The Electoral Commission

Political Parties and Election Bill
House of Lords Second Reading, Wednesday 18 March

This note sets out the Electoral Commission's views on the Bill's key provisions and identifies some issues where the Commission would welcome further discussion in the House of Lords.

Summary

- Healthy political parties are vital to the democratic process, and the regulatory structure that governs their funding has to be fit for purpose, reflecting the fact that many of those with statutory responsibilities under the law are volunteers. The Bill proposes some helpful changes to the regulatory structure. The investigatory powers and new civil sanctions will enable the Commission to act proportionately to secure compliance with the rules.
- The proposed increases to the thresholds governing the recording and reporting of donations and loans have the potential to reduce confidence in the transparency and integrity of party and election finance. Their impact will have to be monitored carefully. We would not support any further material increase to the thresholds beyond those already agreed by the Commons.
- We welcome the Government's commitment to introduce individual electoral registration in Great Britain to help improve the completeness and accuracy of the register.

FUNCTIONS OF THE ELECTORAL COMMISSION

Investigatory Powers of the Commission (Clause 2 and Schedule 1)

Healthy political parties are vital to the democratic process. It is important that the regulatory regime governing them is flexible and proportionate, reflecting the fact that many of those with statutory responsibilities under the law 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. To help inform Parliament's consideration of the Bill we have published a paper, "*Investigation and enforcement: the Electoral Commission's proposed approach*"[1], which sets out how we would expect to use the new powers and sanctions. When the Bill's provisions are finalised, we will hold a

[1] http://www.electoralcommission.org.uk/__data/assets/pdf_file/0020/71606/Working-Draft-Enforcement-Policy-and-Guidance---post-PPP.pdf

full public consultation on our future enforcement policy, penalty guidance and approach to risk assessment.

It is important for the Commission to have access to the right supervisory and investigatory powers. **Clause 2 and Schedule 1** of the Bill contain important proposals which fill gaps in the powers provided by the Political Parties Elections and Referendums Act 2000 (the 2000 Act). For instance the Bill 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.

The powers provided by Clause 2 were revised during the Bill's Commons stages. The Commission welcomed these changes, which dealt with two important concerns about the scope of the powers. The first change related to our routine supervisory powers to enter premises occupied by those we regulate, at a reasonable time and without use of force, for audit and inspection purposes. These powers are wider than those in the 2000 Act because they now cover regulated members' associations, but the original proposal to extend the powers further to cover individual regulated donees (such as holders of elective office and members of registered parties), candidates and agents has been dropped. We believe this change should address the concerns raised by the Joint Committee on Human Rights in their report on the Bill[2].

The second change was the removal of a proposed power for the Commission to ask the courts for a warrant to enter premises in cases where we believed that the law had been broken. The power has been replaced by a new procedure allowing us to apply for a court order requiring the production of documents that the Commission has already sought through a statutory notice, if that notice has not been complied with. Failure to comply with the court order would be a contempt of court. We believe this new procedure provides an effective and proportionate way to enforce statutory requests for documents.

The Commission would, however, like to see an amendment to the Bill to extend this new court order procedure to include statutory requests for information and explanations, as well as requests for documents. Obtaining such information can be critical to an investigation and it would be more effective and proportionate to follow up a statutory request for information through a civil court procedure than by pursuing a criminal prosecution for failing to comply with the statutory request.

Civil Sanctions (Clause 3 and Schedule 2)

The proposed civil sanctions introduced by **clause 3 and Schedule 2** of the Bill will enable the Commission to act proportionately to secure compliance. They are modelled closely on the new 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-

[2] http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/23/23.pdf

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 intend to use the new sanctions alongside the criminal offences in the 2000 Act.

Electoral Commissioners etc (Clauses 4 to 7)

Electoral Commissioners

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.

We have listened to the arguments put forward about the benefits of having nominated Commissioners, and we believe that these proposals can be made to work.

There has been some discussion during Commons stages about how the 'fourth' nominated Commissioner will be selected to ensure fair representation of parties with less or no representation in Westminster. The Commission hopes the Speaker's Committee will work with all parties to come up with an effective solution.

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.

We believe that we could benefit from being able to employ staff with more recent direct party political experience then the current ten-year bar allows. However, we consider it important for there to be some flexibility for the Commission to apply the five-year bar proposed for the Chief Executive to a small number of other posts, with the agreement of the Speaker's Committee. This may apply for instance to staff involved in or advising on regulatory decisions or acting on behalf of the Chief Executive.

POLITICAL DONATIONS AND EXPENDITURE

Declaration as to Sources of Donations (Clause 8 and Schedule 3)

Clause 8 and Schedule 3 of the Bill introduce a new requirement for donors to give a declaration about the source of their donation. This is intended to increase transparency, by acting as a procedural reminder of the rules in the 2000 Act which prevent donors concealing their identity by giving money through an intermediary. The Commission said during the Bill's Commons stages that it supported the aim of these provisions but was concerned that the new administrative burdens they would impose on parties and donors would be disproportionate. We therefore welcomed the Government's amendments in the Commons to bring the thresholds for the new declarations into line with the donation reporting thresholds in the 2000 Act, so that they will now stand at £1,500 for party accounting units etc and £7,500 for party headquarters. This will reduce the administrative burden while introducing a new procedural reminder of the rules on agency in respect of reportable donations.

Compliance Officers (Clause 10)

Clause 10 enables people who are regulated by the 2000 Act in their capacity as a holder of elective office to appoint a named 'compliance officer'. Such an officer can discharge the obligations of the regulated individual under the 2000 Act and may be liable for failures to comply with the law. The Commission is content with this change and supports the approach taken in Clause 10, which enables holders of elective office to nominate a person to assist them in meeting their legal obligations, but does not allow them to delegate or waive their own responsibility for complying with the law.

Unincorporated Associations (Clause 12 and Schedule 4)

Clause 12 and Schedule 4 are intended to increase the transparency surrounding large political donations made by unincorporated associations, by requiring such associations to report to the Commission on where their own funds come from. At present there is very little information on this in the public domain unless an association provides it voluntarily.

The Commission supports this aim and believes that the Bill as amended in the Commons 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. However, we have some concerns about the practical working of the new reporting requirement. In particular:

- the definition of a reportable gift and the valuation of non-cash gifts will need to be clarified in secondary legislation before we can prepare meaningful guidance on the new requirement;
- the requirement applies to gifts given to an association *before* it makes a donation which triggers the need to report to us. Although the policy objective is sensible, it means that we will not be able to give advance

notice to every association that may become subject to the new reporting requirement;
- the width of the requirement (e.g. "*whatever details the unincorporated association knows of the name and address of the person by whom the gift was made*"), together with the inherently widely defined nature of unincorporated associations, may make it difficult for us to enforce the requirement, particularly where an association first becomes subject to it; and
- the new provisions allow us to withhold certain information about gifts to associations from publication on our register, but do not make clear the circumstances in which we should do this. We would welcome clarification from the Government on this point.

Increased Thresholds in Relations to Donations etc (Clause 13)

The rules on the permissibility, recording and reporting of donations in the 2000 Act apply only to donations above a certain value. Since 2000 the permissibility and recording rules have applied to donations worth more than £200. Donations to party headquarters must be reported if they are worth more than £5,000 and donations to party accounting units, such as constituency associations, must be reported if they are worth more than £1,000.

Clause 13 proposes increases to these thresholds. It increases the **permissibility and recording threshold** from £200 to £500, a change which is much higher than needed to reflect inflation since 2000. It will mean that any cumulative series of donations that are individually worth £500 or less will be legal regardless of where they come from, and will not need to be reported to the Commission for publication on our register. In the Commission's view an increase of this level has the potential to reduce public confidence in the transparency and integrity of political funding. It may encourage impermissible donors to seek to increase their influence on UK political parties, for instance by making regular donations just below £500. It will be important to monitor the impact of this change closely.

Clause 13 also increases the **reporting thresholds** substantially, from £5,000 to £7,500 for party headquarters and from £1,000 to £1,500 for accounting units. The Commission would not support any further material increase to the accounting unit threshold, which would significantly reduce the transparency of donations to constituency parties. That would be undesirable in principle and would be contrary to the recommendation in the February 2008 report by the Council of Europe's Group of States against Corruption (GRECO) that "*consideration be given to increasing the transparency of political funding at constituency level*"[3].

[3] http://www.coe.int/t/dg1/greco/evaluations/round3/GrecoEval3(2007)3_UnitedKingdom_Two_EN.pdf

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

The Commission has argued for a longer regulated period for candidate expenditure for some time. However, we said in our evidence to the Commons Public Bill Committee that the 'triggering' proposals in the Bill as introduced to the Commons were widely defined, and that it would be helpful for the legislation to be clearer about the effect of the new rules in order to minimise the scope for uncertainty and avoidance.

The Commission welcomed the Government's introduction of **Clause 14** at Commons Report stage, removing the triggering proposals from the Bill and replacing them with new controls on candidate spending at those Westminster general elections held more than 55 months after a Parliament first met. The new controls apply only during a clearly defined period of time, and will therefore 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 candidate spending at the end of all Parliaments, not just those that sit for longer than 55 months, but we recognise the practical difficulties involved.

The new controls will apply to the next Westminster general election if it is held after the end of 2009. The Commission will therefore prepare, consult on and issue practical guidance on the new controls during 2009.

ELECTIONS AND ELECTORAL REGISTRATION

Election falling within canvass period

Clause 16 adapts the law on the annual canvass to allow Electoral Registration Officers (EROs) to capture changes recorded on canvass forms during the canvass period and to ensure those changes are reflected in the electoral register in the event of an election taking place between 1 July and 1 December. The aim is to prevent electors who have returned canvass forms from being unexpectedly disenfranchised. The clause also enables EROs to suspend publication of the electoral register from 1 December to 1 February in the following year to allow time to compile the revised register.

The Commission supports the intention behind this clause but would welcome clarification from the Government on a number of issues, including (a) whether the clause is intended to apply to referendums conducted under the 2000 Act; (b) the reasoning behind the selection of the 1 July date.

We also note that the intended changes will have resource implications for electoral administrators. We have asked the Government to ensure that any funding identified as necessary to support the effective implementation of these revised working practices is made available.

Candidate at parliamentary election may withhold home address from publication

The Commission believes that there is a case for full addresses not to be publicly available on ballot papers or nomination documents at UK Parliamentary elections. Equally, though, we believe that voters should have access to sufficient information to indicate a candidate's proximity or otherwise to the constituency in which they are standing.

The Commission therefore supports **Clause 17** in principle. However, we are concerned that it would potentially enable only candidates, agents, proposers, seconders and representatives of the Electoral Commission to see candidates' full addresses. Clause 17 would therefore make it difficult for a member of the public to confirm or disprove a suspicion that a candidate does not live within the constituency that they claim

Moreover, even the people who can see the full address cannot record it for verification at a later date – as existing legislation does not allow those inspecting nomination papers to record information contained within them.

For this reason, we have suggested that it should be possible to view the home addresses of any candidate if done under the supervision of the Returning Officer, who must record their identity.

In addition, we believe that giving candidates the option of having different categories of information (that is, constituency or full home address) on the ballot paper could increase the potential for voter confusion.

Filling Vacant European and Parliament Seats in Northern Ireland

Clause 19 as introduced at Committee Stage amends the European Parliamentary Elections Act 2002 so that when a European Parliamentary seat in Northern Ireland becomes vacant:

a. if the previous MEP stood in the name of a registered party when elected, then the seat may be filled by a person nominated by the nominating officer of that party; or
b. where this does not apply, the seat may be filled by a person named in a notice made by the previous MEP in accordance with Regulations under the European Parliamentary Elections Act 2002

This would effectively replace the current system of filling vacant European Parliamentary seats in Northern Ireland through holding by-elections.

The Commission support the broad intent behind this Clause, but we have concerns about its implications for transparency, since the voter would not know when voting the names of substitutes who might subsequently be put forward.

Local Returning Officers for elections to European Parliament

Clause 20 provides for European Parliamentary elections in England, Wales and Scotland to be run on the basis of local authority rather than UK Parliamentary boundaries. We welcome this provision. The situation in Northern Ireland is different and, in this case, the returning officer will continue to be the Chief Electoral Officer.

CORE information and action to be taken by electoral registration officers

Clause 21 amends the role and powers of the CORE-keeper, as set out in the Electoral Administration Act 2006. The changes introduced:

- require the CORE-keeper informs the relevant Electoral Registration Officer if more than a specified number of postal votes are requested for a certain address.
- allow any CORE scheme to give the power to the CORE-keeper to report any potential breach of electoral law to an ERO. It also requires the ERO to take appropriate steps to investigate issues highlighted by the CORE-keeper and to report back what these steps were.
- ensure that the CORE-keeper does not give data from one ERO to another, other than as is required to investigate registration irregularities.

The Commission supports this Clause but notes that the increase in the circumstances under which postal votes are investigated could have significant resource implications for any future CORE-keeper, which will need to be addressed when setting their budget. We welcome the requirement for EROs to react to certain directions from the CORE-keeper, but would ask the Government to consider how best this requirement can be combined with the Electoral Commission's performance standards framework.

Schemes for provision of data to registration officers

Clause 22 introduces powers for Electoral Registration Officers to use data from other public sources of information to help improve the completeness and accuracy of the register. In the context of implementing individual electoral registration, this will be one important way of helping to make sure that eligible people can continue to be registered as smoothly as possible, and that people who are entitled to be included on the register are helped to stay registered during the transition to individual registration.

More widely, we believe these powers would provide Electoral Registration Officers with an important resource to help identify those people who may not be included in the electoral register. Although the amendments would only provide for a piloting approach in the first instance, we hope that if the Commission's evaluation indicates that these powers have been used successfully they can quickly form a permanent part of the toolkit available to support the implementation of individual electoral registration.

Individual Electoral Registration

The Commission believes that everyone who is entitled to vote should be able to do so, and that people who are not eligible should not be able to register to vote. Both the completeness of the register and the accuracy of the register are important to us.

We therefore welcome the commitment made by the Government, during the Commons Report Stage debate, to bring forward clauses to introduce a system of individual electoral registration in Great Britain. We have said since 2003 that the electoral registration system in Great Britain should be modernised and strengthened by introducing individual electoral registration in order to:

- reflect the importance of individual personal responsibility for the right to vote
- ensure a more secure process and a more accurate electoral register
- provide a secure basis for considering possible new ways of voting in future

We are clear that this would be a major change to the electoral registration system in Great Britain. There will need to be detailed planning and identification of key milestones to provide the basis for moving towards implementation of individual electoral registration over a number of years, including the delivery of public awareness campaigns during any transition to a new system. There will also need to be a real effort to make sure that Electoral Registration Officers throughout Great Britain have the right tools to ensure all those who are entitled to be registered to vote are helped to do so.

We look forward to a constructive debate about further progress towards modernising and strengthening the electoral registration system in Great Britain, and the introduction of individual electoral registration.

Further information

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