

Political Parties and Election Bill Report Stage Day 2 – Monday 2 March 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.

Summary

- The Electoral Commission believes the Government's proposals to increase the **reporting thresholds** for donations and loans should not have a material effect on the transparency of party and election finance. However, we would oppose any further increase in the thresholds, beyond the Government's proposals, at this point.
- The Government's proposal of a significant increase in the **permissibility threshold** for donations and loans, from £200 to £500, has the potential to reduce confidence in the transparency and integrity of party and election finance. We believe that the impact of raising the threshold beyond the rate of inflation will need to be monitored carefully.
- In principle the Commission supports the Government's proposal for new reporting obligations on **unincorporated associations** making large political donations. This will improve transparency. However, we have some practical concerns about the new rules.
- Similarly, the Commission sees no difficulty with tighter rules on the **permissibility of individual donors** in principle, if Parliament decides that this is appropriate. However, we have strong concerns about the practicality of linking permissibility to the tax status of individuals.
- We welcome amendments which would support a move towards individual registration in Great Britain to help **improve the completeness and accuracy of the register**.

New clauses and amendments relating to thresholds in relation to political donations and loans

The key thresholds in the 2000 Act in respect of the recording, permissibility and reporting of donations and loans are:

- The **permissibility threshold**: donations and loans worth over **£200** can only be accepted from permissible sources, such as individuals on

the electoral register or companies and other bodies that are located and active in the UK. They must be recorded by the recipient and reported to the Commission if cumulative donations from the same source exceed a reporting threshold. Impermissible donations must also be reported to the Commission, and returned to the donor.

- The **reporting threshold for party accounting units** and regulated individuals: donations and loans worth over **£1,000** must be reported to the Commission by the recipient.
- The **reporting threshold for party headquarters** and members' associations: donations and loans worth over **£5,000** must be reported to the Commission by the recipient.

These thresholds have not been revised since the 2000 Act, which itself set the permissibility threshold significantly higher than the £50 recommended by the Neill Committee. The Commission understands that if the 2000 Act thresholds had risen in line with inflation between 2000 and 2009 the cumulative increase would have been about 25%, so the thresholds would now stand at approximately £250, £1,250 and £6,250 respectively.

Clause 8 of the Bill proposes new thresholds for **declarations** in respect of the sources of donations. These were amended at Committee stage and brought into line with the reporting thresholds described above, so that they now stand at £1,000 for party accounting units etc and £5,000 for party headquarters etc.

Recommendations on amendments

Government New Clause 19 would:

- increase the permissibility threshold by 150% from £200 to £500;
- increase the reporting threshold for party accounting units etc by 50% from £1,000 to £1,500; and
- increase the reporting threshold for party headquarters etc by 50% from £5,000 to £7,500.

The Government's proposed changes to the **reporting thresholds** are higher than the effect of inflation since 2000. The changes will therefore be likely to reduce the transparency of party and election finance, but in the Commission's view the effect of the proposed changes should not in practice be very material. However, we would oppose any proposal for further increases in these thresholds, since that would begin to have a material effect on the transparency of donations to party headquarters and accounting units.

The proposed change to the **permissibility threshold** is in the order of 150%, which is much higher than needed to reflect inflation. 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. If the threshold had been set at £500 since 2000, some 13% by value of all the impermissible donations that have been reported to the Commission and returned to the donor since 2000 would instead have been legal.

The Commission understands that the intention of the proposed increase to this threshold is to reduce the administrative burden of the regulatory regime on party accounting units and regulated individuals, reflecting the fact that those responsible for compliance are often volunteers. We naturally support the principle of keeping administrative burdens on our regulated entities as low as possible, consistent with the integrity of the regulatory regime. Because of the impact of an increase to £500 on the regime, the Commission would prefer the threshold to increase only to £250 in line with inflation, but we understand that Parliament may wish to reset the balance by increasing it to £500. The Commission would then need to monitor the effect of any resulting increase in the permissibility and reporting thresholds, and exercise its regulatory functions so as to manage any emerging risks as far as possible.

For example as 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 it is possible that an increase of this magnitude in the permissibility threshold may encourage impermissible donors to seek to increase their influence on UK political parties, for instance by making regular donations just below this level. In order to monitor this we may require more information from regulated entities than is currently the case.

The Commission does not support amendments **(a) to (c) to New Clause 19** which would add an annual indexation allowance to the increases proposed in the Government amendments. There is no practical need for these amendments since section 155 of the 2000 Act already allows the Government to increase thresholds to reflect changes in the value of money.

We comment on **New Clause 1** in our briefing below on other new clauses relating to political donations and spending.

New Clauses and Schedules relating to political donations by unincorporated associations

As the Commission noted in its briefing on amendments tabled in Public Bill Committee, we see merit in increasing the transparency of the funding of unincorporated associations that make substantial political donations, since at present there is very little information on this in the public domain unless an association provides it voluntarily. However, we were concerned that the amendments tabled in Committee to increase transparency were likely to introduce unnecessarily onerous new reporting requirements.

Recommendations on amendments

In principle we support **Government New Clause 20 and New Schedule 1**, which introduce new reporting requirements affecting unincorporated

associations that make political donations totalling over £25,000 in any given calendar year. Such associations will have to provide the Commission with a notification that they have made a donation causing them to reach this donation threshold, and with reports on:

- gifts that they received before making that donation, during a period which begins at the start of the calendar year before the year when they made the donation; and
- gifts that they receive for the remainder of the calendar year in which they made the donation, and during the subsequent calendar year.

The Commission is to record these reports on a published register. It will be an offence not to make the various notifications and reports.

These provisions provide helpful additional and targeted transparency in respect of the most politically active associations, while not imposing new burdens on associations donating smaller amounts. We believe that they therefore strike the right balance in principle. However, we have several concerns about the practical working of the new provisions. In particular:

- 1) associations will become subject to the new reporting obligations only if they make donations above £25,000 in a calendar year, but will then have to report to us on gifts they have received before that point, during a period that could extend to nearly two years. We will aim to liaise with those associations that currently make substantial donations to parties, and with the parties concerned, so that associations that may become subject to these new requirements are aware of this potential obligation in advance. However, it would be impossible for us to give advance notice to every association that may become subject to the new obligations.
- 2) the new Clause and Schedule do not fully define the nature of 'gifts' to associations or the valuation of non-cash gifts, leaving this to secondary legislation. It will be important for the Government to clarify these issues in good time before the commencement of these provisions on Royal Assent, so that the Commission is able to prepare appropriate guidance for those affected by the new reporting obligations.
- 3) the new reporting requirement is quite widely defined (e.g. "*whatever details the unincorporated association knows of the name and address of the person by whom the gift was made*", Schedule 19ZA paragraph 3(1)(d)). This, together with the inherently widely defined nature of unincorporated associations, may make it difficult for us to enforce the offences created by the new provisions effectively, particularly where an association first becomes subject to the reporting obligations.
- 4) the new provisions require the Commission to publish the details of gift reports on a register, but also provide for us not to publish information that could identify someone associated with the giving of a gift in certain circumstances (Schedule 19ZA paragraph 8(2)). However, the amendments do not specify the criteria that the Commission should use when deciding whether to publish such information. We understand that the Government

intends us to withhold information from publication only in instances where publication would raise clear concerns about human rights, but would welcome clarification of this.

The Commission does not **support amendments (a) to (m) to New Schedule 1**, which would add an annual indexation allowance to the various thresholds set out in the new provisions on unincorporated associations. As noted above, the 2000 Act already allows indexation.

We do not support **amendment 8** which seeks to introduce a wider set of new reporting obligations in respect of those providing funds to unincorporated associations, via donees' regular reports on donations received from such associations. As outlined in our briefing for Public Bill Committee, these requirements appear onerous and disproportionate.

New Clauses and amendments relating to Clauses 8 and 9 and Schedule 3

The amendments tabled in respect of these clauses cover a range of issues, including the permissibility of donations by individuals as well as proposals to change the new declaration requirements introduced by clause 8.

Recommendations on amendments

Amendments 84 and 85 would narrow the definition in the 2000 Act of whether individual donors are permissible, so as to take into account whether the individual is resident in the UK for income tax purposes, as well as whether the individual is on the electoral register.

The permissibility requirements in the 2000 Act are intended to ensure that only people and organisations with a close relationship to the UK can donate to political parties. It is for Parliament to decide if this is appropriate: the Commission will work within the legislative framework which is set. But we do have concerns about the workability and proportionality of the new test, and about the practicality of the amendments. In order to assess whether any donation from an individual was permissible, the recipient party or individual would need access to authoritative and up-to-date information about the tax status of that individual. The Commission would also need access to that information in order to check compliance with the permissibility requirements. We think it highly unlikely that this will be possible in practice, or (if so) that the resulting burden on regulated entities and HM Revenue & Customs would be proportionate.

Government amendments 94 - 111 would increase the new thresholds created by clause 8 of the Bill for **declarations** in respect of the sources of donations, in line with the Government's proposed increases to the **reporting** thresholds, discussed above. As we noted in our briefing at Public Bill Committee, we welcomed the Government's decision to bring these

declaration thresholds into line with the reporting thresholds. We continue to support the principle that declaration and reporting thresholds should be harmonised, subject to our comments above on the appropriate level of the reporting thresholds. Since the declaration thresholds provide little additional transparency over the agency requirements of the 2000 Act, we believe that the increases to these thresholds proposed by the Government are not a material concern.

We do not support **amendments 123-139** which would add an annual indexation allowance to those increases, and would also raise the declaration threshold for party accounting units beyond the Government's proposed £1,500 to £3,000. As noted above, the 2000 Act already allows indexation. The substantial increase to the declaration threshold would move it out of line with the equivalent reporting threshold, which will complicate the regulatory regime by imposing two quite different thresholds for reporting and declaration purposes on the volunteer treasurers of accounting units. For the avoidance of doubt, the Commission would not support any proposal to increase both the reporting and declaration thresholds to this level, because of the effect that would have on the transparency of donations.

We do not support **amendments 121 and 122** which would qualify key provisions of clause 8. Amendment 121 would enable anyone recklessly making a false declaration to avoid responsibility for it on the grounds that they had not intended the declaration to be false, and this could significantly weaken the reliability of declarations made under the clause. Amendment 122 would alter the requirement for an individual to make a declaration "to the best of the individual's knowledge and belief" to "to the individual's reasonable knowledge and belief", which again has potential to weaken the reliability of declarations.

Other New Clauses relating to political donations and spending

A number of new clauses propose wider changes to the regime put in place by the 2000 Act. As we noted in our briefing on related amendments tabled at Public Bill Committee, many of these deal with issues considered during the cross party talks convened by Sir Hayden Phillips, including donation caps and local and national spending limits.

Recommendations on new clauses

New clauses 1 and 6-12 relate to party spending and donations. New Clause 5 would make impermissible any donations by otherwise permissible companies that are controlled by impermissible donors. As we commented in our briefing to the Public Bill Committee, these provisions seek to introduce fundamental changes in the scope of the statutory limits on party, candidate and third party spending and on donations to political parties.

The Commission has previously published reports on broader 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]). The Commission has published its 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 its experience regulating the current system can assist in the consideration of the policy intentions of proposals or into their workability in practice. However, the Commission does not comment in detail on the proposals for systemic change to the party funding system, since these are primarily for Parliament rather than the Commission to consider. If Parliament were to decide to take any such proposals forward, the practical implications of the legislation would need careful consideration and the Commission would wish to comment.

New Clause and amendments relating to schemes for the transfer of data to registration officers and New Clauses relating to elections

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 amendments that have been tabled for debate at report stage. The amendment (**New clause 16**) tabled by the Conservative party would provide for the introduction of individual electoral registration in Great Britain, including the provision of personal identifiers by electors. 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,
- to ensure a more secure process and a more accurate electoral register,
- and to provide a secure basis for considering possible new ways of voting in future.

We also welcome the commitment made by the Government at Committee Stage to examine how individual electoral registration might be introduced.

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. The nature of a campaign to support the introduction of a system of individual electoral registration would depend on the manner in

which it is implemented. However, it should be broadly targeted to meet the 'mass' audience with weighting towards groups less likely to be registered and/or more likely to fall off the register under the new system. There will also need to be a real effort to make sure 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 therefore welcome the Government's amendments (**New clauses 21 and 22**) to introduce 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.

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.

New Clauses and amendments relating to Clauses 13 to 17

New Clause 14 – Service voter registration

This New Clause would have the effect of removing the time-limit on service voter declarations making them valid indefinitely, unless cancelled or updated.

We do not support this amendment. The current arrangements, based on provisions introduced by the Electoral Administration Act 2006, give the Secretary of State the power to extend the length of service declarations from one year to five years. The period has since been set at three years, which we continue to believe strikes a good balance between enabling access to the electoral process for members of the armed forces and the need to protect the accuracy of the electoral register. Completely removing a time-limit on such declarations would increase the risk that certain service voter entries on the register would become out-of-date, compromising overall accuracy.

New Clause 15 – Personal identifiers at the ballot box

While the Commission has not ruled out the possibility of introducing measures requiring voters in Great Britain to provide identification at the polling station, we believe that the introduction of a system of individual electoral registration with personal identifiers in Great Britain should be prioritised in order to provide a more secure foundation for the electoral system.

Were Parliament to accept New Clause 15, we believe that further consideration would need to be given to which types of polling station identification might be acceptable in Great Britain. This should include considering the acceptability of non-photographic ID and the case for introducing an electoral identity card (as in Northern Ireland) to cover those electors who did not possess other forms of acceptable identification. Consideration also needs to be given as to whether out-of-date forms of ID would be acceptable, as they currently are in Northern Ireland.

We believe that these forms of acceptable identification could be set out in secondary legislation at a later date.

We note that the system of photographic ID introduced in Northern Ireland appears to have worked well and that less than 0.6% of voters were turned away from polling stations at the 2007 Northern Ireland Assembly because they did not have photographic ID.¹

For comment on **New Clause 16** please see the section above *'New Clauses and amendments relating to schemes for the transfer of data to registration officers and New Clauses relating to elections'*

Other New Clauses relating to elections

New Clause 18 – Scottish Parliament elections

The Commission's view on the transfer of policy responsibility for the administration of Scottish Parliament elections is that this is a matter for politicians to consider and we hold no view on the matter.

New Clause 23 – Candidate at parliamentary election may withhold home address from publication

We believe 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

¹ The actual number of disenfranchised voters will be considerably lower than this as there is no record of how many of these people later returned with photographic ID.

information to indicate a candidate's proximity or otherwise to the constituency in which they are standing.

The Commission supports this New Clause in principle, which has some similarities with our position as set out in our response to the Government's recent consultation on this issue. However, we have the following comments on the New Clause.

The New Clause would potentially enable only candidates, agents, proposers, seconders and representatives of the Electoral Commission to see candidates' full addresses. We are concerned that this would 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.

The New Clause would also give UK Parliamentary candidates the choice of either including their full address on the statement of persons nominated and the ballot paper (as per the current arrangements) or instead opting to have the Parliamentary constituency in which they live published. We are concerned 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.

We would question the necessity of providing for a separate home address form to be submitted by the candidate alongside a completed nomination form, given that the persons entitled to inspect the nomination paper and home address form at UK Parliamentary elections would (as is currently the case) be restricted to candidates, agents, proposers, seconders and representatives of the Commission.

The New Clause would remove the requirement to give a home address on the nomination paper. Instead, candidates would have to submit a second 'home address form' with the nomination paper. We believe that if candidates were able to choose whether or not to make their full address public, it would be more straightforward if a tick box was included on the nomination form to allow candidates to indicate whether they wished to have their full address or constituency published on the statement of persons nominated and ballot paper. As well as these administrative benefits, this approach would still enable proposers, seconders and other assenters, who are required to sign a candidate's nomination papers, to be clear about the identity of the individual that they are supporting by viewing the full address on the nomination form.

Accordingly, we would propose the following approach as an appropriate alternative to the New Clause:

- Candidates are still required to provide their full address on the nomination paper.
- Any person is able to make a request to the Returning Officer to examine the nomination papers (and thereby view the full address). If there were continuing concerns about access to candidates' addresses at this stage, then the Government could consider how best to deal with this – for

example, by not making available the address of any candidate who has an 'anonymous' entry on the electoral register, or requiring Returning Officers to record the identity of each person who is given access to the nomination papers.

- We would recommend that the Government explore whether a statement of the constituency ward and local authority area, rather than the Parliamentary constituency, in which the candidate resides might be more familiar and understandable for electors.

We are generally content with the provisions for Returning Officers to publish additional information in order to distinguish between two similar sounding candidates who do not wish for their addresses to be published. The clause does not make the nature of these additional 'particulars' clear, but does require the Returning Officer to have regard to any guidance issued by the Commission. Were these provisions introduced, we would publish guidance that would ensure the fair treatment of the affected candidates and recommend that any particulars should not cause candidates' home addresses to being revealed.

New Clause 24 – Absent voting

New Clause 24 would end postal voting on demand in Great Britain and return to the pre-2001 system, where only electors who provided a reason for needing a postal vote could obtain one.

The Commission does not support this New Clause.

We recognise that there is a tension between the goal of increased accessibility and the principles of security and secrecy when electors vote away from a polling station.

However, postal voting is the most convenient method of voting for a significant number of electors. For example, at the 2005 UK Parliamentary election 12.1% of electors in Great Britain applied for and received a postal vote. On balance, therefore, the Commission continues to support the use of postal voting on demand in Great Britain.

We do, however, believe that there must be improvements to the security of electoral registration and postal vote checking processes. We are pleased that there is increasing support for the introduction of individual electoral registration in Great Britain including personal identifiers for every elector. We also continue to press for the 100% checking of absent voting identifiers to be mandated in legislation.

New Clause 25 – Personal details on the register of electors

New Clause 25 would require the publication of the following personal identifiers on the electoral register:

- Date of birth.

- National insurance number or a statement that the elector does not have one.
- The elector's signature or other identifying mark.
- Other material as the registration officer may direct.

The Commission does not support this New Clause.

We strongly believe that the security of the electoral register would be improved by introducing, as part of a system of individual electoral registration, the requirement for electors to provide personal identifiers such as those specified by the New Clause. However, we are concerned that making these identifiers public on the electoral register would undermine rather than enhance the security of the system.

New Clause 26 – Absent Voting: Personal Identifiers

This clause would require electors applying for an absent vote to provide their:

- national insurance number or a statement that the elector does not have one; or
- other identifying information as the registration officer may direct

We do not support New Clause 26.

We believe that a phased introduction of individual electoral registration for all electors, not just absent voters, should be the priority. This would include the collection of personal identifiers from electors, including national insurance numbers. The extent to which absent voters should be required to provide additional personal identifiers could then be addressed following the introduction of individual electoral registration.

Further information

For further information, please contact Aileen Keyes, Public Affairs Manager on 020 7271 0628 or akeyes@electoralcommission.org.uk