Curiously, anonymously registered electors cannot challenge elections, presumably on the ground that it would identify them to the public. The MP whose election or return is challenged must be a respondent to the petition, even if their conduct is not challenged, because they are always directly concerned by a petition that could declare the election void. No candidate other than a petitioning candidate and the sitting MP can be a party to the proceedings without agreeing to be. If the petition complains about the conduct of the returning officer or his staff during the election, the returning officer is deemed to be a respondent.

The local government election petition

- 1.154 There has since 1872 been an alternative election court to hear a local government election petition (a “local election court”). The relevant provisions are now set out in sections 127 to 135A of the 1983 Act. The local election court determines petitions arising out of elections “under the local government Act”. In England and Wales an election “under the local government Act” is defined by section 203 of the 1983 Act to mean any election held under the Local Government Act 1972, catching elections to principal areas and parish and community council elections.¹⁰⁹ Elections to the Greater London Authority are treated as elections under the local government Act.¹¹⁰
- 1.155 The local election court differs from its parliamentary counterpart as follows.

- (1) In England and Wales, the court is ordinarily presided over by a senior lawyer called an election commissioner. Section 130 of the 1983 Act requires the commissioner to be “a person qualified and appointed”, meaning a solicitor or barrister satisfying the judicial appointment eligibility condition on a seven year basis who is not resident within the local government area in question. The judges on the rota to hear parliamentary election petitions may annually appoint as many as five qualified persons as local election commissioners, and assign the petitions to be tried by each commissioner.
- (2) Similar but not identical provisions govern the local election court in

¹⁰⁹ Election of chairman and councillors of a non-metropolitan county or district council or, in Wales, the chairman or councillors of a county or county borough; the election of the mayor and councillors of a London borough; the election of the chairman and councillors of a parish or community council. Section 191(1) of the 1983 Act makes municipal elections in the City of London “election under the Local Government Act” for the purposes of selected provisions of the 1983 Act, which includes those on challenge by election petitions.

¹¹⁰ Representation of the People Act 1983 s 203(1A).

Northern Ireland, which is presided over by a barrister of not less than ten years standing in practice.¹¹¹

- (3) In Scotland the local election court is presided over by the sheriff principal for the area where the local election took place. The local election court has the same powers as its Parliamentary counterpart, which in practice means it has the powers of the High Court or Court of Session.¹¹²
- (4) A local election petition must be presented by at least four electors who voted, or had a right to vote at the election, or by an actual or putative candidate.¹¹³
- (5) The local election court's accommodation is provided by the "proper officer" of the authority for which the election was held, whose expenses of so doing are to be paid by the authority.¹¹⁴
- (6) Any report by the court as to corrupt or illegal practice is submitted to the High Court and Secretary of State, rather than the Speaker.¹¹⁵

The petition procedure in England and Wales

1.156 In England and Wales, the petitions procedure is governed by three sets of rules. The first layer is in Part III of the 1983 Act, or equivalent election-specific provision governing the particular election. Next are bespoke procedural rules, which in England and Wales are contained in the Election Petitions Rules 1960 (the 1960 Rules).¹¹⁶ These govern parliamentary and local election petitions, and are applied in election specific provisions, while the European Parliamentary Election Petition Rules 1979 govern EU Parliamentary elections.¹¹⁷ Subject to the 1983 Act and the 1960 or discrete petitions rules, the ordinary Civil Procedure Rules apply.¹¹⁸ In Scotland, the elections chapter of the ordinary procedural rules, Chapter 69 of the Act of Sederunt 1994, supplements Part III of the 1983 Act, and applies to all national elections, namely UK, EU and Scottish Parliamentary elections equally. We will turn to it further below.

¹¹¹ Electoral Law Act (Northern Ireland) 1962 s 72.

¹¹² Representation of the People Act 1983 s 134(2); see Tribunals Courts and Enforcement Act 2007.

¹¹³ Representation of the People Act 1983 s128(1).

¹¹⁴ Representation of the People Act 1983 s 131.

¹¹⁵ Representation of the People Act 1983 ss 145(3), (5) and 160(3).

¹¹⁶ Election Petition Rules SI 1960 No 543; examples of discrete applications include National Assembly for Wales (Representation of the People) Order 2007/236 sch 9; Police and Crime Commissioners Elections Order 2012/1917 sch 9;

¹¹⁷ 1979 SI No 521.

¹¹⁸ *Ahmed v Kennedy* [2002] EWCA Civ 1793 [2003] 1 W.L.R. 1820.

THE PRESCRIBED OFFICER

1.157 The 1983 Act envisages that some of the early procedural stages of election petitions should be overseen by a “prescribed officer”. The prescribed officer’s role is:

- (1) to receive petitions and to send a copy to the returning officer for the constituency or local authority whose election is questioned;
- (2) to produce and keep for inspection a list of all election petitions “at issue” (as to which, see further below); and
- (3) to certify the reasonable expenses of witnesses in giving evidence at trial.¹¹⁹

1.158 Section 157 of the 1983 Act provides in effect that the prescribed officer in relation to parliamentary elections shall be a master of the Queen’s Bench Division determined by the Lord Chief Justice (in England and Wales), an officer of the Court of Judicature determined by the Lord Chief Justice (in Northern Ireland) and the Principal Clerk of Session (in Scotland). In relation to local government elections, the identity of the prescribed officer is left to the relevant procedural rules. In England and Wales the prescribed officer for all election petitions is the Senior Master of the Queen’s Bench Division of the High Court.

PRELIMINARY PROCEDURE

1.159 Election petitions are filed in the election petitions office, which is staffed by one of the Senior Master’s administrative staff. Currently the election petitions office is staffed by administrative staff of the Administrative Court Office.

1.160 In England and Wales the Senior Master seems to take on more of the early procedural steps in respect of petitions.¹²⁰ Thus, under the 1960 Rules the Senior Master fixes security for costs.¹²¹

1.161 This rule conflicts with section 136 of the 1983 Act, which states that security for costs shall be an amount “not exceeding £5,000 as the High Court or a judge of the High Court directs on an application made by the petitioner”. The original text of the 1983 Act provided for security for costs to be a fixed sum. In practice we understand the maximums are routinely awarded, which may be evidence of the

¹¹⁹ Representation of the People Act 1983 ss 121(4); 128(4); 138(1) and 143.

¹²⁰ Representation of the People Act 1983 ss 157(4),(6) and (7); Election Petitions Rules Rules SI 1960 No 543.

¹²¹ Election Petitions Rules SI 1960 No 543 rr 5(1).

practice, like the 1960 Rules, reflecting the old law.¹²²

- 1.162 It is clear that the 1960 Rules have failed to keep abreast of developments in the 1983 Act. By contrast, the Rules of Court in Scotland require security for costs to be set by the Lord Ordinary or the vacation judge.¹²³
- 1.163 As well as deciding preliminary matters of procedure, the Senior Master in England and Wales often conducts scrutinies and recounts in the Royal Courts of Justice. Unlike the position at trial (in principle, if not practice), there is no default requirement that pre-trial matters are dealt with in the constituency or local government area. It is not clear under what rule this takes place, but it is likely to be a practice of remission of the detailed recounts to the Senior Master by the election court. This appeared to be the case in the recent petition in *Penlington v Pennington*, a matter of administrative error where the supervised recount was conducted under the oversight of the Senior Master, whose report was approved and formed the basis of the determination by the election court.¹²⁴

TIME LIMITS

- 1.164 The petition must be issued within 21 days of the date of the return of the writ (which in most cases will be the day after the election) and can be issued at any time up to, but no later than, midnight on the last day.¹²⁵ Failure to adhere to the time limit is fatal to the petition. The time limit is relaxed only if corrupt or illegal practices involving the payment of money or other reward are alleged, in which case the petition may be filed within 28 days after the date of the alleged payment or promise.¹²⁶ There are several other important procedural deadlines relating to the service of the petition, the obtaining and service of security for costs, and substantive amendment to the petition, which we consider further below. In short, the proceedings are more formal and the rules less forgiving than in ordinary civil proceedings.

¹²² Electoral Commission, *Challenging elections in the UK* (September 2012), part of the response to our Scoping Consultation Paper, paragraph 106, referring to information received by an official of the Administrative Court Office (in effect the election petitions office).

¹²³ Act of Sederunt (Rules of the Court of Session) 1994 SI 1994 No 1443 r 69.4.

¹²⁴ In that case, the local election court was made up of the rota judges of the High Court. It appears that delay and cost of appointing an external commissioner were factors. Perhaps the rota judges can appoint themselves as commissioners, although that requires a strained reading of section 130(3). The proceedings were unreported but were listed under the reference M335/12, *Penlington v Pennington*.

¹²⁵ This is an unusual deadline. Since court administration closes outside business hours, the petition must be left with the Royal Courts of Justice's main entrance security. See the Queens Bench Guide para. 13.3.7.

¹²⁶ Representation of the People Act 1983, s 122(2) and (3).

THE FORMALITIES OF LAUNCHING AN ELECTION PETITION

- 1.165 The rules make provision as to the form and content of the petition. The petition must be in the form set out in the 1960 Rules and must state the prescribed matters, including the capacity in which the petitioner presents it, the relevant dates for the purposes of time limits, the particular grounds on which relief is sought and a “prayer” for, or formula setting out that relief.¹²⁷

Security for costs and petition “at issue”

- 1.166 We previously noted the time limit for presenting a petition is 21 days from the date of the return, with a limited power to extend time under section 122(3) of the 1983 Act. However sections 136 and 137 of the 1983 Act and the 1960 Rules together lay down some additional steps before a petition is “at issue”, or properly filed and fit to be allocated to a court, listed and tried.

- (1) Within three days of initial presentation of the petition, an application must be made to provide security for costs not exceeding £5,000 for parliamentary election petitions and £2,500 in local government election petitions; and the provision of that security within that time. We have noted that security should be fixed by a judge of the High Court or Court of Session, and not a master.¹²⁸
- (2) Within a further five days both the petition and the nature and amount of the security must be served on the respondents.¹²⁹
- (3) Finally, the period within which respondents may object to the adequacy of the security (which is a further 14 days)¹³⁰ must have passed without objection or, in the event of an objection, the Master (subject to appeal to a high court judge) must have resolved the objection.¹³¹

- 1.167 The reference to security for costs is far from simple. Section 136 of the 1983 Act requires the giving of security for “all cost which may become payable by [the petitioner] to any witness summoned on his behalf or to any respondent”. The security is to be given in “the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by deposit of money” or combination of both. Similarly, in Scotland, a person must find security for costs

¹²⁷ Election Petition Rules 1960 SI 1960 No 543, r 4.

¹²⁸ Election Petition Rules 1960, r 5. The amounts of security are expressed as maximum in s.136 of the 1983 Act but the practice is that the maximum is automatically required: see the election petitions office’s form setting out guidance to prospective petitioners, http://hmctsformfinder.justice.gov.uk/courtfinder/forms/loc002_e.pdf (last visited 24 January 2012).

¹²⁹ Election Petition Rules 1960, r 6.

¹³⁰ Election Petition Rules 1960, r 7.

¹³¹ Representation of the People Act 1983, s 137.

such as caution (pronounced “kay-shun”), that is a guarantee by a third party, normally a financial institution. The reference to paying witnesses, and to the old legal term of recognizance,¹³² has little relevance for the modern understanding that security for costs is a payment into court of funds that will be secured against adverse costs orders made in the petition proceedings. Given this practice, one can see that there is scope for delay in listing and hearing an election petition purely because the rules are based on an era where recognizances (which were more like sureties) were prevalent, and there may be argument about the capacity of the person standing as surety to meet the costs. Overall, this procedure strikes us as rigid and outmoded.

- 1.168 Once the above formal steps have been complied with within the time limits, an election petition is properly issued. Rule 19 of the 1960 Rules states that the time limits in steps (1) and (2) above cannot be varied by order, but this has come under strain from recent case law. Once a petition is at issue an application to fix a date for the hearing can be made to a rota judge by the petitioner, respondent, or in the absence of a request from either, by the Senior Master.¹³³

LIST OF PETITIONS

- 1.169 Once a petition is at issue, the prescribed officer is required to list petitions in order of presentation, and to keep a copy of the list for inspection. The 1960 Rules require it to be “conspicuously” displayed in the election petitions office. Section 138 of the 1983 Act requires petitions to be tried “so far as convenient” in the order in which they stand in the list.¹³⁴
- 1.170 The notion that the mere presentation of a petition does not suffice to make it properly issued, and that petitions are tried in list order is peculiar. It dates back to the hearing of petitions by the Elections Committee of the House of Commons. The 1855 edition of Erskine May notes that no petition was presented to the House until recognizances were entered into to the satisfaction of an examiner. Once the examiner reported the recognizances unobjectionable (because he decided against an objection or time to object had lapsed), the petition was entered by the Speaker on a list of election petitions arranged in chronological order according to the date of such report. Informal, defective, time-barred or unsecured petitions would not be heard, so that formality acted as a bar against

¹³² A surety (someone who undertakes to pay the costs in default of the petitioner doing so) is the best analogue to a recognizance. A recognizance is essentially a conditional undertaking to the state (usually a court), in this context to stand as unsecured surety for the petitioner paying the costs of bringing a petition up to a certain amount. A petitioner can offer other persons as sureties against his paying the maximum sum (recognisances) or they can pay into court that sum, or offer a mixture of payment and recognisances. The use of the term continues in s 136 of the 1983 Act and rule 5(2) and (3) of the 1960 Rules. The election petitions office form setting out guidance for petitioners simply uses the term “sureties”.

¹³³ Election Petition Rules 1960, r 9.

¹³⁴ Representation of the People Act 1983, s138 and r 8 of the Election Petitions Rules 1960.

spurious and general complaints.

- 1.171 The list of petitions at issue also determined the order in which petitions were assigned to the five-member committees, whose chairmanship alternated between the two parties.¹³⁵ Historically, therefore the notion of “petition at issue” and trial by list order seemed to be a way of making sure that speculative petitions did not enter the list of petitions to be assigned to committees, only to be selectively withdrawn in order to get a chairman from the petitioners’ party. It seems that it was a way of preventing “gaming” the system.
- 1.172 This is pure speculation, however. Suffice to say the notion of “petitions at issue” survived the transfer of adjudicative functions from MPs to judges, and into the modern law. It is a rather archaic approach to civil procedure, and it is questionable how useful it is in the modern context, and what value is brought by a rule in primary legislation to try petitions according to list order.

MANDATORY FORMAL REQUIREMENTS

- 1.173 The courts have since 1879 consistently regarded compliance with requirements as to the form of the petitions, security for costs, and the manner of and time for their service as “mandatory”.¹³⁶ This means that failing to comply with them is absolutely fatal to the petition, and the court has no power or discretion to extend time or to dispense with formalities even in exceptional circumstances. In *Absalom v Gillett* [1995] 1 WLR 128 the Divisional Court held that the failure to make the successful candidate a respondent and to serve him in time rendered the petition incompetent so that it must be struck out. Laws and Forbes JJ, giving judgment, added:

We reach this conclusion with very considerable regret. In the course of argument we made no secret of our view that, if the respondent's application was good, an injustice would be perpetrated. We remain of that view. This petition has at least arguable merits; it may be that the successful candidates would not even choose to resist it; if they did, the court ought to be able to find some means of hearing them, despite their not having been served in time. We greatly doubt whether the public interest in the speedy determination of election disputes — an interest which we readily acknowledge — requires so draconian a regime as regards time for service as that created by rule 19 of the Election Petition Rules 1960. We should have thought there should be scope for some limited judicial discretion to extend time,

¹³⁵ T Erskine May, *A Practical Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (3rd ed. 1855) pp 467-469; see also S Warren, *The Law and Practice of Election Committees* (1853) p 301. Complex provisions governed the composition and assignment of members and chairmen of the committees. See Erskine May at pp 476-478 and Warren at pp 314-317. The idea was to avoid the predictability of their composition by petitioners and the partisan selection of committees to hear particular petitions.

¹³⁶ *Williams v The Mayor of Tenby and Others* (1879-80) L.R. 5 C.P.D. 135.

though no doubt it would be sparingly exercised, and only if very good cause were shown. But that is not the present position. Given the present state of the law, the application to strike out must succeed.¹³⁷

1.174 The Court of Appeal in *Ahmed v Kennedy*,¹³⁸ though not bound to follow the existing cases, affirmed this principle. It was argued that there was a general power to extend time under rule 3.10 of the CPR; section 157(3) gave the High Court the general powers it had under its ordinary jurisdiction subject to the 1983 Act only, and not the rules made under it. Simon Brown LJ rejected the technical argument, finding that the legislation dictated the following hierarchy of provisions: first, Part III of the 1983 Act and the 1960 Rules made under section 182(1); next the Civil Procedure Rules; and finally any residual “practice, principle or rule” of the House of Commons (likely to concern matters such as agency and scrutiny) under section 157(2).¹³⁹

1.175 The absolute consequence of failing to comply with procedural requirements has led to some strained interpretations of the provisions. In *Scarth v Amin* [2008] EWHC 2886 (QB) a returning officer applied to strike out a petition on the grounds of formal defects and late service. The petitioner had served notice on the returning officer at the local authority premises where he worked in his capacity as a senior local government official. Section 184(1) of the 1983 Act requires service by personal delivery or by post at a person’s last known place of abode in the relevant electoral area. The High Court departed from decisions in previous cases that section 184 applied, with mandatory consequence, to service upon returning officers.¹⁴⁰ It held that the returning officer was akin to the proprietor of a business so that he could be served at his place of business under CPR rule 6.5. Tugendhat and Clarke JJ in a joint judgment added:

In our judgment, to [require service to a] returning officer as an individual who must be served either personally or at his usual or last known residence is likely to defeat the public interest in providing an effective means to question elections. There must be an effective means to question elections if it is to be possible to resolve an issue as to what opinion the people have expressed by their votes, or whether the elections have been free and lawfully conducted. And the means must be available to all those entitled to question elections pursuant to s.128(1) of the 1984 Act, namely any four persons who voted as electors at the election, or who had a right to vote, and any

¹³⁷ [1995] 1 WLR 128 at page 138. Laws LJ had set out part of the decision of the Privy Council in a Malaysian appeal in *Devan Nair v Yong Kuan Teik* [1967] 2 AC 31, 44 to 45 which offered the need for speedy resolution, among others, in support of the mandatory construction of formal rules.

¹³⁸ [2002] EWCA Civ 1793, [2003] 1 WLR 1820.

¹³⁹ *Ahmed v Kennedy* [2002] EWCA Civ 1793, [2003] 1 WLR 1820 at [23].

¹⁴⁰ *Fitch v Stephenson* [2008] EWHC 501 QB; *Ali v Hacques* (unreported, 10 October 2006).

person alleging himself to have been a candidate at the election. If the courts in *Fitch* and *Ali* received submissions as to the consequences of a requirement that the returning officer be served at his usual or last known residence (as we understand these consequence to be), these are not set out in those judgments.¹⁴¹

- 1.176 Commenting on the underlying principles behind the legislation, the court noted that competing public interests were at stake. One was that there should be early clarity as to who has been elected. Another, enshrined in the Bill of Rights Act 1688 and the European Convention on Human Rights, was that free elections should include a procedure questioning elections. The Court held that it was wrong in principle to adopt an interpretation of the 1960 Rules which placed conditions upon the presentation of valid petitions which were more restrictive than necessary to achieve the certainty that is required, and which obstructed the determination of what opinion the voters had expressed.¹⁴²

Using strike out for informality as a filter mechanism

- 1.177 The *Scarth* case is an example of a respondent – in that case, the returning officer – using a technical informality to seek to throw out a petition. The petitions process can be seen as binary: if a petition is formally sound, the next step is full merits review and trial. There is no mechanism for parties to test and the court to determine the initial merits of a petition, and to filter out unmeritorious claims. In ordinary civil procedure, it is open to respondents to apply for a claim, or part of it, to be struck out for disclosing no reasonable grounds for bringing the claim.¹⁴³ Respondents to petitions are limited to applying to strike out for informality. It appears to us that this procedure sometimes masks an argument about the *arguable merits* of the petition as pleaded, for example by alleging lack of particulars in the election petition.¹⁴⁴ By and large, the courts have resisted using informality as an umbrella for considering the arguable merits of cases.

Compatibility with human rights legislation

- 1.178 In *Miller v Bull*¹⁴⁵ the returning officer sought to strike out a petition. The petitioner, who was not legally represented, had presented and served the petition in time. While he had paid the security for costs in time he served notice of the amount and nature of the security on the respondents about a week out of time. He served the Director of Public Prosecutions significantly out of time. The

¹⁴¹ [2008] EWHC 2886 at [39].

¹⁴² At [15] to [17], citing art 3 of the First Protocol of the European Convention of Human Rights and art 8 of the Bill of Rights Act 1688.

¹⁴³ Civil Procedure Rules, r 3.4(2).

¹⁴⁴ Lack of particularity in the case pleaded by the petition was the respondent's principal argument in seeking to strike out a petition in *Erlam v Rahman* [2014] EWHC 2766 (QB). This argument was rejected.

¹⁴⁵ [2009] EWHC 2640 (QB), [2010] 1 WLR 1861.

court held that the time limits in rules 5, 6 and 7 of the 1960 Rules (as to when petitions are at issue) remained mandatory under English law. A 2003 amendment to rule 19 empowered the court to extend time in respect of other time limits. For the first time, the court considered whether the preservation of the mandatory nature of the time limits in rule 19 was contrary to article 6 of the European Convention on Human Rights and article 3 of the First Protocol to that Convention.

- 1.179 Tugendhat J considered the public interest in the certain and swift resolution of disputes as to the validity and outcome of the elections, as formulated in case law. He concluded that the mandatory time limits were disproportionate to that legitimate aim, held that it could disregard the relevant part of rule 19, and granted an extension of time to the petitioner.¹⁴⁶ The returning officer did not appeal the decision.
- 1.180 As regards formal requirements in the 1960 Rules there is therefore now scope for extending time under rule 3.1(2)(a) of the Civil Procedure Rules. Failure to comply with mandatory requirements in the 1983 Act itself, however, will still result in the petition being a nullity; that is clear from the judgment of Tugendhat J, and was confirmed in a recent petition case heard by the Divisional Court.¹⁴⁷
- 1.181 The basis for the distinction between the 1983 Act and the 1960 Rules is that there is no power under the Human Rights Act 1998 to disregard a provision of primary legislation for breaching a Convention right. The distinction therefore applies so far as the provisions of Part III of the 1983 Act extend to any given election. That means it applies to Parliamentary and “elections under the local government Act”, which as we have seen elsewhere is defined widely. However the distinction would seem to us not to apply to every election in the UK. Other elections’ provisions which apply the 1983 Act or repeat its provisions, do so in secondary legislation. Logically, therefore, any petitions arising in those elections would involve consideration of the human rights compatibility of even those provisions which for most elections are in the 1983 Act and have mandatory effect. There has been no judicial consideration of this point.

Amendment of petitions

- 1.182 The tension between the competing principles in the context of time limits is also manifest in the provisions on amending petitions. There is a power under section 122(5) of the 1983 Act to amend an election petition to include an allegation of an illegal practice, but only¹⁴⁸ within the time limit to present one.¹⁴⁹ Once time has

¹⁴⁶ *Miller v Bull* [2009] EWHC 2640 (QB), [2010] 1 WLR 1861 at [43], [68] to [82] and [92] to [94].

¹⁴⁷ *Gartland v Little; Stoddart v Humes* Divisional Court, unreported, 08 May 2014.

¹⁴⁸ The word used in the statute is “may” but the courts have interpreted the word as one of limitation which defines the power rather than as a permissive one. See, in another context, Laws LJ in *Absalom v Gillett* [1995] 1 WLR 128 at p 138.

lapsed there is no power to amend the petition. A corrupt practice may be included in an amended petition (if in time) but it will be treated as if it were an illegal practice.¹⁵⁰ The power to amend is limited to an allegation of illegal practice (or of a corrupt practice which will be deemed an illegal practice). The limitation to allegations of illegal or corrupt practice cannot be justified by reference to a public interest in securing early determinations, given that amendments within the time limit to present a petition are excluded. An application to amend made within time will fail if the amendment claims the seat for the petitioner, for example, or alleges that the respondent was disqualified. Since the provisions on amendment are contained in the 1983 Act itself, the rationale for the more subtle approach adopted in *Miller v Bull* is absent.

Procedure for election petitions in Scotland

- 1.183 The same rules govern UK Parliamentary and European Parliamentary election petitions in Scotland. Chapter 69 of the Rules of the Court of Session¹⁵¹ supplements Part III of the 1983 Act and applies to all national elections, namely UK, EU and Scottish Parliamentary elections.
- 1.184 The Parliamentary election court consists of two judges of the Court of Session selected by the Lord President to be on the rota for the trial of election petitions.¹⁵² The same court hears European Parliamentary and Scottish Parliamentary election petitions. The procedural rules in Chapter 69 of the Rules of the Court of Session (the Chapter 69 Rules) are applicable to both. They are broadly similar to the Election Petition Rules 1960, but contain notable differences. The time limit for intimation and service of the petition and for objection to the form of security for costs is not fixed, but set at the judge's discretion.¹⁵³ Instead of security for costs and recognizances, the 1983 Act and Rules of the Court of Session refer to security for expenses and, among other forms of security, bonds of caution. Unlike in England and Wales, where the prescribed officer seems to take a more prominent role in early procedure both in practice and the 1960 Rules, different officers are responsible for different parts of the process. The principal clerk accepts petitions and sends them to the returning officer; the list of petitions is maintained by the deputy Principal Clerk,

¹⁴⁹ *The Youghal Case* (1869) 1 O'M & H 291 at 296; *The Lancaster Division Case* (1896) 5 O'M & H 39 at 40 and other cases cited in Halsbury's Laws of England vol 15. Elections, para. 784.

¹⁵⁰ Representation of the People Act 1983, s 122(5)(6) and (7).

¹⁵¹ Act of Sederunt (Rules of the Court of Session) 1994 SI 1994 No 1443 (S.69).

¹⁵² Representation of the People Act 1983, s 123(1); European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 91(1); Court of Session Act 1988, s 44.

¹⁵³ Act of Sederunt (Rules of the Court of Session) 1994 SI 1994 No 1443, r 69.4(1); Representation of the People Act 1983, s 121(4).

and the time and place of trial is fixed by the Keeper of the Rolls.¹⁵⁴

- 1.185 Local government elections are governed by the Local Governance (Scotland) Act 2004 and statutory instruments made under the Act by the Scottish Ministers.¹⁵⁵ The rules on election petitions in the 1983 Act apply to election petitions questioning Scottish local election petitions. The local election courts are presided over by the sheriff principal (for the area) where the local election took place. The procedural rules governing local election petitions are set out separately.¹⁵⁶ Though similar to the Rules of the Court of Session, they are more succinct and less demanding. There are no prescribed contents of the application or prescribed form. The Lord Advocate performs functions in relation to election petition proceedings equivalent to those of the Director of Public Prosecutions.¹⁵⁷

OUT OF DATE REFERENCES IN PROCEDURAL RULES

- 1.186 Both the 1960 Rules and Chapter 69 of the Rules of the Court of Session are out of date. They continue to make rules concerning, and referring to, evidence required for withdrawal of petitions, substitution or death of petitioners, and abatement of petitions, even though the relevant legislation, sections 148 to 153 of the 1983 Act, was repealed in 2001.¹⁵⁸ Furthermore, rule 19 of the 1960 Rules, which states that time limits in rules 5 to 7 shall not be varied, has not been amended since *Miller v Bull*, despite Tugendhat J's decision in that case that it breached Convention rights and fell to be disregarded.

Costs

- 1.187 The 1983 Act makes provision as to the costs of election petition proceedings. Section 154(1) of the 1983 Act provides:

All costs of and incidental to the presentation of an election petition and the proceedings consequent on it, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the election court or High

¹⁵⁴ Act of Sederunt (Rules of the Court of Session) 1994 SI 1994 No 1443 rr 69.4, 69.8 and 69.9.

¹⁵⁵ Local Governance (Scotland) Act 2004, ss 3, 3A and 16.

¹⁵⁶ Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 SI 1999 No 929, pt XI.

¹⁵⁷ Representation of the People Act 1983, s 204(5).

¹⁵⁸ Electoral Commission, *Challenging Elections in the UK* (September 2012), http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/150499/Challenging-elections-in-the-UK.pdf (last visited 22 November 2012). Timothy Straker QC's response recalled encountering this issue while sitting as a Commissioner in an election petition. Election Petition Rules 1960 SI No 543 rr 14 and 16; Act of Sederunt (Rules of the Court of Session 1994) 1994 SI No 1443 rr 69.20 and 69.22 to 69.24. Sections 148 to 153 of Part III the 1983 Act were repealed by para 1 of Sch 22 to the Political Parties, Elections and Referendums Act 2000. Section 158(3) of that Act provides that none of the repeals of Part III have effect in relation to local government elections in Scotland.

Court may determine.

- 1.188 This is in keeping with the general principle that legal costs of the successful petitioner or respondent are likely to be met by the losing party to the proceedings. This encourages bringing meritorious petitions, and deters speculative or frivolous cases.
- 1.189 The words “except such as are by this Act otherwise provided for” must refer to the power to make adverse costs orders against someone who is not a party to the petition under section 156. This is engaged when corrupt practices have occurred without the knowledge or consent of the respondent to the petition and the respondent has taken all reasonable means to prevent corrupt practices being committed on his or her behalf. In such a case, those proved to have been extensively engaged in corrupt practices, or to have encouraged or promoted them, may be ordered to pay the whole or part of the costs of the petition.
- 1.190 Under section 131 of the 1983 Act, a petitioner whose petition was vexatious or frivolous, or a respondent found personally guilty of a corrupt practice, may be ordered to pay the Treasury or the returning officer the cost of holding the election petition.

The relevance of costs to electoral law

- 1.191 As our review shows, electoral law is complex, fragmented, and often uses notions or expressions that are out of date. Insofar as establishing the substance of a case is a precondition to commencing petition proceedings, expert legal advice is advisable. Furthermore the rules on challenge are themselves complex and deeply affected by the historical developments we outlined at the outset. The special and complex grounds of challenge and the mandatory nature of formal requirements rules increase the need for expert representation. There are upfront costs such as providing security for costs, as well as the usual risks of adverse costs orders for losing a case. A petitioner who loses a case where the returning officer is a respondent will be exposed to two sets of respondents’ legal costs.
- 1.192 It is a reasonable supposition that challenging elections is an expensive process. However, there is no indication that the legal costs of conducting an election petition are greater than those in other civil proceedings heard in the High Court. Nevertheless, in order for the policy behind the provisions of the 1983 Act to be effective, successful parties should be able to recover their costs. Costs should not be prohibitive or act as a disincentive to bringing a meritorious challenge.

Costs against non-parties

- 1.193 Some recent reports indicate that even successful petitioners have not been able to recover their costs of bringing petitions. In *R. (on the application of Conservative and Unionist Party) v Election Commissioner* [2010] EWCA Civ

1332¹⁵⁹ the successful petitioner in the Slough election petition sought an order for costs against the national and local party which had funded the unseated respondent. The election commissioner found he could hear the application, after he had made a determination and report including a final costs order against the respondent, who had become bankrupt. The respondent's party successfully judicially reviewed that decision in the Administrative Court. An appeal to the Court of Appeal was dismissed.

1.194 In part, the reason for these decisions was that the election court was *functus officio* and could not entertain a further application after it had made its final determination and report. Keith J in the Administrative Court and the Court of Appeal nevertheless fully considered the question whether a costs order could be made against a non-party to the election petition. Under the ordinary rules as to costs, it had been established that such an order could be made by the High Court in respect of proceedings before it.¹⁶⁰ However, these developments post-dated the 1983 Act, which provided a complete scheme as to costs. In Leveson LJ's words:

...in my judgment, the scheme of the 1983 Act in relation to costs is clear and, when legislated, was both intended to be and is in fact far more extensive than that which prevailed under section 51 of the 1981 Act and its predecessor legislation. Until *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965, save for wasted costs (justified for entirely different reasons), there was no question of the court exercising a jurisdiction in relation to costs over a third party, yet the 1983 Act not only specified circumstances in which such orders could be made, subject to appropriate procedural safeguards, but also allowed local election courts to make orders recovering the costs incurred in setting up and running the court. These wider powers were far more than procedural: they extended the jurisdiction and the fact that, because of the *Aiden Shipping* case, the High Court recognises that it has a wider jurisdiction in relation to ordering costs against third parties than hitherto had been appreciated does not affect the position (or the governing principles of law) in any way.

...the fact that sections 154 to 156 of the 1983 Act do not expressly prohibit orders for costs against non-parties being made otherwise than in the circumstances set out in section 156 does not change this analysis. As Keith J explained in language with which I entirely agree [2010] PTSR 937, para 34:

“the effect of the words ‘except such as are by this Act otherwise provided for’ in section 154(1) is to limit the

¹⁵⁹ [2011] PTSR 416.

circumstances in which non-parties can be responsible for costs to the circumstances set out in any provision in the Act, and the only provision in the Act which does that is section 156. I appreciate that statutory provisions should be construed if possible so as to be consistent with legal policy. That includes enabling litigants to be assured that if they are successful they will recover their legal costs, if necessary against non-parties to the litigation in appropriate circumstances if the party against whom the order for costs is made defaults. I appreciate also that statutory provisions should be construed if possible to give effect to the presumed intention of Parliament, and Parliament may be presumed to have wanted litigants not to be deterred from bringing meritorious election petitions by the fear that they will not recover their costs. But these considerations simply cannot overcome the plain words of the exception in section 154(1), to say nothing of the words '[s]ubject to the provisions of this or any other enactment' in section 51(1) of the 1981 Act and the words 'subject to the provisions of this Act' in sections 123(2) and 157(3)."¹⁶¹

- 1.195 The scheme for ordering costs under the 1983 Act, which was intended to be more generous than the general law, has not kept up to date with legal policy elsewhere. This appears to us to be less a consequence of a deliberate policy than a historical accident.

Protective costs orders

- 1.196 Another recent development in procedural laws has been the ability of claimants to apply, in advance of proceedings, to cap the amount of costs that can be ordered against either party at the end of proceedings. Such "protective costs orders" have featured particularly prominently in environmental cases arising out of the Aarhus Convention. There is no reason, in principle, why such orders cannot be made in election petitions, although it would appear that the specific powers of the election courts under the 1983 Act to make orders against vexatious petitioners, corrupt respondents or third parties cannot be subject to the costs cap. To hold otherwise would run contrary to the reasoning of the Administrative Court and Court of Appeal in the *Conservative and Unionist Party* case.

¹⁶⁰ Senior Courts Act 1981, s 51; *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965; Civil Procedure Rules 1999, r 48.2(1).

¹⁶¹ R. (on the application of Conservative and Unionist Party) v Election Commissioner [2010] EWCA Civ 1332 [2011] P.T.S.R. 416 at paras 37 and 38.

1.197 In *Pilling and others v Reynolds* [2008] EWHC 316, the Divisional Court was considering costs after determining a special case stated to it. Its comments warrant reproduction in full

We indicated that we would award costs in the sum of £20,000 to the Second Respondent and £10,000 to the First Respondent and here briefly give our reasons for doing so, it being recognised that costs are to be awarded in the discretionary judgment of the court in accordance with normal civil principles.

We are extremely grateful to all counsel for the efficient and effective manner in which the arguments were presented to us, but were concerned that a hearing which in the end took half a day of the court's time should generate Respondent's costs of £55,000. In our judgment, public law principles for the award of costs are an appropriate guideline in the case of a legitimate and serious challenge to a ballot paper that was decisive of the outcome of an election. There is an important public interest in clarifying the legitimacy of the ballot and the vote on which the disputed paper depends. It would be contrary to the public interest to deter such scrutiny because of the disproportionate consequences in costs for any unsuccessful petitioner. There is some analogy with the court's concerns to limit the costs consequences of public interest challenges in environmental litigation or on other important [law] public law claims: see per Carnwath LJ in *R (England) v LB Tower Hamlets* [2006] EWCA Civ 1742 20th December 2006 and the report of Sir Maurice Kay "Litigating the Public Interest" (July 2006) noted at [14].

The Petitioners appeared in person when these proceedings were instituted. It may be that having regard to the issues, and the fact that the ballot paper concerned was originally rejected for uncertainty, that they would have had a good claim for a protective costs order at least of the third type mentioned by Sir Maurice Kay in his report, namely an order capping liability to all respondents in a reasonable sum.

No protective costs order was made. It is not alleged that the Petitioners have behaved unreasonably in the conduct of this litigation, but we do not conclude that there should be no adverse costs consequences for the outcome on the substantive issue. We are, however, satisfied that the Court has the power and the duty to ensure that costs are proportionate in all the circumstances and do not unduly deter access to the courts in appropriate cases of dispute, and in particular the full costs of engaging experienced leading counsel should not be visited on the Petitioners. It is for these reasons as well as specific observations on the summary assessments lodged made by the Petitioners that we have made the reductions in the costs claimed on summary assessment.

1.198 However, in the Tower Hamlets election petition case, *Erlam v Rahman*, an application for a protective costs order was dismissed for want of evidence of the petitioners' financial means. The court did not consider the merits of the application in full, but made the observation:

It appears to us that Mr Straker may well be correct in his submission that the protective costs regime is inapt for an election petition. Elections and election petitions are specially provided for with their own particular legislative regime, which includes provision as to costs. By section 154 of the 1983 Act all costs of or incidental to the presentation of an election petition and the proceedings consequent upon it, except as provided for by the Act, shall be defrayed by the parties to the petition in such proportions as the election court or High Court may determine. We understand that a PCO has never been made in an election case. There are, in our view, good reasons why this is so, but it is not necessary for us to decide the point and we do not do so.¹⁶²

- 1.199 In Scotland, the equivalent orders are protective expenses orders. Similarly, these are a relatively recent innovation and have been developed by the courts in a number of cases¹⁶³ leading to the promulgation of a new Chapter in the Rules of the Court of Session on protective expenses orders in environmental appeals and judicial reviews.¹⁶⁴

A COST-EFFECTIVE WAY OF DETERMINING THE MERITS OF A PETITION?

- 1.200 Given the potential costs of bringing a petition, and some of the grounds for bringing one, a key indication for a would-be petitioner is whether the result of the election was affected by a breach of electoral law. Furthermore returning officers cannot bring a petition even if they accept that a breach of electoral law has been committed; nor can they correct the result after it has been finally declared. Recently, a less formal forum for testing whether breaches have affected the outcome of the election has emerged. Rule 56 of the Parliamentary election rules states:

(1) An order [for inspection of rejected or counted ballot papers or opening of a sealed packet of corresponding number lists] may be made -

¹⁶² *Erlam v Rahman* [2014] EWHC 2766 (Admin) at [41] to [49].

¹⁶³ *McArthur v Lord Advocate* 2006 SLT 170; *McGinty v Scottish Ministers* 2010 CSOH 5; *Road Sense and William Walton v Scottish Ministers* [2011] Env. L.R. 22; see also *William Walton v Scottish Ministers* [2011] CSOH 131, [2012] CSIH 19, [2012] UKSC 44; *Fife Council v Penny Uprichard* [2011] CSIH 77, [2013] UKSC 21; *Doogan v Greater Glasgow and Clyde Health Board* 2012 SLT 1041; *The Scotch Whisky Association and Others, Petitioners* [2012] CSOH 156.

¹⁶⁴ Act of Sederunt (Rules of the Court of Session) 1994 SI 1994 No 1443 (S.69), Chapter 58A. Despite the somewhat misleading title of the new chapter of the rules, it is clear that they apply only to judicial reviews and statutory appeals challenging decisions which are subject to the public participation provisions of two European directives (2011/92/EU and 2008/1/EC). It appears, however, that these rules are not intended to affect the ability of the Court of Session to grant a similar order in cases falling outside the application of the rules, but this has not been tested in the context of election petitions; see r 58A.1(4).

(i) by the House of Commons; or

(ii) if satisfied by evidence on oath that the order is required for the purpose of institution or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition, by the High Court or a county court.¹⁶⁵

- 1.201 In *Gough v Sunday Local Newspapers (North) Limited* [2003] EWCA Civ 297 the Court of Appeal considered this election rule, which appears in every election's discrete set of rules.¹⁶⁶ After the result of a local election was declared, an envelope containing 86 postal ballot papers for one of the wards was discovered uncounted. The returning officer decided to perform an informal count of the postal ballot papers in the absence of the candidates and their agents. It showed that the outcome was unaffected by the mistake. Subsequently, the returning officer was advised to apply to the county court, pursuant to what is now rule 53(1)(b) of the Local Elections (Principal Areas) Rules 2006, for an order seeking inspection and counting of all the ballot papers originally counted together with those accidentally not counted. The elected candidate objected to the application. In the event the application was withdrawn after the candidates could not agree as to the county court's powers.
- 1.202 A key issue in the libel claim was whether the county court had a power to make an order under rule 53 before an election petition had been presented. The Court of Appeal held that it did. It was desirable, following an admitted error in the counting process, to have recourse to a quick and cost-effective way of establishing whether it was worthwhile to present a petition questioning the legitimacy of the election. Rule 53 permitted an application to be made before any final decision was taken to present a petition, provided that its purpose was to resolve a real doubt as to the correctness of the declared result and there was a real likelihood of an election petition being presented if the inspection showed an incorrect result. The court held that the application was not on notice to the interested parties, but that they could attend and participate if they wished. Furthermore, it was open to a returning officer to make such an application when he had made an obvious error.
- 1.203 It is not clear how often applications are made to the county court under rule 56 of the Parliamentary Elections Rules or its equivalents. The Court of Appeal's conclusion that an application was not restricted to cases where a petition had already been presented, however, was plainly based on the perceived need for a

¹⁶⁵ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 56; all other election rules replicate this provision. In Scotland, the sheriff has the jurisdiction equivalent to the county court's.

¹⁶⁶ [2003] EWCA Civ 297, [2003] 1 WLR 1836 at [41] to [50], by Lord Brown; the references in the case are to rule 53 of the Local Government (Principal Authorities OR IS IT AREAS?) Elections Rules SI 2006 No 3304. It is materially identical rule 56 of the Parliamentary elections rules which we quoted.

less costly, less punishing procedure for establishing with certainty and in advance whether mistakes might have affected the result of the election. While such an application cannot affect the outcome of an election, the decision in *Gough* shows that there is pressure on the adequacy of the petition process in circumstances where admitted mistakes emerge after the declaration of the result. It also illustrates that the courts consider the returning officer interested enough in administrative irregularity to bring such an application, even if they have no standing to bring a petition.

Finality and exclusivity

- 1.204 The election petition procedure was devised with finality and exclusivity in mind. It was thought desirable to have a comprehensive process that delivered a certain outcome. In the event limited provision was made which meant in some cases an election petition's decision was not final, which we will consider first. Recent developments have, however, dampened the original scheme, which we consider further below.

Finality and appeals

- 1.205 Section 144 of the 1983 Act states that the parliamentary election court's determination shall be final as to the matters raised in the petition. Without question, it finally decides questions of fact though it does have the power to state a special case on any question of law to the High Court under section 146(4) of the 1983 Act. In England and Wales it is the High Court that hears the special case stated. In Scotland it is the Inner House of Court of Session, in Northern Ireland, the Court of Appeal.¹⁶⁷
- 1.206 The "special case stated" procedure appears to be unique to electoral law. Its historical origin and operation after 1868 are not entirely clear but in practice today it is described as a procedure for appealing on a point of law, which was the view the High Court took in the *Woolas* case.¹⁶⁸ Certainly that seems to be the case where the election court itself decides to state a special case to the High Court under section 146(4).
- 1.207 However the "special case stated" is not always an appeal. The parties themselves may apply directly to the High Court for a special case to be stated and heard by the court under section 146(1) of the 1983 Act "if it appears to the High Court that the case raised by the petition can be conveniently stated as a special case". Under rule 11 of the Election Petition Rules 1960 this is by application notice to the Divisional Court. It is not clear whether this must be on a point of law and whether the High Court may determine (and try) the petition itself.

¹⁶⁷ Representation of the People Act 1983, s 146(5).

¹⁶⁸ *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [25], [29], [41].

- 1.208 If a special case is stated a further right of appeal emerges, but only in England and Wales. It is an appeal from the decision of the High Court to whom the case was specially stated. Section 157(1) of the 1983 Act provides for an appeal, with the “special leave” of the High Court, on any question of law to the Court of Appeal. No such appeal route exists in Scotland or Northern Ireland where, respectively, the Inner House of the Court of Session and Court of Appeal are the courts to whom cases are specially stated.¹⁶⁹ This is thus a striking asymmetry between the jurisdictions.
- 1.209 An appeal court common to all three jurisdictions would be the Supreme Court of the United Kingdom. Its predecessor, the Judicial Committee of the House of Lords, never featured in electoral law. This is probably because of the link between the judicial committee and the Upper House, which has traditionally refrained from involvement in the House of Commons’ own electoral affairs. With the creation of the clearly and distinctly independent Supreme Court, no such objections persist.

Judicial review

- 1.210 Judicial review of election petitions could not have been at the forefront of the minds of the drafters of the Victorian legislation. The jurisdiction of the High Court to test the legality of decisions in the public domain, now commonly referred to as judicial review, developed considerably in the second half of the 20th century. In due course the relationship between election courts and the Administrative Court was defined. In 1984 it was decided that the local election court’s decision was subject to judicial review, albeit only in exceptional cases where it could be said to have exceeded the court’s jurisdiction.¹⁷⁰ The court did not decide whether the parliamentary election court, staffed by High Court judges who shared their status with those who hear judicial review claims, was equally subject to that jurisdiction.
- 1.211 The question was decided after the 2010 general election. Mr Phil Woolas, whose election had been avoided by an election court for illegal practice, brought judicial review proceedings. The Divisional Court considered the history of election petitions and the provisions as to specially stated cases and appeals. It noted the importance of finality in the determination in identifying the electors’ representative in Parliament, and also for the significance of the absence of an MP at when majorities might be small. It also noted that the election court was created by Parliament for a very limited purpose and had a unique relationship to the House of Commons. Nevertheless it concluded that an election court’s decision was not immune from challenge if it had been reached on the basis of a wrong interpretation of the law. This conclusion was consistent with the constitutional principles of separation of powers and the rule of law. The election court, local and parliamentary, was subject to judicial review by the High Court to

¹⁶⁹ Representation of the People Act, s 146(5).

¹⁷⁰ *R v Cripps ex parte Muldoon* [1984] 1 QB 68

correct legal errors made by the election court.¹⁷¹ In the event, the claim was dismissed but the Divisional Court did overturn the election court's conclusion that alleging a breach of promise to live in the constituency was making a statement as to a candidate's personal character within the meaning of section 106 of the 1983 Act.

- 1.212 The applicability of judicial review to the decisions of Scottish election courts appears to be untested. In exercising its supervisory jurisdiction (that is, in judicial review cases), the Court of Session has always emphasised that the remedy of judicial review is available only where the applicant can demonstrate that all other remedies for resolving the question of law at issue have been exhausted. As section 146 of the 1983 Act provides a scheme for the resolution of questions of law which arise in election petitions, it is difficult to see how judicial review could be brought into play.

¹⁷¹ *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [46] to [56]

APPENDIX A

ROYAL COMMISSIONS 1852 - 1906

Constituency	Election year	Reference
<i>Election Commissioners Act 1852</i>		
Barnstaple	1852	
Cambridge	1852	
Canterbury	1852	
Kingston-upon-Hull	1852	
Malden	1852	
Tynemouth	1852	
<i>Corrupt Practices Prevention Act 1854</i>		
Galway Town	1857	
Berwick-upon-Tweed	1859	
Gloucester	1859	PP 1862, xxvii
Wakefield	1859	
<i>Corrupt Practices Prevention Act 1863</i>		
Lancaster	1865	PP 1867, xxvii
Reigate	1865	PP 1867, xxviii
Totnes	1865	PP 1867, xxix
Yarmouth	1865	PP 1867, xxx
<i>Election Petitions and Corrupt Practices at Elections Act 1868</i>		
Beverley	1868	PP 1870, xxix 5-22; 41-804
Bridgwater	1868	PP 1870, xxx 5-7; 13-46
Norwich	1868	PP 1868-9, xlix; PP 1870, xxxi 829-916
Cashel	1868	PP 1870; xxxii 5-394
Dublin	1868	PP 1870, xxxiii

Constituency	Election year	Reference
<i>Election Commissioners Act 1852</i>		
Sligo	1868	PP 1870, xxxii 625 – 1053
<i>Ballot Act 1872</i>		
Boston	1874	PP 1876, xxviii 5-12
Norwich	1874	PP 1876, xxvii
<i>Parliamentary Elections and Corrupt Practices Act 1880</i>		
Boston	1880	PP 1881, xxxviii 5-9; PP 1880, lvii 387-90
Canterbury	1880	PP 1881, xxxix
Chester	1880	PP 1881, xl 1-25
Gloucester	1880	PP 1881, xli 5-20
Knarborough	1880	PP 1881, xlii 5-628
Macclesfield	1880	PP 1881, xliii 5-21
Oxford	1880	PP 1881, xliv 3-20
Sandwich	1880	PP 1881, xlv 5-16
<i>Corrupt and Illegal Practices Act 1883</i>		
<i>Corrupt and Illegal Practices Prevention Act (1883) Amendment Act 1895</i>		
Worcester	1906	PP 1906, xcv 477-84