
RESEARCH PAPER

FROM NOTICE OF ELECTION TO NOMINATIONS

The law stated in this research paper may be in parts out of date.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 This paper considers the legal rules governing notice of elections, the nominations process and associated formal requirements which must be complied with to stand for election. These are, first, the requirement for electors to sponsor a candidate's nomination in a formal sense ("subscription" is the British term, "attestation" is a more internationally recognised analogue) and second, the payment of a deposit.
- 1.2 These are all administrative processes that govern whether a putative candidate stands validly nominated for election, and therefore whether their name appears on the ballot paper in the event of a poll. If no more candidates are nominated than there are vacancies, there is no poll: the nominee(s) stand(s) elected.
- 1.3 This paper therefore does not consider the substantive qualifications for office, which belong in our taxonomy to the law governing candidates and the campaign. It does consider the special place of the disqualification under the House of Commons Disqualifications Act 1981 of prisoners serving a 1 year custodial sentence or longer, colloquially referred to as the Bobby Sands rule. This is because, unlike other disqualifications, it is one that administrators must enquire into and verify at the nominations stage.
- 1.4 It is important to note at the outset that rules governing the nominations process are set out in the "election rules" for each discrete election type, which are scheduled to the main body of the legislative measure governing that election (which can be distinguished from other electoral laws by calling them the "core election provisions"). Rule 1 of each set of election rules sets out the statutory timetable, the first few steps of which are generally concerned with notice of election and the nominations process. The next set of rules outline the process from issue of notice of election to the publication of a statement of candidates standing validly nominated. That statement governs the names and other details

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

which will appear on the ballot paper.²

- 1.5 This paper highlights the detailed legal prescription governing the nominations process, with a historical introduction to the classic features of the process in parliamentary elections, and outlines its replication with adaptation in other elections' rules, including those that use a different voting system.

Historical perspectives

- 1.6 This is an area where historical developments played a pivotal role in shaping the current law and in particular the level of detail in which it is set out.

The original nature of nominations as the "election"

- 1.7 Before 1872, nominations were conducted at public meetings by show of hands. When the first election rules were written for parliamentary elections in 1872, the nominations process took place on "the day of election", at "the place of election" which was a place in town or in the county determined by the returning officer. The nominations process therefore constituted the election unless more candidates were nominated than there were vacancies. If the election was contested, it was "adjourned" and public notice of the day of the poll given as soon as practicable after adjournment, with a poll to follow in a matter of days.³
- 1.8 It is important to note this link between nominations and the election. It persists in the way in which modern election rules are presented. They are split into sections for uncontested and contested elections. The proceedings still start with a notice of election, and after nominations a contested election is formally announced by a notice of the poll.
- 1.9 The modern nominations process originated in the Ballot Act 1872, which required nominations to be in writing, subscribed by two registered electors, and eight other subscribers. The candidate's description had to include their name, address and 'rank, profession or calling'. The purpose of the description and the requirement to state the candidate's address (when no residence requirement existed to stand both then as now) was to identify the candidate. The returning officer could reject papers if he thought they insufficiently identified the candidate. Objections to the nomination paper could be made by the returning officer or some other person at or immediately after the time for delivery of nomination paper, with the returning officer's decision being final. The form of the nomination paper was prescribed by law and scheduled to the Act.
- 1.10 In line with the idea that nominations could be the election, which still survives in the distinction between notice of election and notice of a poll, certain ceremonial

² If a party withdraws its association with a candidate after publication of the statement of persons nominated, but before publication of ballot papers (and therefore before polling day), it is powerless to stop the use of a party description and emblem on the ballot paper and therefore on polling day.

aspects accompanied that process. Nominations occurred at a designated place supervised by the returning officer, with the candidates, their spouse, and election agents having a right to attend. The process involved securing a measure of local support, through the requirements for nomination to be proposed and seconded by electors and, furthermore, subscribed by eight others.

- 1.11 Despite some change – it is no longer compulsory, for example, to include “rank, profession or calling” in the form, and the returning officer no longer has to decide whether the papers sufficiently identify a candidate – this classical nominations process largely survives. The nomination form remained unchanged until 1948, when an amendment was introduced which prohibited the description referring to the candidate’s political activities. This attempt to stop candidates using party labels without authorisation marks the start of several developments in the field, leading to the Political Parties, Elections And Referendums 2000 Act (“the 2000 Act”) party registration scheme,⁴ and the associated requirement that candidates not affiliated to a registered party must take the description “independent”, if any.

The origins of the deposit

- 1.12 The deposit requirement dates back to the Representation of the People Act 1918, which introduced a £150 deposit to discourage frivolous candidatures. It is interesting to note that the 1918 Act provided for the first time that the costs of elections would be met by central government. Costs had hitherto been a collective responsibility of the candidates. The deposit acted as a safeguard against unrealistic candidacies but nevertheless added to the complexity of the process. Except in Northern Ireland, the deposit was never required in local elections.
- 1.13 In 1985, the deposit for parliamentary elections was increased to £500. The threshold for return of the deposit was reduced to five percent of total votes cast. There has been discussion of higher deposits, or of index-linking the amount, but the need to make standing for election widely accessible appears to have taken paramount importance.
- 1.14 The evidence before the Home Affairs Select Committee in its 1997-98 enquiry was that the £150 deposit introduced in 1918 would have been worth £4,093 in June 1997 if increased in line with inflation, and that the £500 deposit introduced in 1985 would have been worth £825 in June 1997. Adjusted to today’s date this gives £6,017 and £1213 respectively. The select committee recommended a moderate increase (to £700) with subsequent indexation. The number of

³ Ballot Act 1872, 35&36 Vic c.33, sch 1 rr 2, 3, 9 and 14.

⁴ Under the Political Parties, Elections and Referendums Act 2000, parties must be registered in order to field candidates at elections. This Act also subjects parties to certain reporting and expenses requirements: Political Parties and Referendums Act 2000, s 22 and Pts 3 to 5. The party registration scheme is discussed at para {1.55} below.

subscribers would be increased to 50.⁵ These particular proposals were not adopted by Government.

The role of the notice to nominations processes

- 1.15 A number of insights can be gleaned from the origins of the processes from notice to nomination. First, save for the deposit, these are rooted in the classical law. Notice was a substantive, public announcement of both the election and where and when it – nominations – would take place. Detailed guidance was therefore given as to the “conspicuous” placement of the notice, and the nominations procedure. The function of subscribers, in that context, was the demonstration of local – at the time likely to be notable – support for a candidate who might take office without a poll.
- 1.16 As to deposits, their function from 1918 onwards was more clearly deterring frivolous candidacies, although the importance of the simultaneous introduction of public funding of elections might be noted.
- 1.17 The laws governing nomination are detailed and – taken together for all elections – voluminous. As we will see, the classical rules have evolved significantly in some fields, while new elections using the party list voting system in whole or in part have adapted them heavily. A significant aim of any reform project must be to simplify the law. To that end, it is helpful to set out the function of nominations, from its central purpose to the secondary functions.

The administrative function: determining the contents of the ballot paper

- 1.18 The central function of nominations is conclusively to ascertain, first of all, whether there is to be a poll, and second, whose name and what details will appear on the ballot paper. The latter function is time-sensitive. Returning officers must nowadays be able to print ballot papers in time to send postal votes to absent voters. In practice this is achieved by specifying a deadline for submitting nomination forms on the last day for nominations, and defined processes in order to crystallise a candidacy shortly thereafter.

The cautionary function: marking the seriousness of the occasion of candidacy and filtering frivolous candidacies

- 1.19 Nomination as a formal process also plays a cautionary role. The formality of the process forces candidates to think seriously about what their actions. Candidacy brings with it significant liabilities, some of them strict, and many criminal in nature. Furthermore, there is a public interest in testing the seriousness of a candidate before presenting them to the electorate on the ballot paper. As the Home Affairs Committee put it in 1998:

⁵ Electoral Law and Administration, Report of the Select Committee on Home Affairs (1997-98) HC 768, para 134; and Home Office written evidence, appendix 1 para 7.21. Adjustments to inflation made using online tools as of April 2013.

We agree that people who are putting forward genuine political views and policies should in a democratic society be able to stand as candidates without undue difficulty, even if their views are unlikely to secure the support of any more than a small minority of voters. At the same time, we do not believe the political process is enhanced or democracy well served by a proliferation of candidates who are standing purely for the sake of personal publicity, whether for the purposes of humour or of commerce. We therefore agree that it is right and proper for there to be some basic threshold candidates must pass if they are to be allowed to stand. The issue is how high this threshold should be and what form it should take.⁶

- 1.20 The cautionary function is fulfilled by the subscription and deposit requirement. It can also help explain, in elections that follow what we will call the "parliamentary election model", the enduring element of "pomp and ceremony" in the procedural rules governing personal delivery by candidates of nomination papers at a place personally attended by returning officers.

The qualifications function: testing or advertising the qualifications for office

- 1.21 Quite apart from testing the seriousness of candidates, nomination interacts with their substantive qualifications in varying ways. At parliamentary and certain other elections, the returning officer is required to enquire as to whether candidates are in substance disqualified as serving prisoners (the so-called "Bobby Sands" rule).⁷ At local government elections, an additional qualification based on local ties must be indicated at nomination: the candidate must have lived or worked in the relevant local authority area for the preceding 12 months.⁸ At all elections, the nominations process refers candidates, in their written consent to nominations, to disqualification provisions, requiring them to declare that they are not disqualified from election.

The functions of the current nominations process

- 1.22 The evolution of the rules governing the process from notice of election to the close of nominations can be summarised as follows. The legal requirements surrounding the delivery of nomination papers and associated paperwork have grown complex and formalistic. Meanwhile, the deposit and subscription requirements (at least for long-established elections) have become less onerous in real terms, when measured respectively against inflation and the growth in the franchise since 1872. There is therefore a question as to whether the adequacy

⁶ Electoral Law and Administration, Report of the Select Committee on Home Affairs (1997-98) HC 768, para 131.

⁷ See para {1.27}. Representation of the People Act 1981, s 1; Representation of the People Act 1983, sch 1 r 15.

⁸ See para {1.114}. Local Government Act 1972, s 79; Local Government (Scotland) Act 1973, s 29; Local Government Act (Northern Ireland) 1972, s 3.

of the nomination process to perform its central administrative function – getting candidacies on to the ballot paper – has been compromised by a formalistic nominations process which might unduly favour the “cautionary” function of testing the seriousness of candidacies.

The role of returning officer generally

- 1.23 Section 23 of the 1983 Act provides that “the proceedings at a parliamentary election shall be conducted in accordance with the Parliamentary Elections Rules” scheduled to the Act. It is the returning officer's “general duty ... to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those parliamentary elections rules.” Equivalent provision is made in the core electoral provisions governing other election types, with election rules being scheduled to such provision.

When is a candidate nominated? A general proposition

- 1.24 As a general proposition for all elections, the election rules state that a candidate stands nominated by a nomination paper which is properly subscribed (if required), having consented in writing to nomination, paid a deposit (if required), and having been authorised by certificate to use a registered party description (if using a description other than “independent”).⁹ The candidate remains nominated unless:

- (1) the returning officer declares the paper invalid on the basis of – with one exception – purely formal grounds;
- (2) proof is given to the returning officer's satisfaction that the candidate has died; or
- (3) the candidate withdraws.

- 1.25 Although the above statement generally holds true, it masks a number of differences and nuances across different election types. We therefore consider in detail the classical nomination rules for UK Parliamentary elections. All election rules are derived from the original Victorian Parliamentary Elections Rules. Some election rules follow what we call the parliamentary election model closely. The local government election rules contain significant points of divergence at the nomination stage, and some election types follow this “local government election model” rather than the parliamentary model. The gist of the difference lies in the ceremonial and formal nature of the parliamentary model compared to the local government model.

- 1.26 Our general proposition above relates purely to the formal validity of the nomination paper – determining whether a candidature will proceed to the ballot paper, if there is a poll. A candidate's nomination may be substantively defective

⁹ No such authorisation is required at parish and community council elections.

but the nomination paper unassailable, in which case the returning officer plays no role and the candidate's name will appear on the ballot paper. That does not prevent such a candidate's election from being vitiated and vulnerable to challenge by election petition. The authoritative distinction in this context is between the returning officer's function to determine the validity of a nomination *paper* and the election court's role of reviewing the validity of a *nomination*.

The exception to the rule: the 1981 Act disqualification

- 1.27 The one exception to the returning officer's purely formal role relates to section 1 of the Representation of the People Act 1981, which disqualifies persons detained indefinitely or for more than one year anywhere in the British Isles or the Republic of Ireland. The specified disqualification is from membership of the UK Parliament but is applied to the European and Scottish Parliaments and the Assemblies for Wales and Northern Ireland. It is colloquially known as the "Bobby Sands rule", a reference to the circumstances underlying its enactment. In this paper we will refer to it as "the 1981 Act disqualification".
- 1.28 The returning officer must inquire substantively into the 1981 Act disqualification. If it appears to the officer that a candidate may be so disqualified, the returning officer must as soon as practicable after the close of nominations publish a draft of the statement of persons nominated. This document must contain a notice stating that any person wishing to object to the nomination of any candidate on the ground that he or she is disqualified under the 1981 Act may do so between 10am and 4pm the following day. The officer is entitled to hold the nomination paper invalid on the ground that the candidate suffers from the 1981 Act disqualification.¹⁰

Notice to nominations process at UK Parliamentary elections

- 1.29 Having set out the general proposition, and outlined the 1981 Act disqualification, we now examine in detail the law governing the period from notice of election to close of nominations for UK Parliamentary elections.

Notice of election

- 1.30 The timetable for UK Parliamentary elections requires that notice be given of the election. Rule 5 of the Parliamentary Election Rules scheduled to the 1983 Act requires the notice to state:
- (1) the place and time at which nomination papers are to be delivered;
 - (2) that forms of nomination papers may be obtained at the nominations place;
 - (3) the date of the poll in the event of a contest; and

¹⁰ Representation of the People Act 1981, ss 1 and 2; Representation of the People Act 1983, sch 1 r 15.

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- (4) the deadlines by which applications to be treated as an absent voter and other applications about postal and proxy voting must reach the registration officer.
- 1.31 Section 200 of the 1983 Act requires public notices required by or given under the Act to be posted in a “conspicuous place or places” in the constituency, and also given in such other manner as the returning officer thinks desirable for publicising them. In practice this is often done by issuing a press release and publication on a council website, which are much more effective ways of publicising an election than the requirement to post – historically “placard” in the 1872 Act – in a conspicuous place.¹¹
- 1.32 The notice of election should be distinguished from the notice of poll, which is to be given if more candidates are nominated than there are seats, and from an elector’s poll card, which is sent to electors by post and informs them of the poll and which polling station they are allocated to. The poll card in particular clearly shares a publicity function with the notice of election.
- 1.33 Publicity is not the only function of the notice of election. Crucially, it fixes a place at which nomination papers are to be delivered (“the nominations place”) which as we will see plays an important role in the nomination of parliamentary candidates.

The nomination paper

- 1.34 Each candidate at a UK Parliamentary election must be nominated by a separate nomination paper in a prescribed form set out in the Appendix to the Parliamentary Election Rules. For elections in Wales, the form of nomination paper may be in Welsh.
- 1.35 Although in practice almost certainly the norm, nomination need not emanate from the candidate. Anyone can nominate themselves or another for candidacy. Hence the election rules state that the returning officer is bound to supply any elector (rather than a candidate) with a form of nomination paper at the place and time for delivery of nomination papers. The rules also state that the nomination need not be made by using a form supplied by the returning officer, as long as it meets the prescribed requirements.¹² Furthermore, a candidate may be supported by more than one nomination paper, one purpose being to allow a candidate to submit another nomination paper because an earlier one was

¹¹ Electoral Commission, *Guidance for UK Parliamentary elections – Action before the poll* (December 2009), para 4.1.

¹² Representation of the People Act 1983, sch 1 r 7(4). It is not clear what this provision adds, since it cannot mean that a form to the “like effect” is acceptable. The likelihood is that this rule is intended to countermand a practice of refusing nomination papers not distributed by the returning officer.

defective.¹³

Subscribers

- 1.36 Nomination papers must include a form signed by a proposer, seconder, and eight other “subscribers”, all of whom must be registered electors for that constituency who are furthermore eligible to vote at the particular election. An EU citizen can neither vote nor subscribe in a UK Parliamentary election, though he may be registered as a local elector in the constituency. In order to subscribe a nomination paper, electors must be registered by the deadline for nominations, although they only have to be 18 years old or older on polling day.¹⁴
- 1.37 The prescribed form of nomination papers appended to the 1983 Act contains boxes only for a subscriber’s signature and their electoral number. This can pose some problems in practice for the returning officer. Were there to be some clerical error as to the electoral number (which the returning officer is empowered to correct), a signature that does not correspond to a person’s name on the register makes it difficult to discern whose electoral number should be scrutinised.¹⁵
- 1.38 An elector cannot validly subscribe more than one nomination paper, and cannot withdraw their assent to a candidate.¹⁶ The implications of this provision are twofold:
- (1) While a candidate can be nominated by more than one nomination paper,¹⁷ if a first nomination paper is rejected, any of the subscribers thereto cannot subscribe the second nomination paper, even if they are substantively assenting to the same person’s candidacy. We understand that candidates occasionally do file multiple nomination papers to guard against defects in any one of them. These will have entirely different sets of subscribers.
 - (2) If more than ten electors have subscribed to a nomination paper only the first ten are to be considered, meaning an eleventh subscriber cannot cure a defective entry within the first ten subscribers. What happens in

¹³ Representation of the People Act 1983, sch 1 r 14(4). *Northcote v Pulsford* (1875) LR 10 CP 476. *Parker’s Law and Conduct of Elections* notes a practice of nominating a candidate by more than one nomination paper as a means of guarding against a candidate failing to be nominated because of a technical defect in his nomination paper, R Price (ed), *Parker’s Law and Conduct of Elections*, loose-leaf, issue 37 volume 1 at para 12.16.

¹⁴ Representation of the People Act 1983, sch 1 r 7(6).

¹⁵ Representation of the People Act 1983, sch 1 r 14A(2)(b); Appendix of Forms. Contrast Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 pt 7 (Appendix of Forms). The nomination paper requires a person’s name to be given as well as their signature.

¹⁶ Representation of the People Act 1983, sch 1 r 7(5).

¹⁷ Representation of the People Act 1983, sch 1 r 11(2).

practice and is encouraged by guidance is that candidates file draft nomination papers early, which are informally checked by the returning officer and flaws pointed out in time to be cured by close of nominations.¹⁸

- 1.39 It is a corrupt practice under section 65A of the 1983 Act to include or cause to be included in a document delivered to the returning officer anything which purports to be a subscribing elector's signature which was not that person's signature or was not given for the purpose of subscribing a nomination. Nevertheless, a persistent complaint in electoral administration is that subscribers did not understand the party affiliation of someone's candidacy at the time they assented to it, for example.

Consent to nomination

- 1.40 Since nomination papers can conceivably emanate from others, candidates must consent to their nomination in writing on or within one month before the close of nominations. It is not clear on what basis that period was chosen. The form must be witnessed and submitted at the place or time for delivery of nomination papers. The rules empower the returning officer to dispense with these requirements if satisfied that the candidate is outside the UK, in which case the rules say that "a telegram (or any similar means of communication)" will suffice.¹⁹
- 1.41 Although rules for elections to the Scottish Parliament and National Assembly for Wales use the parliamentary election approach, they depart from these antiquated words, referring instead to "a facsimile communication (or any similar means of communication)". On the other hand, the European Parliamentary election rules retain the reference to a telegram, as (by adoption) do elections to the Northern Ireland Assembly.²⁰
- 1.42 This is the point at which candidates attest that they are aware of the disqualification provisions, are not disqualified to the best of their knowledge, and are not candidates for any other constituency election on the same day.

The names of candidates

- 1.43 There is a great amount of material in legal guidance, textbooks and some judicial pronouncements on the admissibility of the candidate's name on the nomination paper. These concern issues such as whether the name on the

¹⁸ Electoral Commission, *Guidance for UK Parliamentary elections – Action before the poll* (December 2009), para 4.33.

¹⁹ Representation of the People Act 1983, sch 1 r 8 (1), (2).

²⁰ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 1 r 9(3); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236 sch 5 r 9(3); contrast European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 8(2); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1. Section 74 of the 1983 Act, which refers to telegrams in the context of expenses by agents, is also applied.

statement of persons nominated should be with or without a prefix such as Mrs, Dr or “Councillor”, which are descriptions rather than part of the name, although there may be an element of uncertainty in certain elections about titles such as Rt Hon or “Sir”. There has also been some debate concerning the meaning of a “surname”: for example whether it extends to names acquired by deed poll or maiden names if in use.

- 1.44 The case law which pronounced on issues relating to candidates’ names emanates from the 19th and early 20th Centuries, at a time when candidates were perhaps more litigious. In the modern context these arguments ought to be obviated by section 50 of the 1983 Act, which prevents inaccurate descriptions or misnomers in nomination papers from affecting their validity where the description of the person is as commonly understood. The form of the nomination paper requires surnames to be given, and permits in addition the inclusion of a commonly used surname. The latter will appear on the ballot paper unless the returning officer considers it obscene, offensive or likely to mislead or confuse electors. It is important to note that the returning officer’s discretion in this regard determines not the validity of the nomination paper but the ability to use the commonly used name on the ballot paper.

Duplicate names and spoiler candidates

- 1.45 Occasionally, candidates have attempted to impersonate major political figures. Examples include a second ‘Roy Jenkins’ at the Hillhead by election in November 1982, a man who changed his name to ‘Margaret Thatcher’ in Finchley during the 1983 general election, and a second Nicholas Lyell attempting to stand against the then Attorney General at the 1997 general election. While the 2000 Act dealt with misleading party descriptions, a contemporary problem, it did not extend to misleading personal names. There have, however been fewer problems reported at recent elections. We consider how the returning officer is to deal with spoiler candidates further below, when discussing the grounds for avoiding nomination papers.

Home Address

- 1.46 Although the property qualification for MPs disappeared in 1858, in 1872 the rules required candidates to include their home address in their description. This would include the name and number of house or flat. The effect of section 50 of the 1983 Act is that inaccuracies do not affect validity, but the address must be the true ‘home’ address. While the returning officer does not inquire substantively into the address and will not reject a nomination paper for a substantive defect, we will see below that according to one case, failure to give the true home address is a point that can be taken at an election petition resulting in the nullity of the election if the nomination was defective.
- 1.47 In 2009 rule 6 of the Parliamentary Elections Rules was amended to enable candidates to choose whether or not their home address appears on the statement of persons standing nominated at a parliamentary election. The aim was to protect candidates from threats due to their home addresses being publicly available. The candidate’s nomination paper now must be accompanied by a ‘home address form’ including their home address in full which may at their request not be made public. If such a request is made, the form must state the

constituency in which the candidate's home address is situated, or, if that address is outside the United Kingdom, the country within which it is situated. The home address form must be destroyed 21 days after an MP is returned, or the day after the conclusion of any election petition.²¹

- 1.48 The candidate's address, or in the case of an opt-out, the constituency or country of residence, will appear on the statement of persons standing nominated which is published and available to the voter. The rationale must be that even if the candidate requests that their address be withheld, voters can still access the information whether they are local to the constituency or residents of the UK.²²
- 1.49 The 2009 changes do not affect the long-established principle that giving an incorrect address on a nomination paper is a ground for an election court to vitiate a winning candidate's election. This is so irrespective of whether the true address falls in the same informational "category" as the given address. Even if the error did not affect the information available to voters, the candidate's election is vulnerable.
- 1.50 Most of the case law cited in support of this principle harks back to a more litigious age in the electoral field, with some cases pre-dating the abolition of property qualifications for office.²³ More recently however in *R v An Election Court ex parte Sheppard*²⁴ the High Court held that a candidate was not duly elected because the address given in the nomination paper was not his true home address. The Victorian cases were not cited before the Court, which deals with this issue in one paragraph, its reasoning essentially being that no election can be valid if the nomination was not.²⁵ It is important to note that the core electoral provisions for every election make it a corrupt practice to cause or permit to be included in 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 is invalidated. This is not the basis on which *Sheppard* was decided.²⁶

²¹ Representation of the People Act 1983, sch 1 r 6(4), (5).

²² Representation of the People Act 1983, sch 1 r 14(2), (3A).

²³ P Gribble (ed) *Schofield's Election 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 by the 1872 Act. 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.

²⁴ [1975] 1 WLR 1319.

²⁵ [1975] 1 WLR 1319, 1325D, by Lord Widgery CJ.

²⁶ Representation of the People Act 1983 s 65A(1)(a).

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- 1.51 The concept of the home address form has been applied to Police and Crime Commissioner elections and Northern Ireland Assembly elections. It remains to be seen whether it will be applied to other elections following the Parliamentary election model, such as those to the European Parliament, the Welsh Assembly and Scottish Parliament.

Description of candidate

- 1.52 As we previously noted, the classical law provided for candidates to provide their “rank, profession or calling”. Some form of description beyond name and address (excluding political party), was mandatory until 1969, when it became optional. Candidates from major parties would include a reference to their party label within the six word description permitted by the election rules.
- 1.53 After 1969 there were problems with misleading descriptions. The 1997 general election saw a number of so-called “spoiler candidates” using descriptions such as New Labour, Conservatory, and Liberal Democrat Top Choice. Some attempts were defeated through the use of pre-emptive injunctions for undue influence under section 115(b) of the 1983 Act, successfully arguing that the nomination papers amounted to undue influence “by any fraudulent device or contrivance” impeding or preventing the free exercise of the franchise of an elector.²⁷
- 1.54 Nevertheless, further legislative regulation was introduced, first through the Registration of Political Parties Act 1998, which instituted a voluntary party register scheme, then through the establishment of the modern compulsory party registration framework under the 2000 Act.

The party registration regime

- 1.55 When the Political Parties, Elections and Registration Act 2000 (“the 2000 Act”) was at the Bill stage, amendments were made which eased the restrictions on candidates’ descriptions for minor parties contesting parish or community council elections, and enabled the Speaker to use the description “the Speaker seeking re-election”. Amendments to enable independents to use a description on the ballot paper other than “independent” failed. As a result candidates who are not endorsed by a registered political party can no longer put a description on the ballot paper other than “independent”.
- 1.56 The key provision regarding party registration is section 22 of the 2000 Act. That provision, as amended by the Electoral Administration Act 2006 (“the 2006 Act”), states that, other than for parish or community council elections:

[N]o nomination may be made in relation to a relevant election unless the nomination is in respect of –

²⁷ Injunctive relief against the use of a description had previously been sought on the basis of the tort of passing off, but was rejected by the Court of Appeal in *Kean v McGivan* [1982] F.S.R. 119.

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- a) a person who stands for election in the name of a qualifying registered party; or
 - b) a person who does not purport to represent any party; or
 - c) a qualifying registered party, where the election is one for which registered parties may be nominated.
- 1.57 A “qualifying registered party” means a party contesting the elections we are concerned with in this paper, save for the three “special category” elections in Scotland.²⁸
- 1.58 Under section 22 of the 2000 Act the deadline for effective party registration is two days before the close of nominations for all elections in respect of which a commencement order has been made to bring the 2006 amendment into effect.²⁹

Uncertainty concerning the deadline for effective party registration at European Parliamentary elections and Police and Crime Elections

- 1.59 There is currently a conflict between section 22 of the 2000 Act and the express provision in the election rules governing Police and Crime Commissioner Elections and EU Parliamentary Elections. Unlike for other elections, the amendment by the 2006 Act of section 22 has not yet been expressly commenced for those elections. This means that, strictly speaking, the original deadline for effective party registration under the 2000 Act ought to apply, which is the day of notice of the election. The Electoral Commission’s timetable for the Police and Crime Commissioners Election in November 2012 advised candidates that this was the deadline for effective party registration.
- 1.60 It is not clear that the above situation is the product of Government policy pertaining to those elections. Rule 6(6) of the Police and Crime Commissioner Election Rules, governing the use of registered party descriptions, refers to a deadline of two days before the last day for delivery of nominations.

²⁸ Elections to the Crofting Commission, National Health Boards, and the Cairngorms and Loch Lomond and the Trossachs National Parks Authorities. Parish and community council, elections in England and Wales are expressly not affected by section 22 of the 2000 Act.

²⁹ Political Parties, Elections and Registration Act 2000, s 22. The amended deadline in s 22(2) is by virtue of s 52(4) of the Electoral Administration Act 2006, which is commenced on a date and for purposes set by statutory instrument (s 77). Commencement orders have been made for the following elections: UK Parliament and NI Assembly by SI 2006 No 1972, art 3, sch 1 para 13; Scottish Parliament and National Assembly for Wales SI 2006 No 3412, art 3, sch 1 para 7; local government elections SI 2007 No 230, art 3 defined by s 160 of the 2000 Act by reference to ss 191, 203 or 204 of the 1983 Act, thus including local government elections in England and Wales, Scotland, and GLA elections, or an election under Part II of the Local Government Act 2000 for the return of an elected mayor); and local elections in Northern Ireland: SI 2008 No 1316, art 2(2), art 4(u).

For the purposes of the application of this rule in relation to a PCC election—

(a) “registered political party” means a party which was registered under Part 2 of the 2000 Act on the day (“the relevant day”) which is two days before the last day for the delivery of nomination papers at that PCC election

- 1.61 While the intention is clear, it is doubtful that this provision has the effect of commencing the amendment made by the 2006 Act so as to amend section 22 of the 2000 Act since this would be done expressly by reference to the 2006 Act. On balance, we conclude that the rule for Police and Crime Commissioner elections remains that party registration has to occur by the time for notice of election. This is highly undesirable given that candidates and agents, and even lawyers, might conclude they can reasonably rely on the words of the election rules.
- 1.62 We arrive at the same conclusion with respect to European Parliamentary elections. Here the conflict between the (unamended) section 22 deadline under the 2000 Act and the election rules occurs in a narrower area. Rule 5(7) of the European Parliamentary Election Rules 2004 (which were last amended in 2009) governs the use by individual candidates of registered party descriptions at a by-election. It also refers to a deadline under the 2000 Act for effective party registration of two days before the nominations deadline. There is no equivalent reference to the amended deadline in the provision governing the use of registered party descriptions by candidates at a general election in rule 8. The Electoral Commission guidance ahead of the June 2009 elections was that people wishing to register a party name for a candidate to use at the 4 June 2009 election must have an entry on the register of political parties two days before the close of nominations.
- 1.63 An obvious answer to this riddle might be that a commencement order has been made in respect of European Parliamentary elections but is not showing on electronic databases. We have checked Westlaw, Lawtel and searched (speculatively) for commencement orders which might have been missed out, on legislation.gov.uk. The databases show the same 11 commencement orders made in respect of the 2006 Act. None of them mention European Parliamentary or PCC elections. Our view is that due to the complex interlay of legislative provisions, the set of legislative measures governing PCC elections in 2012 did not include the requisite commencement order – just as they did not, until late in the day, include an order permitting the use of Welsh forms. As to European Parliamentary elections, new rules were introduced in 2009 which did not also commence the relevant part of the 2006 Act.

Certificates of authorisation

- 1.64 Party endorsement of a candidate is by means of a certificate issued by or on behalf of the registered nominating officer of the qualifying registered party

received by the returning officer before close of nominations.³⁰ A candidate who is supported by two registered parties and who wishes to use a name which reflects this support would need a certificate from each party's nominating officer. Submitting fraudulent certificates is a corrupt practice.³¹

- 1.65 The authorised description must be the party's registered name or a registered description. A party may register up to 12 concurrent six word descriptions, monitored by the Electoral Commission.³² This regime applies for all elections save those of parish and community councils. Special provision in Scottish Parliamentary elections enables party candidates standing in Scotland to use the prefix "Scottish" before the registered party name.³³ The major parties include within their 12 registered descriptions Scottish variants on their names, however, for use at other elections.³⁴
- 1.66 In general the effect of rule 6A(1A), which specifies what an authorised description may be and is replicated for other elections, is clear. Nevertheless, some confusion is generated by differences in approach between elections regarding whether descriptions will appear on ballot papers instead of or in addition to party names. At elections to the UK Parliament, National Assembly for Wales, Greater London Authority, elections for principal area³⁵ and parish and community councils, Scottish local government elections, and Mayoral and Police and Crime Commissioner elections in England and Wales, candidates must choose either their party name or a description.³⁶ This approach also applied at all elections held in Northern Ireland.³⁷

³⁰ Representation of the People Act 1983 sch 1 r 6A(1).

³¹ Representation of the People Act 1983, sch 1 r 6A(1B) and (2).

³² Political Parties, Elections and Referendums Act 2000, ss 28 (name) and 28A(2) (descriptions); Representation of the People Act 1983 sch 1 r 6A(1A) (authorised description must be the registered name or description).

³³ Scottish Parliamentary Elections Order 2010, sch 2 rr 4(7) and 6(3).

³⁴ Registered party descriptions search <https://pefonline.electoralcommission.org.uk/Search> (searched Conservative, Labour and Liberal Democrat and UKIP Parties on 1 May 2013).

³⁵ A principal area in England is a non-metropolitan county, a district or a London borough; in Wales, a county or county borough. Local Government Act 1972, ss 20 and 270.

³⁶ Representation of the People Act 1983, sch 1 r 6A(1A); National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, sch 5 rr 5(2) and 7(2); Greater London Authority Elections Rules 2007 SI 2007 No 3541, sch 1 r 6(6); sch 2 r 7(3); sch 3 r 6(6); Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 5(2); Local Elections (Parishes and Communities (England and Wales) Rules 2006 SI 2006 No 3305, sch 2 r 5(2); Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 4(6); Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, sch 1 r 7(2); Police and Crime Commissioner Elections Order 2012 SI 2012 No 1917, sch 3 r 6(2).

³⁷ Representation of the People Act 1983, sch 1 r 6A(1A); European Parliamentary Elections (Northern Ireland) Rules 2004 SI 2004 No 1267, sch 1 r 5(2); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Electoral Law Act (Northern Ireland) 1962, sch 5 r 5A(1A).

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- 1.67 For European Parliamentary elections and regional contests for the Scottish Parliament, candidates must state the party name and may include a description as well, yet constituency candidates for the Scottish Parliament may only use their party name.³⁸ The rules were changed for Scotland after the 2007 elections, where controversy over the use of the description “Alex Salmond for First Minister” led to recommendations that the party name should always be included.
- 1.68 A nomination paper is invalid if it purports to use a description which included words in addition to those specifically authorised by the nominating officer.³⁹ The returning officer’s power to reject a nomination paper on that ground, however, is curiously still worded in terms of the officer concluding that a description is “likely to lead electors to associate” a candidacy with a party. This wording is out of date. The question is simply whether a party description is authorised or not; if not, the description, if any, must be “independent” or the paper is void.

Deposit

- 1.69 The deposit for UK Parliamentary elections is £500 which may be paid by legal tender or banker’s draft, although the officer may refuse a banker’s draft if he does not know that the drawer carries on business as a banker in the UK. It was not until the Electoral Administration Act 2006 that the returning officer was given the discretion to accept payment in “any other manner”, thus enabling the use of credit or debit cards and electronic transfers.⁴⁰ The deposit is returned to a candidate who polls at least five per cent of the votes cast at the election. Table B below sets out the deposit and subscriber requirements for each election.

Time and place of nominations

- 1.70 The nomination paper, consent to nomination and the certificate of authorisation must be “delivered”, and the deposit paid, at the time and place fixed by the returning officer in the notice of election. The time of between 10 am and 4 pm is set by the election rules which also constrain the geographical bounds within which the returning officer can specify the place at which nominations must be received. In England and Wales, for example, the place must be in the constituency, registration area including the constituency, or district adjoining the constituency or registration area. Such detailed guidance has existed ever since 1872, when this process was described as “the election” and the place called “the election place”.

³⁸ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 6(2) and (3); Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 4(5) and 6(2).

³⁹ *R (on the application of De Beer and others) v Returning Officer for London Borough of Harrow* [2002] EWHC 670 (Admin), (2002) ACD 83 which was decided under the equivalent rule in the local government election rules 1986. “Liberal Democrat Focus Team” was held to be unauthorised because it had not been specifically authorised by the party nominating officer. That description is a registered party description for the Liberal Democrat party. The issue was whether the nominating officer had authorised that description specifically and in time.

⁴⁰ Representation of the People Act 1983, sch 1 r 9.

1.71 Nomination papers need to be “delivered” as part of a personal, almost ceremonial process.

(1) First, delivery is to the returning officer at the nominations place. The rules require the returning officer to attend the place for nominations, although in practice the deputy returning officer will be in attendance.

(2) Second, only the candidate, their proposer or seconder, or their election agent if appointed, can validly deliver a nomination paper.

1.72 Delivery is interpreted to exclude faxed or emailed forms. By contrast, as we noted above, consents to nomination may be faxed or emailed (being equivalents to a telegram) if the returning officer is satisfied that the candidate is outside the UK.

1.73 Candidates are encouraged to submit papers well in advance of the timetable deadline, so that if there are any defects new papers can be submitted in time.⁴¹ The deadline is rigid and cannot be extended.⁴² This occasionally causes problems where the candidate or agent is unavoidably delayed, as there is no discretion to take extenuating circumstances into account. However it is difficult to see what alternatives there are which do not place the returning officer in a sensitive position.

Right to attend, inspect and object

1.74 The right to attend nominations corresponds to the limitation on who can deliver the nomination paper. The candidate or election agent, proposer and seconder are thus entitled to attend the delivery of nomination papers, along with a further nominee (until recently, the candidate’s spouse) who, unlike the others, may not object to the nomination of another candidate.

1.75 A candidate’s nomination papers can only be inspected by others with a similar right to attend; that is, those affiliated with a rival candidacy. Objections must be made before close of nominations and need not be in writing. There is therefore no provision for public inspection of nomination papers at parliamentary elections. The wider public is only ever consulted in relation to the disqualification under the 1981 Act of serving prisoners and the special “draft statement” procedure in that context, which we outlined above.

1.76 This personal, in-person objections procedure, along with the requirements that

⁴¹ Other than providing for only a “last day” for nominations, which implies an ongoing process, the rules make no provision for such checking. Informal checks are however accepted best practice contained in the Electoral Commission’s guidance. There is at least one case of judicial acknowledgement of this role in *R (De Beer) v Returning Officer for London Borough of Harrow* [2002] EWHC 670 (Admin), [2002] ACD 83 at [19].

⁴² The sixth day after the proclamation summoning a new Parliament at a general election, or the day fixed by the returning officer between the third and seventh day after receipt of the writ at a by-election. Representation of the People Act 1983, sch 1 r 1.

papers be personally delivered to the returning officer by certain persons at the nominations place, is peculiar to what we call the “parliamentary model” of election rules. It does not apply in local elections and other elections which follow the local government election model, where papers may be inspected – by any member of the public during office hours – after the close of nominations.⁴³

Powers of the returning officer

Assessing the formal validity of nomination papers

- 1.77 Save for the 1981 Act disqualification, the returning officer’s role is limited to examining the formal validity of nomination papers, as opposed to assessing the substantive validity of a nomination. *R (on the application of De Beer and others) v Returning Officer for the London Borough of Harrow* is a robust illustration of this principle. The High Court considered a challenge to the rejection by the returning officer of the nomination papers of 60 Liberal Democrat candidates for election to the London Borough of Harrow on the ground that the description in the papers was not the one authorised by the party nominating officer’s certificate. Scott Baker J dismissed a claim for judicial review of the officer’s decision.

I have considerable sympathy with the returning officer, who was in a very difficult position. On the one hand he knew several, perhaps many, of the 60 candidates, some of whom were serving councillors or had previously served as councillors, and he was well aware that the difficulty into which the Liberal Democrats had got themselves could have been overcome had the nominations and certificates all been lodged in reasonable time before the deadline. Furthermore, he was aware from all the surrounding circumstances that the Liberal Democrats were perfectly content with these candidates describing themselves as "Liberal Democrat Focus Team". On the other hand, he had to apply the law without fear or favour, giving even treatment to every candidate, whether a single individual or member of a large or small party. There is no scope for bending the rules in what seem or may seem meritorious cases. For example, there is no discretion to accept a nomination paper received just after the deadline has expired, or indeed to accept a certificate under rule 4A(1) just after the deadline has expired... .

⁴³ Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 11.

It is, in my judgment, important to keep in mind the role of the returning officer in the election process. He is in a sense the referee. He is there to see fair play and to ensure that the rules are complied with. As a matter of policy, it seems to me, the fewer occasions on which he is called upon to exercise questions of judgment and thereby lay himself open to criticism by one or more of the candidates the better. This is particularly pertinent if the exercise of judgement were to go outside issues that can readily be resolved by looking at a document or documents, and which involves weighing up facts or surrounding circumstances.⁴⁴

1.78 Detailed rules govern nominations which are supposed to exclude so far as possible any question of judgement. The returning officer's role in determining the formal validity of nominations is governed by rule 12 of the Parliamentary Election Rules. The rule divides the task into two stages.

1.79 The first stage sets out the test for a candidate standing nominated. Where the nomination paper, consent to nomination and home address form are delivered and a deposit is made in accordance with the rules, the candidate is "deemed to stand nominated" unless and until:

- (1) the returning officer decides that a nomination paper is invalid (r 12(1)(a));
- (2) the returning officer decides that the home address form does not comply with rule 6(4), which itself states that the nomination paper must be accompanied by a home address form stating the candidate's full names and home address in full and delivered in the same manner as the nomination paper (r 12(1)(aa));
- (3) proof is given to the returning officer's satisfaction of the candidate's death (r 12(1)(b)); or
- (4) the candidate withdraws (r 12(1)(c)).

1.80 The second stage is the returning officer's power to hold a nomination paper invalid only on one of the following grounds:

- (1) that the particulars of the candidate or the persons subscribing the paper are not as required by law;
- (2) that the paper is not subscribed as so required; or
- (3) the candidate is disqualified under the Representation of the People Act 1981.

⁴⁴ *R (De Beer) v Returning Officer for London Borough of Harrow* [2002] EWHC 670 (Admin); [2002] ACD 83.

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- 1.81 Ignoring the complication of the home address form, which we turn to below, the position is as follows. If a deposit is paid, the nomination papers are properly subscribed, they include the consent to nomination, and are delivered in time to the returning officer at the nominations place, a candidate is nominated unless (or until) they die, withdraw or their nomination paper is held to be invalid by the returning officer. Other than the 1981 Act disqualification, the returning officer may only find a nomination paper invalid if the particulars of the candidate or subscribers are not “as required by law”, which includes non-compliance with election rules. The returning officer cannot go behind the nomination paper, for example to verify the authenticity of the name on it.⁴⁵

Faults in the nomination paper which do not affect its validity

- 1.82 The foregoing outlined the returning officer’s powers to reject a nomination. The officer also has powers with regard to faults in nomination papers which fall short of impugning their validity.⁴⁶
- 1.83 Similarly, rule 14(2B) of the Parliamentary Elections Rules entitles a returning officer to exclude a commonly used name from the statement of persons nominated, where the returning officer thinks that name may be likely to mislead or confuse voters, or is obscene or offensive.⁴⁷ If a returning officer so concludes, the nomination paper is not invalidated. Instead, the candidate is referred to by their actual name on the statement of persons nominated, and thus on the ballot paper.

⁴⁵ *Greenway Stanley v Paterson* [1977] 2 All ER 663; *R v An Election Court ex parte Sheppard* [1975] 1 WLR 1319.

⁴⁶ Representation of the People Act 1983, sch 1 r 12(1)(a), (aa), (2)(a).

⁴⁷ Representation of the People Act 1983, sch 1 r 14(2A) and (2B).

1.84 A power which has similar character is that set out in rule 14A of the Parliamentary Election Rules. It enables returning officers before publication of the statement of persons standing nominated to correct minor errors in a nomination paper or home address form, including errors as to a person's electoral number, obvious spelling errors in relation to the candidate's details⁴⁸ or as to the information relating to the candidate's constituency or country of residence within the home address form. The rule furthermore states:

(3) Anything done by a returning officer in pursuance of this rule must not be questioned in any proceedings other than proceedings on an election petition.

(4) A returning officer must have regard to any guidance issued by the Electoral Commission for the purposes of this rule.⁴⁹

1.85 These powers stand in contrast to the effect of, for example, a failure to submit a home address form, state the candidate's names and home address in full on said form or deliver the form in the prescribed way (at the nominations place, by certain persons and so on). Any such defect will result in the invalidity of a candidate's nomination.⁵⁰

Withdrawals

1.86 A candidate's withdrawal, like his consent, must be given by notice of withdrawal signed and attested by one witness and given to the returning officer at the place for delivery of nominations. There are provisions covering the position where the candidate is outside the UK and where he has been nominated by more than one nomination paper. It is unclear whether withdrawals received by fax are valid. Previously, in elections which follow the local government model, the deadline for withdrawals came after the close of nominations and the publication of the statement of persons nominated. This difference has now been removed for all but Greater London Authority elections.

⁴⁸ There is a question whether the candidate's details include their authorised registered description. That is certainly arguable, although some election rules have been amended specifically to include a reference to an error of spelling in relation to the description of a registered party which a candidate is authorised to use: Northern Ireland Assembly (Elections) Order 2001 SI 2001 No 2599, sch1 modification to rule 14A; Electoral Law Act (Northern Ireland) 1962 sch 5 r 12A(2); European Parliamentary Election Regulations, sch 1 r 16(2). Other elections with a party list component refer to errors relating to the details of a candidate *or party* (Scottish Parliamentary, Welsh Assembly, and GLA (London members) elections). The wording in the Parliamentary election rules is replicated for local government elections in England and Wales, including principal areas and parish and community councils; Scottish local government elections; Mayoral elections in England and Wales; GLA elections for Constituency members and the London Mayor; and PCC elections.

⁴⁹ Representation of the People Act 1983 sch 1 r 14A.

⁵⁰ Representation of the People Act 1983, sch 1 rr 12(1)(aa), 6(4).

Is abuse of the right to nomination a ground for invalidating papers?

1.87 Despite the fact that rule 12(1)(a) of the Parliamentary Elections Rules prefaces the three grounds for invalidating a nomination paper with the words “only”, there has been some debate as to whether the returning officer has a wider power to reject nomination papers. Such a power has sometimes been labelled a “common law” power of refusal of nomination.⁵¹ The most frequently quoted expression of this power was that of Wright J in *Harford v Linskey*:

We do not understand it to be laid down in the *Bangor* case that a nomination cannot ever be rejected except for informality in the form of presentation of it. If the nomination paper is, on the face of it, a mere abuse of the right of nomination or an obvious unreality, as, for instance, if it purported to nominate a woman or a deceased sovereign, there can be no doubt that it ought to be rejected, and no petition could be maintained in respect of its rejection.⁵²

1.88 Later cases, when discussing the above passage, emphasized that it applied to manifest disqualifications “on the face of” the nomination paper, although they have been taken to approve the principle.⁵³ Irrespective of whether the above passage was ever good law, the courts have left some scope for refusing a sham nomination paper.

1.89 In *R v Bennett, ex parte “Margaret Thatcher”*⁵⁴ a Mr Hanoman changed his name by deed poll to Margaret Thatcher and stood for election to Parliament in Barnett and Finchley, where the real Mrs Thatcher was the incumbent Member of Parliament and at the time Prime Minister. He gave his address as Downing St Mansions and his description as Conservationist. His election agent was his flatmate who had changed his name to Ronald Reagan.

1.90 The returning officer rejected the nomination paper for four reasons:

- (1) as an abuse of the right of nomination;

⁵¹ C Morris, *Parliamentary Elections, Representation and the Law* (2012) p 63.

⁵² [1899] 1 QB 852, 862.

⁵³ C Morris, *Parliamentary Elections, Representation and the Law* (2012) p 64. The principle, narrowly confined, has been taken to have been approved in *Hobbs v Morey* [1904] 1 KB 74, 78 to 79, and *Greenway Stanley v Paterson* [1977] 2 All ER 663, 667. This is not without difficulty. The former case, properly understood, is discussing the doctrine of “votes thrown away”, and it is in that context that it is citing Wright J’s dictum and giving the example of Lady Sandhurst’s vitiated election – she had thus been nominated – in 1899 in the case of *Beresford-Hope v Sandhurst* (1889) 23 QBD 79. In *Greenway Stanley v Paterson* O’Connor J quotes the judgment of Kennedy J in *Hobbs v Morey*, which includes the famous passage by Wright J in *Harford v Linskey*. But what O’Connor J expressly approves is the statement of the orthodox position by Lord Widgery in *ex parte Sheppard* that the returning officer’s duty is confined to verifying that nomination papers are in due form and he could only reject them on the specified ground in the rules.

⁵⁴ (3 June 1983) CA (unreported) transcript available on electronic resources such as Westlaw.

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- (2) as an obvious unreality;
 - (3) as lacking a duly attested consent to nomination; and
 - (4) for the particulars of the candidate provided being not as required by law.

1.91 Mr Hanoman challenged the returning officer's rejection of his nomination paper. The Court noted that the first two reasons related to Wright J's statement in *Harford v Linskey*, but held that since that decision the election rules laid down grounds for refusing nomination papers that did not include these. The rules did however include the fourth basis on which the returning officer rejected the nomination paper. Given that Hanoman's own evidence was that he sought "to make the electoral process more farcical, we believe it is already a frightening farce", and its conclusion that his candidature was a deliberate attempt to confuse the electorate, the Court of Appeal refused relief because the proceedings before it were an abuse of process. The Court did not decide "whether or not the returning officer has... the power to reject as he did for the abuse of the right of nomination." It follows that this decision does not affirm the correctness of the *Harford v Linskey* doctrine.

1.92 More definitive guidance is found in *Sanders v Chichester*.⁵⁵ The High Court heard a special case stated in a European Parliamentary election petition. At the 1994 European elections in Devon and East Plymouth a Mr Huggett stood as a "literal democrat" (saying he stood for the true meaning of democracy) and eventually polled over 10,000 votes. The petitioning liberal democrat candidate lost by 700 votes. The Court found that Wright J's dictum in *Harford v Linskey* does not apply to the conduct of elections under the modern statutory regime. Dyson J added:

Candidates who give descriptions that are obscene, racist or an incitement to crime deliver particulars that are "not as required by law" because they contravene the law and/or will inevitably involve the returning officer in a breach of the law, not because they are an 'abuse of the right to nomination'.

There was discussion before us about the candidate who obviously gives a fictitious name and address such as "Mickey Mouse of Disneyland". The law has always treated sham documents and transactions as nullities. That would be a sufficient basis for holding the nomination paper to be invalid on the grounds that the particulars were not as required by law...

⁵⁵ (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, *Schofield's Election Law*, loose-leaf, 6th reissue volume 5 p E99.

We would hold that there is no power in the returning officer to reject a nomination paper on any ground other than [the three set out in the election rules], unless the nomination paper is manifestly a sham. The words “not as required by law” are sufficient to exclude descriptions which are illegal. The exclusion of sham nomination papers would deal with the example [of nomination of a] deceased sovereign.⁵⁶

- 1.93 The effect of the recent case law, and of *Sanders v Chichester* in particular, is that there is no wider principle that a nomination paper may be refused as an “abuse of the right to nominations” or an “obvious unreality”. However the right to refuse a nomination paper for “not being as required by law” now includes the right to refuse a paper that gives particulars that contravene laws other than electoral laws, including apparently a general principle that the law treats sham documents as nullities. That would appear substantively to bring Wright J’s doctrine in by the back door.⁵⁷ Such a doctrine necessarily involves a departure from the conventional approach of shielding the returning officer from being involved in political judgements. In the absence of guidance as to what is a “sham” nomination paper or obscene or racist particulars, these may not be the sort of judgements best left to returning officers who have imperfect information and little or no legal assistance.⁵⁸

Challenging the decision of a returning officer

- 1.94 The rejection or acceptance of a nomination paper is an administrative act by a public official which is *prima facie* subject to judicial review. Furthermore, it is part of the process of an election, the validity and outcome of which is subject to the jurisdiction of an election court hearing an election petition.
- 1.95 Rule 12 of the Parliamentary Elections Rules, whose twin provisions are replicated in the rules governing other elections,⁵⁹ states:

⁵⁶ *Sanders v Chichester* (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, *Schofield’s Election Law*, loose-leaf, 6th reissue volume 5 p E99, p E114 to E115.

⁵⁷ Bob Watt, *UK Election Law: a critical examination* (2006) p 112 to 114.

⁵⁸ C Morris, *Parliamentary Elections, Representation and the Law* (2012) p 66.

⁵⁹ 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).

(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.

Judicial review available in principle

- 1.96 Identical provision is made concerning local government (principal area) elections in England and Wales. Scott Baker J in *R (De Beer) v Returning Officer for London Borough of Harrow* considered whether judicial review of a rejection of nomination papers was available. He concluded that it was but seemed keen not to encourage challenges to returning officers' decisions.

The wording of that rule seems to me to leave open the converse situation where the returning officer has decided that a nomination paper for one reason or another is invalid. It has not been argued before me that the court cannot interfere by way of judicial review, although it is fair to say that neither party was aware of any case where there has been a successful application for judicial review against a returning officer. In my judgment, although judicial review does lie, this is an area in which the courts should be extremely slow to interfere with the decision of a returning officer. No doubt where a returning officer has plainly acted unlawfully relief will lie. But ordinarily returning officers should be left to conduct the election process as provided by Parliament.⁶⁰

Ouster of challenge to acceptance of nomination paper

- 1.97 Scott Baker J was careful to confine his remarks to the rejection of nomination papers. Rule 12(5) precludes legal challenge of a returning officer's "decision that a nomination *paper* is valid". In legal jargon it is known as an ouster clause. Because only the clearest words can oust the inherent jurisdiction of the High Court to scrutinise an act of public administration, it is established law that the rule will be narrowly construed. There are therefore two limitations on the decision being immune from being questioned.

- (1) First, the ouster only extends to challenging decisions as to the validity of a nomination paper, as distinct from the nomination itself (whether the candidate was validly nominated or was disqualified). The latter can be

⁶⁰ *R (De Beer) v Returning Officer for London Borough of Harrow* [2002] EWHC 670 (Admin); [2002] ACD 83 at [36] to [38].

questioned by an election court as rule 12(6) makes clear.⁶¹

- (2) Second, the decision must be that the paper is valid. A decision that the paper is invalid is not similarly immune from being questioned.

1.98 There may be further constraints on the operation of the ouster clause in rule 12(5). In *Sanders v Chichester*⁶² doubt was cast on whether the ouster of jurisdiction would be effective if the returning officer erred in law. The first three questions the High Court had to determine concerned whether the returning officer correctly accepted nomination papers for a candidate describing himself as a “literal democrat”. In accordance with orthodoxy, Dyson J held that the officer’s decision had been correct and that she could not go behind the nomination paper.

1.99 The fourth question was whether, if the returning officer had erred, her decision that the nomination paper was valid could be challenged notwithstanding the ouster clause in rule 12(5). The case did not, therefore, turn on the decision on this point. Dyson J reasoned that had his answer to the first three questions been different, and he had concluded that the returning officer had breached her duty in accepting the nomination paper, the ouster clause would not have applied to preclude the review of this action. This is because returning officer’s decision would have been fundamentally flawed, she would have failed to direct herself properly, and her decision would have been a nullity. In coming to this decision the judge rejected an argument by counsel for the returning officer that the above reasoning, based on the seminal case of *Anisminic Limited v Foreign Compensation Commission* [1969] 2 AC 147, was inapplicable. In election law there was a whole scheme of challenge only part of which was ousted by rule 12(5). Dyson J reasoned as follows.

[If] Mr Straker is right, the jurisdiction of the election court to impugn a decision of the returning officer to hold a nomination paper to be invalid is excluded altogether, even where the grounds relied on are a breach of duty in circumstances rendering the decision a nullity. We do not accept that the fact that the decision as to the validity of a nomination paper is merely part of a process is a good reason for holding that the *Anisminic* principle does not apply. That decision is a discrete part of that process whose consequences are of the utmost importance.

1.100 We consider the entire scheme for challenging elections and decisions made within the electoral process in Chapter X of our Consultation Paper, supported by our research paper on challenge. At this point it is interesting to note that the

⁶¹ See also *Re Melton Mowbray (Egerton Ward) Urban District Council Election* [1969] 1 QB 192; a mistaken rejection of a nomination paper can lead to the election subsequently being declared void by an election court.

⁶² (1995) 139 SJLB 15, not fully reported but transcript available in P Gribble, *Schofield’s Election Law*, loose-leaf, 6th reissue volume 5 p E99.

effect of *Sanders v Chichester* seems to be to render the words of rule 12(5) nugatory. The only decisions that are immune from challenge are those that are correct, and could not be challenged in any event.⁶³

The distinction between the validity of the nomination paper and nomination

- 1.101 Where a returning officer 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. However, if the nominated candidate has won the election, their election is vitiated by any particulars of the candidate being defective. These may be said to relate to the substantive validity of his nomination, which an election court can review. The distinction between the concept of validity of the nomination paper and of the nomination can be troublesome.
- 1.102 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 is not ousted by rule 12(5) on those formal grounds, 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.⁶⁴

- 1.103 This is a powerful argument, and a similar one may be made even in relation to one of the particulars of the candidate at a parliamentary election – the home address. Since there is no substantive residence qualification to stand, it is equally perverse for a candidate to be disqualified even if elected on a substantial majority for giving an incorrect home address if the error did not mislead electors (for example if the true address was also in the constituency in question).

⁶³ The way the court's reasoning is structured, however, is based entirely on the counterfactual case where the returning officer in that case had breached her duty. In such a case, the returning officer would have been under a duty to go behind the nomination paper and make a determination as to whether the description "literal democrat" was an abuse or an obvious unreality. Since on the facts the returning officer took the orthodox – and correct – approach of not involving using judgement on political matters – it is arguable that she would not have been within her jurisdiction in refusing to go behind the paper. However, the better reading of *Sanders v Chichester* is the one given in the text above.

⁶⁴ R Price (ed), *Parker's Law and Conduct of Elections*, loose-leaf, issue 37 volume 1 at para 12.28.

Statement of persons nominated

- 1.104 In parliamentary elections the statement of persons nominated is published immediately after the objections have been disposed of, which leaves very little time for consideration by the returning officer. Its importance is paramount, since it determines which names will appear on the ballot paper and in which order.
- 1.105 Until recently, for local elections the statement had to be published two days after the close of nominations, but before the final deadline for withdrawals. This distinction between parliamentary and local election timetables was long-standing, dating back to at least 1933. Following amendments to the timetables for local government, mayoral and Police and Crime Commissioner elections, the same nomination deadlines for parliamentary elections are applied to those elections as well.
- 1.106 The statement must give the name, address and description of each candidate in alphabetical order, with first names deciding when there are two identical surnames. It has to indicate whether any particular nomination is invalid. The names of subscribers must also be shown at parliamentary elections. The returning officer must send a copy of the statement to the Electoral Commission along with the authorising certificate for each party candidate.
- 1.107 The Representation of the People Act 1981, which we discussed above, requires a draft statement of persons nominated to be produced sometime after 4pm on the last day for delivery of nominations where there is concern that one or more candidates suffer from the 1981 Act disqualification as a serving prisoner.
- 1.108 For completeness, it should be mentioned that rule 16 of the Parliamentary Elections Rules deals with nominations obstructed by riot or open violence, operating to extend the deadline for nominations to the next day if proceedings are abandoned on the last day for nominations. Its use must be obsolete, although some power is probably necessary for public order reasons.

OTHER ELECTIONS

- 1.109 We have considered several aspects of the nomination procedures at parliamentary elections. Other elections' procedures use the concepts developed for UK Parliamentary elections, and some follow the Parliamentary Election Rules closely in structure and detail. These we describe as following the "parliamentary election model" for nomination rules. Other elections follow closely the "local government model of election rules".
- 1.110 Whether the rules follow the parliamentary or local government election model is one parameter for divergence in nomination rules across elections. A second parameter is the voting system used. The classical rules for both parliamentary and local government elections were developed for the first past the post system. While this classical rule set is easily applied (in the nominations context) to other voting systems such as single transferable vote or the supplementary vote, any party list system is bound to involve a significant departure from the classical nomination of individual candidates. Table A below gives an indication of how elections divide according to these two parameters for change: which model is applied and the voting system used.

Timetables

- 1.111 A third major area of divergence across elections is the different timetabling of various nomination processes across all elections. We will consider election timetables as a discrete topic, but for information Appendix A sets out the major deadlines in the nominations context for all elections.

Table A: Nominations models by voting system⁶⁵

Model	Parliamentary			Local Government	
Voting system					
First Past the Post – <i>Classical rule set</i>	UK Parliamentary election rules			Local Government (Principal Areas) and (Parishes and Communities) election rules (England and Wales)	GLA - constituency members elections rules
	Scottish Parliamentary election rules - constituency	Welsh Assembly election rules - constituency			GLA - London members election rules
Party List – <i>Heavily adapted rule set: nomination of parties as well as party list candidates. Classical remnant for “individual” (independent) candidates</i>	Scottish Parliamentary election rules – regional	Welsh Assembly election rules - regional			
	EU Parliamentary election rules (Great Britain)				
Supplementary vote <i>Classical rule set</i>	Police and Crime Commissioner election rules			Mayoral election rules (England and Wales)	GLA - Mayor of London election rules
STV <i>Classical rule set</i>	EU Parliamentary election rules (Northern Ireland)	Northern Ireland Assembly election rules	Local Government election rules (Northern Ireland)	Local Government election rules (Scotland)	

⁶⁵ Scottish Parliamentary, Welsh Assembly and GLA elections are colour coded, and separated into their voting system components.

The local government model

Principal areas elections in England and Wales

- 1.112 Elections to principal area councils⁶⁶ are governed by the Local Elections (Principal Areas) (England and Wales) Rules 2006.⁶⁷ There are separate rules for local government elections in Scotland and Northern Ireland, discussed below. By and large the rules in England and Wales follow the approach set out for Parliamentary elections. Each candidate has to be nominated by a separate nomination paper in the prescribed form appended to the election rules, subscribed by ten electors and delivered at the nominations place. The returning officer's role and powers are the same as in the parliamentary model, save that the complication of the "home address form" does not occur.
- 1.113 There are significant differences in the nominations procedure, however. There is no deposit requirement. The returning officer is not required by the rules to attend the nominations place and nomination papers need not be delivered there by specified persons. They must simply be "delivered" to the nominations place. The place for nominations must be at the offices of the council in question. There is no restriction on the right to attend. There is furthermore a specified right for any person to inspect and take copies of nomination papers and consents to nomination during office hours after the deadline for nomination and before the poll. The consent to nomination form is appended to the rules, although a form to the "like effect" may be used by candidates.⁶⁸
- 1.114 Other differences are substantive in nature. An additional qualification to stand in local government elections is that the candidate must have lived or worked in the relevant local authority area for the preceding 12 months. Candidates have to give details of the basis of their local qualification in the consent to nomination form as well as giving the usual assurance that they are not disqualified by sections 80 and 81 of the Local Government Act 1972.⁶⁹
- 1.115 Another difference stems from the prevalence of multi-member wards. Thus no elector may subscribe more nomination papers than there are vacancies to be filled in the electoral area (nor subscribe a nomination paper in respect of an election in any other electoral areas).⁷⁰ On the other hand a candidate may be nominated in more than one electoral area, as long as he or she withdraws from all but one area by the deadline for withdrawals of candidature. If not, he or she is

⁶⁶ County, district and London borough elections.

⁶⁷ SI 2006 No 3304.

⁶⁸ Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 rr 4, 7.

⁶⁹ These provisions list the offices which disqualify a person from being elected as a local councillor.

⁷⁰ Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 6.

deemed to have withdrawn from candidature in all those electoral areas.⁷¹

- 1.116 This difference has now been removed for principal area and parish and community elections, mayoral elections and Police and Crime Commissioner elections. The deadline for nominations and withdrawals is now the same as that for elections following the parliamentary model; they must be submitted by 4pm on the 19th day before the date of the poll. The statement of persons nominated must be published 24 hours later.⁷² This seems to indicate a policy to eliminate the two different models for nominations; it remains to be seen whether the same changes will be applied to the timetable for Greater London Authority elections.
- 1.117 The reasons for finding a nomination invalid are the same as for Parliamentary elections, except that the 1981 Act disqualification does not apply. The returning officer is additionally bound to send a notice of the rejection of the nomination paper to the home address of a candidate as given in the nomination paper. Previously, withdrawal from nomination at local elections could occur after the closing time for nominations and the publication of the statement of persons nominated. This meant that that statement does not determine absolutely what will go on the ballot paper. Following the recent amendments outlined above, the statement of persons nominated will now set out exactly which candidates will appear on the ballot paper.

Parish and community council elections in England and Wales

- 1.118 The rules for these elections are almost identical to the principal area elections rules. They are set out in the Local Elections (Parish and Communities) (England and Wales) Rules 2006.⁷³ But there are some differences in the qualifications and the nominations process. An alternative qualification to the local government grounds for qualifying to stand is that the candidate has lived within 4.8 kilometres of the parish for 12 months preceding the election. The nomination paper must be subscribed by a proposer and seconder only.
- 1.119 One major area of difference is that independent candidates may use a six word description other than “independent”. This makes elections to parish and community councils the one type of election where the prohibition against using a description likely to lead electors (unduly) to associate the candidate with a registered party – which appears in all election rules – actually plays a meaningful role. The 2000 Act also makes provision for the category of “minor”

⁷¹ Local Elections (Principal Areas) (England and Wales) Rules 2006 SI 2006 No 3304, sch 2 r 12.

⁷² Local Elections (Principal Areas) (England and Wales) (Amendment) Rules 2014 SI 2014 No 494, r 3; Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2014 SI 2014 No 492, r 3; Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2014 SI 2014 No 370, reg 5(2); Police and Crime Commissioner Elections (Amendment) Order 2014 SI 2014 No 924, art 31.

⁷³ SI 2006 No 3305. Community councils are the counterpart in Wales to parish councils in England.

parties registered for parish and community councils only (town councils do not come within this category). Minor parties are exempt from the requirement of providing full financial information. The returning officer may reject papers where he considers that the description is misleading, unless there is an authorising certificate from the relevant registered political party. In effect, the short-lived 1998 scheme applies, with the addition of the authorising certification machinery of the 2000 Act.

Elections involving a party list

EU Parliamentary elections held in Great Britain

1.120 The rules governing elections to the European Parliament held in Great Britain follow the “parliamentary” model, although the use, after 1999, of a party list voting system results in significant changes to the classical rules, some of which we outline below.

- (1) The voting system means that registered parties, as well as individual candidates, can stand for election.⁷⁴
- (2) There are no subscription requirements. The deposit is £5,000 for an individual candidate, or a party (that covers all candidates in its list).⁷⁵
- (3) An individual candidate is nominated by a nomination paper signed and delivered at the designated place for receipt of nominations by the candidate or a person they authorised to do so in writing. They may use the description “independent”, or a registered party description if standing on behalf of a party at a by-election.⁷⁶
- (4) A registered political party is nominated by a nomination paper delivered to the returning officer at the designated place by the party’s nominating officer or a person they have authorised in writing. The rules say that the paper must state the name of the registered party, and may state which registered description it is to stand under. A list of candidates not exceeding the number of vacancies must accompany the paper, setting out their full names and home addresses in full.⁷⁷
- (5) Individual and list candidates must give their written consent to nomination in order to be validly nominated. List candidates must identify the party in question.⁷⁸

⁷⁴ European Parliamentary Elections Act 2002, s 2; European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 rr 4 to 6.

⁷⁵ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 10.

⁷⁶ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 rr 4 and 5.

⁷⁷ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 rr 6 and 7.

⁷⁸ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 8.

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- (6) There is no prescribed form for the nominations paper or consent to nomination. The nominations place is within the European constituency and attended by the regional returning officer.⁷⁹
 - (7) Individual candidates may withdraw their own nominations. Party nominating officers may withdraw the party nomination – but not a particular list candidate’s candidature under the party’s list.⁸⁰
 - (8) Candidates who are non-national EU citizens resident in the UK must give their home address in the UK and declare that they are not standing for election to the European Parliament in any other member state. They must also give details of where they are registered to vote in their member state of origin, if applicable, and state that have not been deprived of the right to stand as a candidate through a disqualifying decision of the member state of which they are a national. The declaration must be received by the time for close of nominations; where it is delivered after 4pm on the 24th day before the day of the poll, the candidate must also provide a certification from their home member state that they are not disqualified from candidacy. In all other cases it is the responsibility of the Secretary of State to contact the member state in question regarding any disqualification of the candidate. The declaration must be sent to the Secretary of State as soon as possible after the statement of persons and parties nominated. Failure to comply with these special provisions is the only ground for refusing nominations which is additional to the classical grounds.⁸¹

Scottish Parliamentary elections

- 1.121 The Scottish Parliamentary election rules are set out in schedule 2 to the Scottish Parliament (Elections etc.) Order 2010.⁸² Individual candidates for constituency or regional seats, as well as parties for regional seats, must be nominated by a nomination paper signed by one witness, and must pay a deposit of £500.
- 1.122 These elections, as well as those to the National Assembly for Wales and the Greater London Authority, use the additional member voting system (“AMS”). This necessitated significant change to the classical nominations procedure.
- 1.123 AMS (as understood and applied in the UK) is a hybrid of the first past the post and party list voting systems. Part of the elected body’s membership is elected

⁷⁹ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 11.

⁸⁰ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 14.

⁸¹ European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 rr 9, 9A and 13(3)(c); Directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals 93/109/EC, Official Journal L 329 of 30.12.1993 p 24.

⁸² SI 2010 No 2999.

under a first past the post system to represent constituencies within the elected body's area. Individual candidates, not parties, stand for election.

- 1.124 The constituency membership of the elected bodies is supplemented by a membership elected under a proportional (closed party list) system. The party list may apply either to the entire elected body's area (Greater London) or to regional divisions of that area (as in regional elections for the Scottish Parliament and Welsh Assembly). At the regional contests, both parties and individual persons can stand for election. It is thus the case that a party is nominated, although those named in the party's list are also called candidates. In this paper we refer to them as "list candidates".
- 1.125 In effect this single electoral event can be viewed as two coincidental election contests, a constituency contest and a regional or London contest. The drafting of the election rules confirm this interpretation.
- 1.126 Accordingly, there are separate notices of election for constituency and regional elections. The constituency returning officer must in his notice refer to the time and place of nominations for constituency candidates. The regional returning officer in the regional notice states the time and place for regional nominations, whether of a party or individual regional candidate.⁸³
- 1.127 In the nominations context, the use of AMS means that the rules must distinguish not only between constituency and regional contests, but also within the latter between the nomination of parties and that of (independent) individuals.
- (1) Constituency nomination papers are to be used by both independent and party-backed candidates standing in a constituency.
 - (2) Individual nomination papers must be used by an individual (independent) contestant for a regional election.
 - (3) Registered party nomination papers must be used by a registered political party, and must include a list of party candidates for use at the regional level. Thus the "nomination papers" nominate a party and its regional list.⁸⁴
- 1.128 Not all points of divergence from classical election rules are due to the voting system. There is no general requirement for subscribers. A single "witness to the candidate's signature" is required to sign an individual candidate's nomination paper for a constituency or regional election.⁸⁵
- 1.129 Save for the changes due to the AMS voting system and the substitution of a

⁸³ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 3(1) and (2).

⁸⁴ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 4(1), 5(1) and 6(1).

⁸⁵ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 5 (1), 5(2), 6(1).

single witness for subscribers, elections to the Scottish Parliament follow the parliamentary model mentioned above. This means certain ceremonial features are retained. The constituency and regional returning officers must be present at their respective places for the delivery of nomination papers.⁸⁶ Candidates, agents and registered party nominating officers have a right to attend nominations, as well as to inspect and object to nomination papers.⁸⁷ The nomination paper for a constituency or regional seat must be in one of three prescribed forms (for a constituency member, for an individual regional member, and for a party and its regional list). There is no scope, unlike some other elections, for using forms to the “like effect”.

- 1.130 There is one area of departure from the parliamentary model. For constituency or individual regional candidacies, the nomination paper must be delivered at the (constituency or regional) nominations place. However, unlike UK Parliamentary or Welsh Assembly elections, there is no further stipulation that it should be delivered by the candidate himself or his election agent. Instead, party nomination papers must be delivered by a party’s nominating officer or a person authorised by them in writing.⁸⁸
- 1.131 Detailed rules govern the content of candidates’ consent to nomination, which is also required of candidates named on a registered party’s regional list. The consent must state that the candidate is aware of disqualification provisions under the Scotland Act 1998 and give the usual assurances as to his qualification. No consent form is prescribed.⁸⁹
- 1.132 For withdrawal of candidacy a notice of withdrawal must be delivered to the place for delivery of nomination papers, signed by the candidate and attested by one witness in the case of constituency or individual regional candidates. The withdrawal of any or all of the party list candidates must be by notice from the registered party nominating officer.⁹⁰ This is in stark contrast to the European Parliamentary election rules, which restrict the nominating officer to either withdrawing the whole list, or not withdrawing at all.
- 1.133 In relation to a constituency or individual candidate, the classical (parliamentary model) rules are applied albeit adapted to require the use of a single witness rather than subscribers. The returning officer may only find a nomination paper invalid if the particulars of the candidate or witness are not as required by law, the

⁸⁶ The place for delivering constituency nomination papers must be in the constituency or the local government area within or adjoining it. Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 11. This is the case for UK Parliamentary elections also. This may be related to the ability in Scotland to appoint registration officers for an adjoining local government area. Representation of the People Act 1983 s 8(3); sch 1 r 10(3)

⁸⁷ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 11 to 13.

⁸⁸ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 rr 4 (1) and 5 (1).

⁸⁹ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 9.

⁹⁰ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 17.

paper is not witnessed or the candidate is disqualified by virtue of the 1981 Act serving prisoners' rule.⁹¹

1.134 As for the nomination of party list candidates – an area alien to the classical law – the concept of rejection of nomination papers purely on formal grounds is retained. The regional returning officer may only hold a regional list (in other words, the nomination of the party itself) invalid if:

- (1) the name of the party breaches the rule regarding the use of registered party names and descriptions and formalities regarding authorisations;
- (2) the number of candidates on the list is greater than 12; or
- (3) it contains no statement that it is issued by the party nominating officer or the person authorised by him to issue it.⁹²

1.135 Furthermore, the regional returning officer may delete any particular party list candidate from the list if the candidate's particulars in that list are not "as required by law", if the candidate is disqualified by virtue of the 1981 Act serving prisoners' rule or if the candidate's consent to nomination was not delivered in accordance with the election rules.⁹³

National Assembly for Wales elections

1.136 The nomination procedures are set out in the Assembly Election Rules (which here we will call the Welsh Assembly election rules) in schedule 5 to the National Assembly for Wales (Representation of the People) Order 2007.⁹⁴ These elections also use the additional member system, bringing with it the threefold configuration of nominations of constituency candidates, regional independent candidates and regional party list candidates.

1.137 The Welsh Assembly election rules follow the parliamentary election model. Candidates, agents, and party nominating officers accordingly have the right to attend nominations and consequently to inspect and object to nomination papers and consents to nomination. Nomination papers for election to a constituency seat must be delivered by the candidate himself, his election agent if appointed, or, if using a registered party description, by the nominated officer of the party. The latter option is unique to the Welsh Assembly elections. As a general proposition, where individuals contest a first past the post election the party is only acknowledged in respect of authorising descriptions and emblems. Nomination of parties is by the party nominating officer, and nomination of individual list candidates by the candidate in question or their election agent. The

⁹¹ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 14(2), 15(2).

⁹² Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 16(2).

⁹³ Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, sch 2 r 16(4).

⁹⁴ SI 2007 No 236.

nomination papers are prescribed in forms in schedule 10 to the 2007 Order. Also unique to the Welsh Assembly election rules is a requirement for a single subscriber, who may be the candidate. Written and attested consent to nomination is required, but no form is prescribed in the rules.⁹⁵

- 1.138 The deposit is £500 for both constituency and regional candidates – so it is £500 per party list or individual list candidacy. The place and time are fixed following usual parliamentary model procedures as is the right to attend nomination, modified to make reference to party nominating officers.⁹⁶

Greater London Authority elections

- 1.139 Elections to the Greater London Authority are treated as one election, but the Authority consists both of the Mayor of London, who is a single postholder elected by the supplementary vote. The London Assembly's membership is elected under the additional member system. London members are elected under a party list while constituency members are elected by first past the post at a particular constituency.

- 1.140 The approach of the legislators to Greater London Authority elections was to split the conduct rules according to each voting system. Not only is there a separate set of election rules for the Mayor of London elections, there are separate sets of rules for the election of London members and the election of constituency members. The three sets of election rules are appended to the Greater London Authority Elections Rules 2007.⁹⁷ This is in marked contrast to two other elections that use the additional member system, those for the Scottish Parliament and Welsh Assembly. These have one set of election rules that cover both components of the voting system.

- 1.141 The deposit and subscription requirements for Greater London Authority elections are as follows:

- (1) Mayoral candidates must deposit £10,000, which will be returned to the candidate on polling above a threshold of 5 per cent of votes cast. Their nomination must be subscribed by at least 330 electors, of which there must be at least ten who are "ordinarily resident" in each London Borough or the City.
- (2) Constituency candidates must deposit £1,000 on the same 5% threshold,

⁹⁵ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, rr 4,6, 7 and 9. The subscription requirement at r 4(5) is not accompanied by the usual provisions governing subscriptions, in particular the requirement that they be "electors in the constituency. One can conclude it is no true subscription requirement at all.

⁹⁶ National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, r 12(1) and (2).

⁹⁷ SI 2007 No 3541, sch 1 (the Constituency Members election rules), sch 2 (the London Members election rules) and sch 3 (The Mayoral election rules).

with no subscription requirement.

- (3) A registered party or an individual candidate running for office as a London member must deposit £5,000 on a 2.5% threshold. There is no subscription requirement.⁹⁸

1.142 The procedure from issue of notice of election to the close of nominations follows the local government election model. There is therefore no requirement that delivery of nomination papers at place specified in the notice of election be by certain persons only, nor a specified right to attend nominations and object to papers. Any person can inspect nomination papers during ordinary office hours and take copies. Candidates must be nominated by paper in the appropriate form appended in the schedule. For consents to nomination, but not nomination papers, there is provision for use of a form “to like effect” as the prescribed form, so that a substantially compliant form will do.⁹⁹

1.143 As is the case for EU Parliamentary elections and the party list component of elections to the Scottish Parliament or Welsh Assembly, the nomination rules governing the election of London members are affected by its use of the party list system. The provisions on nominations in the London members election rules mirror those in other election rules listed above. Unlike those elections, however, the London Members election follows the local government model so that there is no reference to a “right to attend” nominations nor an obligation of the Greater London returning officer to attend the place where nominations must be delivered. Nevertheless, certain elements of the parliamentary model remain. Thus there is a requirement that delivery of party nomination papers at the nominations place be by the party nominating officer or a person he authorised in writing only. Furthermore, delivery must be “to the Greater London Returning Officer”.¹⁰⁰ The drafting is inconsistent as to which of the classical models is followed. The election of London members of the Greater London Authority is the only election with a party list component that follows the local government election rules model.

1.144 The application of the classical rules to the nomination of candidates for Mayor of London is not materially affected by the use of the supplementary vote system. Under this system, the winner is the candidate with at least 50% of first preference votes outright, or of first and second preference votes taken together in the second round of counting. Recourse to second preferences presupposes at least three candidates running for election, so the election rules as a whole

⁹⁸ A full list of deposits for all elections is set out in Table B.

⁹⁹ SI 2007 No 3541, sch 1 rr 6(1) and 7(1), sch 2 rr 6(1), 7(1) and 9(1), sch 3 rr 6(1) and 8(1), sch 10 Forms 1 to 4.

¹⁰⁰ Greater London Authority Elections Rules 2007 SI 2007 No 1024, sch 2 rr 6(1), 7(1). By contrast, the equivalent – and classical local government model requirement – for the other two types of Greater London Authority elections is that the nomination paper be delivered “at the place fixed for the purpose” by the constituency returning officer or Greater London Returning Officer: sch 1 r 6(1)(b), sch 3 r 6(1)(b).

take that into account. Nominations are unaffected by this voting system.

Elections using the supplementary vote

Mayoral elections in England and Wales

- 1.145 The provisions on nomination and subscription are contained in schedule 1 to the Local Authority (Mayoral Elections) (England and Wales) Regulations 2007.¹⁰¹ The elections use the supplementary vote system which does not materially affect the classical rules on nominations.
- 1.146 The procedure from notice to nominations follows the local government election model. There is therefore no requirement that delivery of nomination papers at the nominations place be by certain persons only, nor any rule restricting the right to attend nominations and object to papers. Any person can inspect nominations papers during ordinary office hours and take copies. The nominations paper, and consent to nominations, must be in the forms appended to the rules or forms to “the like effect”.¹⁰² Mayoral candidates are not entitled to free postage, but instead are entitled to have their election address published in a booklet which is then sent to all electors.¹⁰³ Candidates must be nominated and their candidature subscribed by 30 assentors (a proposer, seconder, and 28 subscribers). The deposit is £500 which will be returned where a candidate polls more than 5 per cent of votes cast.¹⁰⁴

Police and Crime Commissioners in England and Wales

- 1.147 The provisions on nomination and subscription are contained in schedule 3 to the Police and Crime Commissioners Elections Order 2012.¹⁰⁵ The elections also use the supplementary vote system, which does not materially affect the law concerning nominations.
- 1.148 Candidates must be nominated and their candidature subscribed by 100 subscribers, including a proposer and seconder. The deposit is £5,000 which will be returned where a candidate polls more than 5 per cent of votes cast.¹⁰⁶ The nominations paper and consent to nominations must be the appropriate forms appended to the rules although the consent may be in a form to the “like effect”. Police and Crime Commissioner candidates are not entitled to free postage, there being a scheme for publicising candidates on the Home Office website.

¹⁰¹ SI 2007 No 1024.

¹⁰² Local Authority (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, sch 1 rr 6 to 10, 13 (inspection); sch 3 forms 1 and 2.

¹⁰³ Local Authority (Mayoral Elections) (England and Wales) Regulations 2007 SI 2007 No 1024, reg 6.

¹⁰⁴ See Table B.

¹⁰⁵ SI 2012 No 1917.

¹⁰⁶ See Table B.

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- 1.149 The procedure from notice of election to the close of nominations follows in the main the parliamentary election model. There is provision for personal delivery (by the candidate, agent, proposer or seconder) of nomination papers to the returning officer and a restricted right to attend nominations and object to papers.¹⁰⁷ However there is no special procedure relating to the disqualification of serving prisoners under the 1981 Act.
- 1.150 One curious point of departure from the parliamentary election model relates to the statement of persons standing nominated and withdrawals of candidature. Here PCC elections follow the local government model of enabling candidates to be nominated for more than one police area, provided that before the deadline for withdrawals they are nominated for one area only.¹⁰⁸ As noted above, this difference has been removed by recent amendment to the timetable for Police and Crime Commissioner elections.

Elections using the single transferable vote (“STV”)

Elections to the Northern Ireland Assembly

- 1.151 Elections to the Northern Ireland Assembly follow the parliamentary model, including its ceremonial features. No special adaptations are required to the classical nominations rules in consequence of their use of the single transferable vote system. They require the returning officer to be present for the delivery of nomination papers, and those present at this stage are permitted to raise objections to the nomination papers.¹⁰⁹ Nominations must be delivered by a candidate or agent, proposer or seconder.¹¹⁰
- 1.152 The right to attend at the receipt of the candidates’ nomination papers for elections under the parliamentary model is limited. The rules for elections to the Northern Ireland Assembly apply the Parliamentary Elections Rules, which allow candidates, their election agents and their proposers and seconders to attend. A deposit of £150 must accompany the nomination paper, and candidates must provide 10 subscribers including a proposer and seconder.¹¹¹ Nominations must be submitted on forms appended to the Representation of the People Act 1983.¹¹²

¹⁰⁷ Police and Crime Commissioners Elections Order 2012 SI 2012 No 1917, rr 5 to 10.

¹⁰⁸ Police and Crime Commissioners Elections Order 2012 SI 2012 No 1917, rr 15, 16.

¹⁰⁹ Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1 applying Representation of the People Act 1983, sch 1 rr 6 and 11.

¹¹⁰ Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1; Electoral Law Act 1962, sch 5 r 5(1).

¹¹¹ See Table B.

¹¹² Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, sch 1.

Elections to the European Parliament in Northern Ireland

- 1.153 Elections to the European Parliament in Northern Ireland, which use the STV system, also follow the parliamentary model. The returning officer must attend nominations, and only specified other persons are entitled to attend nominations and object to nomination papers.¹¹³
- 1.154 As for European Parliament elections in Great Britain, EU candidates who are non-nationals must declare their home address in the UK, that they are not standing as a candidate in the same election in another member state, and that they have not been disqualified in their home state.¹¹⁴ Candidates do not need to provide subscribers, but must pay a deposit of £5,000.¹¹⁵
- 1.155 No form of nomination paper is specified for European Parliamentary elections in Northern Ireland, although the law states that a nomination paper may be a single sheet of paper or two or more sheets of paper securely fastened together. This seems unnecessarily detailed for a legislative provision.¹¹⁶

Local elections in Northern Ireland

- 1.156 Elections to local government in Northern Ireland are governed by substantially the same rules as those applied to Northern Ireland Assembly elections.¹¹⁷ Uniquely for elections to local government, they follow the parliamentary election model. Candidates do not however have to pay deposits. The 10 subscribers must be from the relevant district electoral area.¹¹⁸ Nominations may be made on forms specified in the Appendix to schedule 5 to the Electoral Law Act (Northern Ireland) 1962, although any forms required for local government elections in Northern Ireland may be substituted by a form to substantially the same effect.¹¹⁹
- 1.157 A candidate for local election in Northern Ireland must also submit a declaration against terrorism as part of their consent form; without this, the nomination will be invalid.¹²⁰ There is no equivalent in local elections in the rest of the UK, nor for candidates to the new Northern Ireland Assembly. This requirement does not extend the discretion of the returning officer to reject nomination papers; it is merely another formal requirement analogous to the provision on the consent

¹¹³ European Parliamentary Elections (Northern Ireland) Rules 2004 SI 2004 No 1267, sch 1 rr 9 and 10.

¹¹⁴ European Parliamentary Elections (Northern Ireland) Rules 2004 SI 2004 No 1267, sch 1 r 7.

¹¹⁵ European Parliamentary Elections (Northern Ireland) Rules 2004 SI 2004 No 1267, sch 1 r 8.

¹¹⁶ European Parliamentary Elections (Northern Ireland) Rules 2004 SI 2004 No 1267, sch 1 r 4(6).

¹¹⁷ Electoral Law Act (Northern Ireland) 1962, sch 5 rr 5(1), 9.

¹¹⁸ Electoral Law Act (Northern Ireland) 1962, sch 5 r 6(1).

¹¹⁹ Electoral Law Act (Northern Ireland) 1962, sch 5 r 3A.

¹²⁰ Elected Authorities (Northern Ireland) Act 1989, s 3(1).

form which requires candidates to attest that they are not disqualified from office. It is not therefore analogous to the role at parliamentary model elections of the 1981 disqualification provisions.

Scottish local government elections

- 1.158 Elections to Scottish local government follow the local government model, which does not have the ceremonial features of the parliamentary model. Nomination procedures merely require that nomination papers be “delivered” at the nominations place. Nor is the presence of the returning officer at that place required. No special objection procedure is envisaged, although as with local government elections in England and Wales interested parties may inspect nomination papers at the returning officer’s office after the last day for nominations.¹²¹
- 1.159 No deposit is required for elections to Scottish local government, although nomination papers must be accompanied by the candidate’s signature and a witness to that signature.¹²²
- 1.160 Nominations may be submitted on a form provided by the returning officer, or one to the like effect.¹²³ At Scottish local government elections, there is no requirement for a statement of persons nominated to be published. Instead, the notice of poll fulfils the function of publicising which candidates have been validly nominated for election.¹²⁴

¹²¹ Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 11.

¹²² Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 6;

¹²³ Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 4(1).

¹²⁴ Scottish Local Government Elections Order 2011 SSI 2011 No 399, sch 1 r 20.

APPENDIX A: ELECTION TIMETABLES (FROM NOTICE OF ELECTION TO CLOSE OF NOMINATIONS NOMINATION)

Election	Notice of election	Delivery of nomination Papers	Notices of Withdrawals	Objections to nomination papers	Statement of persons nominated
UK Parliament (general) ¹²⁵	Day 3, 4pm	Day 6, 10am to 4pm	Day 6, 4pm	Day 6, 5pm	Day 7, 4pm
EU Parliament (general)	25	24 to 19, 10am to 4pm	19, 4pm	19, 10am to 5pm for nomination papers delivered after 20, 4pm 19, 10am to 12pm for all other nomination papers	19, 5pm if no objections 18, 4pm (at the latest) if there are objections
Scottish Parliament	35 to 28	23, 4pm	23, 4pm	23, 10am to 5pm for nomination papers delivered after 24, 4pm 23, 10am to 12pm for all other nomination papers	23, 5pm if no objections 22, 4pm (at the latest) if any objections
NI Assembly	25	24 to 17, 10am to 4pm 16, 10am to 1pm	16, 1pm	24 to 17, 10am to 4pm 16, 10am to 2pm	16, 6pm (or as soon as practicable thereafter) if no objections 15, 1pm (at the latest) if any objections
Welsh Assembly	25	24 to 20, 10am to 4pm 19, 10am to 12pm	17, 12pm	19, 10am to 1pm ¹²⁶	16, 12pm

¹²⁵ UK Parliamentary elections are unique in that their time table runs from the proclamation of a new Parliament, so the deadlines can be expressed sequentially from that day, with the poll occurring on day 25. We express the deadlines as day 3, 6, 7. For other elections, whose timetables are calculated back from polling day, we give a simple number. The timetables for each election are found at start of the election rules appended to the core provisions governing each election.

¹²⁶ The rule on objections is an exact copy from the timetables found in other election rules. However, it doesn't make sense in the context of these election rules, since nomination papers cannot be delivered in the afternoon of the last day.

Election	Notice of election	Delivery of nomination Papers	Notices of Withdrawals	Objections to nomination papers	Statement of persons nominated
Local (Principal) (EW)	25	19, 4pm	19, 4pm	n/a	18, 4pm
Local (Parish /Community) (EW)	25	19, 4pm	19, 4pm	n/a	18, 4pm
Local (Scotland)	35 to 28	23, 4pm	23, 4pm	n/a	n/a
Local (NI)	25	24 to 17, 10am to 4pm 16, 10am to 1pm	16, 1pm	24 to 17, 10am to 4pm 16, 10am to 2pm	16, 6pm (or as soon as practicable thereafter) if no objections 15, 1pm (at the latest) if any objections
PCC (EW)	25	19, 12pm	19, 12pm	n/a	18, 12pm
GLA	30	24, 12pm	21, 12pm	n/a	22, 12pm
Mayoral (EW)	25	19, 4pm	19, 4pm	n/a	18, 4pm