The Political Parties and Elections Act 2009:
an introduction to what it means

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Introduction

Shortly before Parliament rose for the 2009 summer recess, Royal Assent was given to the Political Parties and Elections Act 2009, which is intended in particular to deal with some of the issues thrown up by the regular sequence of scandals over political party fundraising in the UK.

New rules on political donations

The changes introduced by the Act are intended both to reduce the administrative burden on volunteers such as local party treasurers but also to ensure that more information is revealed as to the actual sources of money received by parties or candidates.

Question over the actual origin of money given to parties have come up in the cases such as David Abrahams's donations to Labour (where he provided money to intermediaries who then donated to Labour and whose names were those in the public donations records) and the Midlands Industrial Council (who took money from individuals and in turn made donations to Conservatives, but with the MIC being declared as the donor).

In future donations will have to be accompanied with a declaration as to the source of the money (dealing with the David Abrahams type situation). Unincorporated associations making donations of over £25,000 in a year will have to reveal the source of donations to themselves of more than £7,500 (dealing, at least in part, with the Midlands Industrial Council type situation, though that £7,500 is a fairly generous figure).

There has also been ongoing controversy over whether tax exiles and similar should be able to donate. Under the Political Parties and Elections Act 2009, donations or loans of more than £7,500 can only come from those resident, ordinarily resident and domiciled in the UK. There have been reports, however, than the commencement of these provisions will be delayed until after the general election.

The Peter Hain Labour deputy leadership campaign illustrated problems over who exactly is legally liable if the rules are not followed. In future, members associations (a group or organisation primarily made up of members of one party) will have to appoint a "responsible person" who will be liable for failures to follow the rules. Holders of public office will also be able to appoint a compliance officer to assist them with declaration of donations.

To make life easier for voluntary treasurers, and to reflect the impact of inflation since the figures were first set, the basic threshold for recording and checking on

the permissibility of donations and loans rises from £200 to £500, with the threshold for then reporting them to the Electoral Commission rising from £1,000 to £1,500 (for monies received locally) and from £5,000 to £7,500 (for monies received nationally). Finally, there is a defence in future of "reasonable excuses" for non-compliance.

Electoral registration

The Political Parties and Elections Act 2009 contains a timetable for switching from household registration to individual registration. Currently one electoral registration form is sent to each household, to be completed by one in person in the household on behalf of everyone there. In future – in fact, quite a way in the future as the timetable is very leisurely – everyone will get and have to fill in their own individual form, providing additional personal information that can be used to help protect against electoral fraud.

A voluntary phase will start in July next year, with household registration continuing but voluntary individual registration on offer. For this, people will be asked to provide their signature, date of birth and national insurance number. Each year the working of this system will be reviewed by the Electoral Commission until 2014 when, if the Commission recommends it, a vote will go before Parliament to change to full mandatory individual registration from July 2015.

The Political Parties and Elections Act 2009 also paves the way for a series of pilots on how the quality of the electoral register could be improved by making more use of the data held by public authorities. There are many records in the public sector of who lives where which currently are not used to help improve the accuracy or completeness of the electoral register.

This is linked to individual registration as switching from household registration may result in lower registration rates (as was the case in Northern Ireland). Better use of other data could be a way to help compensate for this.

Sharing more government data raises obvious fears about privacy, accuracy and security, but the examples of countries such as Australia show how, done well, it can bring sensible electoral benefits.

These pilots could be a really good route to making better use of data in ways that people are happy with. However, the experience of the pilots on e-voting should give pause for caution, as in those little emphasis was given to issues such as cross-checking accuracy of data and transparency of (and so confidence in) in data handling procedures.

Changes to the Electoral Commission

The Political Parties and Elections Act 2009 introduces numerous technical, but widely welcomed, changes to the Electoral Commission's powers, such as providing better investigatory powers and a wider range of sanctions.

The new civil sanctions are particularly sensible as currently the Electoral Commission is frequently faced with a choice between doing nothing or pursuing an inappropriate criminal prosecution. Where the circumstances involve, for example, a voluntary party treasurer failing to declare a donation on time because they had also just become a parent then neither option at the moment really suits. Doing nothing isn't appropriate but a criminal conviction would be rather over the top. A fine would often be much more appropriate.

The make-up of the Electoral Commission is also set to change, with up to four Commissioners now able to be people with recent political experience. This had been rejected in the past for fear of politicising its work, but should be a way to deal with the still heard criticisms that the Electoral Commission too often displays an ignorance of how the political and electoral systems actually work in practice. Electoral Commission staff in future will also be able to have been active in politics more recently than the current rules allow.

New controls on election expenditure

Hands up everyone who thought the problem with current rules for controlling constituency expenditure was that they work if a Parliament last for four years but not if it lasts for five? Nobody? Oh well, that's the basis on which the Political Parties and Elections Act changes the law anyway.

The changes to election expenditure controls have their roots in a sensible concern, but along the way disagreements between parties and lack of understanding of how campaigns actually operate has landed us with this rather odd change in the law.

The issue that should be at the heart of the matter is the dividing line between what counts as local expenditure and what counts as national expenditure. Local expenditure on a constituency campaign is controlled for the three or four weeks of the actual general election campaign, with a limit of around £10-12,000 per constituency per candidate. National expenditure is controlled for the year prior to a general election (which causes some budgeting headaches given we don't know when polling day will be), with the limits running into the several million of pounds per party.

All parties try to concentrate their resources on target seats – difficult defences or ones they hope to gain. For any party, even one of the major ones, the number of such seats is relatively small compared with the total number of constituencies. Therefore, during the three or four weeks of the campaign proper, there is an incentive to do your campaigning in a way that counts against the national limit rather than the local limit. Although the national limit also has to cover national activities, it is sufficiently generous – and the number of seats which really matter sufficiently small – that if you can charge target seat campaigning against the national rather than the local limit then you can operate in practice without any real regulatory limits restricting your activity. It's your bank balance rather than the law that restricts what you can spend.

So what can count as national rather than local campaigning? Imagine a letter, from a party leader to a voter. The voter has been selected because they live in a particular constituency and because of the canvass data the party has for them. The letter mentions the local constituency by name. It gives the name of the health trust and the health waiting list figures. It gives the name of the local police force and changes in crime figures. It urges people to vote for that party in the general election. It even contains a "Vote for party X" window poster.

It can do all of that, and still only count against the national limit. It is only if names the party's candidate that it has to count against the local limit.

Parties used to act as if the law said otherwise, but a combination of changes in the law and party competition egging each party on in turn to push the limits of the law means we've now reached the situation where letters like this have been done and counted against the national limit without any legal action or even expression of qualms from the Electoral Commission when it has inspected expense returns.

And so there is a real problem. We have one sort of activity relatively tightly controlled and another sort controlled in a very relaxed manner, even though both activities are carried out in order to achieve the same aim (more votes for a party in a particular constituency). What's worse, this distinction encourages a change in campaigning behaviour goes against the general health of our democracy – because it means the less you talk about your candidate and their record, the more campaigning you can do. The more presidential the campaign, the more of it you can do in your target seats.

However, the changes in the law brought about by the Political Parties and Elections Act 2009 do not address problem. That's for two reasons. First, many of the expert advisors to the Government have not appreciated that this is the current

reality. I was at a consultation meeting a few months ago with the key people and it was clear that the descriptions from myself and those from other parties of how parties now operate was an eye-opener to many of them.

Second, the Labour Party has misunderstood how the "Ashcroft money" fits in to this issue. Many in Labour are concerned they were and will be out-spent in marginal seats thanks to the funds provided by Lord Ashcroft to the Conservative Party. They have responded to this by wanting to tighten up the expense rules, but have decided that the problem is that the local campaign limits do not apply for long enough.

As a result, during the passage of the legislation variants on "make the local controlled period longer" were proposed. They are all doomed to fail to achieve Labour's aim because all the Conservatives have to do is to switch more of their campaigning to be about David Cameron and less about their individual candidates and such changes will not restrict the amount of campaigning they can do. Given that David Cameron is generally better known and more popular than Conservative candidates, forcing the Conservatives to say more about him and less about their candidates is not merely unproductive but also counter-productive.

So what does the mess that we've ended up with say? Well, one argument used by many against extending the local controlled period is that local expenditure is controlled by local volunteer agents, and without knowing when polling day is going to be, any rules which mean it starts before a general election is called means agents have to be in place for longer, keeping control and records, with a significant degree of uncertainty about what will turn out to matter when. It's one thing to put that burden on the staff in party HQs, but putting it on volunteers – who are criminally liable if they get it wrong – will just put even more people off taking part in elections.

The messy compromise in the Act then is to have an extended controlled period, but to say that it can't start before a date late in the Parliamentary cycle. Agents therefore don't have to be in place and keeping records for years in advance of an election just in case there's one sooner than expected.

There will therefore now be both a "pre-candidacy" and a "short campaign" period of controlled local expenditure (see sections 21 and 22 of the Political Parties and Elections Act 2009).

The pre-candidacy campaign period starts after 55 months from the previous general election and runs until the short campaign, which is when someone becomes a candidate as under the existing rules (i.e. either the day on which

Parliament is dissolved or, if they've avoided calling themselves a candidate up to that point, the day on which they start doing so, which at the latest is when they hand in their nomination form).

For the pre-candidacy campaign period, expense limits will be a percentage of a sum equal to £25,000 plus either 5p (for borough constituencies) or 7p (for county constituencies) per entry on the electoral register. What percentage it is depends on when Parliament is dissolved:

(a) 100% where the dissolution was during the 60th month of the Parliament;
(b) 90% where the dissolution was during its 59th month;
(c) 80% where the dissolution was during its 58th month;
(d) 70% where the dissolution was during its 57th month;
(e) 60% where the dissolution was during its 56th month.

i.e. rather counter-intuitively, the longer the Parliament lasts, the higher the amount you can then spend in the pre-candidacy campaign period.

Just to add to the fun the version of the electoral register which is used for working out the limit is the one in force on the last day for publication of notice of the election, i.e. one which comes out well after the period starts for which it is used to calculate the limit.

At this point, Parliament then rather gave up trying to draft a law that works and added in that the Electoral Commission will produce guidance on what does and doesn't get covered by these limits. An earlier attempt to do this was forcibly disowned by the Electoral Commission, in some of the most robust correspondence I've seen – very polite, but very firm – which said that Parliament couldn't completely opt-out of coming up with rules and pass the buck. As a result, the Bill was changed somewhat in order to make the legal framework a little clearer, but it still leaves an awful lot up to the Commission to produce guidance to fill in the gaps.

One consolation for election agents at least is that as the guidance is required to be produced by law, and so although it law itself, following that guidance will offer a very high degree of legal protection.

The Electoral Commission is currently consulting on its guidance. Their consultation looks to be covering the right topics, including clearing up pesky details such as "Which side of the regulatory line would the day of dissolution itself fall?" and important broad questions such as "Does any of this have an

impact on what donations are covered by the controls on donations to candidates?"

The consultation process is also forcing out in to the open guidance on some issues that have been rather fuzzy in the past. For example, one of the Commission's notes on the state of its consultation says, "Staff and facilities may be shared between national/regional and constituency campaigns. We also recognise that during an election period, staff will be spending many additional hours on campaigning for which they are not paid and which may not form part of their legal employment contracts." (Just to emphasise: this is a note of an ongoing consultation and therefore the final wording may be significantly different. What's notable though is that this issue is being addressed.)

Fundamentally though the guidance can't fixed the flaws in the legislation. It doesn't address the issue of side-stepping local controls by charging campaigning against national limits, and indeed by having an extended period of local controls, the legislation will make that a bigger, not a smaller, problem. The result will be less control over expenditure, but more bureaucracy.

Other changes

There are several other detailed changes, including:

- Dealing with a technical issue that could have prevented some people from getting on the electoral register if a general election were to take place during the summer when the annual electoral registration canvass takes place.
- Allowing vacant Northern Ireland MEP seats to be filled without a by-election. Instead, the relevant party specifies a replacement.
- Changing the rules in Scotland about the retention of general election documents, bringing them in line with the rest of the UK. They will now be held by the relevant Returning Officers rather than the Sheriff Clerks.
- Specifying that in future European elections should be organised on the basis of local authority (rather than Parliamentary) Returning Officers and allowing the Greater London Returning Officer to be the London European Returning Officer.
- Setting up a new body to administer the planned Co-ordinated Online Record of Electors (CORE), which would collate the electoral registers from around the country into one database. The brings to an end a long-drawn out, slightly farcical sequence, where the Government was saying to the Electoral Commission, "Will you look after CORE?", the Electoral Commission said back, "But what will that involve?", the Government said, "We can't say for

sure until we know who is looking after it. Will you look after CORE?" And so on round in circles for months.

- And finally, a measure that got a degree of controversy – in future candidates at general elections will be able to choose to exclude their home address from publicly available documents.

Acronym watch

It has been common to abbreviate "National Insurance number" to "NI number", but in the Political Parties and Elections Act 2009 it becomes NINO.
