
RESEARCH PAPER: THE REGISTRATION OF ELECTORS IN THE UK

The law stated in this research paper may be in parts out of date.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.

INTRODUCTION

- 1.1 The registration of electors is the permanent, year-round electoral function in the UK which is carried out by an official called the “electoral registration officer”. We noted in our review of the law on polling that entry into the electoral register conclusively governs entitlement to vote on polling day. Indeed, the requirement to register in order to vote is a part of the electoral franchise, which we presently turn to. We will then consider the fundamental residence requirement for registration, and the mechanics of electoral registration itself.

THE FRANCHISE

- 1.2 No area of electoral law is more important than the franchise. It governs entitlement to vote at UK elections. Along with electoral boundaries and voting systems, it is a core parameter of representative democracy and the right to free elections. Because of its political and constitutional importance, we excluded the franchise, at the scoping stage, from substantive reform. We did, however, reserve our ability to consider the proper place within the legislative hierarchy of provisions as to the franchise, and to restate the current franchise within the reformed electoral law framework.

The 1983 Act franchises

- 1.3 Sections 1 and 2 of the 1983 Act set out the basic franchise for UK Parliamentary and local government elections respectively. Sections 3 and 4 disenfranchise from either type of election convicted serving prisoners and offenders detained in hospitals for the treatment of psychiatric disorder under the Mental Health Act 1983 or under the Criminal Procedure (Insanity) Act 1964.

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

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- 1.4 Local government elections are defined by the 1983 Act to include the election of any councillors in Great Britain, Greater London Authority elections, and Mayoral elections in England and Wales, so the section 2 franchise and local government register govern those elections.²

Other elections adopt the local government franchise

- 1.5 Other elections' franchises, while formally set out in their discrete governing legislation, in truth adopt the local government franchise in the 1983 Act, by tying their franchise to being a putative local government elector: a person is entitled to vote at a Police and Crime Commissioner election, for example, if they would be entitled to vote as a local government elector.³

The European Parliamentary election franchise

- 1.6 The only exception is the European Parliamentary election franchise. A person is entitled to vote at that election if on the day of the poll they would be entitled to vote as an elector at a UK Parliamentary election. However, a person is also entitled to vote at the election if:

- (1) they are a resident peer who would be entitled to vote at a local government election;
- (2) they are an overseas peer entitled to vote under the Representation of the People Act 1985; or
- (3) they are an EU national entitled to vote under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001.⁴

- 1.7 The way in which these other electors are registered is explained in detail below.

Outline of the franchise in UK elections

- 1.8 In order to vote at UK elections, a person must satisfy four requirements on polling day.

² Entry into the Parliamentary register entitles an elector to vote in UK Parliamentary elections. Interpretation provisions (Representation of the People Act 1983, ss 203(1) and 204(1)) include elections of councillors in England, Wales and Scotland, GLA and Mayoral elections in the definition of local government elections for the purpose of the local government register. The local government register is applied in: Scottish Parliament (Elections etc.) Order 2010 SI 2010 No 2999, art 2; National Assembly for Wales (Representation of the People) Order 2007 SI 2007 No 236, art 2; Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, art 4; Elected Authorities (Northern Ireland) Act 1989, s 1.

³ Scotland Act 1998, s 11; Government of Wales Act 2006, s 12; Northern Ireland Assembly (Elections) Order 2001 SI 2001 No 2599, art 4; Local Government Act 2000, s 43; Police Reform and Social Responsibility Act 2011, s 52.

⁴ European Parliamentary Elections Act 2002, s 8(3); Representation of the People Act 1985, s 3; European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 SI 2001 No 1184, reg 3.

Entry in the relevant electoral register

- 1.9 Registration is a mandatory part of the franchise in the UK. It introduces a requirement of residence, which drives entitlement to register. That includes notional residence for overseas voters, overseas peers, and certain voters registered pursuant to making a declaration (such as those in mental health institutions). While residence can be seen as an administrative device, determining where particular citizens can exercise their entitlement to vote, it also accords with the traditional concept of community representation.⁵
- 1.10 As well as bringing residence into play, in practice registration is determinative of the right to exercise the franchise on polling day, as far as electoral administrators are concerned. It is crucial, therefore, that persons are only registered who also satisfy the requirements under the next three headings.

Citizenship

- 1.11 To vote in a UK Parliamentary election a person must be a Commonwealth citizen (which includes a British citizen) or a citizen of the Republic of Ireland. In order to be entitled to be registered, a Commonwealth citizen must either have, or not require, leave to be in the United Kingdom under the immigration legislation. At all other elections “relevant” citizens of the European Union also enjoy the franchise. A relevant citizen of the European Union is one who is not a Commonwealth citizen or a Irish citizen.⁶

Voting age

- 1.12 UK electors must be 18 years of age or older.

⁵ H Rawlings, *Law and the Electoral Process* (1988) p 80.

⁶Representation of the People Act 1985, s 4; European Parliamentary Elections (Franchise of Relevant Citizens of the Union Regulations 2001 SI 2001 No 1184, reg 1.

Freedom from legal incapacity to vote

- 1.13 Certain persons are disqualified from voting. These include persons detained under the Mental Health Act 1983 and pursuant to a criminal conviction,⁷ prisoners serving a sentence after conviction, and persons guilty of corrupt or illegal practices. At UK Parliamentary elections peers of the realm are also subject to a legal incapacity from voting, save for hereditary peers unable to sit in the House of Lords under sections 1 and 2 of the House of Lords Act 1999. The current legal incapacity of peers from voting is not positively set out in legislation, but is instead based on ancient case law.⁸

RESIDENCE AND SPECIAL CATEGORY ELECTORS

- 1.14 A person's entitlement to be registered turns on their being resident within the electoral area in question.⁹ Registration officers need to be able to determine whether someone is resident, and where. Unexpressed, but fundamental to the electoral system, is the idea that residence connects a person to a geographical area that has democratic representation. Residence provides a person with what we call an "electoral connection".

The concept of residence in the electoral context

- 1.15 Residence is a straightforward term which, when used in the electoral context, can extend to a variety of circumstances. It is best to deal with it by considering the diverse scenarios in which one might ask whether someone is resident for the purposes of electoral registration.

The central case of residence

- 1.16 The central example of residence covers most of the UK's population. A person is settled at premises at a given address which is publicly recognised as such: it has a postcode, street name and house number and so on. They may be away for reasons of work or leisure, but are principally settled and live there; it is their home. There is little difficulty in practice with the central case of residence. The difficulty arises in the more subtle departures from this case – what we call "peripheral" cases of residence.

⁷ Section 3A of the 1983 Act applies to detention in mental health institutions pursuant to other measures, for example the Criminal Procedure (Insanity) Act 1964, where technically there has been no conviction; however the detention arises out of criminal proceedings and conduct, even if it short of culpable in strict criminal law terms. The disqualification does not extend to persons detained under the Mental Health Act other than through a court order made in connection with criminal proceedings.

⁸ Persons subject to "any legal incapacity to vote (age apart)" are not entitled to vote at UK Parliamentary elections or to be registered: Representation of the People Act 1983, ss 1(1)(b) and 4(1)(b); peers of the realm were the subject of repeated House of Commons resolutions declaring them not to have the franchise to elect members of the lower House, which was understood by the courts to be the House of Commons declaring the common law in its capacity as the highest court of the land: 13 Commons Journal 64 (1699); *Earl Beauchamp v Madresfield Overseers* (1872-3) 8 LRCP 245. Section 3 of the House of Lords Act 1999 enables hereditary peers who are not members of the House of Lords by virtue of section 2 of that Act to vote at elections to the House of Commons.

⁹ Representation of the People Act 1983, s 4.

Peripheral examples of residence

- 1.17 Some persons inhabit places that may not have a postcode, live in a mobile home, a boat, and so on. They may be homeless and sleep in a different place on many nights. They may “couch surf” at the residences of friends. There is tension in how the law should deal with peripheral examples of residence:
- (1) On the one hand, it is no longer a function of residence to allocate the franchise based property-owning qualifications. It cannot be right, therefore, that a homeless person, a traveller or someone who lives in a boat cannot register because they have no “residence” in the more common sense of the word. Were that to be the case, it would risk disenfranchising people on the basis of their low financial means, which is no longer the object of the residence requirement.
 - (2) On the other, if someone’s living arrangements are such that they move from one place to another, it is more difficult to tie them down to a particular area and its electoral community. It also opens up an opportunity for such persons to choose an electoral community for tactical reasons: to target particular seats, or marginal ones, for example.
- 1.18 Electoral law seeks to deal with peripheral cases of residence so that as many electors as possible retain access to the democratic system. So far as possible, persons whose residence is peripheral should be registered under ordinary residence principles. If they cannot, the mechanism of the “declaration of local connection” is used to allocate them to an electoral community. As we will see, the relationship between these two mechanisms is incoherent.

The resident who is away from home

- 1.19 Another difficult question is what the relationship between elector and residence should be. In the central case, presence and residence go hand in hand. Some electors, however, are called away from their residence on business, or study, temporarily or indefinitely. They may nevertheless regard it as their “home”. The question here is: in what circumstances will a person retain an “electoral connection” to a place notwithstanding their absence, so that they continue to be represented in that community? We will see that electoral law seeks to guide registration officers so that they ignore temporary absences for work or study, and provides a mechanism for overseas electors to vote at UK Parliamentary elections.

Second residences

- 1.20 Some electors have more than one home and apportion their time between both. In principle this begs the question, should the law insist on only one residence providing an electoral connection? Or can an elector have a sufficient electoral connection to two places, so that they are entitled to be represented in each?¹⁰ The law might seek to give a definitive answer, or test, for whether successive places can amount to second residences entitling them to register there too. We will see that at present the legislation says nothing about second residences, leaving guidance to the courts, from which registration officers take their cue.

Residence as physical fact and intentional context

- 1.21 These considerations reveal an important aspect of residence for electoral purposes. There is tension between two senses of the word residence
- (1) The first refers to the simple fact of physical presence at a particular place. A synonym for residence in this sense would be “occupation”. In this sense, the place of residence is the answer to the question “where do you live?”
 - (2) The second admits of residence notwithstanding even prolonged, absence: despite being absent from a place, someone may nevertheless reside there, when regard is had to the purpose of someone’s absence, their ties to the residence and the community it is in, and their intention with respect to resuming bare physical presence. A synonym for residence in this sense would be “home”.
- 1.22 As we will see, UK electoral law does not give a definition of residence. It provides indicators for registration officers to come to their own view. These relate to specific situations, such as temporary absences due to work or study.

Section 5 of the 1983 Act and standard residence

- 1.23 The “standard” meaning of residence is dealt with in section 5 of the 1983 Act, while particular cases are dealt with elsewhere. In those other cases, of “special category” electors, there is an effort to connect persons to a residence which is “notional”; it is an artificial way of allocating persons to an electoral area. We will consider the law on residence generally before moving on to the special categories which use notional residence.
- 1.24 Section 5 of the 1983 Act provides:

- (1) This section applies where the question whether a person is resident at a particular address on the relevant date for the purposes of section 4 above falls to be determined for the purposes of that section.

¹⁰ Multiple registration does not mean the elector can vote multiply at the same election – for example at a General election – but it does allow them to vote at different elections on the same day: for example, concurrently held ordinary local government elections, or Parliamentary by-elections.

(2) Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address on that date.

For example, where at a particular time a person is staying at any place otherwise than on a permanent basis, he may in all the circumstances be taken to be at that time –

- (a) resident there if he has no home elsewhere, or
- (b) not resident there if he does have a home elsewhere.

(3) For the purposes of determining whether a person is resident in a dwelling on the relevant date for the purposes of section 4 above, his residence in the dwelling shall not be taken to have been interrupted by reason of his absence on the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him if –

- (a) he intends to resume actual residence within six months of giving up such residence, and will not be prevented from doing so by the performance of that duty; or
- (b) the dwelling serves as a permanent place of residence (whether for himself or for himself and other persons) and he would be in actual residence there but for his absence in performance of that duty.

(4) For the purposes of subsection (3) above any temporary period of unemployment shall be disregarded.

(5) Subsection (3) above shall apply in relation to a person's absence by reason of his attendance on a course provided by an educational institution as it applies in relation to a person's absence in the performance of any duty such as is mentioned in that subsection.

(6) Subject to sections 7 and 7A below, a person who is detained at any place in legal custody shall not, by reason of his presence there, be treated for the purposes of section 4 above as resident there.

THE "RELEVANT DATE"

- 1.25 Section 5 refers to residence on the "relevant date", defined by section 4(6) as the date on which an application for registration is made (or by virtue of section 10A(2), is treated as having been made; this refers to the canvass date in Northern Ireland, which is 15 October). For individual applications throughout the UK, the question is whether the applicant is resident at an address when they apply to register. The reference to a particular date is apt to confuse. The issue is not simply what accommodation a person physically occupied on that date, but whether the person was resident there. The registration officer's decision must be made based on the position on that date, but the officer is not determining residence on that particular day only, but by reference to that date.¹¹ Similarly, moving persons into premises purely for the purposes of registration does not make them truly resident there.¹²

What can be gleaned from the section 5 guidance

- 1.26 Section 5 has limited aims: It gives guidance in particular scenarios, refers officers to certain factors, and highlights the notion that the context of physical absence or presence is important. Even with that limited aim in mind, section 5 can be criticised. It uses the terms "resident", "factual residence" "home", "dwelling" and "address" without further definition. It does not deal with multiple residence at all.

ABSENCE OR PRESENCE AS FACTORS WHICH TURN ON CONTEXT

- 1.27 While presence or absence is plainly an important indicator of residence, section 5 emphasises the importance of the reason for such presence or absence. That can be understood as a narrative context. Section 5 gives the example of an elector who is present at a place, but not permanently. That person is resident there if they have no home elsewhere, but not if they do. The same factual circumstances may thus lead to different conclusions as to residence for electoral purposes, purely based on the context (having a more settled home elsewhere).
- 1.28 What is unexpressed here is the concern in electoral law to avoid disenfranchisement. For some, there may be a choice of places which, based on the "fact" of residence (physical occupation), might be identified as their residence. If one of those places is their home and the other is mere temporary accommodation, the former is taken as the residence, connecting the person to the electoral community it is within. If a person has no "home" beyond mere temporary accommodation, then it does not matter that it is temporary. It establishes the necessary electoral connection and is their residence.

¹¹ *Scott v Electoral Registration Officer for Kinross and West Perthshire* 1980 SLT (Sh Ct) 126 at 127. "Miss Ritchie was not in fact, it was agreed, present in Callander on [10 October 1978], but this is of itself of no practical significance".

¹² *Ali v Bashir* [2013] EWHC 2572 (QB) 29 July 2013 at paras 36 and 37.

DISREGARDING INTERRUPTIONS IN PRESENCE

- 1.29 The emphasis on purpose and context enables the registration officer to determine the effect of absence upon residence, taking into account the reason for any absence and the elector's intentions with respect to the residence. Ill health, for example, may cause an elector to seek prolonged treatment elsewhere, but their electoral residence may, in all the circumstances, continue.
- 1.30 In other areas of law, legislation lays down a rule as to when temporary absences do not negate underlying residence.¹³ Electoral law requires absences to be disregarded in just two contexts: work and study. Section 5(3), read with section 5(5), provides that a person's residence in a dwelling "shall not be taken to have been interrupted" by reason of their absence in the course of employment or study, provided either:
- (1) that person intends to resume "actual" residence within six months of leaving, or
 - (2) the dwelling serves as a permanent place of residence for that person, with or without others, and the person would otherwise be in actual residence there.
- 1.31 The purpose of this provision is to preserve residence from the effect of an elector's absence. Only if residence has been "interrupted" will conditions (1) and (2) be engaged. If they are, the registration officer is under an obligation to disregard the interruption. So this provision is supplemental to the general position whereby the registration officer must have regard to the purpose and context of absence or presence at premises in order to determine residence.
- 1.32 The first condition is clearly defined. Absence from an existing residence is discounted, provided it is temporary (that is, of not more than six months' duration) and for the purpose of work or study.

THE ABSENT RESIDENT

- 1.33 The second condition is far more troublesome. The duration of the absence is open ended, unlike the first condition. As a self-standing condition, its wording is opaque and the net result is to impute continued residence notwithstanding absence for reasons of work or study, irrespective of how long it lasts.

¹³ For example, Article 11(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States OJ 2004 L158/77. It saves the validity of EU citizens' residence card from the effect of up to 6 months' temporary absence generally, or longer due to compulsory military service or for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

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- 1.34 There may be an argument that this provision is targeted at preserving ties to an electoral community based on family residence— a gone away wage earner or student remains resident where their family resides, and where they were previously resident. If so, the first proviso appears to be completely pointless and is subsumed by the second.
- 1.35 That argument rationalises what appears to be poor drafting. The current section 5 was inserted into the 1983 Act by section 3 of the Representation of the People Act 2000. Some provision preserving residence from the implications of temporary absence had existed in the Representation of the People Act 1949, and the original section 5 of the 1983 Act.
- (1) In 1949, section 4(2)(b) of the 1949 Act preserved residence from interruption by reason of the elector leasing or otherwise permitting others to live in the premises, either during the period of up to six months' temporary absence due to work, or for a nine week period (for any reason).
 - (2) Section 5(2)(b) of the 1983 Act reproduced, with minor changes, this provision.
- 1.36 As originally drafted, then, the second proviso was distinguished from the first as follows:
- (1) It applied to a period of absence for any reason whatsoever and not just work.
 - (2) It was conditional on a resumption of "actual" residence within a shorter period: nine weeks instead of six months.
- 1.37 Plainly, a decision was made to remove the second condition, and no reference is made any longer to permitting others to use the property. The newly drafted second condition absorbs the first: it envisages an "absent resident" who is away due to work or study, with no limitation on the length of the absence. We are of the view the two conditions were not intended to be alternatives, but were instead intended to be conjunctive: a person absent due to work must intend to resume, and be able to resume, occupation within six months, and the dwelling must serve as a permanent place of residence which they would occupy but for that duty. If this view is correct, the word "and" should connect section 5(3)(a) and (b) not "or".
- 1.38 It is possible to give meaning to the section as presently drafted. For example, it is possible to apply the first condition (six months absence on work or study) to more peripheral cases of residence than the second. Section 5(2)(a) itself states that if a person is staying at a place otherwise than on a permanent basis, they may be taken to be resident there if they have no home elsewhere. One could then apply section 5(3)(a) to disregard any absence of up to six months for work or study, and take their residence not to have been interrupted. Section 5(3)(b) would apply only to those whose dwelling serves as a "permanent place of residence": to the central cases of residence, and not peripheral ones.

1.39 This remains an unsatisfactory interpretation. The point of section 5(2)(a) is to allow persons who have the franchise to exercise it by finding residence based on physical presence even if it lacks permanence. If these persons are away for up to six months, then their residence should be where they physically dwell at that time. The section 5(3) conditions' function is to allow persons who are temporarily absent from their settled home to continue to be resident there, provided they intend to, and do return. The second proviso, read conjunctively with the first, reinforces the requirement for permanence of the residence, and that it would be their putative home but for the absence on work or study. We conclude that the law is poorly drafted, and the word "and", not "or", should appear after section 5(3)(a) of the 1983 Act, to explain its relation to subsection (3)(b).

Meaning of residence pursuant to case law

1.40 Glossing on the statutory language, case law has laid down some now well-established principles, including that:

- (1) A person can have more than one residence.¹⁴
- (2) It is not relevant that residence is unlawful.¹⁵
- (3) Temporary absence or presence does not affect residence.¹⁶
- (4) The intention of the applicant is relevant to a decision on residence.¹⁷

1.41 The word "residence" has different meanings in different branches of the law, but in general is distinguished from mere presence. In the tax law context, recourse was had to the Oxford English Dictionary definition of reside as "to dwell permanently, or for a considerable time, to have one's settled abode...."¹⁸ In the electoral context, the courts have agreed that residence connotes a considerable degree of permanence.

¹⁴ *Fox v Stirk and Bristol Electoral Registration Officer, Ricketts v Cambridge City Electoral Registration Officer* [1970] 2 QB 463; *Scott v Phillips* 1974 SLT 32

¹⁵ *Beal v Ford* (1877) 3 CPD 73; *Hipperson v Newbury Electoral Registration Officer* [1985] QB 1060.

¹⁶ *Borough of Oldham* (1869) 1 O'Malley and Hardcastle 151 at 158; *Fox v Stirk, Ricketts v Cambridge* [1970] 2 QB 463

¹⁷ *Fox v Stirk, Ricketts v Cambridge* [1970] 2 QB 463, Representation of the People Act 1983, s 5(3)(a).

¹⁸ *Levene v Inland Revenue Commissioners* [1928] AC 217 at 222, cited in *Fox v Stirk* [1970] 2 QB 463 and *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] QB 1060.

1.42 In *Fox v Stirk and Bristol Electoral Registration Officer, Ricketts v Cambridge City Electoral Registration Officer*, [1970] 2 QB 463, the Court of Appeal considered whether certain students at Bristol and Cambridge Universities were resident and entitled to be entered on the local electoral registers. Lord Denning MR referred to the above dictionary definition of residence. Lord Widgery elaborated on this definition by stating that “some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence”. The court held that the fact that the students were living and sleeping in their halls of residence for at least half of the year was a sufficient degree of permanence to be resident for registration purposes.¹⁹

1.43 The courts have acknowledged that more even more peripheral residence can suffice, and the circumstances of impermanence, precariousness or absence will affect residence in a different way. In *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] QB 1060, the Court of Appeal dismissed objections to residence based on unlawful occupation by the campaigning “Greenham Common women” of an area outside an air base. Sir John Donaldson MR said:

[T]o import considerations based on the standard of accommodation into qualification for the franchise would be to put the clock back to the days when the franchise depended on a property qualification and is quite unwarranted by anything in the 1983 Act. It may be unusual to make one's home in a tent, bender or vehicle, but we can see no reason in law why it should be impossible. Section 5(2) of the 1983 Act may well have an application which is limited to dwelling houses, but this only means that circumstances which could not interrupt a person's residence in a dwelling house may interrupt his residence in a tent.²⁰

1.44 What appears to us to underlie judicial pronouncements on residence is a concern to establish the best connection between a person and the area in which they seek to be registered. As such, laying down an exhaustive definition of residence is a challenging task. The question is whether and how the law can enable more consistent and principled decisions by registration officers.

Second electoral residence

1.45 There has been concern about inconsistent decision making in the context of electors seeking to be registered in a second home, claiming in two electoral areas at once.²¹ The legislation says nothing of multiple residences. In the case-law establishing that multiple electoral residence is in principle possible, the English courts are seen as having taken a more lenient stance than their Scottish counterparts on what amounts to a second electoral residence.

¹⁹ [1970] 2 QB 463 at 475, 477.

²⁰ [1985] QB 1060 at 1075.

²¹ Electoral Commission, Submission to 11th Programme of Law Reform (2010) at p 7.

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1.47 *Fox v Stirk*, the Court of Appeal of England and Wales held that students could be registered in respect of their residence in halls of accommodation as part of their study. In considering the concept of residence, one of the principles derived by Lord Denning was that “a man can have two residences. He can have a flat in London and a house in the country.” Lord Denning did not give guidance as to how a person can have the requisite degree of permanence to be resident at two places.²²

1.48 In the Scottish case of *Scott v Phillips* 1974 SLT 32, an architect owned a house and was the tenant of a cottage. He had spent, over a period of seven years, three and half months each year on average at the cottage. He had certain local interests there. While the Registration Appeal Court accepted there was the requisite degree of permanence for residence at the cottage, it held that the cottage was merely an “incidental” residence, and the house was the “substantive” home: the family home where the majority of time was spent. In contrast, the cottage was a holiday home for the “purpose of leisure and relaxation in the country” and thus insufficient.²³

1.49 In coming to that conclusion, the court doubted the correctness of Lord Denning’s statement in *Fox v Stirk*.²⁴ However, a close reading of *Scott v Phillips* points out that the court based its decision on a reference in section 4 of the 1949 Act to general principles under a predecessor act.

It is, we think, of importance that section 4(1) provides that the question of entitlement to registration is to be determined “in accordance with the general principles formerly applied in determining questions arising under the Representation of the People Act 1918, ... [under that Act] the basis was a qualifying period but under the Act of 1949 the basis is a qualifying day. Nevertheless, the same principles are to be applied. The Court of Appeal, in *Fox v Stirk* (supra), seem to ignore the reference to the general principles formerly applied in determining questions under the said Act of 1918. Lord Denning MR, with a complete disregard for the fact that the Act of 1949 did not only apply to England, stated categorically that “there are no cases reported under the Representation of the People Act 1918”. There is a reported case under the Act of 1918, namely, the case of *Ferris v Wallace*, 1936 SC 561, 1936 SLT 292 to which the sheriff principal referred and on which he relied.

²² [1970] 2 QB 463 at 476

²³ 1974 SLT 32 at 33 and 34.

²⁴ [1970] 2 QB 463 at 475.

It cannot be doubted that the general principles found to be applicable in that case apply to the present case. Each member of the registration court in that case decided that where, as here, a person has a “permanent home”, to use a neutral phrase, in two electoral areas, and one home is a home which is only incidental to the substantive home, the former is not to be taken as the “residence” for the purpose of qualifying under the said Act of 1949.²⁵

- 1.50 Two main principles emerge from the Scottish authorities. First, that the question as to whether a voter is resident at a particular property for electoral registration purposes is one of fact and degree; in essence a jury question. Thus it has been said that “each case must depend on its own facts”.²⁶ Similar statements appear elsewhere in the case law, such as, for example, “what should constitute residence in a question of this kind is a question of fact, and is largely a question of degree”²⁷, and “it appears...to be merely a question of circumstances in each particular case whether the condition of residence can be held to have been satisfied or not”.²⁸ This is in addition to the statutory criterion in section 5 of the Representation of the People Act 1983 (in the same terms as its predecessor provision, section 4 of the Representation of the People Act 1949) that regard is to be had to the “purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address on that date”.

The second main principle is the distinction, where a person has two residences, between a “substantive” and “incidental” residence. Thus Lord Murray in the case of *Ferris v Wallace*²⁹ accepted the test applied in *Stewart v McFadzean*³⁰ and *Sim v Galt*,³¹ that where the occupier has an “undoubted residence in Glasgow, and what, for short, I may term a week-end and summer holiday residence in a hut or dwelling-house in the country – it is legitimate to consider whether the time spent in the country hut or dwelling-house is a substantive residence or merely a residence which is incidental to the residence in Glasgow”.³² In *Stewart v McFadzean*,³³ Lord Trayner concluded that the person in question “resides in Glasgow, and his visits to Bute seem to me not to be in any proper sense a residence or inhabiting, but visits incidental to the residence which he has in Glasgow”.³⁴

²⁵ 1974 SLT 32 at 34.

²⁶ *Scott and Another v Phillips* 1974 SLT 32, p 34.

²⁷ *Ferris v Wallace* 1936 SC 561, p 563.

²⁸ *Sim v Galt* (1892) 20 R 84, p 86.

²⁹ 1936 SC 561.

³⁰ (1890) 18 R 349.

³¹ (1892) 20 R 84.

³² *Ferris v Wallace* 1936 SC 561, p 563.

³³ (1890) 18 R 349.

³⁴ *Stewart v McFadzean* (1890) 18 R 349, p 350.

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- 1.51 A key point to make is that notions of “substantive” and “incidental” residences are only relevant if there is a sufficient degree of permanence in both residences. In *Scott v Kinross* the Sheriff distinguished the second home cases and stressed that when determining residence in a particular place, the mere fact of sleeping elsewhere was not the sole focus of the inquiry. Instead, the nature and quality of occupation and the purpose and circumstances of any break in such occupation are also key considerations. He concluded that the elector in question was resident in Callander, her family home, even though she was frequently away in London and abroad seeking education and job opportunities. It was her home.³⁵
- 1.52 Where a person has two homes, the Scottish authorities have not doubted that a person can have two “substantive” residences. In *Dumble v Borders* 1980 SLT (Sh Ct) 60, the Sheriff Principal held that a would-be candidate for election in Ancrum was resident both there, where he leased a property, and in Glasgow, where he owned another. Presence in each was necessary for Mr Dumble’s careers in law and politics, and neither was incidental to the other. If Parliament had intended for registration to be confined to a single residence, it would not have made a separate provision to prohibit a person voting in more than one constituency. The Sheriff Principal did, however add the following:
- ... I do not think that a holiday cottage or a house which was used for purposes only incidental to the elector’s main activities in life would qualify as a residence. In England it may be otherwise... but the Scottish courts have not been willing to accept a house in the country, the main purpose of which is to afford facilities for relaxation and leisure, as a qualifying residence.³⁶
- 1.53 The Scottish courts’ refusal to recognise incidental residence as residence for electoral purposes was originally based upon the requirement in section 4 of the 1949 Act and in section 5 of the 1983 Act as originally enacted to have regard to the “general principles” applied under predecessor legislation. That requirement was removed when section 5 was replaced in 2001.³⁷ DO THE SCOTTISH COURTS STILL APPLY THE INCIDENTAL TEST POST 2000? However, we understand that students are registered in Scotland in the same way in England and Wales.³⁸

³⁵ *Scott v Kinross* 1980 SLT (Sh Ct) 126 at 128.

³⁶ 1980 SLT (Sh Ct) 60 at p 61 and 62.

³⁷ By the Representation of the People Act 2000.

³⁸ See <http://www.saa.gov.uk/central/centralerofoqs.html#question8> (last visited 5 September 2014).

RATIONALISING THE CASES IN THE UK

- 1.54 The words of the 1983 Act apply equally to Scotland and England and Wales, and there is no justification for differences in practice in these jurisdictions. The precise wording of section 5, now devoid of reference to “general principles” formerly applied under predecessor Acts to the 1983 Act, does not mention “substantive” and “incidental” residences. We consider that the following propositions summarise the legal position:
- (1) The test for residence under section 5 applies to second homes. The courts have adjudged that presence at the second home must have the requisite degree of permanence.
 - (2) However, section 5 requires registration officers to consider the “purpose and other circumstances”, as well as the fact, of presence at or absence from the second home. It is not simply a question of time spent there.
 - (3) Full-time students are generally entitled to be registered as resident in their university towns and probably also at their parental home, where they are likely to spend a significant amount of time outside term.
 - (4) Occupying a second home for the purposes of leisure or relaxation is less likely to suffice to establish an electoral connection between an individual and a holiday home, though much will turn on the facts. If a second residence is necessary for someone’s career, study and family life, the connection is easier to establish.
- 1.55 Second homes pose a real challenge to registration officers because the law gives no guidance in respect of whether and when a person may be resident in, and thus entitled to be registered at, both their homes.

Notional residence and special category electors

- 1.56 As we noted above, there are peripheral examples of residence outside the central case of settled abode at a recognised address. For some of these, the law makes particular provision, such as to enable homeless persons to register by an administrative mechanism called a “declaration of local connection”. All are registered under a “notional” residence, which might be entirely fictional. Underlying all of these is a policy of ensuring these persons enjoy the franchise, and doing so through an administrative mechanism which provides them with a connection to an electoral, or representative, area. Collectively, we refer to these persons as “special category electors”.
- 1.57 There are six groups of “special category” electors, five covered by the 1983 Act³⁹ and the sixth (overseas electors) by the 1985 Act:

³⁹ Some view “anonymous voters” as a further special category. These, however, must have a residence under the ordinary rules – or under the special categories we are presently covering; the point is that their address and other details are kept private for their safety. We deal with them discretely below.

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- (1) Merchant seamen – persons a significant part of whose employment is carried out on board seagoing ships, and who do not have a service qualification.⁴⁰
 - (2) Patients in hospitals for the treatment of psychiatric disorder who are not detained offenders or on remand.
 - (3) Persons remanded in custody who have not been convicted of any offence or found guilty in criminal proceedings. The situations in which a person is considered remanded in custody for the purposes of this section are listed at section 7A(6) of the 1983 Act.
 - (4) Homeless persons – those who do not have either a permanent or temporary residence under section 4 of the 1983 Act.⁴¹
 - (5) Service voters – those who are serving abroad as members of the armed forces, otherwise in the service of the Crown or are employees of the British Council, and their spouses and civil partners.⁴²
 - (6) Overseas electors – British citizens who were registered in the UK, or could have been registered but for their age, before moving abroad, and have not lived abroad for more than 15 years.⁴³

1.58 For special category electors, residence is notional. They may not have a real residence in the UK, because they are homeless or abroad, so a fictional one must be supplied in order to connect them to an electoral area. Alternatively, they may have an actual residence but are given the option of registering in another place with which they have a connection; for example tying remand prisoners and mental health patients to the community they would live in but for the circumstances requiring them to be elsewhere. With the exception of merchant seamen, special category electors register via a declaration which connects the applicant to an address despite the fact they do not live there.

⁴⁰ Representation of the People Act 1983, s 6,

⁴¹ Representation of the People Act 1983, ss 6 to 7C.

⁴² Representation of the People Act 1983, s 14.

⁴³ Representation of the People Act 1985, s 1.

MERCHANT SEAMEN

- 1.59 Merchant seamen may either be registered at the place where they would be resident but for the seagoing nature of their occupation – their home address in the United Kingdom – or “at any hostel or club providing accommodation for merchant seamen” where they commonly stay during the course of their occupation.⁴⁴ Unlike the other special categories, merchant seamen do not need to provide a declaration of local connection as proof that they would be at the address in question, but for the circumstances which make them a special category elector.

THE DECLARATION

- 1.60 For all other categories of notional residence, the applicant must make a declaration connecting them to a particular address in the United Kingdom. Similar requirements apply to all the declarations, as set out below.
- 1.61 The declaration must include a UK address where the declarant would have been residing but for the circumstance which permits them to make such a declaration; or if they cannot provide this, a UK address at which they have resided in the past. It must also provide specified details of the grounds on which notional residence is claimed.⁴⁵
- 1.62 The declaration lasts for a maximum of 12 months, and can be revoked by the declarant. Ordinarily only one declaration may be made, which applies for the purposes of both parliamentary and local government elections; however in the case of electors not entitled to vote in parliamentary elections (peers and Union citizens) a declaration may be made only in respect of local government elections.⁴⁶
- 1.63 A declaration or multiple declarations of local connection made by the same person may only state one address; where more than one address is given the declaration(s) are considered void. A declaration is also void where it is not received by the registration officer within three months of the date on the declaration.⁴⁷

⁴⁴ Representation of the People Act 1983, s 6.

⁴⁵ Representation of the People Act 1983, ss 7B(3) and (4) and 16; Representation of the People Act 1985, s 2(3) and (4).

⁴⁶ Representation of the People Act 1983, ss 7B(7) and (9), 7C(2)(a), 15(2), (5) and (7); Representation of the People Act 1985, s 2(2) and (5).

⁴⁷ Representation of the People Act 1983, ss 7B(8) and (10) and 15(6) and (8); Representation of the People Act 1985, s 2(4) and (6).

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- 1.64 The effect of a valid declaration of local connection is that, where the declarant makes a subsequent application for registration, they are regarded as resident on the date of the declaration at the address which they provide.⁴⁸ In the case of overseas voters the conclusive presumption is that the applicant is outside the United Kingdom on the date of the declaration.⁴⁹

PATIENTS IN HOSPITALS FOR THE TREATMENT OF PSYCHIATRIC DISORDER AND PERSONS REMANDED IN CUSTODY

- 1.65 It is convenient to deal with these two categories together, since the same rules apply to both. There are three different ways a person in either category can be registered.
- (1) Where the period which the patient or person in custody is likely to spend in the institution is of a length which would satisfy the ordinary requirements for residence, they may be registered for the area in which that institution is located.⁵⁰
 - (2) Where they can be considered resident under sections 4 and 5 of the 1983 Act in a place other than the hospital for the treatment of psychiatric disorder or place of detention, they may be registered there (instead of or as well as at the institution).⁵¹
 - (3) Where they would not be entitled to register anywhere under the ordinary rules, or only in the respective hospital or place of detention, they may register under a declaration of local connection.⁵²
- 1.66 This permissive scheme, which allows applicants to register under a declaration of local connection, recognises that persons who are for the time being in hospitals or places of detention may nonetheless have a connection to another electoral area, which they will return to after a period of time away from it. The scheme also goes some way to avoid persons artificially placed in an electoral area by reason of detention or hospitalisation having a disproportionate effect on the outcome of an election in that area. However, since the scheme is permissive and there is the option of registering in the area in which the person is a patient or detained, this aim cannot be fully realised.
- 1.67 The declaration must contain an address to which correspondence can be sent by the returning officer, or a statement that the declarant is willing to collect such correspondence periodically from the returning officer's office.

⁴⁸ Representation of the People Act 1983, ss 7C(1) and 17(1).

⁴⁹ Representation of the People Act 1985, s 2(7).

⁵⁰ Representation of the People Act 1983, ss 7(2) and 7A(2).

⁵¹ Representation of the People Act 1983, ss 7(5)(a) and 7A(5)(a).

⁵² Representation of the People Act 1983, ss 7(5)(b) and 7A(5)(b).

HOMELESS PERSONS

- 1.68 Homeless persons may also be registered under a declaration of local connection. These are persons who are not resident at any address in the UK, whether permanently or temporarily. The address provided in the declaration must be that of, or nearest to, a place where they commonly spends a substantial part of their time.⁵³
- 1.69 There is a special rule in the case of a declaration submitted by a homeless person during the time between a vacancy occurring in a UK Parliamentary, Scottish Parliamentary or National Assembly for Wales election and the deadline for nominations. The homeless person must also declare that they have, over the preceding three months, commonly spent a substantial part of their time at or near the required address.⁵⁴ The policy is presumably to prevent homeless persons tactically registering in particular constituencies.

Other electors who may be treated as homeless

- 1.70 The Electoral Commission publishes extensive guidance concerning electoral registration, including on residence generally and special category electors. Two categories in particular can cause trouble when considering whether a person is resident at a particular place, These are:
- (1) Travellers, who may not reside at an address, although they may settle for a period of time, for example at a site designated by the local authority. The Electoral Commission guidance states that registration officers should use council staff familiar with traveller communities in order to assess their situation, with a view to registering them, presumably, under normal residence rules. However, we have also heard, anecdotally, that some members of traveller communities are registered pursuant to a declaration of local connection, effectively being treated as homeless under section 7B of the 1983 Act.
 - (2) Persons living in narrow boats or houseboats. The Electoral Commission guidance suggests that persons living in moored boats should be registered pursuant to the normal residence rules. Those living in a boat not fixed to a particular place cannot be treated as resident at any address, but the Commission says they can be registered by way of declaration of local connection, also treating them as homeless under section 7B of the 1983 Act.⁵⁵

⁵³ Representation of the People Act 1983, s 7B(6)

⁵⁴ Representation of the People Act 1983, s 7B

⁵⁵ Electoral Commission, Management electoral registration in Great Britain, Guidance for Electoral Registration Officers, Updated January 2014, Part B pp 11 and 12.

1.71 The examples of travellers and persons living in houseboats are both peripheral cases of residence, as we outlined above. If there is no reason to believe that the location of these homes is not settled, these persons should be registered as resident under the general provisions, rather than be required to make declarations of local connection.

SERVICE VOTERS

1.72 The residence requirement also causes difficulties in the case of persons who are posted abroad in service to the United Kingdom. Concerns that these people, who remain connected to the United Kingdom and who work directly for the State, could be disenfranchised led to the introduction of a service voter's declaration. Similarly to the declaration of local connection, this imports a notional concept of residence: a service voter is registered either at the UK address at which they are or would be resident but for their service abroad, or failing that, at an address at which they have been resident at in the past.⁵⁶

1.73 There are three categories of service voters:

- (1) members of the armed forces;
- (2) persons otherwise in service of the Crown who are posted abroad, who work full time and are paid wholly out of money provided by Parliament; and
- (3) persons employed by the British Council who are posted abroad.

1.74 In addition, spouses and civil partners of these persons who are otherwise entitled to be registered can also be registered as service voters, in recognition of the fact that many move abroad to accompany with their partners.⁵⁷

1.75 For members of the armed forces and their partners, the Secretary of State may by order extend the period of validity of a service declaration to up to five years. This power was most recently exercised in 2010 in respect of the full five year period.⁵⁸

⁵⁶ Representation of the People Act 1983, s 14 and 16(d).

⁵⁷ Representation of the People Act 1983, s 14.

⁵⁸ Representation of the People Act 1983, s 15; Service Voters' Registration Period Order 2010 SI 2010 No 882, art 2.

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- 1.76 In the case of declarations made by persons who are not members of the armed forces or their spouses, these must also be transmitted to their employer who must then pass it on to the registration officer. Service declarations in respect of members of the armed forces can be given directly to the registration officer. The registration officer must notify the declarant of whether their declaration has been accepted or not.⁵⁹
- 1.77 The 1983 Act also states that declarations made by Crown servants or employees of the British Council or their spouses must be attested in the prescribed manner. However, the 2001 Regulations do not set out any requirements in relation to attestation of service voters' declarations. It may be that this requirement was mistakenly retained when provisions on attestation that were previously in force were repealed.
- 1.78 In addition to being considered notionally resident under section 4 of the 1983 Act, registration in pursuance of a service declaration raises the presumption that the elector in question satisfies the other requirements of the franchise.⁶⁰

OVERSEAS VOTERS

- 1.79 For Parliamentary elections, the franchise was extended to voters living overseas in 1985.⁶¹ The 2002 Act applied this extension to European Parliamentary elections as well.⁶² To enable these applicants to register, a concept of notional residence is applied, in the same way as for declarations of local connection and service declarations.
- 1.80 In order to be registered as an overseas voter, an applicant must be a British citizen, and have satisfied one of two conditions within 15 years of the date of the registration application. These conditions are that:
- (1) they were previously registered as a domestic voter in the United Kingdom; or
 - (2) they were only prevented from registering as a domestic voter by reason of their age, and a parent or guardian of theirs was registered at the address in respect of which the application is made.⁶³

⁵⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 15 to 17; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 15 to 17.

⁶⁰ Representation of the People Act 1983, s 17.

⁶¹ Representation of the People Act 1985, s 1.

⁶² European Parliamentary Elections Act 2002, s 8(2)(b); Representation of the People Act 1985, s 3.

⁶³ Representation of the People Act 1985, s 1.

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- 1.81 In the case of the latter category, the first overseas voter's declaration must also be accompanied by a copy of their birth certificate, which must show the names of either or both of their parents and their date of birth.⁶⁴ Previously, the first declaration made by an overseas voter also had to be attested by a British citizen bearing a British passport who was resident overseas. This was repealed as part of the package of reforms implementing individual electoral registration.⁶⁵ As with service declarations, the registration officer must notify the applicant whether the declaration has been accepted or not.⁶⁶

RELATIONSHIP BETWEEN ORDINARY AND NOTIONAL RESIDENCE

- 1.82 There is some tension between special category electors and some of the applications of the ordinary test of residence. We have noted that section 5 defines residence purposively, so that impermanent physical presence at a place amounts to residence where an elector has no other home. Similarly, some electors who might be described as homeless, or who live in boats, caravans, or some other shelter, may register pursuant to a declaration of local connection.
- 1.83 Conversely, temporary absence from residence for work or study can be disregarded. On a strict reading of section 5(3)(b) of the 1983 Act, even an open-ended absence may be discounted, although we doubted above that this was the legislature's true intention. On that reading, there is an overlap with the provisions governing overseas electors, which are specially regulated.
- 1.84 Elsewhere, in the case of remand prisoners and patients in hospital hospitals, there is a real residence in the institution, and notional residence is an alternative.
- 1.85 There is therefore a clear interaction between finding an electoral connection through "standard" residence, and using notional residence for special category electors. The question is whether the law should give more guidance as to which should be used, and when.

⁶⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 19 and (now repealed) 20; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 19 and (now repealed) 20.

⁶⁵ Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 SI 2013 No 3198, sch 2 para 1; Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 SI 2013 No 3206, sch 2 para 1.

⁶⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 22; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 22.

ELECTORAL REGISTRATION GENERALLY

- 1.86 Registration was introduced in 1832 when the franchise was extended by the Reform Act of that year. It allowed complex property qualifications for voting by adult males to be recorded and checked. Although these were later removed, paving the way for universal adult suffrage, the concept of electoral registration remained tied to real property. In every household, one person was asked as part of the electoral canvass to take responsibility for informing the electoral registration officer who lived there, their age and citizenship – the key franchise requirements. The electoral register provided a snapshot of who resided and was eligible to vote on a particular day within the canvass period.
- 1.87 This was a rigid and inflexible system. It was ill suited to the highly mobile population in many parts of the UK. To supplement the canvass, “rolling” registration was introduced in 2000. It allowed electors to apply to be registered individually outside the canvass period. By 2006 voters could register at relatively short notice ahead of an election.⁶⁷ These policy developments were implemented through amendments to the 1983 Act and secondary legislation.

Individual electoral registration

- 1.88 A different concept of electoral registration was introduced in Northern Ireland in 2002. “Individual electoral registration” conceives of each elector individually applying to be registered. No person in a household was asked to take responsibility to register others; the initiative was left to the individual. Individual electoral registration allows a potential elector to apply to register at any point in time during the year. It differs from rolling registration in that it is not supplementary to the annual canvass, but independent of it. In Northern Ireland this has had the consequence that the canvass is conducted less frequently than in Great Britain, once every ten years.
- 1.89 It has been the policy of the last two UK Governments to bring about individual electoral registration in Great Britain, leading to the significant changes brought about by the Electoral Registration and Administration Act 2013 (“the 2013 Act”). As of 10 June 2014, individual electoral registration is in effect in England and Wales, to be followed by Scotland on 19 September 2014, after the referendum on Scottish independence. It will also be possible, for the first time, for applicants for registration in Great Britain to complete application forms online. The scheme is slightly different from that in Northern Ireland. The detail of this will be discussed further below.

⁶⁷ Representation of the People Act 1983, ss 13 to 13BA.

The modern electoral objective of registration

- 1.90 The electoral franchise can only be exercised by a person if they have an entry in the electoral register. If they do not appear on the register, they cannot cast a vote.⁶⁸ Whatever its history, the electoral register's task is to give practical expression to the universal adult franchise. Consequently, the modern understanding is that the objective of electoral registration is "completeness and accuracy":
- (1) every person eligible to vote should be entered on the register (completeness); and
 - (2) only those eligible to vote should be included in the register (accuracy).
- 1.91 Although plainly incontrovertible, when put into practice, these twin aims of registration can sometimes compete. For example, very relaxed registration requirements will promote completeness by reducing barriers to entry, but will risk significant inaccuracy. Conversely, meticulous checks on inaccurate entries will keep away eligible electors. The law on registration must strike a proper balance, and it is not for us radically to alter that balance; that would be an exercise in political, rather than legal policy. However, reform of electoral registration requires rethinking, from first principles, how the law should express the norms that should govern electoral registration today. Due to successive policy developments being implemented by bolting on new provisions onto old ones, the law has become extremely complex in this field.

Legislative expression of the registration aims

- 1.92 Although completeness and accuracy have taken centre stage in the Electoral Commission's published material on registration for over a decade, historically they were given little or no legislative expression in Great Britain, where the classical expression of registration officers' duty is to "maintain" their registers.⁶⁹
- 1.93 In Northern Ireland, by contrast, accuracy and completeness have since 2007 been "registration objectives" under the 1983 Act. So far as reasonably practicable, registration officers should ensure that:
- (1) every person entitled to be registered in a register is registered in it;
 - (2) no person who is not entitled to be registered in a register is registered in it; and
 - (3) none of the required information relating to any person registered in a register is false.⁷⁰

⁶⁸ See, for example, Representation of the People Act 1983, ss 1 and 2.

⁶⁹ Representation of the People Act 1983, ss 9, 9A and 10.

⁷⁰ Representation of the People Act 1983, s 10ZB.

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- 1.94 The scheme in Great Britain now also gives expression to accuracy and completeness. Amendments in the 2013 Act to section 9A of the 1983 Act qualify the duty to take steps to maintain the register to refer specifically to the purpose of:

Securing that, as far as is reasonably practicable, persons who are entitled to be registered in a register (and no others) are registered in it.⁷¹

- 1.95 A similar form of words appears in the newly inserted section 9D of the 1983 Act, governing the canvass, and in the context of the power to make proposals to amend or abolish the canvass, whereupon the Commission must assess proposals against the aim of completeness and accuracy.
- 1.96 The difference in the way the registration objectives are presented in the law in Great Britain and Northern Ireland is historical and cosmetic. In substance the law is the same, and electoral law recognises the purpose of registration is to have a complete and accurate account of eligibility to vote. While a 100% accurate register at any given time is unrealistic, it is a key aspiration for electoral registration officers.

The register as a gateway to fraud

- 1.97 The electoral register is often referred to as the gateway to electoral fraud. Bogus registrations are one of the most effective forms of electoral fraud. Armed with a false entry in the register, a fraudster in Great Britain need only answer prescribed questions satisfactorily (if they are asked) in order to cast an effective vote. They will then be a “ghost voter”.⁷² False entries on the electoral register are also used for non-electoral frauds and deceptions, such as identity theft and credit card fraud. It is important to note that, apart from preventing fraud and promoting democratic participation, the completeness and accuracy of the register has repercussions elsewhere in the electoral system, from planning for elections to allocating voters to polling stations, and even drawing electoral boundaries. The accuracy and completeness of registers is thus important for the electoral system as a whole, and beyond.

The content of the register

Five different registers

- 1.98 The legislation on registration effectively creates five different registers. These are:
- (1) the UK Parliamentary register, which includes overseas voters;
 - (2) the local government register;

⁷¹ Electoral Registration and Administration Act 2013 ss 4(2), 8(2); Representation of the People Act 1983 s 9D; sch 4 para 6.

⁷² *Ali v Bashir* [2013] EWHC 2572 (QB) (unreported) at [9], [27], [202] and [207].

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- (3) the register for non-national European citizens residing in the UK;
 - (4) the register of peers who live abroad; and
 - (5) the Gibraltar register.⁷³

In practice the registers are combined

- 1.99 The registration officer must so far as possible combine the entries for the first four registers, marking the names to indicate which elections electors are entitled to vote in.⁷⁴ In practice a registration officer is likely to keep registration records electronically in an “electoral management system”. That system will run registration and absent voting records, and produce the lists used for particular polls.

EU Parliamentary elections and the three extra registers

- 1.100 As we have noted above, the franchise for European Parliamentary elections is framed in a complicated way. In consequence three of the five of the registers listed above exist only because of EU Parliamentary elections.

PEERS IN THE UK AND OVERSEAS

- 1.101 The UK Parliamentary register is the basic register from which the majority of those entitled to vote in European Parliamentary elections are taken. Since it does not include peers of the realm, who are entitled to vote in European Parliamentary elections, reference is made in regulations to the local government register in order to catch peers resident in the UK. That does not capture all peers entitled to vote in European Parliamentary elections, since the franchise also extends to peers living overseas, who are not on the local government registers. Thus a distinct register is necessary for peers who live abroad.

RESIDENT EU CITIZENS WHO WISH TO VOTE IN THE UK AND NOT IN THEIR HOME STATE

- 1.102 EU citizens who are not Commonwealth or Republic of Ireland citizens are entitled to vote in European Parliamentary elections, but not in UK Parliamentary elections. While they are entitled to register to vote at local government elections, any entry in that register cannot be used for European Parliamentary elections, since there is a further requirement of a declaration that they will only exercise their vote in the United Kingdom while their application to be registered for European Parliamentary elections is in force.⁷⁵

⁷³ Representation of the People Act 1983, ss 1 and 2; Representation of the People Act 1985, ss 1 and 3; European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 SI 2001 No 1184, reg 5; European Parliament (Representation) Act 2003, s 14 (Act of the Gibraltar House of Assembly).

⁷⁴ Representation of the People Act 1983, s 9(5); European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 SI 2001 No 1184, reg 5(3).

⁷⁵ European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 SI 2001 No 1184, reg 6.

THE GIBRALTAR REGISTER

- 1.103 Finally, the Gibraltar register had to be added when the franchise for European Parliamentary elections was extended to Gibraltar in 2003 after a successful challenge based on article 3 of Protocol No. 1 to the European Convention on Human Rights.⁷⁶ That register is maintained by the European electoral registration officer in Gibraltar, the Clerk of the House of Assembly, and is thus kept separately from the registers maintained in the UK. It is not, therefore, qualitatively different from the others, and we will refer, on the whole, to the four registers in the UK, rather than five to include the Gibraltar register.

The information contained in the electoral register

- 1.104 The register must contain the following information:
- (1) the elector's name;
 - (2) their "qualifying" address; and
 - (3) their electoral number. That number is allocated by the registration officer, and "as far as practicable" the numbers in each separate part of the register must run consecutively.⁷⁷

Structure of the register

- 1.105 The register is structured geographically. The law requires it to be framed in separate parts for each parliamentary polling district. Where a parliamentary polling district crosses local authority boundaries, as might be the case for local elections, the entries should be divided into separate parts for each electoral area within that polling district. Different letters are given to each polling district, and are used to make up electoral numbers in the relevant polling district.⁷⁸ As we noted elsewhere, the parliamentary polling district is the default administrative area for all elections, and this rule is geared at making the registers divisible into polling station registers. If two registration officers maintain two registers, parts of which relate to a single polling district, their registers must be structured so as to facilitate such compilation.
- 1.106 Within each part, names and addresses must, so far as reasonably practicable, be arranged in street order. This also helps returning officers to decide on the polling station provision and location in each polling district. Where it is not practicable to do this, names can be arranged in alphabetical order or in a combination of alphabetical and street order.

⁷⁶ *Matthews v United Kingdom* (1999) 28 EHRR 361 (App No 24833/94). For an account of how the UK was able to give effect to a decision of the Strasbourg Court without an amendment to EU law, see Shaw E.C.L. Review 2008, 4(1), 170 to 171.

⁷⁷ Representation of the People Act 1983, s 9(2) to (4).

⁷⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 38 and 39; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 38 and 39.

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- 1.107 Entries which are not accompanied by an address – for example, those pursuant to a declaration of local connection, or anonymous entries – are listed under a separate heading of “other electors”.⁷⁹
- 1.108 Entries on the “combined” register must be marked to indicate which elections an elector can vote in, and stipulate the letters which shall be marked against an entry in the register where the elector is not one of the majority who is on both the parliamentary and local government registers.⁸⁰

The apparatus of electoral registration

- 1.109 The 1983 Act lays the foundations for the management of electoral registration. Section 8 provides for electoral registration officers to be appointed by local councils. Section 9 requires these officers to maintain registers and sets out their core content. Section 9A governs what steps are involved in maintaining the register in Great Britain, while section 10 governs the same for Northern Ireland.

The electoral registration officer

- 1.110 The electoral registration officer maintains electoral registers and administers absent voting arrangements. Since that is a year-round task, the registration officer and their staff are in practice the only permanent electoral employees. The registration officer will often, but not always, also be a returning officer for some elections in their locality, while their election staff will in England and Wales and Northern Ireland form the core of the team running elections, as well as registering voters and administering absent voting arrangements all year round.
- 1.111 The requirement on local authorities to appoint a registration officer is framed differently in each jurisdiction:
- (1) In England, every district and London Borough council must appoint an officer of the council to be registration officer for Parliamentary constituencies which are coterminous with or cross the boundaries of their local area. The same applies in Wales in relation to county and county borough councils. In England and Wales, the Chief Executive of the council is usually appointed as the registration officer.
 - (2) In Scotland, every local authority must appoint one of their officers as the registration officer for their area or for any adjoining area, or an officer may be appointed by any combination of local authorities. The role in Scotland has traditionally been undertaken by officers of the Valuation Joint Board and this is the case for all but two councils.
 - (3) In Northern Ireland, the Chief Electoral Officer is the registration officer for each electoral area.

⁷⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 41 and 41A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 41 and 41A.

⁸⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 42; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 42.

- (4) The Gibraltar register is managed by the Clerk of the House of Assembly of Gibraltar.⁸¹

How the law governs the registration process

- 1.112 Registration officers have a number of duties under the 1983 Act, which are supplemented by secondary legislation. They are subject, like returning officers, to regulation by criminal law through the offence of breach of official duty, penalising them for breaching electoral laws without reasonable cause.⁸²
- 1.113 As for how the law seeks to govern their conduct, the classical approach, familiar from our review of other parts of electoral law, is to achieve the certain legal outcomes by requiring the registration officer to move from one procedural task to another.
- 1.114 Figure A below represents diagrammatically the law’s approach under the individual electoral registration system in Great Britain (figure B).

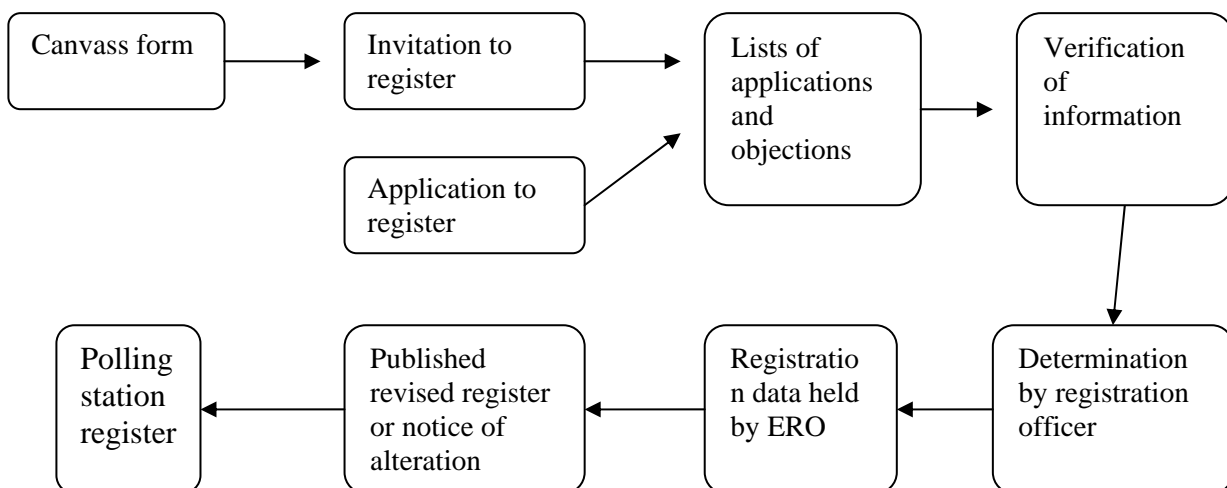


Figure A: registration under individual electoral registration

“MAINTAINING” THE REGISTER

The registration officer’s historically “passive” role

- 1.115 One can characterise the historical role of registration officers as passive and reactive. In Sir John Donaldson MR’s words:

⁸¹ Representation of the People Act 1983, s 8. European Parliament (Representation) Act 2003, s 14(2) (Act of the Gibraltar House of Assembly).

⁸² Representation of the People Act 1983, s 63.

The average parliamentary constituency consists of about 90,000 voters and it would be impracticable for electoral registration officers to verify all claims to be included in electoral registers. They therefore publish electoral lists, in effect draft registers, based on information acquired from householders and others including therein the names of all those who claim to be, and prima facie are, qualified for registration. If anyone who appears from the electoral list to be himself entitled to be registered objects to the registration of any other person, he makes his objection to the electoral registration officer who inquires into the objection and determines it...⁸³

- 1.116 Registration officers thus relied on someone within a household to register those who lived in the property; they then entered them on the register if they seemed on the face of the canvass form to be entitled to be registered. In addition, they reacted to individual applications to be registered (rolling registration), or dealt with objections to registration, which we consider further below. Whilst they had powers to investigate and review entries on the register, and to use other information legally available to them, for historical reasons the focus remained on the canvass.

The modern duty to maintain the register

- 1.117 The registration officer is required by section 9A(1) of the 1983 Act to maintain the register, and “must take all steps that are necessary for the purpose of complying” with this duty, and for the purpose of ensuring completeness and accuracy.⁸⁴

- 1.118 Section 9A(2) provides that the steps include:

- (1) sending out repeat canvass forms to the same address;
- (2) making “on one or more occasions” house to house enquiries;
- (3) making contact by any other appropriate means;
- (4) lawful inspection of records; and
- (5) providing training to canvassers.

- 1.119 The law requires all necessary steps to be taken to “maintain” the registers and to promote accuracy and completeness; it then lists some of the steps that can be taken. A natural reading of the provision suggests that the law does not state that these steps are necessary in all cases: that is a decision for the registration officer to take. We will turn to the tricky step of canvassing by making house to house enquiries further below.

⁸³ *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] QB 1060, p 1068

⁸⁴ Representation of the People Act 1983, ss 9 and 9A.

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- 1.120 There are concerns that these steps are adopted by registration officers inconsistently in practice. Some will conduct comprehensive house to house enquiries when canvassing. Others will rely primarily on electors returning the canvass form. The Electoral Commission takes the view that door to door enquiries are necessary in unresponsive canvassed households, save in exceptional circumstances (for example the safety of canvassers). From one point of view not doing so can be seen as inconsistent practice.
- 1.121 The counter-argument is that the law is designed to allow registration officers to judge which of the above steps, or any other, is necessary, taking into account local factors. Comprehensive house to house enquiries may be essential in an area with high population mobility, whereas in other areas resources may be better spent elsewhere. Similarly, they may be the first step for some registration officers, while others will rely on sending a canvass form by post and only send canvassers to unresponsive persons' doors. However, where a necessary step, such as door to door enquiry, is not taken because of cost, it would appear to us to be a breach of the current law. The guiding principle is accuracy and completeness, not saving cost.

Wider obligations to maintain the register

DUTY TO ENCOURAGE ELECTORAL PARTICIPATION

- 1.122 Section 69 of the Electoral Administration Act 2006 requires local electoral officers, defined to include registration officers, to take such steps as they think appropriate to encourage the participation by electors in the electoral process in their area. The officer must have regard to Electoral Commission guidance in complying with this duty, while the Secretary of State may reimburse officers for performing it in accordance to regulations. Plainly, promoting electoral participation includes registration drives, and this provision overlaps with the basic duty to register electors.

ENCOURAGING APPLICATIONS IN THE TRANSITION TO NEW SYSTEM

- 1.123 The legislation governing the transition to the individual electoral registration system in Great Britain includes provisions requiring registration officers to encourage new applications. Due to a concern to avoid a reduction in registration rates comparable to that experienced in Northern Ireland after individual electoral registration was introduced, the transition has primarily focused on a "confirmation" process for existing electors, avoiding the need for a massive influx of individual applications to register. Registration officers are pro-actively transitioning existing registration entries by reference to available database, for example that of the Department for Work and Pensions.⁸⁵

⁸⁵ Electoral Registration and Administration Act 2013, sch 5 paras 4 and 8 to 15.

Performance standards published by the Electoral Commission

- 1.124 Performance standards apply to electoral registration officers as well as returning officers. The position is slightly different in relation to electoral registration officers, whose failure to meet standards cannot result in a reduction of their fee. This is because the cost of registration is met by local government budgets.
- 1.125 There are currently two performance standards for registration officers, which were updated in September 2013 to focus on the transition to individual electoral registration and the concern to avoid a drastic reduction in registration rates. One standard deals with producing a plan to deal with particular challenges faced in an area in relation to individual electoral registration; the other monitors how that plan is implemented. Future performance standards, post-transition, ought to focus on the conduct of the canvass, and registration more generally. These may seek to inject consistency in the use of door to door canvassing. Under household registration, performance standard 3 sought to ensure that registration officers ensured unresponsive canvassed properties were subject to house to house enquiries, unless they were satisfied they were uninhabited. Other relevant performance standards included:
- (1) maintaining a property database for the registration area;
 - (2) maintaining the integrity of registration applications; and
 - (3) having a strategy for raising public awareness.⁸⁶

THE ANNUAL CANVASS IN GREAT BRITAIN

The old household registration system in Great Britain

- 1.126 Previously, the primary way in which the registers were kept up to date was through the canvass. From July to December each year, registration officers would initiate a drive to ensure that those entitled to vote in elections were registered.⁸⁷ Section 10 of the 1983 Act required registration officers to use the canvass to take a snapshot of electors' residence on 15 October. This provision now applies only in Northern Ireland, where the regular canvass occurs every ten years.⁸⁸ We cover Northern Ireland further below.

⁸⁶ Electoral Commission, Performance standards for Electoral Registration Officers (September 2013), p 2 to 6. Electoral Commission, Managing electoral registration in Great Britain, Guidance for Electoral Registration Officers, Part J.

⁸⁷ The legislation did not explicitly state that this was the canvass period, but it can be inferred from the provision that an election falling within the canvass period is one which falls due between 1 July and 1 December, Representation of the People Act 1983, s 13BB(1) and (5).

⁸⁸ Representation of the People Act 1983, s 10(2).

1.127 The canvass under the household registration system was conducted by sending out a canvass form and, as we noted above, making house to house enquiries on one or more occasions. A canvass form completed and returned by a person in the household constituted an application to register for each person appearing from the form to be entitled to be registered. As a result, it was the main way in which electors became registered, although the introduction of rolling registration meant that it was possible for applications to be made outside a canvass period as well.

The canvass under individual electoral registration

1.128 Under individual electoral registration, the canvass is a mere inquiry as to who resides in the household. A returned canvass form gives the registration officer that information and is not an application to register any of the reported residents. Each must individually apply to register by returning an invitation to register form to the registration officer.⁸⁹

1.129 Whether under the old or new system, “special category” electors are excluded from the remit of the canvass. These electors are registered in an area through a notional residence. Since the canvass seeks to determine actual residence, these are excluded from the remit of the canvass.⁹⁰ These categories are explained in more detail below.

The canvass form

1.130 A new canvass form must be designed by the Electoral Commission, and must request certain information:

- (1) the full name and nationality of each person aged 16 and over who is (or, upon reaching 18, will become) eligible to vote and is residing at that address;
- (2) an indication as to whether:
 - (a) there is no one residing at that address;
 - (b) the address solely relates to business premises; and
 - (c) none of the people residing at the address are entitled to be registered, and the reasons why.

⁸⁹ Electoral Registration and Administration Act 2013, s 6 inserting s 10ZC into the 1983 Act.

⁹⁰ Representation of the People Act 1983, s9D(6).

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- 1.131 The form must also include instructions on entitlement to vote, the fact that an offence may be committed if the form is not returned, the penalty for that offence, and information on registering online.⁹¹ It has been subject to user-testing and piloting, and a decision was taken by Government to produce the form on A3 paper so that the required information could be presented clearly.

How the canvass is conducted

- 1.132 New regulations set out the role of the registration officer in conducting the canvass. As well as the steps the registration officer may take to satisfy the duty to maintain their register under section 9A of the 1983 Act, they must:

- (1) send the prescribed canvass form to each residential address in the area for which they are responsible, with any residents' details of which they are already aware pre-printed on the form;⁹² and
- (2) where they receive no reply to the canvass form, send a second and, if necessary, third canvass form to the same address. If they receive no reply to this third communication, they must make a visit to the household in question, unless they have already done so.⁹³

- 1.133 The last obligation appears potentially to go beyond the provisions of section 9A of the 1983 Act, in requiring a home visit by canvassers to unresponsive households. The obligation does not apply where records held by the local council indicate that no one resides at the address, or that it is solely business premises.⁹⁴

Invitations to register

- 1.134 With the canvass now an information gathering exercise, registration officers are obliged by section 9E of the 1983 Act to give a person an invitation to apply to register if they are aware of that person's name and address, the person is not registered and the officer has reason to believe they may be entitled to be registered.

⁹¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZA (as inserted by SI 2013 No 3198); Representation of the People (Scotland) Regulations 2001 SI 2001 No 341, reg 32ZA (as inserted by SI 2013 No 3206).

⁹² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZA(4) and (5) (as inserted by SI 2013 No 3198); Representation of the People (Scotland) Regulations 2001 SI 2001 No 341, reg 32ZA(4) and (5) (as inserted by SI 2013 No 3206).

⁹³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZB(1) to (3) (as inserted by SI 2013 No 3198); Representation of the People (Scotland) Regulations 2001 SI 2001 No 341, reg 32ZB(1) to (3) (as inserted by SI 2013 No 3206).

⁹⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZB(6) (as inserted by SI 2013 No 3198); Representation of the People (Scotland) Regulations 2001 SI 2001 No 341, reg 32ZB(6) (as inserted by SI 2013 No 3206).

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- 1.135 The Electoral Commission must design the invitation to register form, which must contain certain details, and contain information as to the circumstances when a civil penalty may be imposed for not complying with a requirement to apply to register. In practice, the invitation to register appears to be an application to register in all but name, which we cover further below.⁹⁵

Individual electoral registration in Great Britain

- 1.136 Section 10ZC(1) of the 1983 Act requires registration officers in Great Britain to register a person (“P”) if:
- (1) an application for registration is made by someone who appears to the officer to be P;
 - (2) any requirements imposed by or under the 1983 Act in relation to the application are met; and
 - (3) P appears to the officer to be entitled to be registered.
- 1.137 The registration officer must consider objections and there is a prescribed process for doing so and determining applications, which we consider further below. The Minister has, for a period of five years from 10 June 2014, a power to give guidance about the determination of applications under section 10ZC of the 1983 Act, including the relative weight to be given to different kinds of evidence to satisfy the officer that the applicant is indeed who they are.⁹⁶

THE APPLICATION TO REGISTER

The information required

- 1.138 An application to register must meet the legal requirements which are prescribed in secondary legislation. What follows does not apply to overseas voters, while anonymous voters must state the fact that they are also applying for anonymous registration, when applying to register. In general all applications must be dated.
- 1.139 The application to register must be in writing, and must state the applicant’s:
- (1) full name and any name used in the preceding 12 months;
 - (2) address;
 - (3) previous addresses, and an indication whether they were registered as an overseas voter;
 - (4) an indication whether they reside at another address, including one under which they claim a continued entitlement to be registered;

⁹⁵ Representation of the People (England and Wales) 2001 SI 2001 No 341, reg 32ZD (as substituted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, reg 32ZD (as substituted by SI 2013 No 3206).

⁹⁶ Representation of the People Act 1983, s 10ZC(2) and (3); Electoral Registration and Administration Act 2013, s 1(3) to (5).

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- (5) date of birth, and if unable to provide one, a statement as to why and whether they are under 18 or over 70 years old;⁹⁷
 - (6) national insurance number, and if unable to provide one, a statement as to why;
 - (7) nationality;
 - (8) indication that they wish to be omitted (“opt out”) from the edited register; and
 - (9) declaration that the information provided is true.⁹⁸

1.140 This information can be conveyed in one of three ways, all of which ultimately amount to a written application.

Application form designed by the Electoral Commission

1.141 The first is by way of a form designed by the Electoral Commission, subject to approval by the Lord President of the Council. Some additional content is prescribed for this form, for example stating that the information will be processed in accordance with the Data Protection Act 1998. A draft form in our possession, entitled “invitation to register”, includes a signature box beside the declaration as to the truth of its contents. The form must be made available for registration officers and may be delivered in person at the registration office, or returned by post. There is no requirement that electors should use this form; it appears that the policy was merely to require that this form be sent to electors, so that the vast majority of hard copy applications would be made on the user-tested form.⁹⁹

⁹⁷ Registered electors aged 70 or over are exempt from jury service.

⁹⁸ Representation of the People (England and Wales) 2001 SI 2001 No 341, reg 26 (as substituted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, reg 26 (as substituted by SI 2013 No 3206).

⁹⁹ Representation of the People (England and Wales) 2001 SI 2001 No 341, reg 26 (as substituted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, reg 26 (as substituted by SI 2013 No 3206). The original policy had been to make use of the Electoral Commission form mandatory, but this has softened into the position described above.

In-person or telephone application

- 1.142 Secondly, a person may apply by telephone or in person to the registration officer, if authorised by the officer to do so. If this option is chosen, the registration officer is required to read certain information to the applicant, which would otherwise be contained on the registration form. The information provided by the applicant must be transferred into an application in writing, suggesting this may be a way of dealing with electors unable to write or otherwise suffering from a disability preventing them from applying in writing. Those applying under pressure of time may also be authorised to apply this way.¹⁰⁰

Applying online

- 1.143 Thirdly, an innovation brought about by individual electoral registration allows applications to be made through a “digital service”, the Individual Electoral Registration Digital Service, accessible online on a Government-hosted website. In that case, an email address and telephone number(s) will be required from applicants, and regulations also state that the service must provide an explanation of the purpose for which this information will be used. It is hoped that online registration will increase the number of applications to register and make it easier for those living overseas to register to vote. Online applications do not need to be signed, but must be accompanied by the applicant’s email address and telephone number.¹⁰¹

Determining applications to register

- 1.144 Once a registration officer has received an application, the officer must determine whether it satisfies the requirements for entry onto the register. The rules for individual electoral registration are grafted onto the previous registration regime, whose rules envisaged that applications to register be subject to inspection and objection by concerned electors. We consider these in detail further below. In this context the registration officer’s role in the determination process was passive. With the move to individual electoral registration comes a more proactive role for registration officers, which has been a growing theme since 2000.

¹⁰⁰ Representation of the People (England and Wales) 2001 SI 2001 No 341, reg 26(8) (as substituted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, reg 26(8) (as substituted by SI 2013 No 3206).

¹⁰¹ Representation of the People (England and Wales) 2001 SI 2001 No 341, regs 3 and 26(9) (as substituted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, regs 3 and 26(9) (as substituted by SI 2013 No 3206).

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- 1.145 Two proactive features are prominent in the new individual electoral registration scheme: verification against national databases such as those held by the Department of Work and Pensions; and a power to ask for additional evidence as proof of identity.¹⁰² We have noted that the Minister has a power, in the first five years, to give guidance to registration officers. What follows is the position according to the current law, which may need revisiting in the light of ongoing developments in secondary legislation and guidance.

“VERIFICATION”

- 1.146 On receipt of an application to register, the registration officer must disclose the name, date of birth and national insurance number to the Lord President of the Council “in such a format and through such a conduit system” as the latter notifies in writing. In practice this is a software system. What is envisaged is that central government shall compare these against data kept by the Department for Work and Pensions and Her Majesty’s Revenue and Customs. The result may be disclosed to the registration officer and, if so, the registration officer must take the result into account in determining the application.¹⁰³ We understand that in practice, software has been rolled out to registration officers to enable them to carry out this process in the transition to individual electoral registration to confirm existing voters.

Power to access and share information

- 1.147 The pro-active transitioning of electors formerly registered under the household return system to the new individual electoral registration system is being aided by powers to use and share information held by Government, central or local, in schedule 2 to the 2013 Act. These powers will remain even after the transition.
- 1.148 The interplay between access to publicly-held personal data and the classical objections process is not addressed by the new primary or secondary legislation introducing and implementing individual electoral registration. We will return to its impact further below.

¹⁰² Representation of the People (England and Wales) 2001 SI 2001 No 341, regs 26B and 29ZA (as inserted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, regs 26B and 29ZA (as inserted by SI 2013 No 3206).

¹⁰³ Representation of the People (England and Wales) 2001 SI 2001 No 341, regs 29ZA (as inserted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, regs 29ZA (as inserted by SI 2013 No 3206).

REQUESTING ADDITIONAL EVIDENCE

- 1.149 If the registration officer considers that additional evidence is necessary to determine entitlement to register (including because an applicant was unable to provide their date of birth, national insurance number or nationality), they may require additional evidence, which regulations place in three tiers. The first is an original copy of a passport or various other official photographic identity documents. Provision of one such document suffices. The second tier includes other official documents such as birth or marriage certificates and non-photographic driving licences. The third tier includes documents such as a bank statement, council tax statement or utility bill. Applicants must provide at least one document from the second tier and a further two from the second or third tier to satisfy the officer. If an applicant is unable to provide any or sufficient documentation, they may be required to produce a signed attestation by a person attesting to the applicant's identity in full knowledge of the penalty for providing false information to a registration officer. No one may attest more than two applicants since the last revised version of the register (after each canvass). Special rules are made governing those registered under a service declaration and overseas electors.¹⁰⁴

DETERMINING APPLICATIONS AND THE OBJECTIONS PROCEDURE

- 1.150 The registration officer must determine applications in accordance with a prescribed procedure aimed at promoting public scrutiny by allowing registered electors to inspect and object to applications to register and, indeed, existing entries on the register. The restriction to registered electors probably harks back to an age when property qualifications were required in order to register, and local parties would "attend to the register". Even in the modern context, scrutiny of the register will most likely emanate from the local party association as an interested political actor.¹⁰⁵
- 1.151 Under section 10A(3) of the 1983 Act, the officer must determine all objections to a person's registration made in accordance with prescribed requirements by another whose name appears in the register in question. Regulations require objections to be in writing and to identify the application objected to (by naming the applicant, providing their address and electoral number if the objection postdates registration) and to provide the equivalent information about the objector.¹⁰⁶
- 1.152 After they have been received and acknowledged, registration officers must enter applications and objections into one of three lists, which must be made available for inspection:

- (1) a list of applications;

¹⁰⁴ Representation of the People (England and Wales) 2001 SI 2001 No 341, regs 26B (as inserted by SI 2013 No 3198); Representation of the People (Scotland) 2001 SI 2001 No 497, regs 26B (as inserted by SI 2013 No 3206).

¹⁰⁵ H Rawlings, *Law and the Electoral Process* (1988) pp 91 and 92.

¹⁰⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 27; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 27.

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- (2) a list of objections relating to applications for registration; and
 - (3) a list of objections relating to entries in the register.¹⁰⁷
- 1.153 Regulation 29 of the 2001 Regulations applying in Scotland, England and Wales set out in detail a procedure for determining objections. If no objection is made within a five day period, a registration officer may allow an application.¹⁰⁸ While they are under no strict obligation to do so, they will likely make that determination, swiftly if the late registration window is upon them.
- 1.154 Alternatively, the registration officer may:
- (1) ask for further information;
 - (2) disallow the application on the grounds that the matter has already been decided by a court, or that the particulars given do not entitle the application to succeed; or
 - (3) decide the matter at a hearing.
- 1.155 The officer may also disallow an objection if the objector is not entitled to object, or it is clearly without merit. While anonymous entries cannot be objected to, it appears that anonymous voters can object to registration; the 2001 Regulations recognise that an objector's address may not be shown in the register.¹⁰⁹ The Electoral Commission in guidance states that "clearly without merit" means that the grounds for the objection cannot, if made out, be legal grounds for refusing an application or deleting an entry. For example, if the objection is based on a nationality which in any event satisfies the citizenship requirements.
- 1.156 The registration officer is empowered to consider objections after they have determined an application positively, but before the notice of alteration has taken effect, and to remedy the position if they allow the objection.¹¹⁰

¹⁰⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 28 and 29(2BA) to (2BE) as amended by SI 2013 No 3198; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 28. and 29(2AA) to (2AE) as amended by SI 2013 No 3162.

¹⁰⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 29(4); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 29(4).

¹⁰⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 27(1)(d); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 27(1)(d).

¹¹⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 29(5A) to (5D) and 31A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 29(5A) to (5D) and 31A.

Hearings and appeals

- 1.157 If the registration officer is minded to disallow an application or objection they must give reasons, and the applicant or objector may request a hearing within three days from the date of the officer's notice. The registration officer adjudicates the hearings in a quasi-judicial capacity and there is a right of appeal to the county court (and onward on a point of law to the Court of Appeal) in England and Wales. In Scotland the appeal is to the sheriff, and onwards on a point of law to a court made up of three judges of the Court of Session known as the registration appeal court.¹¹¹
- 1.158 Similar provisions are made to allow the officer, subject to the right to a hearing and a right of appeal, to review registration entries generally and in particular in the case of registered patients in hospitals for the treatment of psychiatric disorder, persons remanded in custody and persons registered pursuant to a declaration of local connection or as service or overseas voters.¹¹²

ALTERATIONS AND REMOVAL OF ENTRIES FROM REGISTER

- 1.159 Registration officers must maintain the register besides processing applications to be entered within it; existing entries must be altered or deleted. These processes are governed by newly inserted sections 10ZD and 10ZE of the 1983 Act.

Applications for alteration of existing entries

- 1.160 Section 10ZD mirrors section 10ZC, stating that the name or address in respect of an entry in the register must be altered if a person applies for an alteration in conformity with legal requirements for the application, and the applicant appears to the registration officer to be the person the entry in the register applies to. Regulations prescribe the content of the application for electors to alter an entry in the register in respect of the name only. These require the Electoral Commission to design a form for applications for alteration in a similar manner to applications to register. It is not clear what the legal requirements are to change the registration address within the same registration area. The provisions on verification and requesting additional information apply to applications for alteration just as they do to new applications.

Removal of entries

- 1.161 Section 10ZE provides that a registered elector is entitled to remain so until the registration officer determines that:

¹¹¹ Representation of the People Act 1983, ss 56 and 57; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 29(6) and (7), 30, 31 and 32; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 29(6) and (7), 30, 31 and 32.

¹¹² Representation of the People Act 1983, ss 56 and 57; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 31B, 31C, 31D, 31F and 31E; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 31B, 31C, 31D, 31F and 31E

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- (1) they were not entitled to be registered;
 - (2) they ceased to be resident at the address or otherwise satisfy the conditions for registration under section 4 of the 1983 Act; or
 - (3) they were registered, or their entry was altered, by another person.

1.162 Such a determination must result in the person's entry being removed. A registration officer is empowered to make house to house inquiries for the purpose of deciding whether or not to make that determination. A registration officer must consider making such a determination if an objection is made to the entry or they otherwise become aware of information indicating that one of the conditions for removal of the entry is satisfied. Regulations provide a procedure for determining that a person has ceased to satisfy conditions for registration.

The register as a physical document

1.163 The law plainly envisages the register of electors as a physical document. Section 13 of the 1983 Act requires registration officers to publish, each year, a "revised version" of their registers. That revised register is then amended each month by notice of alteration published by the registration officer. When an election is imminent, a special notice of alteration is published on what we call the "final publication date". Recent amendments mean this is preceded by two "interim" publication dates.

1.164 The scheme established above is not concerned merely with the publication of electoral registers. Eligibility to vote at any election depends on entry in the published revised register or in a notice of alteration. An elector may successfully apply to be registered on day X, in the sense that a registration officer may make the determination that the elector is entitled to be registered. That decision, however, has no effect for the purpose of any election unless and until either:

- (1) the elector is entered on a yearly revised register; or
- (2) the elector is entered on the register via a notice of alteration.

1.165 So far, we have sought to outline the law through simplified exposition. We continue to do so here but it is important to mention that successive amendments to the registration provisions in the 1983 Act have made them dense and opaque. We will see the effect that complexity has had on deriving the deadline for late registration.

THE ANNUALLY REVISED REGISTER

1.166 The revised register must be published between the end of the canvass period and 1 December that year. If an election is due to occur during the canvass, that date is pushed back to 1 February the following year. The revised register must incorporate the alterations that, by virtue of section 13A(3) or (3A), need not be made by notice of alteration, and must instead be made in the revised version of the register.

MONTHLY NOTICES OF ALTERATION

- 1.167 Section 13A of the 1983 Act governs alterations to the revised register. The word alteration occurs here in a different sense than the one we encountered it in further above, when considering the alteration of entries in the register. Notices of alteration are best understood as monthly amendments to the register – adding, altering, or removing entries according to determinations by registration officers, or appeals from these determinations, or to correct clerical errors. These amendments are made by way of notice issued in the prescribed manner specifying the alteration to the register in question.
- 1.168 After the publication of the revised register, it is amended by issuing monthly notices of alteration. If an alteration is required to be made, it must appear in a notice published on the first day of the following month, provided at least 14 days have elapsed. Otherwise, the alterations will be published in a notice on the first day the next following month.¹¹³ No notice of alteration is required during the canvass period: alterations, as we noted above, will be shown in the revised register.¹¹⁴

Pending elections and late registration

- 1.169 Special provision is made to give effect to applications close to a forthcoming election by providing for a publication date for a notice of election ahead of it. The mechanism for registering late applicants effectively to vote in an election itself is the one that yields the deadline for applying to vote at a particular election. It is so complicated that for many years, the Electoral Commission, administrators, and participants all advised electors that the deadline was 11 days before in election. It was only in 2013 that it was discovered that the deadline is in fact 12 days ahead of the election.
- 1.170 Section 13B of the 1983 Act provides that if by normal application of the rules on alteration of the register, an alteration in a published version of the register is to take effect after the fifth day before a poll, the alteration does not have effect for the purposes of the election. Given this cut off period, the registration officer must publish a notice of alteration by that date in order to provide an up to date picture of the register effective at the election. In fact the final publication date for that notice is the fifth or sixth day before polling day, at the registration officer's discretion. We will see that this discretion affects the true deadline for late registration so that it is in truth 12 or 13 days. The assumption in the electoral community is that no registration officer will exercise the discretion to fix the publication date as the sixth day before the election. We will refer to the fifth day before the election as the "final publication date".

¹¹³ What this means is, determinations to accept individual applications to be entered on the register will be given effect in a notice of alteration on the first day of the month falling within the period of 14 to 45 days from the date of determination. A determination made on 2 January leads to publication on the first working day in February. A successful application made on 17 January leads to publication on the first working day in March.

¹¹⁴ Representation of the People Act 1983, s 13A(2).

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- 1.171 If, at any time before the final publication date, the registration officer is required to amend the register (to add, alter or remove an entry under section 13A mentioned above), and the ordinary process for publishing a notice of alteration would mean the amendment would not take effect at the election, the officer must issue a notice of alteration in the prescribed manner, on the final publication date, with the alterations taking effect as from the beginning of the day.¹¹⁵
- 1.172 Section 13B makes provision for an alteration to be effective after the fifth day before the poll, but only in the event of an appeal from a determination of the registration officer, or in the case of an alteration to correct a clerical error.¹¹⁶
- 1.173 The Electoral Registration and Administration Act 2013 amends the 1983 Act to add two “interim” publication dates before the final one, to enable a more staggered introduction of newly registered electors in notices of alteration in the run up to the election. The final publication date is, as we saw, typically the fifth day before the poll. The first interim publication date is the day on which nominations close for the election. The second interim publication date is a date after the close of nominations and before the final publication date, fixed by the registration officer.¹¹⁷

THE DEADLINE FOR LATE ELECTORAL REGISTRATION

- 1.174 A complicated exercise must be undertaken to derive the deadline for applying for registration effective for a particular election. It involves piecing together the provisions in the 1983 Act above and the registration regulations.
- 1.175 As noted above, a determination to add a person to the register takes effect through a notice of alteration published five or (at the registration officer’s discretion) six days before the election, to take effect from the beginning of that day.
- 1.176 In order to publish a notice of alteration in time, the registration officer must have granted an application for registration “at any time *before*” the final publication date. The words of section 13B(2) of the 1983 Act thus require a determination to have been made at the latest on the day before publication of the notice of alteration.¹¹⁸

¹¹⁵ Representation of the People Act 1983, s 13B(1) to (3).

¹¹⁶ Representation of the People Act 1983, s 13B (3A) to (3D).

¹¹⁷ Representation of the People Act 1983, s 13AB.

¹¹⁸ That this is the right interpretation of the statute is strengthened by the words of 13(3C), concerning the deadline for notices of alteration to correct a clerical error (9pm on the day of the poll). The condition for making a notice is that “at any time *on or after* the [final] publication date” the registration officer determines that a clerical error has been made. The statute thus provides a complete scheme for late alterations to the register – one applying to all “determinations”, provided they are made before the final publication date, and another applying only to clerical errors and notifications of appeal decisions from determinations, which can be made on or after that date.

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- 1.177 Determination of applications to be registered is governed by the Representation of the People Regulations 2001. Regulation 29 requires applications to be entered on a list of applications for register. Regulation 29(4) states that the registration officer may allow an application without a hearing provided that no objection is made within the period of five days beginning with the day *following* the entry of the application in the list of applications.
- 1.178 The deadline for applying to register in time for an imminent election is thus derived by adding together the period between polling day and the final publication date for effective notice of alteration, together with the period between an application being made and the first day it can be determined. Until recently, the understanding was this amounted to 11 days, but that was shown to be wrong, and the deadline is now understood to be 12 days.¹¹⁹
- 1.179 The deadline is calculated by adding together:
- (1) the day the application is made;
 - (2) the minimum period of five days for objections;
 - (3) one further day, on which the application is determined, which must be before the “final publication date”; and
 - (4) a further five days beginning with the date of publication of the notice of alteration.
- 1.180 That brings the true deadline to 12 days. The fact that experienced electoral experts have misunderstood the deadline for late registration, and that this deadline appears to be a wholly unintentional product of complexity rather than deliberate policy, is evidence of the palpable impact of the considerable complexity of the registration provisions in the 1983 Act and 2001 Regulations on effective policy making.
- 1.181 In arriving at a deadline for late registration of 12 days, we must reiterate that we have made the assumption that most electoral experts make, that no registration officer will fix the “final publication date” for the notice of alteration on day six before the election. If any do so, the deadline will be 13 days, which would be perverse since nowadays national advertising by the Electoral Commission publicises a specific day as the last day to register, based on the 12 day deadline. In our discussion with electoral stakeholders, we have heard of no registration officer using the discretion in that way.

¹¹⁹ Electoral Commission bulletin 64, January 2014. http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/164676/Electoral-Administration-Bulletin-64.pdf; see also http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/164677/Deadline-for-registration-ahead-of-an-election-detailed-note-January-2014.pdf (last accessed May 2014).

Anonymous registration

- 1.182 An anonymous elector is one whose entry on the full register contains only their electoral number, not their name or address. This facility was introduced by the Electoral Administration Act 2006, following a suggestion by the Electoral Commission in their 2003 Report *Voting for Change*.¹²⁰ As we explain below, the full register may be viewed, under supervision, by any member of the public, who may gather information from it; it is also available to certain institutions.¹²¹ There were concerns that certain vulnerable persons might be deterred from registering in those circumstances. A typical example might be a person who has suffered domestic violence or harassment and wishes to keep their address private. We understand from the Electoral Commission that a recent assessment revealed that there are 1,835 anonymous electors in England and Wales
- 1.183 Anonymous registration is available for electors who have requested that their name and address do not appear in the full register for safety reasons.¹²² Their names and addresses are entered in registration records – in practice software generically known as the “electoral management system” – so as to allowing them to appear in the section of the register that is appropriate for their address (that is, in the correct parliamentary polling district). In the actual register which is available to candidates, the public and electoral administrators, their name and address is kept confidential.
- 1.184 An application for an anonymous entry must be completed in addition to an ordinary registration application. It must include evidence justifying the request for anonymity, either in the form of a specified court order or injunction granted to them, or an attestation made by one of a listed group of persons, such as a police superintendent or higher officer, or a director of children’s services in England and Wales, or chief social work officer in Scotland.¹²³

¹²⁰ Electoral Administration Act 2006, s 10; Electoral Commission, *Voting for change: an electoral law modernisation programme* (June 2003), p 18.

¹²¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 43(1), 97(4), 97A(4), 99(4) and 109A(6); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 43(1), 96(3) and 108A(6).

¹²² Representation of the People Act 1983, s 9B.

¹²³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 31G to 31J; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 31G to 31J.

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- 1.185 A registration officer must decide that a “safety test” is satisfied before they can enter the applicant in the register as an anonymous voter. This requires that the safety of the applicant or that of any other person of the same household would be at risk if the register contained the name or address of the applicant. If the safety test is not satisfied then no entry at all is made on the register. Once a registration officer has determined that the safety test is satisfied they may allow the application: anonymous applications cannot be objected to, and can be determined at any time.¹²⁴
- 1.186 Anonymous status lasts for a year; at the conclusion of that year, if no further application for anonymous registration is made, the elector’s entry is removed from the register. An anonymous elector may also withdraw their entry themselves.¹²⁵
- 1.187 So far, anonymous registration has only applied in Great Britain. The Northern Ireland Office intends to extend the scheme to Northern Ireland, and after consultation draft legislation has been laid before Parliament.¹²⁶ It is intended that the new regime for anonymous registration in Northern Ireland will come into force on or after 15 September 2014. The scheme will be materially similar to that in Great Britain, save for the following differences:
- (1) status as an anonymous voter should last for 5 years;
 - (2) there is a power to review a voter’s entitlement to an anonymous entry in the register;
 - (3) attestations may be made on the basis of court orders and injunctions issued in the Republic of Ireland or any other EU member state, as well as any emanating from UK courts; and
 - (4) all anonymously registered voters will vote by post in Northern Ireland.

RESIDENT EU CITIZENS AND EU PARLIAMENTARY ELECTIONS

- 1.188 As we noted above when considering the franchise and “five registers” in the UK, “relevant” EU citizens (those who are not British or Irish citizens) residing in the UK have a special status with respect to European Parliamentary elections. Their registration details need to reflect the fact that they have declared their wish, according to law, to vote in the UK rather than their home state. This necessitates special administration by registration officers which is reflected in electoral law.

¹²⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 29(4A); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 29(4A).

¹²⁵ Representation of the People Act 1983, ss 9B and 9C.

¹²⁶ Anonymous Registration (Northern Ireland) Order 2014 SI 2014 No 1116.

EU law

- 1.189 Under article 22(2) of the Treaty on the Functioning of the European Union, every citizen of the Union residing in another member state has the right to vote in elections to the European Parliament in the member state where they are resident. However, certain formalities must be satisfied before such an EU citizen can cast their vote, as set out in Directive 93/109/EC.
- 1.190 The basic position is that an EU citizen will vote in their home member state. If they decide instead that they prefer to vote in their member state of residence, they must have “expressed a wish to do so”.¹²⁷ That expression is through a declaration required by the Directive stating:
- (1) their nationality and their address in the electoral territory of the member state of residence;
 - (2) if possible, the locality or constituency in their home member state where they were last registered; and
 - (3) that they will exercise their right to vote in the member state of residence only.¹²⁸
- 1.191 The declaration remains in force until an elector is removed from the register.¹²⁹ The Directive also requires member states to take the necessary measures to enable those who have wished to vote in their place of residence to be entered on the electoral roll in advance of polling day, and that the member state of residence informs an applicant of the action taken on their application for registration.¹³⁰
- 1.192 Member states who receive such declarations must notify the home member state of the declarant, so that they can be taken off the electoral register for European Parliamentary elections in their home state.

The declaration under law in the United Kingdom

- 1.193 The European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 transpose the obligations in Directive 93/109/EC.¹³¹ Regulation 6 replicates the requirements of Directive 93/109/EC. Regulation 4 specifies that a declaration must be sent to the registration officer along with an application for registration. Regulation 10 specifies that a declaration remains in force for 12 months, at which point the relevant citizen must make another declaration in order to remain registered in the United Kingdom.

¹²⁷ Directive 93/109/EC, art 8.

¹²⁸ Directive 93/109/EC, art 9(2).

¹²⁹ Directive 93/109/EC, art 9(4).

¹³⁰ Directive 93/109/EC. arts 9(1) and 11(1).

¹³¹ SI 2001 No 1184.

Practice

- 1.194 The Electoral Commission guidance to registration officers, issued in relation to the previous system of household registration, explains that the annual canvass forms and rolling registration forms can only be used to register relevant EU citizens for local elections. In order to register to vote in European Parliamentary elections, they must complete a separate application form and the declaration outlined above.
- 1.195 The guidance further states that where a local government elector has indicated on the annual canvass form or in their rolling registration application that they are a citizen of an EU member state, an electoral registration officer should send the special application and declaration forms to those applicants.¹³²

Problems encountered at recent European elections

- 1.196 At the recent elections to the European Parliament on 22 May 2014, media reports surfaced suggesting that many non-national EU citizens were unable to vote, having failed to return a declaration or done so incorrectly. Some questioned whether multiple voting was a real problem in practice. However, the EU policy and law is that EU citizen electors' wish to vote in the state of residence must be communicated by declaration. That cannot be part of this review.
- 1.197 How the declaration is administered is a matter for the UK, and it may be that the limitation of declarations to one year is not sensible if no European Parliamentary election is due until after that time period. In any event, electoral administrators are used to dealing with declarations for special category voters, and should administer the application and declaration for EU citizens in such a way that does not cause confusion among applicants.

Civil sanctions

- 1.198 In the United Kingdom, registration as an elector is not optional: this is evident from the fact that it is not open to an elector to choose to be removed from the register, if the circumstances behind their registration are not changed (in other words, if they remain resident at their registered address). The registration officer can impose a civil penalty on persons who are entitled to register but fail to do so. However, this is viewed in practice only as a last resort once a number of other steps have failed to yield a response from a person; it is furthermore always the registration officer's choice whether to impose the penalty.¹³³
- 1.199 Figure B below sets out the various steps a returning officer must carry out in Great Britain before they are entitled to impose a civil penalty.

¹³² Electoral Commission, *Guidance for Electoral Registration Officers: Part B – Entitlement to register* (July 2013), paras 6.32 to 6.37.

¹³³ Representation of the People Act 1983, s 9E(7).

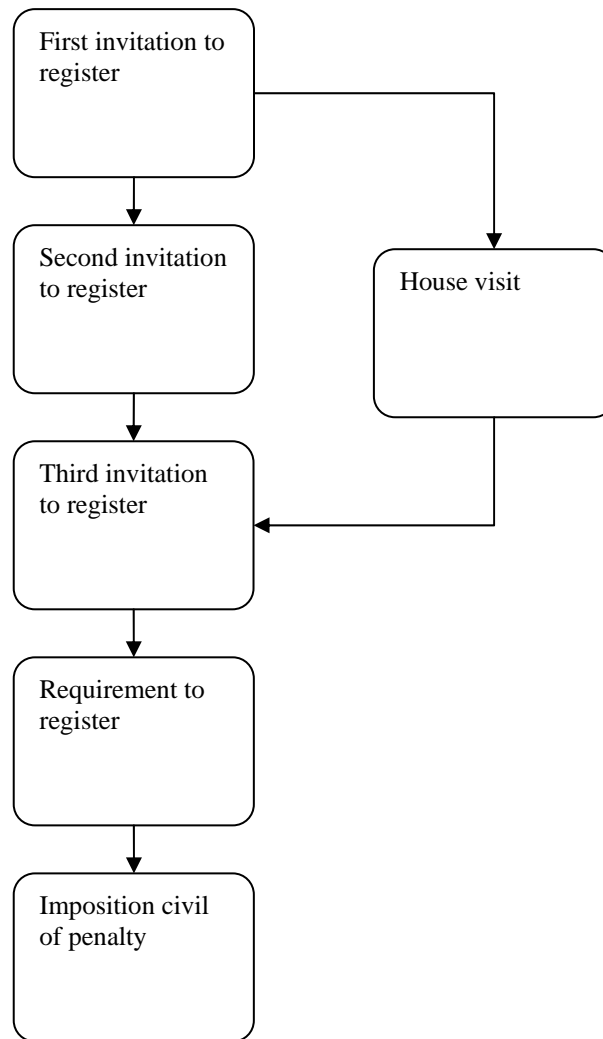


Figure B: steps a returning officer must carry out before imposing a civil penalty

Requirement to register

1.200 Sending out invitations to register, requirements to register and imposing civil penalties form part of the registration officer’s duty to maintain the register under section 9E of the 1983 Act, inserted by the Electoral Registration and Administration Act 2013. A registration officer is not entitled to send a requirement to register to any person until they have sent that person three invitations to register with no response, and have conducted at least one house visit.¹³⁴

1.201 The registration officer must also have established that the person in question:

- (1) is resident at the address to which the invitations were sent;

¹³⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZD; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 32ZD.

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- (2) has received an invitation to register;
 - (3) has been informed of how to make an application to register; and
 - (4) has been informed that a civil penalty may be imposed if they fail to respond to the request.¹³⁵

1.202 The requirement to register must be made in writing on a form designed by Electoral Commission. It must be withdrawn where the registration officer is satisfied that the person is not entitled to be registered at the address in question, or is registered in respect of another address, and the registration officer may also cancel the requirement to register if they consider it appropriate to do so.¹³⁶

The civil penalty

1.203 Where a requirement to register has not been complied with, the registration officer may impose a civil penalty of £80. The person upon whom it is imposed must make an application to register or pay the penalty within 28 days; alternatively they can request a review of the decision to impose the penalty.¹³⁷ The person in question is entitled to make representations and submit evidence to the registration officer. If the registration officer decides on conclusion of the review to uphold the civil penalty, there is a right of appeal to the First-tier Tribunal.¹³⁸

¹³⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZE(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 32ZE(2).

¹³⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZE(4) to (6); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 32ZE(4) to (6).

¹³⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 32ZF; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 32ZF.

¹³⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 32ZH and 32ZI; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 32ZH and 32ZI.

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- 1.204 Under the household registration system, it was an offence leading to a fine not exceeding level 3 on the standard scale to fail to comply with a request for information made by the registration officer.¹³⁹ Requests for information extended to the issue of an annual canvass form, as well as any other request for information a registration officer might make.¹⁴⁰ This offence was difficult to operate since the obligation to respond to a canvass form or make an application to register applied to the notional “head of the household”: the person who filled out the canvass form in respect of the other people living in the property. In cases where a canvass form was not returned it would not be obvious to the registration officer who this person was, and thus who should be prosecuted.
- 1.205 Under individual electoral registration some of these problems are removed; every person who is entitled to register is responsible for their own application. However, problems remain: a registration officer must be satisfied that a person is resident in a property before they are entitled to send a request to register and impose a civil penalty. This may be difficult to establish where a resident is uncooperative, although council tax and other records may help the registration officer to ascertain this. The new regulations are also not fully effective in enforcing compulsory registration; it appears that under regulation 32ZF of the 2001 Regulations, a person who is entitled to register has a choice between applying to be registered and paying a civil penalty.

The registration system in Northern Ireland

- 1.206 The 1983 Act also governs registration in Northern Ireland, supplemented by the Representation of the People (Northern Ireland) Regulations 2008.¹⁴¹ The apparatus for electoral registration is governed by sections 8 and 9 of the 1983 Act, just like that in Great Britain. The registration officer for all of Northern Ireland is its Chief Electoral Officer, who is also a central returning officer for all elections. We have already noted that section 10ZB enunciates the registration objectives for the Officer as completeness and accuracy.
- 1.207 Individual electoral registration has been in use in Northern Ireland since 2002. The Northern Irish scheme shares characteristics with the recently introduced system in Great Britain, which is to be expected since both systems are underpinned by the notion that applications to register be made by individuals, rather than in canvass returns by households. There are some crucial differences however. The most important are that:

- (1) the canvass occurs every ten years;¹⁴²

¹³⁹ Representation of the People Act 1983, sch 2 para 13; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 23; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 23.

¹⁴⁰ R Price (ed), *Parker's Law and Conduct of Elections*, looseleaf, issue 23, para 3.28.

¹⁴¹ SI 2008 No 1741.

¹⁴² Representation of the People Act 1983, ss 10 and 10ZA.

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- (2) canvass forms constitute applications to register each and every person named within them;¹⁴³ and
 - (3) personal identifiers given when registering are used for absent voting applications and to verify postal votes.¹⁴⁴

THE CANVASS IN NORTHERN IRELAND

- 1.208 Section 10 of the 1983 Act, which governed the canvass throughout the UK, now applies to Northern Ireland only. Read with section 10ZA of the same Act, this obliges the Chief Electoral Officer to conduct a canvass every ten years, commencing in 2010. An extraordinary canvass may also be held in any other year if the Chief Electoral Officer recommends that one is required to meet the registration objectives of completeness and accuracy, and the Secretary of State agrees that it would be in the public interest.¹⁴⁵ This power was exercised from August to September 2013, after an Electoral Commission study of the registers in Northern Ireland. Canvassing was conducted by electoral office staff hand-delivering registration forms to every household in Northern Ireland.¹⁴⁶
- 1.209 One of the effects of the section 10 continuing to apply in Northern Ireland is that it remains the case that returning the canvass form constitutes an application to vote, so long as the requisite identifiers are provided.¹⁴⁷ The contents of the canvass form must be prescribed by the Secretary of State after consultation with the Electoral Commission.¹⁴⁸
- 1.210 Maintaining the register is governed generally in Northern Ireland by section 10A of the 1983 Act. The Chief Electoral Officer must determine applications and objections to a person's registration in accordance with requirements prescribed in the 2008 Regulations.

¹⁴³ Representation of the People Act 1983, ss 10 and 10A(2) and (5).

¹⁴⁴ Representation of the People Act 1983, sch 1 rr 2(b) and 2A; Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 87(1)(b); European Parliamentary Elections (Northern Ireland) Regulations 2004 SI 2004 No 1267, sch 1 r 50(2)(b) and (3) and sch 2 para 32(1)(b); Northern Ireland Assembly Elections Order 2001 SI 2001 No 2599, schs 1 and 2; Electoral Law Act (Northern Ireland) 1962, sch 5 r 45(2)(b) and (2A); Local Elections (Northern Ireland) Order 1985 SI 1985 No 454, sch 2 pt 3 para 17A(1)(b).

¹⁴⁵ Representation of the People Act 1983, s 10ZA.

¹⁴⁶ The Northern Ireland Canvass 2013 – About my vote, produced by the electoral commission http://www.aboutmyvote.co.uk/northern_ireland_canvass.aspx (last accessed 1 April 2014).

¹⁴⁷ The canvass form used in Northern Ireland in 2013 differed from that used in Great Britain both under household registration and the new household enquiry form developed for individual electoral registration. Instead of requiring information on which persons are residing at a property, the Northern Ireland canvass form looks more like the form for an application to register. A separate canvass form would have DO YOU MEAN "HAD"? to be completed in respect of each person living at a particular address.

¹⁴⁸ Representation of the People Act 1983, s 10(4) (as amended by Northern Ireland (Miscellaneous Provisions) Act 2014, s 13).

UNRESPONSIVE CANVASSED ELECTORS

- 1.211 Section 10A(5)(i) of the 1983 Act provides that where a registration officer is not satisfied as to an elector's residence on 15 October of a canvass year because they have not returned a canvass form, they should be removed from the register.¹⁴⁹ Unlike the system previously applicable in Great Britain, there is no power allowing the Chief Electoral Officer to "carry over" entries into the next version of the revised register, where there is no evidence to suggest that an unresponsive elector is no longer resident.¹⁵⁰ With annual canvassing, "canvass fatigue" might explain the lack of response; at ten year intervals it may be sensible always to conclude that unresponsive electors are no longer resident and should be deleted from the register. However, we have seen that extraordinary canvassing can occur; if it occurs frequently, the case for an equivalent power to "carry over" unresponsive household entries onto the new register may grow.

THE APPLICATION TO REGISTER

- 1.212 The requirements for an application to vote that are set out in the 1983 Act and 2008 Regulations are similar to those which applied in Great Britain prior to individual electoral registration. Personal identifiers must include a signature as well as a date of birth and national insurance number and there is a similar power to dispense with the national insurance number and the need to sign the application. As to the former, there is much less detailed guidance as to the kind of evidence which is required to satisfy the registration officer as to the applicant's identity.¹⁵¹
- 1.213 The application must include similar details such as name and address, previous addresses, whether the elector wishes to opt out of the full register and a declaration of truth. As with the old system of household registration in Great Britain, an application does not need to be made on a prescribed, user-tested form provided by the registration officer. Furthermore there is no provision for the application to be made online. The fact that a signature is required as a personal identifier, and is relevant for postal voting applications, means that online registration is unlikely to be possible in Northern Ireland in the near future.¹⁵²

¹⁴⁹ Representation of the People Act 1983, s 10A(2), (5) and (6).

¹⁵⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 34; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 34. These provisions are technically still in force, although the reference to section 10A, which applies only in Northern Ireland, renders them ineffective.

¹⁵¹ Representation of the People Act 1983, s 10A(1A) and (1B); Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 27.

¹⁵² Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 27.

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- 1.214 Despite the fact that Northern Ireland has a system of individual electoral registration, the legislation still envisages that an application may be made in respect of multiple persons.¹⁵³ This seems to be a relic of household registration, and the fact that a canvass form returned in Northern Ireland is still considered an application to register. However, as noted above, the canvass form used in 2013 could only be completed in respect of a single applicant. This seems to be an aberration, particularly in view of the shape of individual electoral registration in Great Britain.

INSPECTION AND OBJECTIONS

- 1.215 Substantively similar rules on inspection of registration applications and objections to applications to register apply in Northern Ireland as in Great Britain, although section 10A contains more detailed prescription concerning objections than the Great Britain primary legislation does.¹⁵⁴ There may be an issue with making registration applications publicly available for inspection in Northern Ireland, since they contain sensitive personal identifiers such as the date of birth, signature and National Insurance number of an applicant. We will be inquiring of the Northern Ireland Office whether this information is redacted before applications are presented for inspection.

FAILURE TO RESPOND TO A CANVASS FORM

- 1.216 In Northern Ireland the rules on failure to respond to a request for information from the registration officer, which previously applied to household registration, are still in force. Thus a failure to respond to the canvass form is a criminal offence leading to a fine not exceeding level 3 on the standard scale.¹⁵⁵

Residence and special category electors in Northern Ireland

- 1.217 The discussion above in relation to residence and special category electors applies equally to Northern Ireland. A recent amendment to the 1985 Act allows an overseas elector whose declaration specifies an address in Northern Ireland, and who is an Irish citizen born in Northern Ireland, to identify themselves as an “eligible Irish citizen”. This is a purely cosmetic change – the declarant must still fulfil the same requirements, including qualifying as a British citizen – but it allows them to identify themselves as Irish on their declaration.¹⁵⁶

¹⁵³ Representation of the People Act 1983, s 10A(1A), inserted by the Electoral Fraud (Northern Ireland) Act 2002.

¹⁵⁴ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, regs 28 to 30.

¹⁵⁵ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 24.

¹⁵⁶ Representation of the People Act 1985, s 2(3A), (9) and (10), as inserted by Northern Ireland (Miscellaneous Provisions) Act 2014, s 15.

Access to the register

- 1.218 Broadly the same provisions on access to the register apply in Northern Ireland as in Great Britain.¹⁵⁷ One difference is that the duty to supply a copy of the revised register to the British Library is only in respect of a printed copy, not a data copy.¹⁵⁸ Furthermore, there is no duty to supply a copy of the register to the National Libraries of Scotland or Wales.
- 1.219 As in Northern Ireland the local administration of elections is undertaken by deputy returning officers, overseen by the Chief Electoral Officer, the provisions also include a requirement to supply a copy of the register to all deputy returning officers. However, this obligation only applies to forthcoming local elections; the copy of the register must be supplied no later than five days before the publication of notice of election.¹⁵⁹

REGISTERED MEDICAL PRACTITIONERS

- 1.220 Among those entitled to request registration information, a new category is added by the Northern Irish legislation: registered medical practitioners. These may request registration information relating to a one particular person. The information may only be used or transmitted for medical purposes, which are defined as relating to the provision of medical care or treatment to that person or their dependant. "Dependant" is further defined as a person's spouse or partner, child, parent, or any person reliant on them for the provision of care.¹⁶⁰ Medical practitioners are one of the categories not entitled to request to be supplied continuously with subsequent revised versions of the register, as well as candidates for election.¹⁶¹
- 1.221 This category is not included in the regulations on access which apply in Great Britain. It will be useful to inquire how often the Chief Electoral Officer receives requests from registered medical practitioners, and consider whether this provision might also have utility in Great Britain.

ACCESS TO THE REGISTER

- 1.222 As a wide-ranging record of names and addresses of persons living in an area, the register is both a sensitive document and one of extreme value to public and private bodies. It is not surprising therefore that strict rules apply to the communication of the register outside the small group of the registration officer and their staff. The legislation requires the registration officer to publish two versions of the register:

¹⁵⁷ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, pt 6.

¹⁵⁸ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 96.

¹⁵⁹ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 97.

¹⁶⁰ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 107A.

¹⁶¹ Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 101(5).

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- (1) the full register, which is a comprehensive record of all persons registered to vote in the area that the registration officer is responsible for; and
 - (2) the edited register, which does not contain entries relating to persons who have opted out of inclusion therein, or anonymous voters.¹⁶²

1.223 The general position is that the registration officer and their staff cannot supply the full register or disclose or any information in it to any person, other than in accordance with an enactment permitting them to do so.¹⁶³ The edited register is more freely available; once it has been purchased from the registration officer, its use, disclosure and supply is not regulated by electoral law.

Access to the full register

1.224 By way of exception to the general prohibition on supply or disclosure of the full register, a number of provisions of the 2001 Regulations set out specific situations in which the register must be supplied or can be accessed. These include disclosure for certain legal purposes, such as selecting persons to serve in juries, or to parties and candidates to support their role in the electoral process. Free copies of the register are sent to some institutions, which can be inspected by members of the public under supervision. Finally in some circumstances the full register can be bought by certain specified bodies, such as Government departments and credit reference agencies.

Supply: general principles

1.225 The full register may be supplied either pursuant to a statutory requirement upon publication of a revised version of the register, or upon request by a specified person or body. Certain general principles apply to any such supply of the full register.

SUPPLY IN DATA OR PRINT FORM

1.226 The provisions on supply spell out the format – data or print – in which the register should be supplied. For example, the registration officer does not have to supply a print copy to a credit reference agency or government department if this would mean the registration officer has an insufficient number of print copies to satisfy the other statutory supply requirements.¹⁶⁴

¹⁶² Representation of the People Act 1983, s 13; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 93; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 93.

¹⁶³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 94(3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 94(3).

¹⁶⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 112(2); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 111(2).

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- 1.227 The basic position is that the register must be supplied in data form, unless the person or body it is being supplied to requests otherwise.¹⁶⁵ In addition, a print copy of the register and list of overseas electors must be supplied to the British Library and, by registration officers in the respective jurisdictions, to the National Library of Wales and the National Library of Scotland.¹⁶⁶

USE AND FURTHER SUPPLY

- 1.228 Where a person or body is supplied with a copy of the full register or information contained in that register, they are also subject to a general prohibition on further use or supply of that register unless in accordance with permitted purposes. The permitted purposes are those which justified the copy or part of the full register being disclosed to that person in the first place.¹⁶⁷

Use for electoral purposes

- 1.229 One of the permitted purposes which applies to those involved in the electoral process – administrators, candidates, elected representatives, registered parties and third parties – is the use of registration data for “electoral purposes”. Although this term is used frequently in the provisions on access to the register in the 2001 Regulations, it is not defined.¹⁶⁸
- 1.230 It is possible to distinguish electoral purposes from those which bear no relation to elections; for example, marketing or credit checking as noted below. The Electoral Commission has suggested that electoral purposes might require a connection between use of the data and a specific election. There is however no indication in the legislation that the term should be limited in such a way. The Electoral Commission also suggests that “electoral purposes” do not include “referendum purposes”, based on the fact that both are mentioned separately in the same provision.¹⁶⁹

¹⁶⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 97A(3), 98(3), 99(2), 100(2), 101(4), 102(2) and (3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 97(2), 97A(2), 98(2), 99(2), 100(3) and 101(3).

¹⁶⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 97 to 97B; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 96.

¹⁶⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 96(2) and (2A), 98(9), 99(3), 100(3), 101(6), 102(6), 103(3), 104(3), 105(4), 106(4), 107(4), 108(5), 109(4), 112(4) and (5), 113(2) and (5) and 114(3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 95(3), 97(7), 98(3), 99(3), 100(5), 101(6), 102(3), 103(3), 104(4), 105(3), 106(3), 107(5), 108(3), 111(3),

¹⁶⁸ For example, Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 98(7), 101(3), 105(3), 106(4) and 108(5); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 97(7), 97A(3), 102(3), 104(4), 105(4), 107(5).

¹⁶⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 106; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 105.

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- 1.231 The term “electoral purposes” does not apply to the initial supply of the register from the registration officer to the requestor, and there is no need to provide an indication of how the data will be used in that request. Rather, the “electoral purposes” limitation only applies to further supply of registration data and the use of data by the requestor once they have received it. Permitted recipients receive the full register; they must use it (give the data to others) only for the permitted (electoral) purpose.

INSPECTION

- 1.232 Copies of the register supplied to national and public libraries and the Statistics Board may be inspected under supervision by members of the public, who are confined to making handwritten notes of its contents. They may use and disclose any information they gather in this way, so long as they do not use the information for direct marketing as defined in section 11(3) of the Data Protection Act 1998.
- 1.233 These restrictions are loosened as the register becomes a historical record. In places where a copy of the full register is available for inspection, after ten years have elapsed the full register may be disclosed or supplied, and further supplied or made use of, other than for research purposes and under conditions laid down in section 33(1) of the Data Protection Act 1998.¹⁷⁰

Supply on publication

- 1.234 Upon publication of the revised full register, which occurs either at the conclusion of a canvass or at any time of the registration officer’s choosing, it must be supplied to certain institutions. These are:
- (1) returning officers responsible for running polls in the registration area;¹⁷¹
 - (2) the British Library;¹⁷²
 - (3) the National Library of Wales;¹⁷³
 - (4) the National Library of Scotland;¹⁷⁴
 - (5) the Statistics Board;¹⁷⁵

¹⁷⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 97 to 97B, 99 and 109A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 96, 98 and 108A.

¹⁷¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 98; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 97.

¹⁷² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 97; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 96.

¹⁷³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 97A.

¹⁷⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 97B; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 96.

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- (6) the Electoral Commission;¹⁷⁶
 - (7) in England and Wales, the Boundary Commissions for England and Wales, and the Local Government Boundary Commission for Wales;¹⁷⁷
 - (8) in Scotland, the Boundary Commission for Scotland the Local Government Boundary Commission for Scotland;¹⁷⁸
 - (9) in Scotland, National Park authorities;¹⁷⁹
 - (10) in England and Wales, an officer designated by the Lord Chancellor, for the purpose of selecting jurors;¹⁸⁰ and

Supply on request

1.235 The registration officer must also supply parts of the register to specified persons and organisations entitled to request it. In most circumstances, this request may be made either only in respect of the current version, or also for the supply of subsequent versions on publication. The one exception is in relation to candidates, who may only request the supply of subsequent documents for the purpose of complying with controls on donations.¹⁸¹ The specified persons and bodies are:

- (1) the Electoral Commission;¹⁸²
- (2) elected representatives;¹⁸³
- (3) candidates;¹⁸⁴

¹⁷⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 99; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 98.

¹⁷⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 100; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 99.

¹⁷⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 101.

¹⁷⁸ Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 100.

¹⁷⁹ Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 97A.

¹⁸⁰ Juries Act 1974, s 3.

¹⁸¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 104; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 103.

¹⁸² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 100(2A); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 99(2A).

¹⁸³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 103 and 104; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497. regs 102 and 103.

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- (4) political parties and their local constituency representatives;¹⁸⁵
 - (5) third parties and permitted participants registered under the Political Parties, Elections and Referendums Act 2000;¹⁸⁶
 - (6) local councils responsible for all or part of the registration area;¹⁸⁷
 - (7) the security services;¹⁸⁸
 - (8) police forces and related agencies;¹⁸⁹ and
 - (9) public libraries or local authority archive services.¹⁹⁰

Purchasing the full register

1.236 The full register may also be purchased by certain bodies listed in the 2001 Regulations. These are:

- (1) any government department;
- (2) the Environment Agency;
- (3) the Financial Conduct Authority;
- (4) the Prudential Regulation Authority;
- (5) other bodies which carry out vetting for national security purposes;¹⁹¹ and
- (6) credit reference agencies.¹⁹²

¹⁸⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 104 and 108; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 103 and 107.

¹⁸⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 105 and 106(1)(a); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 104 and 105(1)(a).

¹⁸⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 106(1)(b) and (c); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 105(1)(b) and (c).

¹⁸⁷ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 107; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 106.

¹⁸⁸ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 108A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 107A.

¹⁸⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 109; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 108.

¹⁹⁰ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 109A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 108A.

¹⁹¹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341; reg 113; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 112.

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- 1.237 The information purchased may only be used, supplied or disclosed for purposes listed in the relevant regulations, although information that is contained in the edited register may be disclosed without restriction.¹⁹³

Access to the edited register

- 1.238 The reforms brought in by the introduction of individual electoral registration also include changes to the operation of the edited register. The edited register must now be updated at regular intervals, in a similar way to the full register. Where an application under regulations 26 or 93A of the 2001 Regulations results in a change to the persons wishing to be omitted from the edited register, this must be reflected in a revised version of the edited register, which (like notices of alteration to the full register) is published monthly.¹⁹⁴
- 1.239 The Electoral Commission has also introduced a change in terminology, presenting the edited register as the “open register” to make it clearer that this register is freely available for purchase by any interested party. Although the legislation still refers to the edited register, voter-facing documents such as the household enquiry forms and invitations to register now use the term “open register” instead.
- 1.240 An elector can notify the electoral registration officer that they wish to be removed from or added to the edited register at any time, or this can be indicated on an application to register.¹⁹⁵ It is not however possible for this notification to be made on a household enquiry form.¹⁹⁶ This is a slight change in the law which is consonant with the move to individual electoral registration. Previously, the person completing the canvass form had to indicate on that form, each year, whether they wished to opt out of the edited register. Views differed as to whether the law permitted the canvass form to be pre-printed with a choice to be excluded from the edited register, if this reflected the position of the previous year. The change in the law means that once a person has indicated that they wish to be excluded from the edited register, they will remain excluded until they submit a new application to register or notify the registration officer under regulation 93A of the 2001 Regulations.

¹⁹² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 114; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 113.

¹⁹³ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 112(3) and (4); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 111(3) and (4).

¹⁹⁴ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 93(3A) to (3C); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 93(3A) to (3C).

¹⁹⁵ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 93(2) and 93A; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, regs 93(2) and 93A.

¹⁹⁶ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 93A(3); Representation of the People (Scotland) Regulations 2001 SI 2001 No 497, reg 93A(3).

Use of the register for non-electoral purposes

- 1.241 As we noted in our scoping Consultation Paper, the law allows the electoral register to be used for purposes that are wholly unconnected with elections, such as marketing (edited register) and credit checking (full register). It is arguable that such use of the register may affect its accuracy and completeness, if electors do not wish their name and address to be known to others. The use of the edited register for non-electoral purposes may deter some people from registering, in order to avoid junk mail. For others, the fact that the full register can be purchased by credit reference agencies, the local authority or national government, and is available for inspection by any member of the public in libraries and at local authorities, may also act as a deterrent to registering.
- 1.242 However, there is a counter argument, certainly in the case of the availability of registers to credit referencing agencies, that it promotes and incentivises registration in order to obtain credit.
- 1.243 In the case of anonymous electors, the law ensures only their electoral number will be noted on the register. Furthermore, an elector can choose to “opt out” of the edited register, so that their details are not available for general commercial purchase.
- 1.244 Under individual electoral registration, this opt-out is more powerful than previously, since as explained above an elector will not have to opt-out every year, but only each time they make a new application for registration, which may be less often.
- 1.245 The availability of the register for use for both electoral and non-electoral purposes is the result of a balance drawn between the competing aims of a complete and accurate register and other policies, such as supporting businesses by giving them a way of contacting local residents, having a sound basis for checking credit status, bolstering public information, and so on. It is not for this project to second guess the balance struck between these competing policies.

THIRD PARTY COLLECTION OF EDITED REGISTER INFORMATION

- 1.246 However we do raise the issue of the transfer of the edited register information by those who have access to the full register. It is surprising that a third party – for example a credit referencing agency – is able to pass on a portion of their registers (which is edited register information) to others without supervision or limitation. A recent phenomenon has seen voter information available and searchable online, for example via 192.com. We have anecdotally heard that voter information is available on 192.com despite there being no record of it having purchased the electoral register from the registration officer. The likely explanation is that the information is purchased from someone else, in all likelihood a credit rating agency.

1.247 Since the edited register must be purchased from registration officers, it would seem odd if it can be sold on by the purchaser of either that register or of the full register. Furthermore, since the electoral registration officer is a public servant entrusted with maintaining registers according to the law, and is ultimately accountable for their performance to the public, they are best placed to ensure that the information passed on is only that which can in law be passed on. Leaving that to purchasers of the full register means that they are entrusted with ensuring that only edited register information is sold on to third parties.