

Change we can believe in? How electoral law has altered since 2005

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After myriad changes to election law between 1997 and 2005, the third term of the Labour government has seen comparatively fewer changes than some had predicted (and others had hoped or feared).

Following the upheavals wrought on the political system by the Political Parties, Elections and Referendums Act 2000, further modifications had been anticipated – not least in an effort to make voting more appealing to younger voters, who, in contrast to the United States, have been voting in smaller and smaller numbers. Indeed one prominent Conservative MEP, Daniel Hannan, frequently cites the fact that in June 2004 more people voted to evict a housemate on *Big Brother* than had voted in the European elections the previous day as evidence of the disconnect between the governed and those they elect.

The principal statute of relevance – the Electoral Administration Act 2006 – contains a number of provisions designed to address the various frauds perpetrated in the 2005 general election, in particular as relate to absentee voting, and various offences as to false registration. The intention to impede or prevent the free exercise of the franchise is now a criminal offence – not merely succeeding in doing so.

Those intent on passing themselves off as deceased or non-existent electors will find it harder to do so in 2010 than in 2005 because of the need to provide a signature and date of birth (although those voting in person at a polling station may still do so without providing any proof of identity whatsoever – a situation that continues to cause concern when tales of personation are rife). Whether this will change if voting at supermarkets or online becomes commonplace will have to be seen.

The 2006 act also brought in detailed provisions concerning so-called CORE schemes (CORE standing for Co-ordinated On-line Records of Electors), not least as concerns access to electoral registration records. Such a step, in an era when privacy concerns have been heightened by the losses of personal data by a number of departmental and non-governmental bodies, is controversial. In an effort to address some voters' fears, anonymous registration is permitted under the 2006

act (although again this does make one wonder whether all voters are equal while some voters are more equal than others).

The 2006 act also saw the minimum age for a Member of Parliament reduced from twenty-one to eighteen – a change designed, again, to appeal to younger voters (along with the mooted plans for widespread text and online voting). This was expected to herald a change in the voting age to sixteen but although that reform has been the subject of speculation, it has not yet been forthcoming (albeit the government continues to make warm noises about votes at sixteen and members of the UK Youth Parliament were given the right to sit in the chamber of the House of Commons this past summer). The most prominent teenage candidate in 2010 will be Emily Benn, the granddaughter of Labour veteran Tony, who was selected as a seventeen-year-old candidate in 2007 to fight East Worthing & Shoreham.

The 2006 act also provides for Irish and certain Commonwealth citizens to be permitted to stand as candidates in parliamentary elections, thereby amending the Act of Settlement 1700 (confirming quite how marvellously arcane English law truly is).

After the death of the Liberal Democrat candidate for South Staffordshire in 2005, following the close of nominations, the returning officer was compelled to abandon the poll. The 2006 act changed the procedures to be followed in the event of a candidate's death.

A theme that has run through much of the government's legislation on elections is the perceived need to regulate donations – and, since the Labour Party loans scandal, loans – to political parties. The 2006 act tightens up the law in this regard (part of a series of changes that have brought into the public domain the names of hitherto unknown donors such as Michael Brown and David Abrahams). The government has announced its intention to focus next on the support provided to the Conservative Party by the likes of Lord Ashcroft, suggesting that further changes to party financing laws will be enacted before the general election.

A minor statute that might be of passing interest to local councillors was the Local Government and Public Involvement in Health Act 2007, which allowed for the change in electoral cycles in district and parish council elections (but which is of little direct interest for the 2010 general election). Likewise certain changes were made to the National Assembly of Wales by the Government of Wales Act 2006, which, again, while of interest to Welsh politicians and voters in 2011, are not relevant when it comes to the general election itself in 2010.

Turning to non-statutory measures, political candidates and their agents will want to ensure that they are fully conversant with the many circulars and memoranda issued since the 2005 general election. It is remarkable when reading these circulars and memoranda, which run to over 400 pages in the election lawyer's bible (*Schofield's Election Law*), that so much attention is paid to the perceived increased risk of electoral fraud. Agents must ensure that candidates and party campaigners alike know what is and is not permissible lest (through inadvertence) defeat through disqualification is snatched from the jaws of election victory on (or soon after) polling day. Training is essential because ignorance of the law is no defence.

The majority of statutory instruments passed since 2005 do not relate directly to the general election – instead concentrating on local elections, elections to the Welsh Assembly, the London Assembly and the European Parliament. Those engaged in politics at local, devolved or EU level will need to be familiar with the many important changes brought about by these reforms, many of which are technical and, from the perspective of a political operative, convoluted and easy to fall foul of if care is lacking.

Candidates and agents will, of course, be aware (one hopes!) of the changes to boundaries brought in by the Parliamentary Constituencies (England) Order 2007, as it is under those boundaries, and not existing ones, that the 2010 general election will be fought. These boundary changes, the Conservatives believe, will give them a notional advantage of two dozen seats or so when compared to the 2005 general election result.

What does or does not constitute a valid vote, and the methods for challenging an election, remain largely unaltered and it is the procedure by which to challenge an election which, after all, is what will most concern disgruntled (and indeed successful) candidates. Those wishing to challenge a result must continue to do so by way of the arcane election petition procedure and, as was recently discovered by one party's own election law expert, failure to follow the rather rudimentary and straightforward requirements of the Election Petition Rules 1960 renders an election petition struck out. For whereas the courts have discretion on how to proceed when it comes to minor or technical breaches of court rules, that discretion does not extend to breaches of key aspects of the election petition rules – sometimes with very harsh results indeed.

In the recent case of *McMurtrie v. Fernandes*, the petitioner's petition was compelled to be withdrawn because it was not served, as required under the election petition rules, on the Director of Public Prosecutions. The divisional court concurred with the sorrowful submissions of the petitioner's counsel that nothing could be done to save an incompetent petition that, through the admitted negligence of the petitioner's solicitors, had not been properly served, thus resulting not only in the withdrawal of the petition but an order being made for the petitioner to pay the respondent's costs on the punitive indemnity basis.

Thus it can be seen that while election law is a niche area of practice, even the most seasoned of practitioners – in this instance a solicitor with some twenty-five years' experience as an election lawyer, and retained by the Labour Party itself – is not immune from mistakes.

The lesson for candidates and agents is clear: election law is an area of practice where it does not make sense to cut corners, because the consequences are potentially disastrous if it all goes wrong. Forewarned is forearmed. Ensure that you are trained in how to comply with the law or face the consequences.

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