

June 2003

The
Electoral
Commission

Political Parties, Elections and Referendums Act 2000

Recommendations for change

The Electoral Commission

We are an independent body that was set up by Parliament. We aim to gain public confidence and encourage people to take part in the democratic process within the United Kingdom by modernising the electoral process, promoting public awareness of electoral matters, and regulating political parties.

On 1 April 2002, The Boundary Committee for England (formerly the Local Government Commission for England) became a statutory committee of The Electoral Commission. Its duties include reviewing local electoral boundaries.

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Executive summary

In 2002, The Electoral Commission launched a review of Parts II-VI and VIII of the Political Parties, Elections and Referendums Act 2000 (PPERA), the legislation which established the Commission and which created a new regulatory framework controlling the finances of political parties, third parties and other organisations and individuals engaged in the political process.

Objectives of the review

The aim of the review was to focus on the operation of the framework introduced by PPERA, rather than consider the fundamental principles underlying PPERA. After two years of overseeing the regulatory framework, we believe that it is too early to consider these wider issues, which will be reviewed in our project on state funding of political parties. However, we took the view that it was important to instigate an early review of the Act in order to make recommendations for changes to those areas where the detail of the legislation has imposed a greater administrative burden than might have been expected. In doing so, our aim was to maintain the rigour of the regulatory system whilst reducing the resulting complexity and administration which may act as a disincentive to participation in the political process.

Recommendations

Our report considered a number of key areas: the national controls on political parties, third parties, and holders of elective office which were introduced by PPERA; the controls on election expenditure incurred locally in respect of candidates (these controls pre-dated PPERA but were amended by them); and the impact of the regulatory regime on organisations and individuals which make donations and/or engage in other activities with those regulated by PPERA.

Political parties

The major recommendation arising from the review is the need for a two-tier regulatory framework for political parties. This recommendation recognises that, of the nearly 300 political parties on the registers of parties for Great Britain and Northern Ireland, not all operate at a level that requires quarterly submission of donation returns, weekly donation returns, and detailed year-end accounts. Although we believe that all parties which intend to participate in the democratic process should be subject to a regulatory framework, even if a party contests local government elections alone, we consider there is no benefit in imposing the current regulatory framework on those parties which will repeatedly submit 'nil' returns to the Commission. This administrative burden on smaller organisations can

be alleviated through the introduction of a system of lighter-touch controls for smaller parties.

We therefore recommend that the existing regulatory framework be split into two levels. Parties will be able to choose whether to register either to contest local government elections only, in which case they will be subject to a lighter-touch regulatory framework (including the submission of annual accounts and an annual nil-return if no reportable donations are received during the year), or to contest elections at all levels in the UK, in which case they will be subject to the current controls. The current category of 'minor parties', which are registered to contest parish or community level elections only, should be abolished, although the opportunity for candidates of non-registered parties to use a description at these elections will remain.

Our report also makes a number of recommendations for minor changes to the current controls, which should continue to apply in their amended form to parties that are registered to contest all elections.

- We note the difficulties that some parties face in complying with the accounting requirements of the Act, and seek the power to amend the number and level of accounting thresholds once we have been able to review fully the first party statements of accounts submitted to the Commission this year.
- We also recommend that the three-month deadline for submission of accounts of less than £250,000 is increased to four months.
- In regard to the donation controls, we recommend that weekly donation reporting during election periods should only apply where parties actually receive a reportable donation, and call for controls on repeatedly accepting small donations of less than £200 to be strengthened.
- We also call for a wider range of penalties to be available to the Commission in dealing with cases of non-compliance with PPERA – for example, the application of fines or forfeiture of donations where financial returns are late or inaccurate.

Third parties

Our review concludes that at this stage we have insufficient experience of the PPERA third party controls to be able to make any recommendations for change in this area. Whilst we are aware of the difficulties that arose in relation to third party controls at the 2001 election, only six organisations registered as third parties for the 2003 devolved elections. We therefore believe that this area will need to be reviewed, but consider that there is not sufficient evidence at the present time to do so.

Expenditure incurred in respect of candidates

In addition to the controls introduced by PPERA, the report also addresses the controls on candidates' election expenses and third party spending, which predated but were amended by PPERA. We believe that in practice some of the amendments have made the controls too complicated. In relation to third party spending, we are concerned that third parties are still too restricted in their ability to campaign effectively to promote or disparage a candidate. We urge the government to review the law in this area to remove some of the restrictions: not only will this enhance the democratic process by allowing third parties to undertake campaigns, it will also comply with a ruling in the European Court of Justice in 1998. In relation to candidates, we recommend that the regulated period for election expenses is standardised with political parties, and call for the creation of a list of qualifying election expenses in order to provide greater clarity for candidates and their agents.

Donors

We recognise the concern amongst parties and donors that the definition of donations is wide, and acknowledge that the current reporting of donations does not distinguish between a cash gift to a party or an arrangement in which a commercial organisation pays an equivalent amount to sponsor an event at a party conference. We believe that to maintain the transparency of political funding, it is necessary to maintain the current reporting requirements. However, we recommend that in future, the register of donations distinguishes between

the different types of donations in order to provide a more accurate picture of party funding.

Long run strategic issues

Finally, our report highlights further work that the Commission will undertake in relation to the regulation of political parties, other organisations and individuals. In addition, we outline a number of issues that we consider should be reviewed following further experience of the regulatory controls at elections, including the practicalities of separate party and candidates' expenditure limits, and third party activity to promote or disparage candidates.

1 Introduction

The Political Parties, Elections and Referendums Act 2000 (PPERA) established a new regulatory framework designed to bring greater openness and transparency to the financial activities of political parties and election candidates. The Electoral Commission, established by the same legislation, has the task of operating and monitoring the control. This report examines how the framework regime has operated in its first two years, and identifies the areas which we consider need enhancing.

Background

1.1 In 1998, following public concern about the funding of political parties (arising from a number of high-profile political sleaze allegations), the Committee on Standards in Public Life¹ recommended a new system of statutory controls regulating the financial activities of political parties and other organisations engaging in the democratic process. Subsequently, PERA established a regulatory system controlling the registration, income and expenditure of political parties. The system also regulates holders of elective office, members associations,² and, during election and referendum periods, individuals and organisations that wish to campaign in favour of a policy, party or outcome.

1.2 The Electoral Commission is independent of government, and directly accountable to Parliament. Among the Commission's general statutory functions are a duty to keep under review a range of electoral and political matters, including the registration of political parties and the regulation of their income and expenditure,³ and a duty to monitor compliance with the regulatory requirements on political parties and candidates.⁴ This examination of PERA has been undertaken in accordance with both of these duties, and follows the conclusion of a wider programme of reviews conducted by the Commission following our statutory report on the 2001 general election.⁵

1.3 The need for such an early review of the new regulatory regime was prompted by the Commission's own experience of administering the controls at the 2001 general election. In our analysis in *Election 2001: The Official Results* we indicated that it would be necessary to consider the impact of the legislation on small parties and third parties, as well as a range of other unintended consequences of the changes in the PERA.⁶

¹ The Committee was chaired at the time by Lord Neill of Bladen.

² Defined as organisations whose membership consists wholly or mainly of members of a registered party.

³ Political Parties, Elections and Referendums Act 2000, s.6.

⁴ Political Parties, Elections and Referendums Act 2000, s.145.

⁵ The Electoral Commission (2001) *Election 2001 – The Official Results*. London: Politicos.

⁶ *Ibid.* p. 76.

These conclusions have been reinforced further by our experience since 2001. In addition, we believe that our submission of a wider range of recommendations to government on electoral law affords an opportunity to present a number of recommendations which, in the light of experience over the past two years, we believe will help to improve the operation of the controls.

Scope

1.4 The review has examined the following parts of the legislation:

- Part II Registration of political parties;
- Part III Accounting requirements for registered parties;
- Part IV Control of donations to registered parties and their members;
- Part V Control of campaign expenditure;
- Part VI Controls relating to third party national election campaigning;
- Part VIII Election campaigns and proceedings.

1.5 The following schedules to the PPERA also fall within the scope of the review:

- Schedule 4 Applications under Part II;
- Schedule 5 Accounting units: application of accounting requirements;
- Schedule 6 Details to be given in donation reports;
- Schedule 7 Control of donations to holders of relevant elective office, members of registered parties and members associations;
- Schedule 8 Campaign expenditure: qualifying expenses;
- Schedule 9 Limits on campaign expenditure;
- Schedule 10 Limits on controlled expenditure;
- Schedule 11 Control of donations to recognised third parties.

1.6 The review has deliberately not looked at the fundamental principles underlying the regulatory system. These wider issues will be considered in the Commission's separate review considering the arguments for state funding of political parties. An initial issues paper and accompanying background report for this review were published in May 2003, and the project is due to report in 2004.

1.7 The review has focused instead on the operation of PPERA, and our initial experience of operating the new regulatory framework. Although the review commenced relatively soon after the legislation was introduced, the Commission considered it appropriate at this time to look at the detail and workings of the regulatory system.

1.8 The review has not considered Parts I, VII, IX or X of the Act.⁷ However, since Part VIII of PPERA significantly amended the provisions of Part II of the Representation of the People Act 1983 (RPA), which regulates the election expenses of candidates, this legislation has been considered to ensure a review of the overall regulatory system.

Priorities and principles

1.9 In reviewing the regulatory framework created by PPERA, the Commission has recognised that different stakeholders will inevitably have different (and sometimes conflicting) perspectives. In weighing the evidence and views submitted to us as part of the consultation exercise, and in developing recommendations for the future, the Commission has been guided by the principles and priorities embodied in our corporate aims.⁸ Two objectives have been particularly relevant: to promote and maintain openness and transparency in the financial affairs of political parties and others involved with elections; and to encourage greater participation in and understanding of the democratic process amongst the general public.

1.10 The introduction of the PPERA enshrined in law the principle of openness in the financial affairs of political parties and others involved in political activities, building on existing controls on the expenditure of candidates at elections. However, we recognise the concerns of political parties and others that the administrative burden imposed on them by PPERA can be disproportionate, and may be a deterrent to involvement in a political process which relies on predominantly volunteers. We recognise that much of the new and amended legislation is extremely complex, which can also act as a disincentive to participation.

⁷ These parts of the PPERA deal with: The Electoral Commission; Referendums; Political donations and expenditure by companies; Miscellaneous and General.

⁸ The Electoral Commission (2003) *Corporate Plan 2003–04 to 2007–08*.

1.11 The introduction of a statutory regulatory system will inevitably deter some people from participating in political activities, since the introduction of an effective regulatory system will place greater demands on those regulated by it. However, we believe that the nature of the regulatory regime introduced by PPERA has in some regards placed an additional administration burden on those affected by its application to an extent greater than Parliament may have anticipated. Moreover, the lack of differentiation between political parties has created significant pressures on smaller organisations. We do not believe ‘one size fits all’, and consideration needs to be given to a system of controls that reflect the fundamental differences between parties.

1.12 In framing our recommendations we have, therefore, sought, where possible, to balance the dual aims of transparency in financial affairs with encouraging greater participation in the democratic process. We are confident that the rigour of the regulatory system can be maintained in doing so.

Review process

1.13 This report has been produced following the conclusion of a review process undertaken by Commission staff under the guidance of a Project Board chaired by Electoral Commissioner Karamjit Singh CBE and also including Dr Michael Pinto-Duschinsky (Senior Research fellow, Department of Politics, Brunel University). However, the views presented in this paper are those of The Electoral Commission alone and do not necessarily reflect the opinions of Project Board members.

1.14 A discussion paper outlining the scope of the review and seeking initial views was published in August 2002. Following this, a consultation paper outlining relevant issues was published in January 2003. Responses to both papers were received from political parties, academics, companies and electoral administrators (a list of respondents is given in Appendix 1 of this report). Copies of the discussion and consultation papers are available on the Commission’s website.⁹

Recommendations

1.15 This report has been submitted to the Lord Chancellor and Deputy Prime Minister (Secretary of State), in accordance with section 6 of PPERA. While we have a statutory duty to keep these matters under review, we recognise that the Commission’s role with respect to electoral law is advisory. It is not for the Commission to make the final determination as to how arrangements might be changed and we have no powers to ensure implementation of any recommendations we make. It is for the Government to initiate, and ultimately Parliament to decide on, any changes to procedures and proposals for legislative change.

⁹ www.electoralcommission.org.uk

2 The scope of the regulatory framework for political parties

Since the introduction of PPERA in February 2001, only candidates standing on behalf of registered parties have been allowed to use a description on the ballot paper. Anyone wishing to use a description or an emblem must therefore register with The Electoral Commission as a political party, which brings them within the scope of the regulatory framework introduced by the Act. All registered political parties are required to comply with the same regulatory framework.¹⁰

Legal framework for registering a political party

2.1 Candidates standing at an election can only use a description if they are standing on behalf of a registered political party. The registration requirements for political parties are not onerous: in order to register, a party needs to provide the fee of £150 and submit a party constitution, financial scheme and correctly completed application form. A party must have two registered officers, but no evidence of any party membership is required. The Commission has to approve the party's financial scheme as a condition of registration, and can also refuse an application to register if the proposed name or emblem is offensive or if the name is similar to the name of another registered party and could confuse electors.

2.2 Once registered, PPERA requires that all political parties are subject to the same regulatory framework.¹¹

Experience of the regulatory system

2.3 The requirement to register as a political party to use a description on a ballot paper has prompted numerous groups who were not previously registered on the voluntary register of parties maintained by Companies House to register with the Commission. The voluntary register of political parties comprised 138 parties when it was frozen on 14 December 2000, whilst there are now nearly 300 parties on the current registers for Great Britain and Northern Ireland. If the current registration requirements are maintained, that number can be expected to grow, particularly in advance of major elections.

2.4 Once registered all 'parties', whether local residents' associations or major national parties, are subject to the same regulations, regardless of their size or level of funding. Parties which may comprise just the two individuals who are the party officers are therefore currently regulated to the same extent as the party in government. We believe this to be unnecessary and

¹⁰ Excluding minor parties, which are not subject to Parts III-V of PPERA but which are registered to contest parish and community council elections only.

¹¹ Excluding minor parties, which are not subject to Parts III-V of PPERA but which are registered to contest parish and community council elections only.

excessive. For example, all parties (excluding minor parties) are required to submit quarterly donation reports, even if the report is a nil return.

Creating a two-tier system of regulation

2.5 A consequence of the introduction of the PPERA has been the registration of a number of small local groups, and in particular residents' associations which wish to use a description on the ballot paper. Although some local groups were registered on the previous register of political parties prior to 2001, there are now around 120 local groups registered with the Commission, of varying sizes. We are very much aware of the problems faced by these smaller organisations in responding effectively to the demands created by the regulatory framework, which was designed to regulate larger-sized organisations.

2.6 The response of one local group stated that:
we find the quarterly return on donations very tedious and bureaucratic. In the history of our Party (26 years), we have only received donations of above £200 about 3 times. No donation has ever exceeded £300 in one year. It is thus almost certain that we will continue to submit nil returns every quarter.

2.7 Another wrote that:
the accounting requirements currently place a tremendous strain on a small party which does not have any paid staff, full or part-time, and no-one with accounting qualifications...[we] suspect that the current framework will make it very difficult for this Association to find a replacement when [the current treasurer] has to give up.

2.8 We recognise that the reporting requirements of the Act place a burden that falls on local unpaid volunteers who may have little or no relevant experience or training. However, we believe that there is a need for all parties contesting elections to remain within the regulatory framework, even if they field candidates at local elections only. This view was supported by the responses to our consultation paper, which reflected the view that parties which hold or seek to hold office at any level of government should be regulated. The recent success

of local 'independent' parties indicates the importance of these groups at local government level in the UK¹² and we take the view that it is important that transparency in the financial affairs of such groups is maintained. However, we do not believe that groups which operate exclusively at local level (i.e. contest local government elections only) should be subject to the same controls as larger parties which operate nationally. Given the income of most small parties, we consider it excessive to require them to submit quarterly donation returns (and detailed annual accounts) and consider that a more appropriate framework can be developed and implemented for these groups.

We recommend that a two-tier regulatory framework is created in which parties are able to register in two different categories. The first category would entitle them to contest local elections only (including parish and community elections). The second would entitle them to contest elections at all levels in the UK. Parties would still be able to choose whether they registered in each or all of England, Scotland and Wales or on the Northern Ireland register.

We recommend that the existing category of 'minor parties', which can contest parish or community elections alone, be abolished. However, in accordance with section 22(4) of PPERA, candidates of non-registered parties should still be able to use a description at these elections.

2.9 The Commission's review of nomination procedures examines the question of whether independent candidates can have up to a six-word description on the ballot paper as was previously the case. We recommend that they should be able to do so in order to put them on an equal footing with other candidates who use a description. However, we recognise that this might be exploited by groups who ought properly be subject to the regulatory framework. Accordingly, we also recommend that individual candidates should be required to sign a

¹² For example, the Independent Kidderminster Hospital and Health Concern currently hold the majority on Wyre Forest District Council and have an elected Member in the House of Commons. In addition, many of the local parties registered with the Commission have elected councillors.

declaration with the nomination papers to confirm that they are not standing on behalf of a 'collective', party or commercial organisation. In doing so there would be no need to register with the Commission although the option to do so would remain open.

Deadline for registration

2.10 Under PPERA, a party that wishes to use a registered description at an election must be registered by the last date for publication of notice of an election. This date is usually around a week ahead of the close of nominations, depending on the type of election. In our experience, this has caused difficulty for a number of candidates that have intended to stand under a description, but who were unaware of this particular date in the electoral timetable and assumed that they needed to be registered by the close of nominations. For the sake of clarity, we see no reason why a party candidate's description should not be accepted providing that the party is on the register when the nomination is submitted.

We recommend that the requirement for parties to be registered by the last date for publication of notice of election be scrapped. Any candidate presenting a description bearing the description of a registered party should be entitled to use that description providing that the party is registered with the Commission by the close of nominations.

3 The controls imposed by registration

Parts II-V of the PPERA regulate the registration, accounts, income and expenditure of registered political parties. We recommend that all parties and groups registered with the Commission under a two-tier framework are subject to controls in each of these areas: however, the controls for parties in the local tier of registration should reflect a lighter-touch regulatory system.

Deregistration

3.1 The Commission does not have the power to remove a party from the register unless it receives a signed application from the party leader, nominating officer and treasurer the party which seeks de-registration. Where a party is de-registered, the legislation requires the Commission to treat the party as if it were still on the register of parties until the end of the financial year following that in which the party de-registered, i.e. a party of the same name cannot be registered, and the party must continue to submit financial returns until the end of that period.

3.2 Parties that do not de-register are required to submit an annual confirmation of their registered details when submitting their annual statement of accounts (in addition to the requirement to notify the Commission of changes to their registration details during the course of the year). We have experienced some difficulty arising where parties have not met this requirement because in effect they have disbanded and ceased to exist. The only sanction open to the Commission in such circumstances is to pursue the imposition of a civil fine or criminal penalty: not an effective route if the office holders of a party cannot be contacted. A more appropriate sanction would be to remove the party from the register.

3.3 A power to deregister political parties needs to be tightly circumscribed. However, we believe that the maintenance of a party's registration should be dependent upon it continuing to meet the registration and regulatory requirements. It is our view that if a political party fails over a period of time to comply with the regulatory framework, that party should be liable for de-registration. We see merit in the registration systems in Australia, Canada and Ireland, in which political parties can be deregistered in strictly specified circumstances, such as:

- in Australia, if party membership falls below the required threshold, or if a party fails to contest elections, or if a party fails to comply with the requirement to notify its eligibility to remain registered;
- in Canada, if a party does not stand 50 candidates at a

general election, or fails to return any financial or other report required under the legislation;

- in Ireland, if a party fails to confirm its registration within 21 days of the date of enquiry by the Registrar of Parties.

We recommend that the annual confirmation of details to be submitted with a party's statement of accounts should effectively serve as an annual renewal of registration. Parties that fail to renew their registration within six months of the deadline for doing so will be de-registered. In conjunction with our other recommendations, this would mean that a party could not be de-registered unless it had failed to send in its renewal within 10 months after the end of its financial year.

We do not, at this stage, advocate that failure to comply with the financial requirements (e.g. failure to submit accurate donation returns, failure to submit satisfactory accounts) should be grounds for deregistration. However, we will review this issue in future years.

The current requirement to treat de-registered parties as if they were still on the register until the end of the financial year following that in which they de-register is appropriate for parties registered nationally. However, we recommend that for parties registered only for local elections it would be more appropriate to change this to the end of the financial year in which the party de-registers.

Accounting framework

Accounting thresholds

3.4 Although we propose the establishment of a two-tier regulatory framework, we consider that it is important that Part III of PPERA, Accounting requirements for registered parties, applies to all registered political parties, whether they are registered for local or national elections. However, it is important that the accounting requirements reflect the level at which the party and its accounting units operates.

3.5 Responses to our consultation paper indicated support for the principle of different accounting threshold reporting levels. However, a number of respondents made the point that the current accounting bands – up to £5,000; +£5000–£250,000; +£250,000 – should be amended. In particular, it was felt that the smallest threshold of £5,000 or less is too low and should be increased.

3.6 One residents' association noted that the cost of the print run of its membership magazine, distributed four times a year to 2,000 member households, is £4,000, which automatically takes it very close to the minimum threshold. Once other transactions are taken into account, the group falls within the +£5,000–£250,000 accounting band, although the value of other transactions amounted to just a few thousand pounds. The party therefore finds that, despite being a small organisation which focuses on a single borough council ward and is run by volunteers, it must prepare its accounts to the same specifications as much larger parties which may operate across the UK and have representatives in the national or European legislatures.

3.7 Other respondents criticised the level of detail required for parties and accounting units that fell within the lowest thresholds (parties with income/expenditure of less than £5,000), and argued for greater recognition of the fact that accounts are often produced by volunteers rather than accountants.

3.8 We agree that the accounting bands currently specified in PPERA should be amended, and consider that the lowest threshold is too low and the middle accounting band too wide. To rectify this, our initial view is that it may be more appropriate to have four accounting bands rather than three. However, we do not intend to make final recommendations specifying different accounting bands until we have been able to review the first accounts submitted by parties for the 2002 financial year. Moreover, we believe that it would be better to retain a degree of flexibility rather than specify the thresholds in primary legislation.

Although there is currently provision for the Secretary of State to revise the existing accounting bands following a recommendation from the Commission, we do not consider that the setting of accounting thresholds and bands requires a political judgement, and recommend that this power is replaced with a regulation making power enabling the Commission to determine a different number of bands and/or thresholds. The Commission will review the first statements of accounts before determining exactly how to revise the current thresholds.

Deadline for submitting accounts

3.9 Several respondents to our consultation exercise felt that the deadline for submitting accounts should be brought into line with standard accounting periods for other organisations such as companies and charities. Currently, parties with accounts of £250,000 or less – including accounting units with income of more than £25,000 – are required to submit annual accounts within three months of the end of their financial year (i.e. by 31 March for parties whose financial year ends on 31 December). Parties and accounting units with accounts of more than £250,000 are required to submit their accounts within six months and a week following an external audit (i.e. by 7 July). Larger parties raised concern about the three month deadline in which accounting units with income or expenditure of £25,000–£250,000 must submit their accounts, and a number suggested that the three-month deadline for return of accounting unit accounts be increased to six months.

3.10 We recognise the difficulties facing parties and accounting units of registered parties in complying with the three-month deadline, given that accounts are prepared by volunteers and are ratified by the unit's AGM prior to approval. Therefore, we believe more time should be given to enable them to prepare and submit accounts. However, we see no grounds for extending the six-month period for income/expenditure in excess of £250,000. In our view this provides adequate time to prepare and audit accounts.

We recommend that the deadline for submission of annual accounts by parties and parties' accounting units whose income is of less than £250,000 should be extended to four months but that the reporting period for those with accounts of more than £250,000 should remain at six months.

Audit requirements

3.11 PPERA introduced a requirement for parties and accounting units with accounts of more than £250,000 to have their accounts audited (this requirement can also be applied to other parties where the Commission considers it desirable). In addition, parties whose campaign expenditure exceeds £250,000 and parties that receive policy development grants are required to engage an independent auditor to produce a report on the application of those funds. A number of larger political parties have expressed concern at the cost of these audit requirements: one party paid over £50,000 in additional audit costs under the requirements of PPERA. We recognise that the requirement for multiple audits has imposed a financial burden on parties, and consider that there may be a case for streamlining the current requirements. However, party accounts provide an essential element in bringing greater openness and transparency to the finances of political parties and the audit plays an important role in this respect.

We believe that it is important that annual party accounts of more than £250,000 are audited, and recommend that no change is made to this requirement.

3.12 The Commission will consider the requirement to have policy development grant funding audited as part of a separate evaluation of the operation of Policy Development Grants (which is scheduled to take place over summer 2003).

Donations

3.13 The donation controls introduced under Part IV of PPERA are one of the main reasons for the introduction of the legislation. Part IV of PPERA specifies the following different types of donation to political parties, and

classifies anything of more than £200 as a donation:

- any gift of money or other property;
- any sponsorship;
- any subscription or affiliation fee;
- any money spent other than by a party in meeting expenses incurred directly or indirectly by the party;
- any money lent other than on commercial terms;
- the provision for free (or at a discounted rate) of goods, services property or facilities.

3.14 PPERA also provides for certain payments from public funds to be treated as donations.

Reporting of payments from public funds as donations

3.15 PPERA is currently inconsistent in the requirements it imposes in relation to payments made to parties out of public funds. Opposition parties in Parliament and the devolved legislatures are entitled to receive public funding to assist them in carrying out their duties as opposition parties, and such funding is reportable under PPERA. In addition, ‘start-up grants’, which were made available by The Electoral Commission to political parties which were on the register of parties maintained under the 1998 Act, and which were therefore required to put in place new systems of compliance upon the introduction of PPERA, were also reportable.

3.16 However, the Act specifically exempts from the donation reporting controls the payment of policy development grants to parties. Policy development grants are paid by the Commission to assist parties which are represented by two or more sitting Members of Parliament with the development of their policies.

3.17 We see no clear reason why policy development grant payments are excluded from the reporting requirements of PPERA. While the details of this public funding are publicly available, we think that it is important that this funding is reportable to the Commission in order to ensure that a comprehensive picture of party funding emerges.

We recommend that policy development grant payments should be reported with other donations.

Donation reporting

Quarterly donation reporting

3.18 Under PPERA sums of more than £200, whether given to a party in cash or kind, are regarded as a donation. All registered political parties (except minor parties in Great Britain and parties registered in Northern Ireland) are required to submit donation reports to the Commission on a quarterly basis. Quarterly reports must detail donations of more than £5,000 made to the party headquarters, and donations of more than £1,000 made to accounting units, as well as details of any donations received from impermissible or unidentifiable sources. Where no relevant donations have been received, a nil return must be submitted.

3.19 During the 12 months between April 2001 and March 2002 over 90% of the quarterly returns submitted to the Commission were nil returns. Smaller parties have consistently informed the Commission that they would be happy to report any relevant donations, but that they rarely receive gifts that breach the £200 threshold let alone the £5,000 reporting threshold.

3.20 It is our view that the repeated submission of nil returns by smaller parties is of no value, and is a drain on the resources of both parties and The Electoral Commission. We propose that this situation is addressed through the introduction of the two-tier regulatory system. We consider it reasonable that parties that seek election to national office should continue to operate under the current reporting framework, i.e., submit quarterly donation reports based on the thresholds outlined above. However, we feel that parties that are registered to contest only local elections should be subject to a less stringent reporting timetable.

We recommend that the present donation reporting requirements should continue for parties registered to contest national and UK wide elections. For parties registered to contest only local elections, we recommend that:

- the appropriate reporting threshold should be £1,000, in line with the threshold for accounting units of national parties;
- where a party receives a donation of more than £1,000 (or in aggregate during the calendar year from the same source), it is required to submit a return to the Commission within 30 days of the date on which the donation was accepted rather than in a quarterly report;
- where no reportable donations are received during the financial year, the party should simply submit a nil return of reportable donations as part of its annual statement of accounts.

Reporting of aggregate donations

3.21 We also consider that it is important to clarify the reporting obligations of parties that are registered with accounting units, since this issue has created considerable confusion in relation to the aggregation of donations to branches of parties. This confusion, and the lack of understanding of the relevant provisions among those unfamiliar with the legislation could have reduced the transparency introduced by the new controls.

3.22 We consider that transparency is maximised when donations that are made to local branches of parties are reported as having been made to local branches of parties. However, we support the logic behind section 62 of the PPERA, which requires that donations made to accounting units of parties but which are not reportable in their own right (i.e. of £1,000 or under) aggregated by the central party and reported, as a donation to the central party if the aggregate donation across the whole party is more than £5,000. This provision ensures that a donor cannot avoid being disclosed as a donor to a party by making donations to a number of different accounting units.

3.23 In our view, there is a need to clarify the legislative requirements in this area, since the current requirements are complex and unclear. We believe that although the detail of PPERA suggests that the intention of the Act in this area was that donations of £200–£1,000 made to accounting units during a calendar year should be aggregated and reported by the central party at the end of the year, it is more appropriate that such donations should be reported on a quarterly basis, as parties have tended to do thus far. We take this view because it is our experience that political parties are themselves keen to report donations at the earliest opportunity and in general would prefer to report more donations rather than fewer, and also because the scrutiny of the general public and media demand timely publication of donations soon after they are received.

We recommend that any donations between £200–£1,000 received by a party's accounting unit during a quarterly reporting period should be reported to the party headquarters at the end of that period. The central party would then be responsible for aggregating and reporting any donations made by the same donor to different sections of the party which in total exceed £5,000. In the party's quarterly donation report, the party should submit the total value of a donation made by a single donor, and a breakdown of which accounting units the donations have been made to.

If a donor makes a number of donations to different accounting units during the same quarter, but does not exceed the reporting thresholds, the donations should be aggregated with any donations made by the same donor in future quarters.

Weekly donation reporting

3.24 Our consultation paper raised the issue of whether weekly reporting of donations during the general election period should be retained. PPERA currently requires parties that are contesting a general election to submit weekly donation reports during the general election period. This issue elicited a mixed response.

3.25 Some parties that responded to this question considered that there is no benefit to electors from the immediate publication of information about donations received during the election period, given that the information is published before it has been decided whether or not to accept the donation. A number also believed that the requirement to submit returns places an unnecessary burden on parties in the midst of an already exceptionally busy period.

3.26 However, other respondents felt that information about financial backing was relevant to electors during the election period, and that the requirement should remain. One made the point that where such donations are received during the election period, they should be reported, but that as with quarterly donation reports it is important to avoid repeated submissions of nil returns by parties that have not received donations during the campaign period.

3.27 In the Commission's view, there is a legitimate public interest in the electorate having access to details of the financial backers of political parties as they enter a general election period, particularly where parties may receive large donations in support of the campaign. Whilst we are aware of the workload undertaken by parties during this period, we do not believe that it is a huge burden for a party to collate details of donations of more than £5,000 that have been received by the central party in any given week.

3.28 We are keen to ensure that the requirement to submit weekly returns falls only on those parties that are actually contesting the election. Currently, all parties are required to submit weekly returns unless they have submitted a declaration of exemption stating that they do not intend to contest the election. In 2001, this meant that a number of parties which had accidentally failed to submit a declaration were required to submit weekly donation returns in respect of an election that they were not even contesting.

3.29 We consider that there are more appropriate ways of identifying which parties need to submit weekly

donation returns. The creation of a two-tier framework is an obvious first step towards identifying which parties are likely to be standing at a general election. This can be used in conjunction with the statutory requirement for all Returning Officers to copy to The Electoral Commission a statement of all persons nominated in their constituency, which should be completed by a specified deadline. This will enable the Commission to produce a list of parties contesting the election, and obviates the need for parties to submit declarations of exemption.

We therefore recommend that the current declaration of exemption provision be removed. The obligation to submit weekly returns shall fall only to those parties that have candidates standing at a general election.

In the interests of equality, we also recommend that the requirement to submit weekly donation returns reporting donations of more than £5,000 continues to apply to all parties contesting the election, regardless of size, finances, number of candidates standing, etc. However, as with quarterly donation returns from local parties, we consider that there is little value in parties submitting repeated nil returns during the election period. It is therefore proposed that parties should only submit a return if they receive a relevant donation, and that non-receipt of a weekly report will be taken to indicate that no donations have been received. To enable this to work effectively, we recommend that it should be an offence if a party fails to submit a report of a relevant donation in a weekly report.

Donation reporting by donors

3.30 Under section 68 of PPERA, donors who make donations to political parties (or regulated donees) in sums of £200 or less which in aggregate exceed £5,000 are required to submit a report to the Commission on an annual basis, specifying the value of the aggregate donation and the party (or regulated donee) to which the donation was made. Practically, this is a difficult section to enforce, since it may not always be clear who donors are, given that there is no responsibility for parties to check the identity of donors who make donations of £200 or less (donors giving this amount may also be anonymous).

We do not believe that the current requirement for donors to report multiple small donations is enforceable and recommend that it is abolished.

3.31 We recognise the provision to capture donors (who may be impermissible) making multiple payments of £200 or less to a party who would otherwise go unreported. It is right that controls should exist to prevent the reporting requirements from being circumvented by the making of numerous small payments. However, in our view, the more effective way to deal with this is to place the onus on the donee to ensure that the controls are not evaded.

3.32 We think it would be unreasonable to require parties to keep and check details of every donation they receive irrespective of its value and we do not recommend any change in the position that payments of £200 or less do not count as donations for the purposes of the PPERA. But where parties should reasonably be aware of a stream of regular small payments from the same source (e.g. by standing order) and those payments exceed in aggregate £1,000 they should regard such payments as donations for the purpose of PPERA, i.e., they must be from a permissible source and should be subject to disclosure. Failure to comply with these controls should be an offence. Section 61 of PPERA, under which it is already an offence for any person to knowingly enter into any act in furtherance of any arrangement to facilitate the making of donations otherwise than by a permissible donor, offers an existing basis from which to create an offence of knowingly accepting small payments without checking permissibility or reporting details of small payments which exceed the £1,000.

Donations to holders of elective office

Definition of a donation

3.33 The current donation controls applied by Schedule 7 of PPERA, which regulates donations to elective office holders, members associations¹³ and members of registered parties, are broadly similar to the controls applying to political parties. The definition of and types

of donations are the same, and the donation threshold of £200 also applies to regulated donees.

3.34 Some respondents to our initial discussion paper suggested that there are some gifts to holders of elective office which should not be treated as a donation. It was put to us that where within a particular body all holders of the relevant office are offered the same benefit, e.g., free car parking passes, it should be sufficient to record that fact and not require individual disclosures of acceptance from each recipient. However, it is not always the case that the office holder accepts the benefit that has been offered. It would, in our view, be wrong to give the impression that they have and we are of the view that the onus should be on those office holders who accept such gifts to report them as donations.

3.35 We noted in our consultation paper that the Local Government Bill¹⁴ proposes to exempt the provision of paid leave to councillors from being treated as a donation. The overwhelming response to the paper indicated that in light of this proposed amendment in the Local Government Bill, stakeholders consider that the existing definition of a donation under Schedule 7 is satisfactory. The Commission shares this view. We believe that since Schedule 7 is clearly intended to apply only to a donation made to a holder of elective office in connection with his duties as such, there can be no basis for narrowing the existing definition of a donation, since the current definition adequately covers all the gifts and services that might be offered to a holder of office. However, we strongly believe that, as in the case of paid leave for councillors, where the definition could act as a disincentive to employees to give paid time off to carry out the role of councillor, an exemption should be made.

We welcome the move to exempt paid-leave from the definition of a donation, but recommend that in the interests of transparency, the current definition of a donation to a holder of elective office remains otherwise unchanged.

¹³ Members associations are defined as organisations whose membership consists wholly or mainly of a registered party.

¹⁴ The Local Government Bill is currently being considered in the House of Lords (June 2003).

Definition of holders of elective office

3.36 PPERA currently applies the controls at Schedule 7 to any:

- Member of the House of Commons;
- Member of the European Parliament elected in the UK;
- Member of the Scottish Parliament;
- Member of the National Assembly for Wales;
- Member of the Northern Ireland Assembly;
- Member of any local authority in the UK, including the GLA but excluding parish or community councils; and to
- The Mayor of London.

3.37 It appears to us inconsistent that Members of the House of Lords are excluded from the existing regulatory framework, since they too have an important role to play as part of the legislature. If the intention of PPERA is ensure transparency among those who are able to exert influence and control, it seems logical to extend these principles to members of the House of Lords as well.

3.38 However, there is a more fundamental issue regarding the role of the Commission overseeing one aspect among many as regards the propriety of those elected to public office. Members of Parliament have a self-regulatory system overseen by the Parliamentary Commissioner for Standards and there is a good deal of overlap between the reporting requirements of that system and the regime the Commission operates under PPERA. This has given rise to confusion and uncertainty as to what has to be reported to whom, and indeed, in some circumstances there is a need to report to both. This does not in our view best serve the public interest and the lack of clarity can put Members of Parliament in a difficult position. There are oversight arrangements in other bodies and the existence of the Standards Board for England raises similar issues as regards local councillors.

3.39 We therefore believe there is a need to undertake a more detailed review of the role of the Commission in monitoring the acceptance of donations by elective office holders given that the main thrust of the PPERA and our efforts, is directed towards political parties and their activists. However, such an exercise is outside the scope of this review.

Donations to political parties and candidates in Northern Ireland

3.40 Political parties registered on the Northern Ireland register of parties are exempted from the controls on donations introduced by Part IV of PPERA until 2005.¹⁵ However, candidates at elections in Northern Ireland are subject to donation requirements introduced by PPERA.

3.41 The Northern Ireland Office is running a consultation exercise on the continuation of the exemption for NI parties and we will give our response to that consultation. However, we believe that it would be appropriate for there to be consistency in the application of the controls to parties and candidates in Northern Ireland, whether this means exempting candidates from the controls, or extending the controls to cover parties.

Campaign expenditure requirements

3.42 There was broad consensus among respondents to our consultation exercise that the campaign expenditure controls introduced by Part V of PPERA are satisfactory, subject to some minor additions and clarifications. We share the view that the controls applying to campaign expenditure require relatively few amendments.

¹⁵ The Political Parties, Elections and Referendums Act (Disapplication of Part IV for Northern Ireland parties) Order 2001 (SI no.446 2001).

Types of campaign expenditure

3.43 Most respondents felt that the existing list of types of campaign expenditure as listed at Schedule 8 of PPERA is satisfactory. These are:

- party political broadcasts;
- advertising;
- unsolicited material;
- manifestos and policy documents;
- market research or canvassing;
- dealings with the media;
- transport;
- rallies and other events.

3.44 However, some political parties considered that there are some significant omissions from the list, and that without the inclusion of expenditure on items such as staff costs and administrative costs, the current expenditure limits should be reduced.

3.45 We believe that the list of types of campaign expenditure as specified at Schedule 8 covers most common types of campaign expenditure. We have advised parties that any overheads incurred in connection with the items listed at Schedule 8 must be treated as campaign expenditure, but we concur with the view that there is a need to explicitly identify expenditure on increased administration and overheads as campaign expenditure. In our view, these costs are an integral part of an election campaign, and must be seen to count against the expenditure limits. For the same reason, we similarly believe that the cost of hiring additional staff should also count against a party's expenditure limit.

We recommend that an additional category of expenses be inserted into Schedule 8 to require the inclusion of general costs such as office accommodation and overheads, stationery and postage, and staff costs. Although this will not affect our existing interpretation of the law, it will provide greater clarity.

We also recommend that the exclusion from treating as campaign expenditure the cost of remuneration or allowances payable to permanent or temporary staff of a party should be modified to apply only to normal remuneration of permanent staff, and not to those staff who have been hired to work on the election campaign or any overtime payments made to permanent staff in respect of the campaign.

Campaign expenditure limits for joint candidates

3.46 Schedule 9 of PPERA, specifies limits for parties contesting elections to Parliament, the devolved legislatures and the European Parliament. Broadly, these limits are determined by multiplying a specified constituency or regional limit by the number of constituencies or regions being contested by a party. The schedule specifies that for parliamentary elections, where a candidate stands on behalf of one or more other registered parties, the limit for that constituency is divided between the number of parties that the candidate is standing on behalf of, i.e., if the candidate is standing on behalf of two parties and the normal party allowance for each candidate standing is £30,000, each party is entitled to half that amount, £15,000.

3.47 No such provision is made for devolved elections, despite the fact that a number of candidates do stand on behalf of two parties in the constituency elections to the devolved legislatures. We see no reason for the inconsistency, and believe that the party limit should be split between the parties on whose behalf the candidate is standing.

We recommend that the party expenditure limits for candidates standing on behalf of one or more other registered parties at the constituency elections to the devolved legislatures should be split between the parties for whom the candidate is standing.

Payment of campaign expenditure

3.48 When reviewing the campaign expenditure returns submitted following the 2001 general election, the

Commission identified a number of examples of parties failing to comply with the requirements to pay an invoice for campaign expenditure within the 42-day time period in which they are allowed to do so. Others paid claims that were received after the end of the 21-day period in which they must be submitted without applying for an appropriate court order enabling them to do so.

3.49 At the time, a number of parties were surprised to learn that in doing so they may have committed an offence, and argued that the statutory time periods do not take into account the practical problems parties face in paying claims. Given that parties must seek a court order enabling them to pay claims that are received outside of the specified time-period, we consider that it would be appropriate to increase the period allowed for submission of claims for payment, and the period for payment to allow parties slightly more time, providing that this does not affect the requirement for parties to submit returns of expenditure within certain deadlines. The requirement to receive and pay a bill within a specified period is designed to ensure full and accurate reporting of campaign spending.

We recommend that the period allowed for submission of claims for payment of campaign expenditure should be increased from 21 to 30 days and the period for payment of claims from 42 to 60 days.

Compliance

Legal framework and penalties

3.50 The Commission has responsibility for monitoring compliance with Parts III–VII of PPERA, and with the legislation controlling candidates election expenses and donations. Our earlier consultation paper questioned whether the Commission has adequate powers to carry out this enforcement role.

3.51 PPERA specifies a number of criminal offences that can be committed by individuals under each Part. It also creates a sliding scale of fines that can be recovered as civil penalties from organisations which fail to submit a return (however incomplete) to the Commission by the relevant deadline.

3.52 In the two years since PPERA came into effect, there have been a number of examples of political parties or others breaching the requirements. A number of these might reasonably be regarded as ‘minor’ breaches – for example, paying a campaign expenditure invoice outside the specified period for payment – and the Commission did not consider that enforcement action would be appropriate. Of more concern is the failure of parties to report donations on time. We have no evidence to suggest that this has been deliberate. Nonetheless, repeated late reporting of donations undermines confidence in the regulatory regime, makes other parties question why they are making efforts to comply and damages the credibility of the Commission in enforcing the controls.

3.53 Where sanctions are available they may not be appropriate for the nature of the infringement. A criminal prosecution with a penalty of imprisonment should be reserved for the most serious offences. But that, effectively, is the only enforcement route open to the Commission as the legislation currently stands.

3.54 We therefore believe that in order to carry out our statutory responsibilities effectively in relation to the regulatory framework created by PPERA, we should be able to seek the imposition of financial penalties on parties, whether the forfeiture of any donations reported outside of the correct reporting period or fines to ensure compliance with the Act. Sections 65 and 147 already provide for the imposition of such penalties for other acts of non-compliance: section 65 makes provision for a court to order the forfeiture of a donation which a party had attempted to conceal, while section 147 provides for the Commission to seek the application of a fine to any party which fails to submit a financial return to the Commission by the relevant deadline.

While we believe that the existing criminal offences and civil penalties should be retained, we consider that a more effective mechanism for dealing with non-compliance with PPERA would be the imposition of financial penalties in relation to a wider range of offences, such as submitting an incomplete donation return.

4 The regulatory framework for third parties

To ensure the effectiveness of the new controls on political party election expenditure, PPERA introduced controls on third party spending at all national and UK elections, imposing a requirement for any organisation wishing to spend over a certain threshold to register with the Commission. Registered third parties are required to submit reports of 'controlled' (campaign) expenditure and of donations made to support this expenditure. The review has considered the operation of the third party controls since they were introduced.

4.1 It is important to note that our experience of the controls at Part VI of PPERA is limited. Since the introduction of the Act, the controls have applied at the 2001 general election, which took place shortly after PPERA came into effect. The PPERA third party controls do not apply to local government elections (except where they take place during the regulated period for a regulated national or UK election), and therefore did not apply to the English local elections in 2002 or 2003, but did apply to the elections to the Scottish Parliament and National Assembly for Wales on 1 May 2003.

Overview of third party controls

4.2 Prior to the introduction of PPERA, the only third party activity that was regulated was third party campaigning in respect of individual candidates at elections, which was subject to very low expenditure limits. There were no controls on individuals or organisations that wished to mount national campaigns for or against parties or in favour of or against certain policies.

4.3 PPERA introduced controls on national third party campaigning during election periods for national, UK and European elections. The aim of the third party controls was to prevent political parties from circumventing the campaign expenditure limits by using other organisations to campaign at an election on their behalf. Under the controls, any third party that wants to spend above certain thresholds (£5,000 in Scotland, Wales or Northern Ireland, or £10,000 in England) on campaigning is required to register with The Electoral Commission as a recognised third party.

4.4 PPERA regulates 'controlled expenditure' incurred by third parties on any election material which 'can reasonably be regarded as intended to promote or procure electoral success' for one or more registered parties or candidates who hold particular views on a particular policy, even if the material can reasonably be regarded as intended to achieve any other purpose as well.

4.5 This definition is broad, and catches material which may not explicitly refer to candidates or a party. During the general election campaign in 2001, the definition caused some concern for organisations which do not consider their activities to be political but which publish material focusing on issues that might be assumed by voters to be associated with certain parties or candidates. Arguably this material could be judged to fall within PPERA's definition. A number of these organisations were charities, and were concerned that their activities might fall within the scope of PPERA despite the fact that as charities they are prohibited from engaging in political campaigning.

4.6 Once registered, recognised third parties are brought within the scope of the regulatory framework. Donations can only be accepted from permissible donors, and must be reported to The Electoral Commission in a report which third parties are required to submit after the election. Third parties' reports must also contain details of all the expenditure incurred by the third party during the election period.

4.7 The consultation paper sought views on the existing third party controls: for example, whether or not the definition of election material is too broad, and whether or not controls applicable to third parties should be the same as the controls that apply to political party campaigning.

Definition of election material

4.8 Responses to our consultation paper indicated consensus among stakeholders that the current definition of third party election material is satisfactory, and that the current controls have not been in place long enough for informed changes to be made. Although a number of organisations had previously raised concerns with the Commission about the definition of third party activity, these concerns were not reiterated during the consultation period, which instead indicated that there is general agreement that election material should not have to refer specifically to a candidate or party in order for it to be regarded as campaigning material.

4.9 We note that in other countries, legislation that has enacted third party controls on the basis of a similarly broad definition has been subject to court challenges on the basis that it restricts a third party's right to campaign on issues rather than in favour of or against a party. However, we consider that as the third party controls have operated only twice, with just 10 organisations registered as third parties for the 2001 general election and eight for the 2003 national elections, we do not as yet have sufficient experience of the current controls to make informed recommendations about amendments to the definition of third party material. We also consider that the Commission needs to develop greater knowledge about the campaigning activity which takes place at national election campaigns before it can make any recommendations as to what activities should fall in and outside the regulatory framework in this area.

4.10 We recognise that until such time as any changes are made to the current legislation, the Commission and other organisations may still be required to make difficult judgements as to whether, in our view, material falls within the definition of election material.

We do not believe that the definition of election material should be amended at this time. However, the Commission will need to monitor this requirement at future elections.

Third party regulatory framework

4.11 Respondents to the consultation paper expressed strong support for regulating third parties under the same controls as political parties. A common view was that in the interests of maintaining a level-playing field, it is important that all groups and individuals campaigning at elections are regulated by the same controls.

4.12 There are currently some key differences in the controls applied to political parties and third parties. For example, third party expenditure is only regulated when it is incurred in the production of election material, whereas political party expenditure is regulated when it is incurred on a wider list of items. In addition, while political parties

are subject to the requirement to submit weekly donation reports during the election campaign, third parties are required to submit donation returns after the election.

4.13 We will continue to review the operation of both party and third party controls, and will consider whether these controls should be brought more into line.

4.14 Third party campaigning to promote or disparage specific candidates is covered in section 6 of this document.

5 Candidates' election expenses

Prior to the introduction of PPERA, the Representation of the People Act 1983 (RPA) controlled election expenditure incurred locally by candidates at elections, and by third parties wishing to promote or disparage a candidate. These controls remain in place, but are separate to the national controls established under the PPERA regulatory framework. Although the basic principles of the RPA controls remain unchanged by the new framework, Part VIII of PPERA introduced significant changes to the detail of the local controls.

5.1 These changes were introduced following two court cases: one concerning the election expenses of a successful candidate at the 1997 general election, which highlighted confusion about the start date for a candidate's election expenses and about the items that constitute election expenses; and another concerning the right of third parties to campaign for or against candidates.

Background

5.2 Since the Commission assumed responsibility for monitoring compliance with the legislation controlling candidates' election expenses, and despite the introduction of changes designed to clarify the controls, our major concern has been the confusion that exists in relation to the new legislation.

5.3 The Commission reviewed a number of returns of election expenses following the 2002 local elections in England. Our findings revealed confusion about what items need to be treated as election expenses, and indicate that candidates are tending to treat the same expenditure items inconsistently. Furthermore, in a number of examples, we have found that the advice that we have had to give, based on the precise wording of the legislation, does not allow us to use any sensible discretion when advising whether certain items should be treated as expenses and, if so, how they should be valued. A common example is the use of a candidate's personal property.

5.4 As the Commission is the first organisation to have active responsibility for monitoring candidates' expenditure in the UK, we have taken the opportunity of this review of the regulatory system to recommend a number of amendments to candidates' legislation on the basis of our recent experience of the controls. It is our view that a number of relatively minor amendments would significantly improve the legislation in respect of candidates election expenses and returns.

Period in which election expenses are regulated

5.5 Prior to the changes introduced by PPERA, a candidate's election expenses counted against their statutory expenditure limit from the time at which that person was declared to be a candidate. However, this definition led to some ambiguity about when a person actually became a candidate, and a period of unofficial campaigning, in which an individual might refer to himself as a 'prospective candidate' was commonplace.

5.6 The effect of PPERA was to specify the point at which a person becomes a candidate. For local government elections, a person becomes a candidate on the last date for publication of notice of election if before that date he has been declared or selected as a candidate; or on the date on which he is nominated or declared if he is nominated or declared after the last date for notice of election. For national elections, the relevant start date for becoming a candidate is the dissolution of the relevant legislature (or when they subsequently declare themselves as a candidate). In both cases, the start date for candidates' election expenses is around five to six weeks before the date of the election.

5.7 Since the change was brought into effect, in July 2001, a number of parties, candidates, agents and electoral administrators have expressed concern that the start date for election expenses is too close to the date of the election, and that a significant period of campaigning is therefore not regulated by the new controls. Some parties have complained that the effect of the amendment is to render candidates' expenses limits meaningless. However, it should be noted that some parties and other respondents welcomed the clarity the changes have brought.

5.8 Of the respondents who recommended that the legislation should be amended, opinion was split between re-introducing the previous definition of a candidate and retaining the amended definition but bringing the start date forward.

5.9 We support the clarity introduced by the new definition of a candidate, and do not accept that it would be beneficial to return to the previous system, under which there was considerable ambiguity and in which it was effectively left to an individual candidate to determine when they should begin to count their election expenses. However, we consider that the current regulated period for election expenses is too short. We believe that it should be possible to maintain clarity while also ensuring that election expenses are regulated for a longer amount of time in advance of the election.

5.10 Although we appreciate the concern that regulating expenses during any specified period allows candidates to spend a large sum of money immediately before that period commences, we consider that the clarity achieved by a fixed period offsets this. We do not believe that the possibility of an individual spending money before the regulated period is more detrimental than the previous practice of unregulated spending by prospective candidates, which fell outside the controls by virtue of the fact that an individual had not been formally declared as a candidate. We also believe that there is merit in having the same regulated period for parties and candidates.

We recommend that the legislation controlling candidates' election expenses should be amended so that the cost of any campaigning activity that takes place within a specified regulated period in advance of an election counts towards a candidate's election expenses limit, regardless of when the person is declared to be a candidate. We consider that an appropriate regulated period would be four months ending with the date of the poll. This control should apply to all elections. We recognise that in setting a fixed period for the regulation of expenses, it will be necessary to monitor whether the current election expenses limit are set at an appropriate level.

5.11 Introducing a four-month regulated period for candidate's election expenses would ensure that there is parity between the regulated periods for candidates and parties at devolved and European elections. However, there would be a discrepancy in the respective

regulated periods for general elections, which for parties is 365 days ending with the date of the poll. As PPERA has not yet been in place for a full 365 days in advance of a general election,¹⁶ we are reluctant to make recommendations in relation to this longer regulated period. However, we consider that the 365-day period may be problematic in practice and will in future review whether a four-month period may be more appropriate to bring general elections in line with other elections.

Definition of election expenses

5.12 The current definition of election expenses is 'any expenses incurred on goods or services used for the purposes of a candidate's election after the date on which a person becomes a candidate'. We regard this as a sound basis, providing that that period of regulation, effectively the regulated period, is an appropriate length of time (see 5.10). Election expenses are valued at either the actual expense incurred in respect of the purchase of the goods or services used; or, where goods or services are not used exclusively for election purposes, as a proportion of the total expense incurred determined by the proportion of the use of the goods/services for election purposes. Although the latter provision may require candidates to make some calculations as to the proportion of the cost of an item that is to be treated as election expenses, we consider that this is important to ensure accuracy.

5.13 However, we have some concerns about the operation of other new sections of the RPA relating to what constitutes an election expense. Two new sections require candidates to treat as election expenses:

- a proportion of value of any expenditure incurred on goods or services purchased other than for the election but which are used for the purpose of a candidate's election;
- a proportion of value of any expenditure incurred on goods or services purchased before the date on

which a person becomes a candidate but used after that date for the purposes of the candidate's election.

5.14 We understand the reasons for the introduction of these sections, since it seems important to clarify in law that a candidate cannot use goods and services for the purposes of his election without including a proportion of the cost of these goods and services as election expenses. However, we consider that in practice, the law needs to be more flexible than its current wording allows.

5.15 The new provisions are so broad as to require the inclusion of a proportion of value of any item used for a candidate's election, but we believe that there are some items which could reasonably be excluded from the definition of election expenses, for example use of a candidate's own computer, or the cost of posters produced for previous elections. We also consider that the requirement to include a proportion of value of items purchased before or other than for the election would be more practical if it did not apply to goods etc. purchased a long time in advance of the election.

5.16 A further criticism of the recent amendments is that the list of items to be included in the return under section 81 of the RPA is too complex, with the result that the election expenses return that the Commission is required to produce is not conducive to candidates and agents understanding the requirements or correctly completing the return.

In order to provide greater clarity for candidates about election expenses, we recommend that an enabling power allowing the Secretary of State to prescribe by Order a list of items that qualify (or do not qualify) as election expenses be added into RPA. This list of expenses should be in a similar format to the list of items of party expenditure at Schedule 8 to PPERA, and should go a significant way to ensuring greater clarity about election expenses.

¹⁶ The campaign expenditure controls introduced by PPERA came into effect on 16 February 2001, and the general election of 2001 was held on 7 June. Accordingly, the regulated period and campaign expenditure limits were reduced.

We further recommend that the current section 81 of PPERA is replaced with a requirement for the return to include details of all election expenses (including notional expenditure, unpaid and disputed claims) and donations, with the Commission left to determine the format through which it can best monitor compliance with the legislation. We propose that a prescribed list of election expenses should form the basis of an election expenses return.

Third parties' support for individual candidates

5.17 PPERA increased the amount of expenditure that can be incurred by a third party campaigning in favour of, or in opposition to, a candidate at an election. Following a European Court of Justice ruling in 1998 that held that the previous £5 limit on third party expenditure violated an individual's right to freedom of expression,¹⁷ PPERA increased the limits to £50 plus 0.5p per elector for local elections, and £500 for Parliamentary elections (this figure has also been applied to devolved elections).

5.18 However, although the expenditure limits have been increased, the relevant section of the legislation still prohibits third parties from spending money on:

- holding public meetings or organising any public display;
- issuing advertisements, circulars or publications.

5.19 In our view, there are few, if any other ways in which a third party can effectively campaign in favour of or against a candidate at an election. Therefore, we consider that the increase in expenditure limits has not had the desired effect, and doubt that the amendment satisfies the European Court of Justice ruling.

As an urgent recommendation the law should be amended to allow third parties to incur expenditure on holding public meetings or issuing circulars etc.

5.20 We welcome the fact that higher spending limits for third parties that campaign in favour of or against a candidate should enable increased participation in the electoral process. Our experience suggests that this increased participation ranges from low-level, ad hoc activity by individuals to campaigns which are well-organised and which may be orchestrated across a number of electoral areas.

5.21 However, we have some concerns that the increase in third party spending limits has not been matched by an increase in the transparency of third party activities in supporting or disparaging candidates. We have some sympathy with the views expressed by a number of political parties that responded to the consultation paper, who felt that third parties which incur a significant level of expenditure in respect of candidates should be subject to a greater degree of transparency than is currently the case.

5.22 At present third parties at local level are not required to provide a statement of their campaign spending for public inspection, and enforcement is problematic. The only means by which a candidate or member of the public can challenge the amount of spending by a third party is by raising a specific case with the police or Crown Prosecution Service. The Commission has no responsibility in this area. We consider it an anomaly that although The Electoral Commission is required to monitor compliance with the requirements on election expenses incurred by candidates, there is not a similar power to oversee the controls on third party spending in respect of candidates.

5.23 We believe that if third parties are to be permitted to spend up to a higher amount, there is a need to establish a mechanism for ensuring compliance with the controls. As with national third party campaigning, it may be appropriate that local third party campaigners should be subject to the same controls as political parties and candidates, in order to ensure a level playing field in the democratic process. Therefore, there may be an argument for extending reporting requirements to third parties that campaign in favour of or against a candidate

¹⁷ The case of *Bowman v. The United Kingdom* (141/1996/760/961) followed a case brought against Mrs Phyllis Bowman of the Society for the Protection of the Unborn Child for allegedly exceeding the permitted third party expenditure limit for promoting or disparaging a candidate.

at an election, although such a requirement might be impractical, both because it is not always possible to identify third parties and because the sums that can legally be incurred by third parties are still relatively small (£50 plus 0.5p per elector at local elections). However, we propose to keep this area under review at future elections, and may make further recommendations.

6 Donors

As well as introducing controls on political parties and other organisations involved in the democratic process, PPERA clearly has an impact on those organisations and individuals that make donations to regulated bodies. Any donor who makes a donation of more than £1,000 or £5,000 will be listed on the Commission's registers of donations. In addition, companies that make donations are subject to a requirement to seek prior shareholder authorisation of donations.

6.1 The major concern raised in relation to the impact of PPERA on donors is that the current definition of donations is too wide. Both parties and donors have commented that this means that commercial activities and dialogue between parties and other organisations could fall within the scope of the regulatory framework. A number of respondents warned that this is deterring organisations from becoming involved in the political process.

Definition of donations

6.2 Paragraph 3.13 outlined the types of a donation that can be made to a political party (or regulated donee), while paragraph 3.35 noted the difficulty that arose in relation to the provision by companies of paid leave to employees who are elected councillors. In that instance, companies warned that the compliance burden placed on them by the treatment of the release of staff as a donation might deter them from providing paid leave to their employees.

6.3 Other concerns have been raised by donors. These concerns have mainly been raised by companies, which under the Companies Act (as amended by PPERA) are subject to the requirements to seek prior shareholder authorisation of political donations in excess of £5,000 and to publish details of donations made in the company's annual report.

6.4 Companies have warned that the definition of a donation to political parties is too broad, and that activities which a company regards as a legitimate commercial activity, or in which it engages with all political parties rather than displaying a political preference by working with just one – such as sponsorship – are therefore brought within the framework of the Act. Responses from companies and other interested parties to the initial discussion and consultation papers reiterated this view. One stated: 'Our central concern is that companies which have complex and wide-ranging interests and contacts with political bodies, will find it difficult to put in place a mechanism to catch all the possible data which is required to be reported by the Act'.

6.5 Another wrote that: 'We fully support the aims of the Act... but we are concerned that the Act in its current form goes much further than perhaps was intended and imposes an unnecessary cost burden on companies that have legitimate reasons for a continuing dialogue with political audiences'.

6.6 Part of the difficulty for donors, and to the same extent political parties and regulated individuals, has arisen because the PPERA is so new. For the first two years of its operation, it has been necessary to develop an understanding of what the legislation means in practice, and this has inevitably given rise to problems for organisations and individuals working with the Act. In particular, there has been some confusion as to what constitutes a donation.

6.7 Following two years of experience of the PPERA, the Commission is now in a much better position to produce comprehensive guidance on the types of activity that constitute donations. We will be producing guidance on this area by Autumn 2003, in consultation with external stakeholders, and believe that it will go some way to addressing the concerns raised during this review and therefore reducing the difficulties that parties and donors have faced. We are of the view that there is scope within PPERA for common sense interpretations and application of the controls.

6.8 Guidance notwithstanding, there will of course continue to be difficulties in the application of controls in this area. The main reason for this is that in seeking to achieve transparency about the funding of political parties, the PPERA does not distinguish between the different types of transactions which are classified as donations. Therefore, when a party submits a report of donations to the Commission, the report might include two donations of £6,000, one of which is a payment to sponsor a party conference, while the other is a cash gift of £6,000. This would not currently be clear to anyone viewing the register.

6.9 We understand why commercial organisations might not wish to be reported as making a donation to a

political party when they are involved in similar transactions with all parties or where the activity is, in the organisation's view, commercial rather than political. However, since PPERA was introduced in order to ensure transparency, we believe that it is entirely appropriate that all the funding that parties receive is reportable, regardless of the motive of the individual or organisation providing the funding.

We therefore recommend that while the current categories of donations currently continue to be reportable, the reporting requirements are amended such that a donation is categorised on the register according to the nature of the funding, e.g. cash gift, sponsorship, provision of services etc.

6.10 We believe that this will provide further transparency about party funding and about donors, and will prevent normal promotional or commercial activities from being misconstrued as political donations.

6.11 The requirement for donors which are companies to seek prior shareholder authorisation of donations as defined by PPERA was inserted by PPERA into the Companies Acts 1985. This Act is outside the Commission's remit, and as such we would not seek to judge whether or not the current controls on companies in this respect require amendment.

7 Overview of issues

In keeping with the aims of the review, the majority of changes recommended in this report are technical changes that will, in our view, improve the operation of PPERA and will assist those regulated by the Act to comply with it. On that basis, we believe that most of our recommendations can be implemented in a timely manner and with the minimum of difficulty. In the long run, the Commission will be reviewing the case for a more comprehensive overhaul of the regulatory system.

Implementation

7.1 The most significant change proposed in this report is the proposal to create a two-tier regulatory framework. To do so, it will be necessary for existing registered parties to decide whether to register only for local elections. It would then be relatively straightforward for the Commission to ensure each party's register entry is amended to reflect its decision, and to apply the appropriate regulatory framework. No action need be taken by those parties who wish to contest other elections as well.

7.2 Other than this major change to the registers, the majority of recommendations in this report can be implemented quickly and simply. Most are straightforward changes that will improve the operation of PPERA for both the regulator and the regulated, and, since they do not fundamentally alter the regulatory framework, once the statute is amended, the main task for the Commission will be to alter its guidance to reflect the slightly different requirements. Parties and others may have to make some minor changes to their procedures, but will benefit from these, since the effect of the changes will in most cases be to reduce the administrative burden and associated costs imposed by PPERA.

7.3 Implementation timetables will naturally be determined by the passage of any legislation; however, we see no reason to delay the implementation of these changes, since there are no major programmes of training or preparatory work to be undertaken. We recommend that the implementation of the changes is determined in accordance with the date of future elections, and financial reporting requirements, e.g. changes to campaign expenditure requirements should be changed before or after but not during a regulated period for an election, and changes to donation controls should be effective for an entire reporting period (i.e. a calendar year) rather than in the middle of it. Any changes to the penalties that can be applied under PPERA should be effective from such time as other changes come into effect.

Strategic issues and timing

7.4 We stated at the beginning of this review that it would be mainly concerned with making the existing legislation work better, rather than the principles underlying the regulatory regime. We maintain the view that although our two-year experience of overseeing the regulatory system provides us with sufficient experience to identify problems with the detail of PPERA, it is not a long enough period of time in which to form a judgement on this new form of regulation. We believe that we require more experience before we can make more fundamental recommendations as to the overall structure of the regulatory framework. However, we consider that the amendments proposed in this report will assist the operation of PPERA to the benefit of all.

7.5 Our work to assist parties, other organisations and individuals in complying with PPERA will continue. We will continue to produce guidance, based on our experience of overseeing PPERA and providing training to parties and individuals, which should go a considerable way to reducing some of the difficulties faced by those regulated by PPERA.

Future analysis and reviews

7.6 We will also continue to review the operation of the current framework. The devolved elections in May 2003 provide further opportunity to assess the expenditure controls on parties, candidates and third parties, and we will produce a report in early 2004 on election expenditure and the operation of the controls at these elections. The first submission of annual statements of accounts from political parties will also provide further transparency about the funding of parties and the effectiveness of the PPERA regulatory regime.

7.7 Further policy reviews will also focus on the current framework and possible alternatives to it. In Summer 2003, the Commission intends reviewing the existing system of policy development grant funding for political parties, to consider the basis of the distribution of grants and the purposes for which they can be used. Following more experience of the party campaign expenditure

limits, which we will obtain from the devolved, European and next Parliamentary election, the Commission will also review the existing party campaign expenditure limits. On a wider level, we are carrying out a review of state funding of political parties, an issue that is critically linked to the regulatory framework for political parties and others engaged in the political process. This review will report in 2004.

Issues to consider

7.8 In carrying out our future analysis and reviews, we will focus on issues which we consider to fall outside the scope of this review but which we have identified as issues to be monitored and assessed at a later date. The most significant of these is the application of separate election expenditure regimes for political parties and candidates. Since the introduction of PPERA, we have effectively been overseeing two different sets of regulations, with party expenditure limits added onto the existing system of candidates' election expenses limits.

7.9 The existence of separate arrangements poses some difficulties in judging whether an item should be treated as a candidates' election expense or party campaign expenditure. Although in some cases it is clear (e.g. the party political broadcast is party expenditure, while a leaflet promoting an individual is the candidate's election expense), there are many 'grey' areas – e.g. at a local election, material which promotes a party by focusing on specific local issues, but which may not explicitly mention a candidate. As noted in our report of expenditure at the 2001 general election, *Election 2001: Campaign spending*,¹⁸ we also have some concerns that the current system of expenditure limits, which allows parties to incur expenditure in addition to the expenditure incurred by candidates, enables parties to target a specific constituency, for example through party billboard advertising, telephone canvassing etc. This expenditure falls outside the controls on candidates' expenses. However, in a candidate-centred system, the expenditure effectively benefits a party's candidates, and could therefore be said to distort the system of

¹⁸ The Electoral Commission (2002) *Election 2001: Campaign spending*.

candidates' expenses limits by allowing parties to spend more to promote their candidates than non-party candidates can spend.

7.10 We believe that this is a major area of the legislation which will require detailed consideration. We accept that, after just two years of having two sets of limits, it is important to gather more experience before judging whether or not it was appropriate to add separate party expenditure limits to an existing system of candidates' limits, or whether an entirely new model may be more equitable. One alternative system is the regulatory regime in the Republic of Ireland, where every candidate contesting a parliamentary election is subject to a maximum expenditure limit. There are no separate party expenditure limits, but each candidate can authorise the party to incur all or part of his expenditure limit. The party can spend any expenditure assigned to it by the candidate in either the relevant constituency or on a national basis. There may be other models which are also worthy of further consideration.

7.11 For similar reasons, it will also be necessary to continue to monitor third party campaigning at elections and the effectiveness of the controls. PPERA created an analogous system of national third party controls in addition to the existing RPA 1983 local controls. As well as monitoring whether or not the PPERA definition of third party activity catches appropriate types of campaigns (see section 4), and whether or not third party campaigning in relation to individual candidates should be reportable and or regulated by the Commission (see section 6), we will consider whether the co-existence of candidate specific and national third party limits ensures a level playing field for all those participating in the election campaign. One immediate concern we have is in relation to third party campaigning at local elections, which falls outside the scope of PPERA (unless the local election takes place during the regulated period for another election), but which is not reportable under RPA 1983 either. We believe that some organisations may be spending considerable sums in running coordinated third party campaigns at local elections, and while this is clearly legitimate there is a strong case for saying that

such campaigns should be more transparent. It may also be appropriate to introduce limits on nationwide expenditure by third parties at local elections. Future reviews (such as a review of expenditure limits) will provide an opportunity to review this area.

7.12 Finally, as we continue to develop our role in monitoring compliance with the controls on candidates' election expenses, we may have further recommendations to make in relation to the controls themselves and the enforcement of them.

Appendix 1 –

Responses to our discussion and consultation papers

Responses to our discussion paper

Association of Professional Political Consultants
 Ben Fairweather, De Montfort University
 British American Tobacco
 British Telecom
 Chief Electoral Officer of Northern Ireland
 Conservative Party
 D. Denver, G. Hands and I. MacAllister
 (University of Lancaster) and J. Fisher (Brunel University)
 Department of Trade and Industry
 Halstead Residents' Association
 Hansard Society
 Hornchurch Residents Association
 Labour Party
 Liberal Party
 Local Government Association
 Mike Gapes MP
 People Against Bureaucracy Action Group
 Residents Association of Epsom and Ewell
 Scottish Association of Electoral Administrators
 Scottish National Party
 Stamford Ward Residents Association
 Social Democratic and Labour Party

Responses to our consultation paper

Political Parties
 British National Party
 Conservative Party
 Council-Tax Payers Party (England's Own)
 English Independent Party
 Labour Party
 Liberal Democrats
 Loughton Residents Association
 No Candidate Deserves My Vote
 Nork Residents Association
 Official Monster Raving Looney Party
 Real Democracy Party
 Scottish National Party
 Socialist Party
 Stamford Ward Resident's Association
 Ulster Unionist Party
 Wessex Regionalists

Electoral Administrators

Association of Electoral Administrators
 Association of Electoral Administrators (Wales)
 Bay of Colwyn Town Council
 East Hampshire District Council
 Electoral Office for Northern Ireland
 Hackney Borough Council
 Huntingdon District Council
 Islington Council
 Liverpool City Council
 David Monks (SOLACE Electoral Matters Panel)
 Newham Independents Association
 Newport City Council
 North East Derbyshire District Council
 North Tyneside Council
 Peterborough City Council
 Residents Associations of Epsom and Ewell
 South Holland District Council
 West Dumbartonshire Council
 Wigan Council

Companies

Association of Professional Political Consultants
 Barclays
 BT Group

Others

Centre for Computing and Social Responsibility
 Department of Trade and Industry
 Fabian Society
 Dr Ben Fairweather (Centre for Computing and Social Responsibility)
 Dr Robert Kaye (Centre for Analysis of Risk and Regulation (London School of Economics))
 Local Government Association
 Martin Linton MP
 Parliamentary Commissioner for Standards

The Electoral Commission

We are an independent body that was set up by Parliament. We aim to gain public confidence and encourage people to take part in the democratic process within the United Kingdom by modernising the electoral process, promoting public awareness of electoral matters, and regulating political parties.