

## Political Parties and Elections Bill

House of Lords Grand Committee 29 & 30 April 2009

Please note that this briefing note comments on certain amendments which the Commission believes raise significant issues of workability or policy. The note does not comment on every amendment tabled. The absence of comment on an amendment does not imply that we support it.

### Functions of Electoral Commission

#### Clause 1 - Compliance with the controls imposed by the 2000 Act etc

Healthy political parties are vital to the democratic process, and it is important that the regulatory regime governing them is appropriate, recognising that many of those with statutory responsibilities are volunteers. At the same time, the Commission must be able to enforce the rules effectively when necessary. Clauses 1 to 3 of the Bill restate the Commission's regulatory role in respect of party and election finance, and provide new powers and sanctions that would enable us to carry out that role more effectively and proportionately, in line with the principles of good regulation.

The Commission welcomes the clearer definition of its regulatory function which clause 1 provides, and the explicit power for the Commission to prepare guidance on regulatory matters.

#### Recommendations on amendments

The Commission does not support **amendment 1** in the names of Lord Bates and Lord Henley removing the proposed redefinition of the Commission's regulatory function. The Bill confirms that the Commission has the statutory role of securing compliance with the 2000 Act, as well as monitoring compliance. This is a helpful clarification which gives effect to a recommendation of the Eleventh Report of the Committee on Standards in Public Life<sup>1</sup>.

#### Clause 2 and Schedule 1 – Investigatory Powers of the Commission

Clause 2 restates and revises the Commission's supervisory and investigatory powers. It fills significant gaps in our current powers; for instance, it would for the first time enable us to obtain information from donors to political parties, in a situation where we have reasonable grounds to believe the law has been broken.

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<sup>1</sup> The Committee on Standards in Public Life, 'Review of the Electoral Commission', CM 7006. London, January 2007

To help inform Parliament's consideration of the Bill we have published a paper, "*Investigation and enforcement: the Electoral Commission's proposed approach*"<sup>2</sup>, which sets out how we expect to use those powers and the new civil sanctions proposed in Clause 3 of the Bill.

## Recommendations on amendments

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The Commission supports Government **amendments 2, 3 and 7** which reduce slightly the scope of our restated supervisory powers. They provide that we cannot routinely request information from a person who ceased to be an officer of a regulated entity more than five years ago, and cannot make supervisory visits to premises occupied by persons who are no longer regulated by us but who have been in the past. We would not expect to use supervisory powers in these cases, and it is sensible to exclude them from the Bill.

The Commission does not oppose Government **amendment 9** which places the power to issue a court order requiring the production of documents to the High Court or the Court of Session, rather than to the county court or sheriff. We welcome Government **amendments 11-14, 24 and 25** which extend the court order procedure so that it can be used where a regulated entity fails to comply with a statutory notice requiring information or explanations, as well as documents. As noted in our Second Reading briefing, such information can be critical to an investigation into a suspected breach of the law. Where a statutory request for such information is not complied with, the court order process provides a simpler and more proportionate solution than a criminal prosecution for failure to comply with the original request.

**Amendments 4-6, 8, 15-23** in the names of Lord Bates and Lord Henley propose various procedural changes to the supervisory and investigative powers in the Bill. As we have said in briefing on the Commons stages of the Bill, we see no difficulty with such procedural changes except where they may undermine our ability to regulate effectively. We do not support **amendment 4** requiring service of disclosure notices by hand, since those we regulate could easily use this to evade or delay acceptance of a notice. We see difficulties with **amendments 6 and 8** which seek to impose a fixed 28 day period for compliance with a notice; this may be unreasonably short in some cases where those we regulate have to retrieve, collate or check information, and may be longer than reasonably required in others. We do not support **amendments 15-23** which would significantly reduce the time for which the Commission may retain documents provided to it following a court order. The proposed 42 day time limit is unreasonably short for the purposes of an investigation, and the Commission's retention of documents for a longer period will not inconvenience the owner of the documents, who will be able to take copies of them before providing them to the Commission.

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<sup>2</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0020/71606/Working-Draft-Enforcement-Policy-and-Guidance---post-PPP.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0020/71606/Working-Draft-Enforcement-Policy-and-Guidance---post-PPP.pdf)

## Clause 3 and Schedule 2 – Civil Sanctions

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Clause 3 gives the Commission access to a new suite of flexible sanctions with which to respond to breaches of the law. They are modelled closely on the civil sanctions introduced by the Regulatory Enforcement and Sanctions Act 2008, which are to be made available to other regulators. In appropriate cases, the new sanctions will enable us to move away from referring a case for criminal investigation or the rigid imposition of a statutory fine, and instead use constructive new approaches to secure compliance with the law. For instance, we could issue a notice requiring a non-compliant body to take specified steps to become compliant, such as training party officers or amending systems.

The paper we have published on our future approach to investigation and enforcement (see footnote 1) explains how we expect to use the new sanctions alongside the criminal offences in the 2000 Act. We will consult publicly on our future enforcement policy before seeking access to the new sanctions.

## Recommendations on amendments

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The Commission supports Government **amendment 26** which gives effect to a recommendation by the sixth report of the Delegated Powers and Regulatory Reform Committee<sup>3</sup>, ensuring that a statutory instrument relating to fixed monetary penalties for contraventions of the 2000 Act will be subject to the affirmative procedure.

**Amendments 40-46, 61-62 and 71-73** in the names of Lord Bates and Lord Henley propose a range of procedural changes to the new sanctions provisions. As with the restated supervisory and investigatory powers in the Bill, the Commission's main concern over such changes is that they do not reduce our ability to regulate effectively. **Amendment 40** creates a fixed period for payment of monetary penalties, but appears to cut across the period for appeals. We do not support **amendment 44** which removes the specified grounds of appeal and imposes a fixed 28 day period for appeals, since this would lose the flexibility provided by the Bill to specify appropriate appeal periods in the light of experience. We note that **amendments 45 and 46** appear potentially confusing since it seems sensible for the specified periods for appeals and payment to commence when the notice is received. We do not support **amendment 61** which removes provision for late payment penalties in respect of discretionary fines. Such penalties are likely to encourage prompt settlement and reduce the need to use public funds to pursue payment. Nor do we support **amendment 73** which allows the Commission to withhold information from reports on sanctioning if it "would" (rather than "might") affect a current investigation or proceedings. It will not always be clear that reporting such information is certain to affect a current case, even where it is likely to do so.

**Amendments 28-39, 47-60 and 63-70** in the names of Lord Bates and Lord Henley substantively widen the scope of the new civil sanctions, by allowing the Commission to impose a fixed monetary penalty, discretionary requirement or stop notice in respect of any offence or contravention of the 2000 Act, without the

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<sup>3</sup> <http://www.publications.parliament.uk/pa/ld200809/ldselect/lddelreg/73/73.pdf>

need for the offence or contravention to be ‘prescribed’ in secondary legislation as one to which the relevant civil sanction applies. They also provide for the Commission to impose a fixed penalty or discretionary requirement where no offence or contravention has occurred, if it has the express agreement of the regulated entity concerned. These changes would provide the Commission with considerable flexibility to impose the most suitable sanction in each case. However, we expect that Parliament would prefer to retain the ability to scrutinise the offences and contraventions in respect of which the Commission is to be able to impose the new sanctions.

## New Clauses after Clause 3

### New Clause - Education about electoral systems

The new clause ‘Education about electoral systems’ (**amendment 27**) in the name of Lord Norton would narrow the scope of the Commission’s current duty to promote public awareness of electoral systems, systems of government and the institutions of the European Union. The effect would be to limit the duty to the promotion of public awareness of electoral systems and related matters.

We do not support this new clause. While the vast majority of the Commission’s public awareness activity focuses on electoral systems (encouraging and explaining voter registration, and providing information on how to take part in elections), the Commission also provides some information on systems of government and democratic institutions which we believe is important in explaining the relevance of the democratic process.

## Electoral Commissioners etc

### Clause 5 – Four Electoral Commissioners to be persons put forward by parties

There are two elements to the proposals relating to Electoral Commissioners. The first is to introduce four new Commissioners who will be directly nominated by political parties in the House of Commons. The second is a reduction of the restriction on involvement in political activity from ten years to five years for all other Commissioners.

### Recommendations on amendments

The Commission notes **amendment 74** to Clause 5 tabled by Lord Tyler and Lord Rennard which would have the effect of ensuring that the new group of Commissioners nominated by party leaders would be required to have experience relevant to the work of the Commission and that the party leader have regard to the overall composition of the Commission.

The appointment of nominated Commissioners is a matter for the Speaker’s Committee to consider after passage of this Bill. While it would be helpful for

nominated Commissioners to have the background suggested by this amendment, we expect nominated Commissioners to bring recent party political experience to the Commission Board, whatever their particular background. We would welcome the Speaker's Committee consideration of composition of the Board when it reviews nominations and any further Commissioner appointments.

## Clause 7 – Political restrictions on electoral Commissioners and staff

The Bill proposes to reduce from 10 years to one year, the current prohibition on the employment of those who have held office in a political party, made a reportable donation or been in paid employment in a party. The only exception to this rule would be the post of Chief Executive where the limit would be reduced from 10 year to five years.

## Recommendations on amendments

The Commission welcomes government **amendments 75 and 77** to Clause 7 (2) which have the effect of enabling certain specified posts to be subject to a longer ban on political involvement than the standard 12 months envisaged in Clause 7 of the Political Parties and Elections Bill.

The Commission supports this amendment as a helpful mechanism to enable the Commission to function effectively, especially when dealing with matters that are highly politically sensitive. The Commission does not envisage that this designation would apply to more than a handful of posts within the staff body and in each case the Commission would consider the merits of the case for designation. The Commission will publish information regarding the designation of posts on an annual basis.

## Further comment on Clause 7

The Commission is disappointed that there has been no explanation of the need for change outlined in Clause 7 paragraph (1), which would reduce the ban on party political involvement in relation to those Commissioners not nominated by party leaders, from 10 to five years. This goes further than the recommendations from both the Committee on Standards in Public Life and the former Constitutional Affairs Committee. This change will mean that in principle, the Electoral Commission could consist of four Commissioners with immediate past involvement in political parties, and six Commissioners whose involvement ended just 5 years previously. We would welcome further explanation of the need to change the restriction for the non-nominated Commissioners from the current 10 years to the proposed five years.

## New Clauses after Clause 7

### 'Reports of the Electoral Commission'

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This new clause would place a duty on the Secretary of State to respond in writing within six months to any report published by the Commission under section 6 of PPERA, or to provide an explanation of why it has not been possible to do so.

### Recommendations on amendments

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The Commission welcomes **amendment 79**, which would support timely and effective public discussion of its reports and recommendations. Although the Government has published timely responses to many of the Commission's published reports there have also been occasions when it has not done so, and it has been more difficult in those instances to ensure a full and open debate about issues of electoral policy.

We would also like to see the requirement for the Secretary of State to respond in writing within six months extended to include reports published under section 5 of PPERA (reports on elections and referendums) as well as those published under section 6 (reviews of electoral and political matters). This would help to ensure that reports and recommendations relating to specific elections were also more openly discussed and debated.

## Political donations and expenditure

### Clause 8 and Schedule 3 – Declaration as to source of donation

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The Commission supports the aim of Clause 8, which is to increase transparency in respect of donations and to act as a procedural reminder of the law on routing donations via third parties. It is important that the new administrative burdens that the clause imposes on parties and donors are proportionate.

### Recommendations on amendments

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**Government amendments 80, 85, 91, 93 and 95** to Clause 8 and Schedule 3 would increase the threshold for the new declaration requirement relating to party accounting units and individual regulated donees, bringing it into line with the £7,500 threshold that applies to party headquarters and members' associations. This would reduce the administrative burden on local parties and regulated individuals. The Commission supports this change on the basis that it is a more appropriate way of reducing burdens than the alternative of an increase in the donation reporting threshold to party accounting units, as proposed by **amendment 111** in the names of Lord Bates and Lord Henley. The Commission does not support any additional increase to donation reporting thresholds, which would materially reduce the transparency of party and election finance.

The proposed increase to the declarations threshold would preserve the value of the new declarations provision as a procedural reminder of the law on agency in respect of larger donations, without undermining either integrity (since the law on agency will continue to apply to all recordable donations over £500) or transparency (since all donations of over £1,500 to party accounting units will still be published). The Commission will re-emphasise the importance of complying with the law on agency, in respect of all donations including those that fall below the £7,500 threshold, in its advice and guidance to regulated entities.

The Commission does not support **amendments 83, 87, 88** in the names of Lord Henley and Lord Bates, which propose changes to the declaration requirements and related offences. Their effect would be to enable those making declarations to do so recklessly without any prospect of sanction, and thus to weaken the reliability of declarations in respect of the origin of donations.

**Amendments 82 and 84** in the names of Lord Campbell-Savours, Lord Tyler and Lord Rennard would narrow the 2000 Act's definition of a permissible individual donor, by taking into account whether the individual is resident in the UK for tax purposes, as well as whether the individual is on the electoral register. It is for Parliament to decide whether this is an appropriate test. However, we have concerns about the workability of this proposal. In order to assess whether any donation from an individual is permissible, the recipient would need access to authoritative information about that individual's tax status. The Commission would also need access to that information to confirm compliance. We think it highly unlikely that this will be achievable in practice, or (if so) that the resulting burden on regulated entities and on HM Revenue and Customs would be proportionate.

## New clauses after Clause 8

New Clause - Donations by companies controlled by impermissible donors

New Clause - Non-electors to be impermissible donor

**Amendments 89 and 90** in the names of Lord Tyler and Lord Rennard would narrow the 2000 Act's definition of a permissible company donor and a permissible individual donor, respectively. **Amendment 89** would assess the permissibility of a company by taking into account the permissibility of those individuals controlling the company. **Amendment 90** would require an individual to be qualified to vote at parliamentary, local and European elections in order to be a permissible donor. This would restrict donations from members of the House of Lords and citizens of member states of the European Union who are eligible to register to vote in elections to local councils, devolved legislatures and the European Parliament.

As with **amendments 82 and 84** discussed above, it is for Parliament to decide what the tests of permissibility in relation to donations should be. If Parliament concludes that tests on the lines set out in these amendments is appropriate, their workability would need careful consideration. For instance, in many cases it may be difficult for the recipient of a donation to determine whether a

combination of impermissible donors owns 75% of the voting shares of the donating company.

## New Clauses after Clause 9

### 'Reasonable excuse' in relation to certain offences under the 2000 Act'

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The Commission supports **Government amendment 97** which simplifies the offences in the 2000 Act relating to failures in statutory reporting, by introducing an automatic defence of "reasonable excuse". The law currently only allows a defence in respect of such failures where a regulated entity has been charged, and makes it subject to the more demanding test of taking "all reasonable steps". The Commission believes the proposed new defences are more proportionate, providing greater protection to those we regulate and more certainty to the Commission and to prosecuting authorities.

New Clause - Control of donations to members associations:  
responsible persons

New Clause - Control of loans etc to members associations:  
responsible persons

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The Commission welcomes **Government amendments 98 and 105**, which introduce new provisions in respect of members' associations. At present, a breach of the law on donation reporting by a members' association is difficult to sanction if the association has not appointed a treasurer or other responsible person to comply with the law. The amendments apply only to those members' associations that receive a donation which has to be reported to us, either because it exceeds the donation reporting threshold of £7,500 or because it is impermissible. The amendments will require any such association to nominate a responsible person if it does not have a treasurer, and to notify us of that person's identity. The new requirements are therefore targeted at circumstances where a breach of the law is most likely to affect confidence in the transparency and integrity of political finance. They will enable the Commission both to give members' associations a clear account of what they need to do to comply with the law, and to deal appropriately with cases of non-compliance.

Clause 10 – Control of donations to holders of elective office:  
compliance officers

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The Commission is content with the proposals to allow holders of elective office to appoint a compliance officer to assist them in meeting their obligations under the 2000 Act. We support the approach taken in Clause 10, which does not allow holders of elective office to delegate or waive their own responsibility for complying with the law.

## Recommendations on amendments

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The Commission supports **Government amendment 106** which provides that compliance officers may assist with obligations in respect of loans as well as donations. We also support the procedural Government amendments which amend the compliance officer provisions in a way consistent with the new notification requirements on members' associations.

## Clause 12 - Reports of gifts received by unincorporated associations making donations

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The Commission supports the aim of Clause 12, to increase the transparency of large political donations made by unincorporated associations. We believe the Bill should help to increase transparency in respect of the most politically active associations, while avoiding the imposition of new regulatory burdens on associations that donate smaller amounts.

We have some concerns about the practical operation of the new reporting requirement, which were set out in our Lords Second Reading<sup>4</sup> briefing on the Bill.

## New Clauses after Clause 12

New Clause - £50,000 cap on donations

New Clause - Treatment of contributions from trade union political funds'

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**Amendments 108 and 109** in the names of Lord Tyler and Lord Rennard, would introduce a £50,000 cap on donations, and would apply that cap to donations from trade union political funds except where certain conditions are met. These amendments along with **amendments 114-120** following Clause 13, seek to introduce fundamental changes to the structure and scope of the current statutory limits on fundraising and campaign spending by political parties. The Commission has previously published reports on broad issues of policy in relation to party funding (e.g. *The funding of political parties* [December 2004]; *Public perspectives: the future of party funding in the UK* [October 2006]). We have since published our views on emerging policy proposals on party and election funding, including the provisions in the Political Parties and Elections Bill and amendments to it, where our experience of regulating the current system can assist in the consideration of the policy intentions of proposals or their workability in practice. However, the Commission does not comment in detail on the workability of amendments that would create systemic change to the party funding system; such changes are primarily for Parliament to consider. If Parliament were to decide to take forward proposals along the lines set out in

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<sup>4</sup> Electoral Commission Lord Second Reading Briefing can be downloaded from the website here: [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0005/72617/Lords-Second-Reading-FINAL.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/72617/Lords-Second-Reading-FINAL.pdf)

these amendments, the practical implications of the resulting legislation would need careful consideration and the Commission would welcome the opportunity to comment on such proposals.

## New Clause - Tax relief on donations New Schedule - Tax Relief on Donations

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**Amendments 107 and 110** in the name of Lord Goodhart, propose the introduction of tax relief on donations to political parties. In principle the Commission welcomes measures that incentivise public engagement in politics and help parties to campaign effectively. Proposals for fiscal incentives are of course for Parliament to consider in the light of other priorities.

## Clause 13 - Increased Thresholds in Relations to Donations etc

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Clause 13 proposes significant increases to the donation permissibility and reporting thresholds in the 2000 Act. As set out in our Second Reading briefing, we believe that increasing the permissibility threshold from £200 to £500 has the potential to reduce public confidence in the transparency and integrity of political funding, and its impact will need to be monitored closely. The increases in the reporting thresholds, from £1,000 to £1,500 for party accounting units and from £5,000 to £7,500 for central parties, are also substantial, and we would not support any further material increase to these thresholds.

## Recommendations on amendments

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The Commission is content with **Government amendment 112** which augments the current provision in the 2000 Act for Ministers to increase thresholds in the Act in line with the value of money. The amendment requires the Secretary of State either to make such an order once each Parliament, or to provide a statement to Parliament explaining why an order has not been made. It supersedes **amendment 113** in the names of Lord Bates and Lord Henley.

We do not support **amendment 111** in the names of Lord Bates and Lord Henley, which would increase the donation reporting threshold for party accounting units from £1,500 to £3,000. As noted in our briefing on Clause 8 above, this would significantly reduce transparency. We believe that the Government's amendments to the declaration thresholds in Clause 8 address the concerns that have been raised about excessive administrative burdens on local parties. Increasing the donation reporting threshold further would not lead to any significant further reduction in administrative burdens, since all donations above £500 already need to be checked for permissibility and recorded.

## New Clauses after Clause 13

**Amendments 114-120** in the names of Lord Tyler and Lord Rennard are discussed in the context of **amendments 108 and 109** after Clause 12, above.

### Clause 14 - Limitation of pre-candidacy election expenses for certain general elections

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The Commission has argued for a longer regulated period for candidate expenditure for some time. However, the ‘triggering’ proposals in the Bill as introduced in the Commons were widely defined and we had concerns that they would be difficult for candidates and agents to interpret and comply with. We therefore welcomed the replacement of those proposals with the current Clause 14, which imposes new controls on spending at those Westminster general elections held more than 55 months after a Parliament first met. The new controls will offer greater certainty to candidates and agents than the triggering proposals. The Commission continues to believe that in principle it would be preferable to introduce a longer regulated period for spending at the end of all Parliaments, but we recognise the practical difficulties involved.

### Recommendations on amendments

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The Commission does not **support amendment 121** in the name of Lord Campbell-Savours, which would reinstate the ‘triggering’ proposals contained in the Bill as introduced in the Commons. As outlined above, we believe that the provisions now contained in Clause 14 are clearer and simpler than the ‘triggering’ proposals.

## Further information

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