The Electoral Commission

A regulatory review of the UK's party and election finance laws

Recommendations for change

June 2013

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Foreword

The Electoral Commission's statutory role as the regulator of party and election finance in the UK includes a duty to keep the legal framework under review, and report on our conclusions. We published a first report on these issues in 2003, and many of our recommendations for change have since been implemented. We have also identified further improvements in reports on particular elections and referendums. The debate on the need for wider changes to the rules on political funding and spending has also continued, most recently through cross party talks, following the Thirteenth Report of the Committee on Standards in Public Life (CSPL) in November 2011.

Whilst the wider purpose of the framework is being debated by others, it is also important to keep the building blocks of the system under review. Over the past year we have reviewed the current party and election finance rules, drawing on our last 10 years of experience as the regulator. We have also invited views from the political parties that we regulate and we are grateful for their contributions. During our discussions and development of proposals, we have borne in mind the broad spectrum of individuals and organisations covered by the regime, from volunteer treasurers working from their kitchen table to the parties' headquarters with professional systems and staff.

This report presents the outcome of that work, recommending important changes that will make the current rules more proportionate and effective. We are not proposing major reform; rather, these 50 recommendations are aimed at improving and strengthening the existing system. They achieve this by removing some regulatory requirements altogether from smaller parties and campaigners which raise and spend relatively little money, and simplifying some administrative obligations placed on larger political parties. They will also increase the information available to voters, make the current rules more fit for purpose and strengthen our powers where appropriate.

We invite the Government (and Governments in other parts of the UK where relevant) to take these recommendations forward as soon as practically possible, subject to the further consultation that will be required and practical timing constraints we have identified. The proposals do not need to be addressed as a complete package at once and will all bring worthwhile improvements when taken forward.

We hope and expect that this report will inform Parliament's consideration of any wider changes to the current rules over the next few years. The UK Government has indicated that it may publish proposals for more fundamental changes to parts of the party and election funding system in the near future. As the regulator, we will of course continue to contribute to the debate on any wider changes, to ensure that they are workable and consistent with the Commission's principles of trust, participation and no undue influence.

Jenny Watson
Chair

1 Summary

About this report

1.1 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for well-run elections. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

1.2 This report presents the recommendations from our regulatory review of the UK's party funding laws. It reflects on our experience of regulating the system since its inception in 2000 and is informed by the views of those we regulate.

The scope of the review

1.3 Over the last year, this review has focused on making the regulatory system more proportionate and effective, and through it we have identified 50 recommendations for legislative change. We propose ways to reduce unnecessary burdens placed on smaller parties and streamline requirements for medium and larger parties. We also identify where the rules can be made more effective by strengthening controls or increasing transparency. Lastly, we highlight where clarifying legal definitions will make it easier to comply with and enforce the rules. During the course of the review, we also identified a number of internal improvements which we are taking forward to simplify and strengthen our regulatory work.

1.4 The project has focused on the current framework as set out in the Political Parties, Elections and Referendums Act 2000 and the Representation of the People Act 1983, and the associated Orders where relevant. There is an ongoing debate about wider reforms to the system, such as introducing donation caps, but this review has not considered how to make such changes work. For the most part, these recommendations should apply equally to the current system or any future reforms, because they are focused on improving the basic elements of the framework. However, some recommendations would need to be amended or re-worked if wider changes are brought forward.

Implementing our recommendations

1.5 We recommend that the UK Government (and Governments in other parts of the UK where relevant) identify the earliest suitable opportunities to take forward these recommendations. The proposals do not need to be addressed as a complete package at once and different proposals will need to be taken forward in different ways. Our experience as the regulator points to a

straightforward solution in many instances. Other recommendations highlight issues of policy that the Government and Parliament will want to consider carefully before implementing solutions. Some proposals require consultation with political parties and campaigners about the practical considerations of change, whilst others will have implications for stakeholders in electoral administration or law enforcement.

1.6 Many of our proposals would simplify the current rules by reducing unnecessary reporting burdens. We think that certain recommendations would provide considerable benefits if they were implemented before the 2015 UK Parliamentary general election. However, any changes would need to be finalised in good time for campaigners to understand the new rules. Other recommendations in this report will need further detailed thinking or consultation, as noted above, or need to be considered alongside wider developments on party funding reform. They are worthwhile changes which should still be implemented if wider reforms are not taken forward.

1.7 A small number of our recommendations propose longer-term changes which should strengthen our role and improve public confidence that the rules are effectively enforced. These proposals will have resource implications for us and others, and we therefore recommend that such changes should not come into force before the 2020 UK Parliamentary general election to allow for full consultation and proper preparation.

1.8 The Law Commission is conducting a review of electoral law[1] and intends to publish a final report and bill in early 2017. We will highlight relevant issues from this regulatory review to the Law Commission's review team, so that any overlapping issues can be considered in their conclusions.

Process of the review

1.9 This was primarily an internal review, focusing on the lessons we have learned from our experience as the regulator, rather than a wider consultation on the rules. Before taking our recommendations forward, Government will therefore want to consider the appropriate consultation process, particularly on the more complex issues where this report highlights issues of policy.

1.10 We did, however, want to make sure we captured insights and concerns from those parties with most experience of dealing with the rules, and others with an expert interest. We held a number of workshops to develop and test our proposals with political parties. Compliance staff and other representatives of the parties were broadly supportive of the review's aims and we have highlighted the overall feedback received on specific

[1] The twin aims of the Law Commission's review of electoral law "are to ensure, first, that electoral laws are presented within a rational, modern legislative framework, governing all elections and referendums under statute; and second, that the law governing the conduct of elections and referendums is modern, simple, and fit for purpose." http://lawcommission.justice.gov.uk/areas/electoral-law.htm

recommendations where relevant. We would like to thank the following parties for contributing to developing and testing the proposals: *the Conservative and Unionist Party, the Labour Party, the Liberal Democrats, the Scottish National Party, the UK Independence Party (UK I P), Plaid Cymru – The Party of Wales, the Green Party (GB), the Scottish Green Party, the Green Party (NI), SDLP (Social Democratic & Labour Party), Sinn Féin and Alliance – Alliance Party of Northern Ireland*.

1.11 We have also benefitted from input from others who we would like to thank, including the Working Group of electoral practitioners, and staff at the Crown Office and Procurator Fiscal Service, the Charity Commission, the Office of the Scottish Charity Regulator and Baston Legal, who all contributed views on various issues covered by the review.

1.12 We are also grateful to have had the opportunity to discuss many of the recommendations in this report with officials from both the Cabinet Office and the Scottish Government.

1.13 The fact that parties and others have provided feedback on the recommendations does not of course mean that they agree with them all. Where appropriate, the report highlights the level of support each recommendation has received.

Overview of this report and our recommendations

1.14 Our recommendations are presented over four chapters which examine different elements of the cycle that political parties and other campaigners follow as part of the regulatory framework: registering with us, the rules on the money they receive and money spent on campaigning, and how those rules are enforced.

1.15 A summary list of the review's recommendations can be found on pages 90 to 99.

Party registration

1.16 Anyone who wants to stand for election using a party name, description (other than 'independent'[2]) or emblem on the ballot paper has to register their party with the Electoral Commission. Every year, registered parties have to provide us with information about themselves for publication, including a statement of accounts.

1.17 The rules on party registration are a key element of the UK's legislation on political funding. They mean that voters have access to information about

[2] or 'Annibynnol' in Welsh

every party. They also provide the mechanism which applies other rules on donations, loans and campaign spending to each party.

1.18 In this chapter, we recommend some significant changes to the current rules. Some, such as requiring new parties to provide proportionate information on their finances at the point when they register, will improve transparency. Others, such as reducing the reporting requirements on parties with an annual turnover of under £500, will remove administrative burdens for the many small parties that pose little regulatory risk.

Controls on donations and loans

1.19 Since 2001 registered political parties have had to tell us about the donations and loans they receive, and have only been able to accept funding from certain sources with links to the UK. The same restrictions apply to some regulated individuals and groups, and to candidates and other political campaigners in the run-up to elections and major referendums. We publish information about donations (except in Northern Ireland where special conditions apply[3]) and check that the rules have been followed. These rules mean that the public now have access to more information than ever about how politics is funded in Great Britain. To date, the total value of reported cash donations has been over £400 million, averaging around £35 million per year[4].

1.20 In this chapter, we recommend changes to clarify and simplify the current rules on donations and loans. Some of these will reduce administrative burdens, for instance by rationalising the ways in which political parties report the money they receive year round and in the period before a UK general election. Others are intended to increase trust, such as by changing the way impermissible money is removed from the system. This chapter also discusses some issues that have arisen but which are beyond the scope of this review. For these we have invited the Government, and in due course Parliament, to take them forward. These include the rules on donations by companies and how sponsorship is covered by the rules.

Controls on campaign spending

1.21 There have been restrictions on the amounts that candidates can spend at elections since the nineteenth century. Those rules have been updated and amended in recent years, for instance to cover a longer period in the run-up to some UK general elections. PPERA introduced the UK's first limits on

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[3] The Government has consulted on draft Northern Ireland (Miscellaneous Provisions) Bill, which is currently before Parliament. The Bill provides for more transparency on party funding in Northern Ireland. Once passed, this legislation will allow us to publish more information about the donations and loans reported to us. For more information read our written evidence to the Northern Ireland Select Committee www.electoralcommission.org.uk/__data/assets/pdf_file/0019/154306/Northern-Ireland-Miscellaneous-Provisions-written-evidence-for-NI-affairs-Committee.pdf

[4] Data is available on PEF Online: The Commission's online registers, https://pefonline.electoralcommission.org.uk/search/searchintro.aspx

the money that political parties and non-party campaigners can spend in the run-up to some elections, along with limits on campaigning at major referendums. In the words of the Government in 2000, the PPERA spending rules were intended to reflect the fact that spending by or on behalf of candidates "now forms only a proportion of what a party spends on contesting an election", and that limits on spending at constituency level therefore "no longer serve as an effective control on what the political parties as a whole spend on fighting elections"[5].

1.22 In this chapter, we recommend a variety of changes to the current rules. Some proposals will update and simplify the system, such as removing the need for parties and campaigners to get a court's approval to pay some campaigning costs. Others will also reduce burdens without impairing the effectiveness of the rules, such as recommendations to lower reporting requirements for parties and campaigners that incur little or no PPERA-regulated spending. We propose changes that would simplify the current candidate spending rules as far as possible, while enabling detailed information about candidate spending to be published online in future, as well as being made available for local inspection. We also recommend widening the scope of the PPERA spending rules in some areas, to cover political parties' staff costs related to campaigning, and a wider range of non-party campaigning activity. However, we recognise that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented.

Enforcement of the rules

1.23 The current arrangements for dealing with breaches of the rules on political finance in the UK are a patchwork depending on the type of campaigner concerned. Most breaches of the rules are currently criminal offences. The Electoral Commission is responsible for securing compliance with the rules that cover political parties, candidates at elections, some non-party campaigners at elections and referendums, and some other regulated individuals and organisations. Since 2010 we have had robust investigatory powers to deal with suspected breaches by parties and campaigners, and have been able to impose civil sanctions for many breaches. However, there are some breaches, including all those involving candidates, for which we have no sanctioning powers. We can only refer such cases to the police or prosecuting authorities for criminal investigation.

1.24 In this chapter, we recommend changes that would, over time, strengthen our powers to address alleged breaches by candidates at major elections. This should improve public confidence that the rules are effectively enforced. We would, however, not expect these to be in place before 2020. We also propose that a number of breaches of the PPERA rules that are essentially administrative should no longer be framed as criminal offences, but should become purely civil. We hope that this will encourage participation

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[5] Paragraph 18, Explanatory notes, Political Parties, Elections and Referendums Act (PPERA) 2000, http://www.legislation.gov.uk/ukpga/2000/41/notes/division/2/6

in the political process; some parties have told us that the prospect of criminal investigation for breaching an administrative requirement is understandably off-putting, particularly for volunteer officers. Finally, we recommend some smaller changes to address technical problems with our current sanctioning powers.

Terms used in this report

1.25 We have tried to make this report as accessible and easy to read as possible. This means that in places we have used other terms and phrases instead of the legal terminology. These include

- ‘Non-party campaigner’ means the people and organisations that are not standing for election, but try to influence voters’ choices. In our guidance we describe these as ‘local’ and ‘general’ non-party campaigns. In this report, we refer to them as ‘local’ and ‘PPERA’ non-party campaigns.

- ‘PPERA party spending’ means the controls on national party campaigning under the Political Parties, Elections and Referendums Act 2000.

- ‘PPERA-regulated spending’ means the controls on political parties, non-party campaigners and referendum campaigners under the Political Parties, Elections and Referendums Act 2000.

- ‘Register’ has been used instead of ‘notification’, to describe how PPERA non-party campaigners notify us about their activities.

- ‘Candidate spending rules’ means the controls on candidate spending and donations, which are contained in the Representation of the People Act 1983 (RPA 1983) and the relevant Orders for other elections.

- References to the Representation of the People Act 1983 (RPA 1983) also include the associated Orders where relevant.

- Recommendations on candidate rules under the RPA 1983 also apply, where applicable, to the rules for elections controlled by equivalent secondary legislation.

2 Recommendations on party registration

Introduction

2.1 Anyone who wants to stand for election using a party name, description (other than 'independent'[6]) or emblem on the ballot paper has to register their party with the Electoral Commission. Every year, registered parties have to provide us with information about themselves for publication, including a statement of accounts.

2.2 The rules on party registration are a key element of the UK's legislation on political funding. They mean that voters have access to information about every party. They also provide the mechanism which applies other rules on donations, loans and campaign spending to each party.

2.3 In this chapter, we recommend some significant changes to the current rules. Some, such as requiring new parties to provide proportionate information on their finances at the point when they register, will improve transparency. Others, such as reducing the reporting requirements on parties with an annual turnover of under £500, will remove administrative burdens for the many small parties that pose little regulatory risk.

2.4 Before reading, please refer to our summary of terms used in this report, at paragraph 1.25.

Parties with low annual income and spending

Political parties

Context

2.5 There are 392 parties currently registered (GB and NI registers combined), and all political parties are required to submit a Statement of Accounts on an annual basis irrespective of their income and spending[7].

[6] or 'Annibynnol' in Welsh

[7] The prescribed financial year for political parties runs from January to December. There is currently no prescribed format for accounts, but the Commission has set out a voluntary format and intends to make it mandatory for the 2015 financial year for political parties and accounting units with an annual turnover of over £250,000. It is being mandated so that

2.6 All political parties also have to fulfil quarterly donation and loan reporting obligations. At present, political parties can cease quarterly reporting if they submit four consecutive nil returns, but must begin to report again if they receive a reportable donation or loan. (Also see paragraph 2.11 on minor parties.)

Issue

2.7 Most smaller political parties register with us because they want to stand one or more candidates at a forthcoming election under the party identity marks (party name, descriptions and emblems). Our experience is that many smaller parties receive few or no reportable donations and struggle to comply with the statutory reporting framework. This generates costs both for the parties in trying to comply with requirements which are often not relevant to their financial position, and for the Commission in helping parties to comply.

Solution

2.8 We recognise that it is burdensome for very small parties to comply with the same reporting requirements as larger parties and therefore propose reducing burdens for those that spend and receive very little money. All parties that receive less than £500 and spend less than £500 in a calendar year should be exempt from submitting the annual Statements of Accounts. Instead, these parties should be required to submit an annual declaration confirming their exempt status. In addition, in chapter 3, we recommend that the current requirements for quarterly donation and loan reports should be reduced for smaller parties (see paragraphs 3.4-3.8).

Implications

2.9 We have proposed a threshold of £500 for the annual declaration because this is the level above which parties have to check that donations and loans are from a permissible source. It seems disproportionate to require published accounts for parties whose income and spending over a year is less than this. Based on the data from the 2012 Statements of Accounts, this recommendation would allow just under 200 small parties to submit a declaration instead of their accounts. This will remove a significant burden from these parties and from the Commission.

2.10 All parties should continue to keep clear and accurate accounting records and the Commission should have the power to inspect these records to check that their income or spending is not above the threshold. Requiring an annual declaration that both income and spending is under £500 will ensure that the smallest parties continue to monitor their financial position, and will enable us to deal with deliberate attempts to avoid transparency by making a false declaration. We will monitor the impact that the £500 threshold has on transparency. There is a power in PPERA for Ministers to vary sums on our recommendation, and this could be used to amend the threshold if necessary.

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information is available to voters in a consistent, comparable format for those parties with significant financial resources.

Recommendation 1

All parties that receive less than £500 and spend less than £500 in a calendar year should be exempt from submitting annual Statements of Accounts and should instead be required to submit an annual declaration confirming their exempt status. This should be submitted at the same time that parties with income and spending under £250k submit their Statements of Accounts.

Minor parties

Context

2.11 PPERA includes another type of registration for "minor parties". There are currently 19 registered minor parties and they are **only** eligible to contest parish elections in England and community council elections in Wales. These parties do not have any reporting requirements under PPERA. Minor parties, like political parties, obtain protection for their identity marks by registering. However, independent candidates can also contest parish and community council elections and use a description on the ballot paper without the need to register a party, subject to approval by the Returning Officer, meaning that it is possible to use a description at these elections without registering as a minor or political party.

Issue

2.12 Our recommendations to reduce the accounts and donations reporting requirements placed on small political parties (recommendation 1 above and recommendation 9, page 24) remove the need for a minor party option. Implementing these changes would mean that PPERA only needs to offer one form of registration, but with minimal reporting requirements for the smaller parties. This is an opportunity to simplify the PPERA registration rules.

Solution

2.13 We therefore recommend that the option to register as a minor party is closed for new registrations.

Implications

2.14 We are not recommending that the current 19 registered minor parties should be required to change their status. Minor parties are not required to report information about their financial status. Therefore we do not hold any such data and are not able to assess the potential impact of existing minor parties being converted to registration as a 'political party' and subject to those requirements. Even with the changes to annual reporting requirements proposed in the recommendation above, requiring existing minor parties to join the main party register would impose new burdens on those with turnover above £500. We therefore propose that those currently on the minor party register should be able to remain there unless and until they choose either to de-register, or register as a political party.

2.15 Under our proposed approach, those wishing to register a party to contest parish and community council elections in future could do so by registering as a political party, rather as a minor party. The removal of the

minor party category would require them to maintain financial records, and to make statutory reports to us if their income or expenditure exceeds £500. However, the removal of reporting requirements for small parties that spend and receive under £500 would mean that there is no real need for the minor party category to be open to new applicants.

Recommendation 2

The law should be changed so that the registration category of minor parties is closed to new applicants.

New political parties

Context

2.16 The permissibility and reporting requirements for donations and loans only apply to a political party after it has registered with us. PPERA currently provides no transparency or controls over the sources of money that new parties acquire before they register and enter the regulatory system. Public information about a new party's financial position will be provided in the party's first statutory Statement of Accounts,[8] but depending on when a new party registers and whether its accounts require auditing, the first statement of accounts may not be due to be submitted for publication for as long as 18 months after registration.

Issue

2.17 The lack of transparency about a newly registered party's financial position until it submits its first Statement of Accounts is a concern. Where a party registers shortly before an election, as many do[9], voters will have no information about its financial position until after the election. This also makes it difficult for the Commission to reflect the party's financial position in our risk profiling, which we use to help target our advice and audit work in line with the principles of good regulation.

2.18 The absence of permissibility controls on money entering the system is also a gap in the current PPERA rules, because it enables parties to accept money from impermissible sources prior to registration. The lack of controls also means that a party could de-register, accept impermissible money, and then re-register and use that money while in the system[10].

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[8] The deadline for submitting SOA for parties with income and expenditure under £250 is 30 April and 8 July for those over £250k

[9] 37 parties registered to contest elections in GB in the six months prior to the 2010 UK General Election, and 4 joined the Northern Ireland register

[10] There are statutory reporting controls that require parties under £25k to continue reporting until that financial year ends, and until the end of the following financial year for parties above £25k.

2.19 The first Statements of Accounts[11] provided by newly registered parties in recent years indicate that it is rare for such parties to enter the regulatory system with significant assets. In the past, however, there have been parties that have entered the system with substantial resources with no immediate transparency relating to the value or permissibility of those resources. Further such cases could affect voters' trust in the regulatory system.

2.20 The lack of transparency over assets that parties hold when they enter the system could be addressed by introducing a requirement for new parties to report on their total assets and liabilities upon registration. However, placing permissibility controls on the sources of donations and loans to parties before they enter the regulatory system would be more complex to achieve. Such controls would be retrospective, could be difficult to enforce, and may be relatively easy to evade. Any such change would therefore need to balance the risk arising from the absence of permissibility controls with the burdens that such controls would impose on new parties.

Solution

2.21 Given these considerations, we recommend that all new parties with assets or liabilities over £500 should submit a declaration of assets and liabilities upon registration.

Implications

2.22 This change will improve the transparency of the finances of new entrants to the system. It would provide voters with information about the financial capacity of a party's position if they register shortly before an election. Where a new party discloses that it has substantial assets this will be clearly visible and may inform public and media scrutiny of its campaign. To minimise burdens on the large majority of new parties that have few assets or liabilities, the declaration should distinguish between new parties above and below a threshold of £500, with parties whose assets and liabilities are below that value simply confirming that fact[12]. For parties with a substantially higher financial base upon registration (for example, £25,000), the declaration could require separate totals of cash and non-cash assets, reflecting the information set out in statements of accounts.

2.23 We have considered whether it would be feasible to extend the declaration requirement so that new parties should also have to declare that any donations and loans they bring into the system are from permissible sources. In addition to the enforceability issues noted above, there is an issue of principle to consider. Any attempt to control the source of assets held by new parties would place new entrants at a disadvantage to parties currently

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[11] 42 parties registered in 2012. Four parties were not required to submit their SOA in April 2013. Of the 38 that were required to submit SOA, just under 60% had income and expenditure below £500 and just under 90% with income and expenditure below £7,500. The average income was £3,833 and average expenditure £3,720

[12] Please see the related proposal, recommendation 1 which recommends that parties that spend and receive under £500 should be exempt from the requirement to submit a Statement of Accounts and should submit a declaration of their exemption instead.

on the register. Many of the currently registered political parties held substantial assets upon registration. It would be necessary to consider this question of principle before devoting resources to developing controls on the sources of new parties' assets and liabilities. The UK Government and/or Parliament may wish to consider this question in the context of wider debate about the purpose of the PPERA system.

Recommendation 3

All new parties with assets or liabilities over £500 should be required to submit a declaration of assets and liabilities upon registration.

Registering and maintaining party identity marks and details

Party registration tests

Context

2.24 When registering with the Commission, a party must choose a name and can register up to twelve party descriptions and three emblems. Parties can register their names and descriptions in Welsh, Irish or another language as well as English.

2.25 The Commission is required to apply two tests to applications to register party names, descriptions and emblems:

The original test (2000)

2.26 Set out in PPERA in 2000, this test prevents the registration of names and descriptions that:

- are longer than six words
- are the same or similar to another party's name and therefore likely to confuse voters
- are obscene or offensive
- are likely to amount to an offence
- contain certain prohibited words

2.27 The original test was designed to prevent parties registering confusingly similar names to those already registered, such as *the Literal Democrats* and *the Conservatory Party*.

The additional test (added in 2006)

2.28 Introduced by the Electoral Administration Act 2006, this test is intended to prevent the registration of a name, description or emblem which is likely to mislead the voter as to the effect of their vote or their understanding of how to vote.

2.29 This additional test was introduced to prevent people from registering names or descriptions such as '*Put your X here*'. If a voter saw this phrase on the ballot paper in the list of candidates, it could potentially mislead them to believe it is an instruction on how to complete the ballot paper rather than a party name or description.

2.30 The current tests deliberately restrict the Commission's ability to reject applications to register parties. This is consistent with the principle that the state should have limited powers to intervene in or affect the democratic process.

Issue

2.31 In our view, the purpose of the second test is to require us to reject attempts to register words or emblems that, if placed on a ballot paper, could confuse voters about the practical effect of their vote for a particular candidate. It was not intended to strengthen the original PPERA test, but to address a specific concern about the mechanics of voting. We have interpreted the test accordingly since it was introduced.

2.32 It has been suggested, in the context of past registration decisions, that the courts could interpret the second test more widely than we have applied it. Such an interpretation could require us to refuse registration if we thought that a name, description or emblem passed the first test, but could still result in voters being misled because of similarity to a name or emblem that had **previously** been used by another party. This interpretation would give the Commission wider powers than it considers it has at present in taking registration decisions. We think this is undesirable because it could lead to concerns that our registration decisions are partial or arbitrary. That in turn could create a higher risk of increased successful legal challenges to registration decisions, which would undermine confidence in the party registration provisions and is clearly not in the interests of the voter.

Recommendation 4

Parliament should confirm that the "misleading the voter" test introduced in 2006 should only apply to the likelihood of a voter being misled about the effect of his vote when marking the ballot paper, for example to prevent a party from registering a name such as "*place your X here*".

Descriptions and registered political parties

Context

2.33 For some elections, the current provisions require parties to use either the party name *or* a registered description on the ballot paper[13]. Only

[13] The rules for the following elections allow candidates to use either the party name or a registered description: Mayoral, National Assembly for Wales, Scottish Parliament constituency elections, UK Parliamentary General elections, Greater London Authority, Police

registered political parties are allowed to use a description on the ballot paper, and if they chose to, they must use one of their 12 registered descriptions. [14]

Issue

2.34 Some registered descriptions do not contain the party name. If a candidate stands under a description that does not make reference to their party's name, it could lead to uncertainty about what party the candidate represents. For example, at the 2012 elections for the London Mayor and London Assembly, candidates could use **either** the party name or description. A candidate standing for UKIP appeared on the ballot paper with the description "Fresh Choice for London". This description did not include the party's name, and the ballot paper did not include a separate line for the party's registered name.

2.35 We have carried out some analysis of other registered descriptions and identified a number that do not provide a clear indication of the political party's name. If these descriptions appeared on a ballot paper without being accompanied by the party name, it could lead to voters being confused about the effect of their vote and possibly losing trust in the current arrangements for describing candidates on the ballot paper.

Solution

2.36 It is therefore important that the identity of the party must be clear where a candidate uses a party description on a ballot paper.

Implications

2.37 To achieve this, some entries on the current register of political parties' descriptions will have to be changed. Therefore political parties and the Commission should be consulted on the mechanics of any change.

2.38 For example, we considered whether it should be mandatory for the party name to be used alongside a registered description, where a description is used on a ballot paper. However, some parties would find this solution problematic because they currently use descriptions to localise the party name and reflect the part of the UK in which candidates are standing. For instance, a party called the "Flower Power Party" could register a description of "the Welsh Flower Power Party" to use on ballot papers for elections in Wales. In this example, it would not make sense to require the party to use this name and description alongside each other without making prior adjustments to their registered descriptions.

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and Crime Commissioner Elections, Local elections. Candidates can use both the party name and description for European elections and Scottish Parliament regional elections.

[14] There are two exceptions: (1) Independent candidates can use the description 'Independent', (or 'Annibynnol' in Welsh) on a ballot paper and (2) Candidates contesting parish and town council elections are exempted from the restrictions and can use a description of up to six words on the ballot paper, subject to approval from the Returning Officer, even if not standing for a registered party.

2.39 The parties that contributed to the review agreed with the principle of making descriptions clearer to indicate which party a candidate represents, but recognised the difficulty in finding a simple solution without substantial transitional work. This would have a bigger impact on some parties than others, considering 64 (18%) parties account for 679 (70%) descriptions on the GB register, and 4 (11%) parties account for 40 (55%) registered descriptions on the NI register.[15]

2.40 Another issue considered as part of the review was the use of descriptions by independent candidates. One consequence of the introduction of the PPERA controls on party and election finance was that independents were barred from using any description other than 'Independent', (or 'Annibynnol' in Welsh), on the ballot paper. This is because the use of party names and descriptions on the ballot paper is essentially a benefit that parties receive in exchange for entering the regulatory system. We looked at whether independent candidates could be permitted to use descriptions without undermining this principle of the regulatory regime, and concluded that there was no easy way of doing this. However, we intend to publish a consultation on issues relating to standing for election in autumn 2013, which will invite views on this.

Recommendation 5

Where a candidate represents a political party, it should be clear to voters which party the candidate represents. If a description is used on a ballot paper, the identity of the party must be clear.

The Government should consult political parties and the Commission on the practical considerations of achieving this change.

Registered party office holders

Context

2.41 Under PPERA, a registered political party must appoint at least two officers, and must appoint a named officer to each of three official roles: party leader, nominating officer and party treasurer[16]. One person can occupy all three of the required roles, but where this happens an additional officer must also be registered. This offers protection for parties against one person assuming control of party functions (such as the power to deregister) without the consent of other party signatories.

[15] There are 1049 registered descriptions at present; this includes descriptions registered by political parties and minor parties

[16] Further information can be found in our guidance on registering and maintaining a political party, www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties/registering-and-maintaining-a-party

Issue

2.42 Our guidance and compliance teams aim to support small parties to understand how to comply with the rules. Experience has shown that compliance problems can arise in a very small party where one officer holds all three main roles. Where the additional officer does not have any specific role in the party, they may be more likely to become disengaged from supporting the party to comply with its obligations. If that officer resigns, a small party often then finds it difficult to appoint a replacement additional officer within the 14 days allowed, and could be in breach of PPERA by not having a minimum of two registered officers. We think that requiring two people to hold the three substantive officer roles between them should help both officers to remain engaged and comply with the party's obligations under the PPERA framework.

Recommendation 6

Political parties should be required to have at least two different officers filling the three main party officer roles (Leader, Treasurer and Nominating Officer) between them.

Financial structure of parties

Context

2.43 The UK's political parties are structured in different ways, reflecting their history, culture and party membership. When a new party registers, it has to submit a financial scheme which sets out how the party will comply with the legal requirements of party and election finances under PPERA. The financial scheme also shows whether the party exists as one central party or has constituent parts established as accounting units (AUs). AUs are sections of a party whose finances are managed by local treasurers, often volunteers, and not by a party's headquarters. These are often locally known as party associations or constituency parties. Under PPERA, they are responsible for reporting donations and loans to the central party, and for keeping annual accounts and sending these to us for publication where required. Some other groups of party members are not part of formal party structures, but are regulated under PPERA as members associations, and have to comply with separate controls on the donations and loans they receive.

Issues

2.44 Some parties have a large number of AUs, for example, the Labour Party, Conservative Party and Liberal Democrat Party have over 1,700 combined. Over time, parties often register and de-register AUs to reflect changes in local activity or financial organisation. However, they are not required to update or confirm the overall accuracy of their financial scheme.

2.45 Some larger parties also include other groups, such as bodies providing services to a number of AUs on a regional basis. For example, a group of accounting units in the same area could collectively work with a regional body that co-ordinates administrative functions or provides joint services such as office accommodation or staffing. It is not always clear to people outside the

party whether or not such groups should be registered as AUs, or whether or not they are receiving reportable donations, either as part of the party organisation or as a members association.

Solution

2.46 Parties should confirm the accuracy of their financial scheme on an annual basis, rather than submitting it upon registration and not being required to update it afterwards.

Implications

2.47 Party structures can grow and change organically, and the recommendation is not intended to restrict that. This change will have a minimal impact on smaller parties that do not have any constituent parts established as AUs. The proposed change will support the compliance of larger parties with AUs.

2.48 A new annual requirement for central parties to review and confirm how their political party is structured should help them to identify issues that could adversely affect compliance. The parties that contributed to the review did not raise any concerns about the impact of this recommendation, and some commented that the updated information should help us to understand parties' changing structures and anticipate where additional guidance or support might be needed. Having a clear record of how each party plans to meet its statutory reporting requirements will also help the Commission's compliance team to ensure that constituent parts of a party are correctly registered and to identify potential discrepancies in a party's reporting against its financial scheme.

2.49 Finally, the recommendation should provide additional transparency about the structures of larger parties. We would expect to publish the financial schemes of all parties that have accounting units.

Recommendation 7

Parties should be required to confirm the accuracy of their financial scheme on an annual basis and report any material changes. This process should become part of the annual confirmation of registered particulars, to avoid creating a separate burden for parties.

Submission and publishing of party returns

Context

2.50 Since the late 1990s, there has been a rapid growth in the availability and use of new communications technology, such as the internet. In 2012, the proportion of UK households with internet access had reached 80%[17].

Issue

2.51 Despite the widespread use of the internet and other forms of electronic communications, the terminology used in the provisions of PPERA often refers to paper-based documents and communications. For example, any documents required to be submitted to the Commission "may be sent by post"[18]. Even when the bill that became PPERA was being debated in Parliament, it was recognised that the speed of technological change would mean that it would soon become outdated and that the Commission should determine how access to registers should be facilitated both by paper copies and on the internet[19]. Considering the widespread use of the internet and electronic communications, we think it makes sense to update PPERA so it reflects this fact and it is able to adapt to potential future changes in technology.

Solution

2.52 PPERA's drafting should be updated and future-proofed to ensure it can adapt to past and potential future developments in electronic communications and publishing.

Implications

2.53 We recognise that future proofing legislation is very difficult, especially considering the speed of technological change and the range of new technologies that are constantly being developed. However, the provisions should not be restricted to describing the use of paper-based documents.

Recommendation 8

PPERA's terminology should be updated to reflect developments in reporting and publishing, including electronic submission and publishing of returns.

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[17] Office for National Statistics, *Reference tables for the Internet Access 2012, Households and Individuals statistical bulletin*, (24 August 2012) www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-270031 (Accessed on 14 June 2013)

[18] Section 157(2), PPERA

[19] Standing Committee G, Tuesday 15 February 2000, (12.45pm), Clause 135, Inspection of Commission's registers etc.

3 Recommendations on donations and loan controls

Introduction

3.1 Since 2001 registered political parties have had to tell us about the donations and loans they receive, and have only been able to accept funding from certain sources with links to the UK. The same restrictions apply to some regulated individuals and groups, and to candidates and other political campaigners in the run-up to elections and major referendums. We publish information about donations (except in Northern Ireland where special conditions apply[20]) and check that the rules have been followed. These rules mean that the public now have access to more information than ever about how politics is funded in Great Britain. To date, the total value of reported cash donations has been over £400 million, averaging around £35 million per year[21].

3.2 In this chapter, we recommend changes to clarify and simplify the current rules on donations and loans. Some of these will reduce administrative burdens, for instance by rationalising the ways in which political parties report the money they receive year round and in the period before a UK general election. Others are intended to increase trust, such as by changing the way impermissible money is removed from the system. This chapter also discusses some issues that have arisen but which are beyond the scope of this review. For these we have invited the Government, and in due course Parliament, to take them forward. These include the rules on donations by companies and how sponsorship is covered by the rules.

3.3 Before reading, please refer to our summary of terms used in this report, at paragraph 1.25.

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[20] The Government has consulted on draft Northern Ireland (Miscellaneous Provisions) Bill, which is currently before Parliament. The Bill provides for more transparency on party funding in Northern Ireland. Once passed, this legislation will allow us to publish more information about the donations and loans reported to us. For more information read our written evidence to the Northern Ireland Select Committee www.electoralcommission.org.uk/__data/assets/pdf_file/0019/154306/Northern-Ireland-Miscellaneous-Provisions-written-evidence-for-NI-affairs-Committee.pdf

[21] Data is available on PEF Online: The Commission's online registers, https://pefonline.electoralcommission.org.uk/search/searchintro.aspx

Accepting and reporting donations and loans

Quarterly donation and loan reports

Context

3.4 Political parties must submit quarterly reports detailing all donations and loans received within that period.[22] Those that do not receive a reportable donation must submit a nil return for the relevant period. Once four consecutive nil returns are submitted, the party is exempt from submitting a return until a reportable donation or loan is received.

Issue

3.5 287 (82%)[23] parties were exempt from Quarter 1, 2013 reporting (covering January to March 2013) having received no reportable loan or donation in 2012. It is disproportionate and burdensome to require parties that receive no reportable donations or loans to have to submit four nil returns before they are exempted from further reporting[24].

Solution

3.6 The number of returns that a political party must provide before it is exempt from further quarterly reporting should be reduced from 4 to 1.

Implications

3.7 There is a risk that reducing the number of returns could lead to reportable donations and loans not being reported. However, we consider this risk to be low since we carry out compliance checks, such as scrutinising the accuracy of reports by cross-checking quarterly reports against Statements of Accounts. It is likely that a failure to submit a return where a reportable donation or loan had been received would still be identified and sanctioned in accordance with our enforcement procedure, albeit possibly at a later stage than at present.

3.8 This change would be consistent with a recommendation made in CSPL's Thirteenth Report[25] and complements our recommendation[26] that all

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[22] Parties are required to record information about donations and loans on a quarterly basis: Quarter 1 (1 Jan – 30 March), Quarter 2 (1 April – 30 June), Quarter 3 (1 July – 30 September), Quarter 4 (1 December – 31 December); reports are submitted one month after the end of the period to the Commission

[23] 351 parties were registered and either exempt or required to submit a report for Quarter 1, 2013.

[24] Sections 62A(1) and 71P(1), PPERA 2000

[25] The Thirteenth Report of the Committee on Standards in Public Life recommended that "smaller parties with no elected representatives should only submit donation returns to the Electoral Commission if they have a donation to report" (recommendation 24): Committee on Standards in Public Life, Thirteenth Report: *Political party finance Ending the big donor culture* (2011) www.public-standards.gov.uk/wp-

parties that receive and spend less than £500 in a calendar year should be exempt from submitting the annual Statements of Accounts. Together, these two recommendations would significantly reduce disproportionate burdens on the smallest parties and allow the Commission to focus resources on other regulatory activities.

Recommendation 9

The number of nil returns that a political party must provide before it is exempt from further quarterly reporting of donations and loans should be reduced from four to one.

Pre-election reporting for UK general elections

Context

3.9 PPERA requires weekly reports from political parties on donations and loans over £7,500 given to their headquarters in the run-up to a UK Parliamentary general election. The reporting period begins on the date of dissolution of Parliament and ends on polling day. This is to provide additional transparency to the funding that parties receive during this period in the electoral cycle. All funds reported in this way are also subsequently reported in the relevant quarterly donations and loans report.

3.10 Parties can obtain an exemption from the weekly reporting requirement if they are not standing candidates at the election. However, if a party does not seek an exemption and receives no reportable donations or loans, it must still submit a nil return for each weekly report.

3.11 In 2010, the weekly donation reporting period for the UK General Election ran from Tuesday 6 April to Thursday 6 May. The reports disclosed details of £14.1m donations and loans received by 10 parties on the GB register. Of the other registered parties, 225 obtained exemptions from weekly reporting, 134 submitted nil returns and 35 failed to submit weekly returns.[27]

Issue

3.12 There are two problems with the current system:

(i) it requires all parties to either confirm their intention not to contest the election or to carry out the weekly reporting requirements, and

(ii) the final two weekly reports are not published until after the election

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content/uploads/2012/11/13th_Report___Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf

[26] Please see the related proposal, recommendation 1 which recommends that parties that spend and receive under £500 should be exempt from the requirement to submit a Statement of Accounts and should submit a declaration of their exemption instead.

[27] The Electoral Registration and Administration Act 2013 extends the period between the dissolution of Parliament to Election Day from 17 working days to 25. As pre-election reports begin on the day of dissolution, the period covered will start 25 working days before the poll.

3.13 Parties that do not seek an exemption from contesting a UK Parliamentary general election are required to submit weekly election reports. Many, however, fail to submit reports, usually because they have not received a reportable donation. The resource involved in chasing these statutory reports is therefore of limited regulatory value[28].

3.14 The current model of reporting would be appropriate if most registered parties stood candidates and received at least some reportable donations in the weeks before the poll. However, in practice many parties do not fall into this category. The current reporting requirements are therefore disproportionately burdensome both for these parties and for us.

3.15 The current system requires parties to submit returns covering the full period up to polling day. Parties have seven days to compile and submit each report to the Commission following the end of each of the weekly reporting periods[29]. This timeframe means that the final two weekly reports are not published until after the election. There is no regulatory value in requiring parties to submit reports that provide no information to voters prior to the election. (See picture below.)

Solution

3.16 Political parties should only have to provide a pre-election report if they are standing candidates for election and receive a reportable donation or loan (worth over £7,500) during the pre-election reporting period. There should be one pre-election report covering the period from the dissolution of Parliament up to the final date by which a report can be submitted and published prior to polling day. A new power should allow for the deadline for pre-election reports to be set in the year prior to a planned UK Parliamentary general election.

3.17 Here is an illustration of how the period covered by the reports could change

[28] Sections 63(4) and 71Q(4), PPERA 2000
[29] Sections 65(2) and 71S(2), PPERA 2000

Pre-Election reporting	Jan	Feb	Mar	April (split into separate weeks)				May		
				01-07	08-15	16-22	23-29	01-06	Election Day 7 May	After election
Current system *										
Current Quarter 1 for donation and loan reports (Jan - March)							X			
Example of current period covered by weekly reports				X			X			XX
Proposed change										
Single pre-election report							?	X		

Key

- Q1 reporting period from January to March
  X = publication on 30 April
- Current weekly election reports published before polling day, approx. 1 - 22 April
  (X shows approximate publication times, which are a week after the period covered)
- Current weekly election reports published after polling day, approx. 23 April - early May
  (X shows approximate publication time)
- Proposed new election report, covering the period from the dissolution of Parliament to the final date a report can be submitted & published *(that date will depend on which date in May the election falls, and the potential for use of electronic submission and publishing)*

* This reporting system is based on changes to the required number of working days between the dissolution of Parliament and polling day, made by the Electoral Registration and Administration Act 2013, which have not yet come into force.

Implications

3.18 This proposal would completely remove the current reporting burden on parties that do not receive donations or loans of over £7,500 in the weeks before a UK Parliamentary general election. It would also reduce burdens on parties that receive reportable donations, by requiring only one report rather than the four to six weekly reports required at present.

3.19 At present, some parties submit their weekly reports online and others do not. With the developments of technology and greater take-up of online submission, it should become easier in future for reports to be submitted electronically. We therefore propose that a new power should be created to allow for the deadline for the pre-election report to be set in the year prior to a planned UK Parliamentary general election. This would allow for consultation with political parties and mean that the deadline can be set as close to the date of poll as possible, thus improving transparency for voters.

3.20 PPERA allows for the current weekly pre-election reporting requirements to be introduced for some other elections. However, because the UK Parliamentary general election is the only election that produces a significant increase in donations close to polling day, we do not consider there to be a case, at present, for our proposed pre-election report to apply for other elections.

Recommendation 10

The requirement to submit weekly donation and loan reports before UK Parliamentary general elections should be replaced with a requirement to submit a single pre-election report.

The report should only be required from parties that are standing candidates in that election and receive a reportable donation or loan during the relevant period.

The reporting period should finish slightly earlier than at present and a new power should be introduced to allow for the deadline for pre-election reports to be amended the year before a general election.

Aggregation of donations in quarterly donation reports

Context

3.21 Political parties and their accounting units are required to check permissibility and record donations of over £500. Donations totalling over £7,500 to parties and £1,500 to accounting units, either in one lump sum or as a total of multiple smaller donations of over £500 during a calendar year, are reportable each quarter.

Issue

3.22 The rules on how donations from the same source are aggregated can be difficult for parties to follow, particularly when donations from the same source are made to different accounting units within a party.

3.23 Once a donation has been reported, parties and accounting units are then required to report further donations in that year from the same donor each time they amount to over a further £1,500[30]. So, for example, if a donor gives a central party £1,000 a month:

- a report is due after 8 months when the donations total £8,000, and therefore exceed the £7,500 reporting threshold.
- another report is due 2 months after that because another £2,000 has been reported since the previous donation report and this amount exceeds the £1,500 reporting aggregation threshold.

Solution

3.24 Parties have told us that, on a practical level, once they have reported a donation they would find it administratively easier to report each subsequent donation from the same source of more than £500. This would require more donations to be reported but would simplify the record management requirements on parties, since they would no longer need to keep a running total of further donations from the same source in order to identify when they add up to over £1,500 and must therefore be reported. They also suggested that this would simplify the rules, promote reporting in a timely manner and reduce the risk of forgetting to report a donation.

3.25 Taking the example above, if a donor gives a party £1,000 a month – the donations would still first become reportable after 8 months when they total £8,000 and therefore amount to more than the reporting threshold of £7,500. Thereafter, each subsequent monthly donation of £1,000 would be reportable as it is over the £500 threshold. Parties would not have to go through the

[30] Section 62(6), PPERA 2000

sometimes confusing process of working out when to report aggregated donations.

Implications

3.26 Reporting all donations over £500 after the reporting threshold has been met would potentially increase reporting frequency, which may seem more burdensome than the current arrangements, but in practice parties have told us that they would find it administratively easier. It would also slightly improve transparency and potentially reduce the risk of misunderstandings and false allegations of under-reporting.

Recommendation 11

It should be a requirement that, once a reportable donation has been made, all subsequent donations over £500 in a calendar year from the same source are reportable.

Forfeiture of impermissible donations

Context

3.27 We have powers to seek the forfeiture of impermissible donations to the Consolidated Fund, effectively removing them from the system. In some cases a party will notify us that it has inadvertently accepted an impermissible donation and offer to forfeit it, while in other cases we identify through our own checks that an accepted donation is impermissible. We have powers to seek court-ordered forfeiture if needed, but we seek to agree voluntary forfeiture to avoid the expense of court action where possible. It is also a criminal offence to accept an impermissible donation.

Issue

3.28 We are recommending changes to deal with two problems arising from the current forfeiture provisions, which are described below.

<u>The current forfeiture mechanism is not aligned with our sanctioning powers</u>

3.29 Where a regulated organisation or individual accepts a donation from an impermissible source, we can make an application to a court for the donation to be forfeited. This is a civil process which has the effect of removing impermissible funds from the political system.

3.30 It is also a criminal offence to accept an impermissible donation without a reasonable excuse, and where this offence occurs we also have the option of referring the case to the police or prosecuting authorities for criminal investigation, or (since December 2010) of imposing a civil sanction. Our enforcement policy[31] sets out the circumstances in which we will consider imposing a civil sanction in respect of a criminal offence. For instance, in

[31] The Electoral Commission, *Enforcement Policy*, (December, 2010) www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf

cases where we seek forfeiture of an impermissible donation to remove that money from the system, it may also be appropriate to impose a civil sanction in order to deter future non-compliance.

3.31 We impose civil sanctions via an initial notice setting out the sanction and the reasoning behind it, and then a final notice if we decide to proceed with the sanction. The person or organisation that has allegedly committed the offence can make representations to us about the initial notice, and has a right of appeal to the courts where we proceed to issue a final notice.

3.32 If we were to both seek forfeiture and impose a civil sanction in respect of a case where an impermissible donation has been accepted, the two actions would involve quite separate processes. The forfeiture process involves a court from the outset. In contrast, the civil sanction can be levied by the Commission and only goes to court if there is an appeal. These processes could run in parallel, and the different basis for each is complex and potentially expensive and time-consuming, both for us and for the recipient of the impermissible donation.

The current forfeiture mechanism, as interpreted by the courts, is complex and potentially inconsistent in effect

3.33 PPERA requires that to be permissible an individual donor must be on an electoral register, not just eligible to be on a register[32]. A donor who has been on a register in the past, but then ceases to be registered, will become impermissible as a result. However, a 2009 Supreme Court decision on a forfeiture application[33] has had implications for the position where we seek court-ordered forfeiture. The judges took into account a donor's eligibility to be on an electoral register. Among other factors, the court may consider the donor's eligibility to be on a register as a significant factor in deciding whether to order forfeiture, and how much of the donation should be forfeited.

3.34 Some implications of the judgment are that:

- where we seek forfeiture of an impermissible donation from an individual, all those involved – the recipient of the donation, the Commission as the regulator, and the courts – have to balance a complex range of factors in deciding what amount, if any, should be forfeited. This creates a risk of inconsistent treatment of donations, which is clearly undesirable in this politically sensitive context.

- where a party accepts a donation without taking steps to check permissibility, and the donation is impermissible, the party may nonetheless be able to retain the donation. This weakens the incentive

[32] Section 54(2)(a), PPERA 2000
[33] Supreme Court Judgment: R (on the application of the Electoral Commission) (Respondent) v City of Westminster Magistrates Court (Respondent) and The United Kingdom Independence Party (Appellant) [2010] UKSC 40 On appeal from: 2009 EWCA Civ 1078

for the recipient of donations to check their permissibility. The effect may be to reduce the verification checks undertaken by political parties and in turn to reduce confidence in the effectiveness of the regime.

3.35 We set out these consequences of the judgment in our 2010 submission to the CSPL inquiry into political party funding[34]. In its 2011 report CSPL noted our concerns, observed that "*the task of political parties and the Electoral Commission is hard enough without unnecessary complications of this kind*", and recommended that "*the requirement in PPERA that only donors on an approved electoral register can make donations to a UK political party should be put beyond doubt*"[35].

Solution

3.36 There is a simple way to address the concerns arising from the Supreme Court judgment, and to implement CSPL's recent recommendation on this point. PPERA could be amended to confirm that, where the outcome of an investigation into the permissibility of a donation, and any subsequent appeal, results in a finding that the donation was from an individual who was not on an electoral register, then the full value of the donation must be forfeited. This could apply to all donations, except in cases where exceptional circumstances mean that seeking forfeiture would be wholly unreasonable. This would fully address the problems described above.

Implications

Views of political parties

3.37 We have discussed this way forward with the parties as part of this review. In general, the parties were content with our proposal to move forfeiture from a court based to a Commission based process. However, some concerns were raised about the Commission taking on a judicial role, particularly when forfeiture may have significant implications for a party. In our view, these concerns would be addressed through the availability of a court appeal process.

3.38 We have also considered whether there are alternative approaches which would address some of the Supreme Court's concerns about fairness of treatment of donations from an individual who is eligible to be on the electoral register but not registered. For instance, the law could provide for the Commission to have the formal option of seeking forfeiture of less than the full value of the donation, depending on the circumstances of each case. However, this would effectively re-open the questions that arise from the Supreme Court judgment, because it would be necessary for us, the recipient

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[34] Electoral Commission (2010) Evidence to the Committee on Standards in Public Life (2010), www.electoralcommission.org.uk/__data/assets/pdf_file/0014/106142/Party-funding-The-Electoral-Commissions-submission-to-the-Committee-on-Standards-in-Public-Life.pdf

[35] Committee on Standards in Public Life, Thirteenth Report: *Political party finance Ending the big donor culture* (2011) www.public-standards.gov.uk/wp-content/uploads/2012/11/13th_Report___Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf

of the donation and (in the event of an appeal) the courts to balance a range of complex factors in considering what amount should be forfeited. It would also undermine the principle that recipients must check permissibility of all donations before accepting them, as noted above.

Recommendation 12

The existing forfeiture provisions should be changed so that, where an impermissible donation is accepted, it should be subject to a new civil process. The new civil forfeiture process should work as follows:

- The full amount of the impermissible donation should be forfeited, other than in exceptional circumstances where to seek forfeiture would be wholly unreasonable.
- The forfeiture process should be based on the PPERA process for imposing civil sanctions, with a right of appeal to the courts in cases where it is argued that the donation was not impermissible, or that there are exceptional circumstances which mean that forfeiture is not justified.
- It should remain a criminal offence to accept an impermissible donation without a reasonable excuse. We would retain the option of referring the case to the police or prosecuting authorities for criminal investigation, or imposing a civil sanction.

Gifts given to political parties as bequests

Context

3.39 Parties are required to check whether a donation given as a bequest comes from a permissible donor. People who leave bequests are classed as a permissible donor if they have been on an electoral register at any time in the five years before their death.

Issue

3.40 The current legal framework requires Electoral Registration Officers (EROs) to provide parties with the current version of the register to check if a donation is permissible. However, the law is unclear as to whether EROs can supply older versions or provide information from older registers[36].

3.41 The lack of legal clarity has caused problems for parties seeking to check whether an individual leaving a bequest was a permissible donor. Even the most diligent of parties, that kept copies of all the registers from across the UK from when they were first entitled to them, would need to be in existence for five years before they could easily comply with their legal duty to permissibility check a bequest without the assistance of EROs.

[36] Regulations 102 and 106, Representation of the People (England and Wales) Regulations 2001(No. 341), Section 9, Representation of the People Act 1983

3.42 Although these difficulties appear to be rare, the sums of money involved can be significant. Since 2009, an average of 32 bequests has been reported by political parties each year. The average total of money given to parties in bequests each year is over £1,200,000.

Solution

3.43 A solution to this inconsistency would be to confirm in law that EROs are able to provide the information parties need to check permissibility of donations given as bequests.

Implications

3.44 Political parties have suggested that introducing a legal duty would provide the greatest clarity about an ERO's role, both for electoral administration staff and parties.

3.45 We have raised this issue with our advisory working group of elections practitioners[37] and group members agreed that a clarification in the law would be useful. On the specific issue of whether EROs should be under a duty to provide the information, the feedback we have received is that it is unlikely to be significantly onerous in terms of the number of bequest requests each year, but that it may give rise to practical difficulties in checking the details. Some concern was also raised about whether a change in the law could seem to shift the onus from the party to the ERO to check the permissibility of a bequest.

3.46 There is no specific duty on EROs to keep previous versions of the register. However, in practice, EROs need to keep copies of registers going back 15 years to check whether an overseas voter was on the register at some point in that period. On the first application of an overseas voter, an ERO will need to check their eligibility from the archive of registers. A duty on EROs to confirm whether a donor giving a bequest was on a register during the past five years would not therefore be a new or unique process, but rather an additional reason to check the archive of registers. As discussed above, since 2009 there has been an average of 32 bequests reported by political parties across the UK each year. In many cases, political parties will be able to access the information they need from copies of the registers they already hold. But where this is not possible, the party would need to request information from archives held by EROs.

3.47 We have considered whether a power for EROs to provide information to parties, rather than a legal duty, would suffice. Political parties are under a duty to return impermissible of donations, including bequests; failure to do so is a criminal offence. Although we understand it would be possible for a party to check copies of archived registers held by the British Library, EROs already

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[37] The Elections, Referendums and Registration Working Group are a group of elections practitioners who provide the Commission with advice and support in the development and delivery of election and electoral registration guidance and resources. Further information: www.electoralcommission.org.uk/elections/elections-and-referendums-working-groups

hold the relevant information and already search their archives to confirm the eligibility of overseas voters. In our view, on balance, it would be preferable to place EROs under a duty to provide the information that they hold and that parties need to comply with their duty. Under this duty, an ERO would be required to confirm whether a specified individual was on a register in the past five years prior to the donor's death. The requirement to check the permissibility of a bequest would remain with the party.

Recommendation 13

There is an inconsistency between the requirements placed upon political parties to check permissibility of donations given as bequests and the legal basis for parties to acquire the information needed to comply with that requirement.

EROs should be under a legal duty to provide information to a party to enable it to comply with its duty to check the permissibility of a bequest.

Donations from Irish sources

Context

3.48 CSPL's Fifth Report specifically examined the case of Northern Ireland in relation to the issue of foreign donations, and referred to the "letter and spirit" of the Good Friday Agreement (Belfast Agreement) which recognised the special relationship between the two jurisdictions. The Committee recommended that a "special exemption" should be made in the case of Northern Ireland so that the definition of permissible source included a citizen of the Republic of Ireland[38].

Issue

3.49 The Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Order 2007 provides that for an Irish citizen to be a permissible donor to a Northern Ireland party, they must be eligible to obtain an Irish passport; a certificate of nationality or a certificate of naturalisation. Every time an Irish citizen wants to make a reportable donation they must provide a copy of one of these documents certified by the Irish Department of Foreign Affairs[39]. Some parties raised this as an issue for the review to consider. They pointed out that the current process for proving Irish citizenship in order to donate to a Northern Ireland party is cumbersome and may deter donors.

3.50 There are also practical difficulties with the current requirements. In order to obtain the necessary certified documents, Irish donors either have to present themselves with their passport or other documents to the Department

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[38] Committee on Standards in Public Life, Fifth Report: *The Funding of Political Parties in the United Kingdom* (1998), paragraph 5.40 www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf

[39] Schedule 6, Paragraph 2A(4)(b), PPERA 2000

of Foreign Affairs in Ireland (or an Irish Embassy if they are living outside Ireland) or employ the professional services of a notary public to attend on their behalf.

Solution

3.51 Options to change the current process include widening the scope of who may certify the documents, such as to a solicitor or Commissioner for Oaths, and only requiring donors to produce certified documentation for the first reportable donation made during a given period of time. We would be happy to contribute to further work on this.

Recommendation 14

Currently the process for Irish citizens donating is complex and cumbersome. The UK Government should consider, in consultation with the Department of Foreign Affairs in Ireland, whether the current requirements on Irish donors could be reduced without unduly impacting on the PPERA regime.

Donations and loans to holders of elective office

Context

3.52 Holders of certain elected offices have to report donations and loans to us, and often also have to report the same transactions to the body of which they are an elected member, for instance as part of a register of interests. The law was amended in 2006 to allow this dual reporting requirement to be removed by incorporating the PPERA reporting requirements into the reporting rules of the elected body. This process has been carried out for the House of Commons, and since July 2009 Westminster MPs have only had to report permissible donations and loans to the House of Commons authorities for publication in the Register of Members' Financial Interests (RMFI). The Scottish Parliament is currently consulting on whether to use the same mechanism to amend its Members' interests reporting regime in order to end dual reporting.

Issue

3.53 Although a mechanism exists to allow elected bodies to adopt the PPERA reporting requirements and therefore end the requirement for their members to report donations and loans to us, PPERA still requires us to maintain a register of donations and loans to regulated individuals[40], including members of bodies which have ended dual reporting. We currently include Westminster MPs in our register by using the information collated by the House of Commons and published in the RMFI.

3.54 This requirement for dual publication leads to a duplication of work and the same information being published on different websites in different formats and at different times, which has the potential to cause confusion.

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[40] Schedule 7, Paragraph 15, PPERA 2000

Solution

3.55 We will work with the House of Commons authorities to review whether in practice there are good arguments for us to continue to re-publish information already published in the RMFI. To enable any revised arrangement to be easily implemented, it would be useful to be able to do so via an Order rather than primary legislation. This will also be relevant to other elected bodies, if steps are taken to remove dual reporting.

Recommendation 15

To allow greater flexibility to address instances of dual reporting between the PPERA regime and elected bodies, and to remove dual publishing where appropriate, an order-making power should be created in PPERA to amend the requirements for reporting and publishing donations and loans to holders of elective office. Any order made under this power should be subject to agreement in each case between the relevant elected body, the Commission and the relevant Government(s).

Controls on loans to candidates, non-party campaigners and referendum campaigners

Context

3.56 When the PPERA donation controls were introduced in 2001 they included controls on loans made on non-commercial terms. In 2006 PPERA was amended to introduce reporting and permissibility controls on all loans to political parties, and on loans for relevant political purposes to party members, holders of certain elected positions and party members associations.

3.57 At the same time, an order-making power was created to enable the Government to introduce equivalent controls on loans to candidates at certain elections, and loans to non-party campaigners and referendum campaigners regulated under PPERA. These controls have not yet been introduced. The current Government consulted the Commission on a draft Order to introduce these loan controls in October 2012, and we understand that the Government intends to produce a revised draft Order for further consultation at some point.

Issue

3.58 Where an election candidate, non-party campaigner or referendum campaigner enters into a commercial or non-commercial loan transaction with the intention of using the resulting benefits for campaigning purposes, voters might reasonably expect that the transaction will be reported in the same way that donations for those purposes are reported. However, at present there are

no controls on the sources or reporting of such loans except where a loan is on non-commercial terms and is therefore controlled as a donation[41].

3.59 A loan on clearly commercial terms from a high street lender will not be likely to raise concerns about the source of funding. But there is a stronger case for requiring the reporting of loans on terms that are arguably but not clearly commercial, because these may not be caught by the donation reporting rules, depending on the facts. Introducing new rules for reporting of loans would reduce the scope for concerns and allegations about undisclosed sources of campaign funding.

Solution

3.60 We think the solution is to introduce proportionate loan controls for candidates, non-party campaigners and referendum campaigners. However, the design of controls on loans to people and organisations such as candidates and non-party campaigners needs careful thought in respect of both the **use and source** of their loans. Such campaigners engage in other activities besides political campaigning and it will clearly not be appropriate to regulate all loans to them.

3.61 The current PPERA controls on party members etc are based on a 'use condition' so that loans are only regulated where the benefits arising from the transaction are intended to be used in connection with relevant political activities. The draft Order on which the Government consulted in 2012 took a similar approach. In the context of loans to election candidates, non-party campaigners and referendum campaigners, controls based on a 'use condition' may result in few loans being controlled or reportable, because relatively few loans may be made specifically to cover campaigning. It is therefore important to consider whether introducing such controls is justifiable.

3.62 In the course of this review, a less burdensome alternative to the introduction of loan controls was suggested to us. The Commission could produce further guidance on when loans to candidates and non-party campaigners are to be treated as on non-commercial terms, and therefore controlled as donations. This is a helpful suggestion, and we are considering how our guidance on this issue might be expanded. However, we do not think this would remove the case for proportionate reporting and permissibility controls on loans made to these types of campaigner for campaign purposes.

3.63 In respect of controlling the source of loans, it may be simplest for these campaigners to comply with permissibility controls on all loans made for campaigning purposes, whether or not they are on commercial terms.

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[41] The enabling legislation for the 2011 referendum on the UK Parliamentary voting system included loan controls for referendum campaigners, and we would expect enabling legislation for future PPERA referendums to include equivalent controls.

Implications

3.64 The order-making power inserted into PPERA in 2006 requires that any controls for candidates and non-party campaigners must correspond to or be similar to the loan controls on political parties, party members, holders of elected office and members associations[42]. As noted above, the scope of controls on loans to candidates and non-party campaigners needs careful thought, and the Commission, political parties and campaigners will want to consider the proposals that the Government intends to bring forward to ensure that they do not have unintended consequences. One point that has been raised with us in the course of this review is that it may be appropriate for loan controls on candidates at elections to exclude loans taken out solely to cover the candidate's deposit.

3.65 The PPERA order-making power covers candidates at certain elections including UK Parliamentary elections, Greater London Authority elections, local elections in England, Wales and Scotland, and police and crime commissioner elections in England and Wales. However, the power does not cover candidates at elections to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly. Primary legislation would therefore be needed to introduce consistent controls on loans to all candidates.

Recommendation 16

Appropriate loan controls should be introduced for candidates, non-party campaigners and referendum campaigners.

Clarifying aspects of the permissibility rules for donations and loans

Donations paid in instalments and regular payments

Context

3.66 The definition of a donation includes "any gift to the party of money or other property". Some parties offer membership or donation schemes structured around regular payments, and some parties expect elected representatives of the party to make regular donations.

Issue

3.67 Parties have on occasion asked questions about how these donations should be treated under the permissibility and reporting rules. Should a series of regular payments be regarded as instalments of a single donation, or is each payment a separate donation?

[42] Section 62(1), Electoral Administration Act (EAA) 2006

Solution

3.68 Our view is that the answer depends on the circumstances of each case:

3.69 If a donor commits to make a donation of a specific value through a series of payments during a year that are agreed in advance, the recipient can calculate the total value of that donation at the outset. For example, a donor could make payments of £200 per month to cover an annual fee of £2,400. In such cases our view is that the permissibility controls apply to each regular payment as would apply if the final amount had been made as one donation. Although each individual payment is below the £500 threshold, each payment of £200 will be subject to the permissibility controls because the total amount payable is above the permissibility threshold.

3.70 If a donor makes regular payments for an unspecified duration and towards an unspecified total amount, our view is that these payments should be treated as separate donations, and the appropriate permissibility and reporting requirements should apply to each individual amount. For example, monthly payments of over £500 will need to be permissible and reported when they aggregate to over the £7,500 threshold. However, an on-going monthly standing order for £200 will neither need to be permissible or aggregated to be reported, irrespective of the total amount that is actually paid over the course of a year [43].

3.71 We think it would be helpful for this interpretation to be confirmed in the legislation.

Recommendation 17

For the avoidance of doubt, PPERA should be amended to confirm that for:

Payments towards a fixed total

(i) the permissibility controls apply to each individual payment as they would have applied if the donation had been made in one instalment, and

(ii) aggregated individual payments are reportable once the reporting threshold is met

Other regular payments

(i) the permissibility and reporting requirements apply separately to each individual payment

[43] Attempts to evade the permissibility controls by frequently making donations under the permissibility threshold of £500 would potentially be a breach of PPERA's anti-evasion provisions.

Payments from public funds

Context

3.72 PPERA sets out an exhaustive list of what is classed as a donation for the purpose of regulating political parties, including gifts of money or property, sponsorship, subscriptions or other fees, money spent by others, and things provided otherwise than on commercial terms[44]. PPERA also provides that any payment out of public funds (defined as payments from UK Consolidated Funds, Parliaments and Assemblies, Ministers and government departments, and the Electoral Commission[45]) should be regarded as a donation from a permissible donor[46].

Issue

3.73 The interaction between these two provisions raises the question of whether payments from public funds are only donations if they fall within the list of specific types of donations or whether *any* payments from public funds, such as commercial payments, should be treated as a donation.

3.74 In practice, this has not caused a problem as we take a proportionate approach and only regard payments from public funds as donations if they are within the PPERA definition of donations. However, it would be helpful to clarify the law on this point.

Recommendation 18

For the avoidance of doubt, the status of payments from public funds should be clarified in PPERA.

Permissibility of Scottish partnerships

Context

3.75 PPERA sets out the types of organisations and individuals that are permissible donors. It includes limited liability partnerships (LLPs) registered under the Limited Liability Partnerships Act 2000 and any unincorporated association of two or more people which does not fall within any of the other categories.

Issue

3.76 The list of permissible donors in PPERA captures all partnerships in England and Wales, either as LLPs or unincorporated associations[47]. However, in Scotland partnerships have a separate legal personality. It is therefore arguable that a Scottish partnership which is not an LLP would not be permissible, since it is not an unincorporated association. This uncertainty

[44] Section 50(2), PPERA 2000
[45] Under PPERA, the Electoral Commission distributes £2,000,000 per year in policy development grants to help parties develop policies to include in their manifestos.
[46] Section 55(2), PPERA 2000
[47] Section 54, PPERA 2000

arises from the effect on PPERA of the Partnership Act 1890 and appears to be unintended.

Recommendation 19

For the avoidance of doubt, PPERA should be amended to confirm that Scottish partnerships are permissible donors.

Authorised participants for loans – trusts

Context

3.77 The list of permissible donors and lenders in PPERA does not include trusts, but PPERA provides that donations from certain types of trusts ("exempt trusts") shall be regarded as from a permissible donor. A trust can only be exempt if it is non-discretionary and either (1) the trust was set up before the proposals for PPERA were published in July 1999 and has not been amended since then, or, (2) every penny paid into the trust is from a permissible source[48].

Issue

3.78 The provisions on donations from exempt trusts were not extended to cover loans when the regulation of loans was introduced in 2006. Parties have queried this difference between the donation and loan controls, which means that they can accept donations from exempt trusts but not accept loans from them. It is not clear whether there were policy reasons for this difference.

Recommendation 20

The Government should clarify whether loans from exempt trusts should be treated as permissible, in the way that donations are.

Declarations by donors

Context

3.79 The Political Parties and Elections Act 2009 included a requirement for donors giving more than £7,500 to declare whether any other person has provided a benefit to them in connection with the donation. The purpose of this was to provide a procedural reminder to donors of the PPERA rules on agency (where somebody makes a donation via an intermediary). The requirement has not yet been commenced so is not in force.

3.80 The 2009 Act also included a requirement for donors who are individuals giving more than £7,500 to declare that their tax liability in the current year will be determined on the basis that they are "resident, ordinarily resident and domiciled in the UK". The purpose was to prevent individuals who are not

[48] Paragraphs 325 – 7, Explanatory notes, PPERA 2000, www.legislation.gov.uk/ukpga/2000/41/notes/division/5/15

domiciled in the UK for tax purposes, but who would otherwise be permissible donors because they are on an electoral register, from making donations. Again, the requirement has not yet been commenced so is not in force.

Issue

3.81 During the passage of the 2009 Act we highlighted the potential administrative burdens associated with these declaration requirements in our briefings to Parliament, and noted that some important aspects of the tax status declaration would need to be clarified in secondary legislation, including the treatment of donations that aggregate to more than £7,500.

3.82 As and when the tax status declaration is brought into force, it will be a criminal offence for a donor "knowingly or recklessly" to make a false declaration about their tax status during the tax year in question. The Commission has the statutory role of securing compliance with the donation requirements of PPERA, but we are unlikely to be able to establish the tax status of individuals in order to assess any allegation we receive that an individual has committed this offence. We would therefore expect to pass on any such allegation to the police or another appropriate authority.

Recommendation 21

The Political Parties and Elections Act 2009 introduced new requirements for declarations by donors, but the rules have not yet been commenced. Before the Government brings these requirements into force it should address the unresolved aspects of the tax status declaration, including the aggregation requirements. It should also consider the scope for combining or otherwise streamlining the declarations in order to minimise administrative burdens on donors and the recipients of donations.

Issues for further consideration

3.83 During the review, we looked at several topics where the current rules raise questions about the underlying policy intention, but it is difficult to identify a simple solution. With each of these three issues, we have considered a number of possible solutions. However, we have concluded that the underlying policy intention should be re-visited by Government and/or Parliament as appropriate, before the issue can be properly addressed.

Permissibility status of companies making donations

Context

3.84 The categories of permissible donors to regulated entities in Great Britain include a company registered in and carrying on business in the UK, and incorporated in the EU. This does not fully reflect the approach recommended in CSPL's Fifth Report, which proposed that to prevent foreign donors channelling donations through subsidiary UK companies, it should be necessary for a subsidiary to show that it 'was carrying on a genuine business

within the UK and was generating income here sufficient to fund any donation'[49]. The concept that donations should not exceed UK-generated income or profit was not adopted in PPERA.

Issue

3.85 Electoral Commission investigations into potential breaches of the law involving company donors, Bearwood Corporate Services Ltd[50] and Fifth Avenue Partners Limited[51], have highlighted some implications of the current permissibility test, which we set out in our 2010 submission to the CSPL inquiry into political party funding[52].

- For the test of carrying on business in the UK to be satisfied, a company need not be generating a profit or even actively trading, provided that it is engaged in business transactions such as employing staff or paying for business facilities. If a company has not begun to trade but is preparing to do so, it is likely to be within the scope of the 'carrying on business' test.

- Since there is no requirement in PPERA that the funds a company donates must be generated from its own trading, it is acceptable for an overseas parent company to donate through a UK-registered subsidiary, provided that the subsidiary is carrying on business and is not simply acting as an agent for the overseas company.

- PPERA does not define the concepts of agency (where somebody makes a donation via an intermediary) and 'carrying on business', so we must apply the usual legal definitions of these concepts. To show that a UK-registered company has acted as an agent of an overseas donor (whether a company or individual), it is necessary to establish that the funds used for a donation passed from the overseas donor to the UK company, and that an agreement existed between the two to the effect that the funds would be used to make a donation. Establishing that funds have been transferred from one company to another is not sufficient to demonstrate agency, as the capitalisation of a subsidiary by a parent company is a common business practice.

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[49] Committee on Standards in Public Life, Fifth Report: *The Funding of Political Parties in the United Kingdom* (1998), paragraph 5.29 www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf

[50] Electoral Commission Case summary: Bearwood Corporate Services Limited (2010), www.electoralcommission.org.uk/__data/assets/pdf_file/0009/87219/Case-summary-Bearwood-Corporate-Services.pdf

[51] Electoral Commission Case summary: 5th Avenue Partners Limited, (2009) www.electoralcommission.org.uk/_media/executive-summary/5th-avenue-statement-case-summary-11-09.pdf

[52] Electoral Commission Evidence to the Committee on Standards in Public Life (2010), www.electoralcommission.org.uk/__data/assets/pdf_file/0014/106142/Party-funding-The-Electoral-Commissions-submission-to-the-Committee-on-Standards-in-Public-Life.pdf

3.86 CSPL's Thirteenth Report recommended that companies making donations "*should have to be able to demonstrate that they are trading in the UK and earning sufficient income here to fund any donations*."[53] As part of this review, we have re-visited the lessons from our casework described above and the implications of CSPL's recommendation about company donations. We have concluded that the Government and, in due course, Parliament should re-visit the underlying policy intention of the permissibility controls on companies.

Recommendation 22

In the light of the implications of the current permissibility test, the Government and, in due course, Parliament should re-visit the underlying policy intention of the permissibility controls on companies.

Sponsorship

Context

3.87 PPERA defines sponsorship as income used to meet the costs of any event, conference, publication, or study, and treats such income as a specific type of reportable donation. The sponsorship controls are different from those relating to other donations, in that they cover the full value of what can be a wholly or partially commercial transaction. Some types of income[54] are exempt from being reported as sponsorship.

3.88 The PPERA sponsorship rules apply to political parties, non-party campaigners at elections, referendum campaigners, members associations and regulated individuals. The RPA applies similar rules to election candidates. However, in practice, reporting sponsorship is mainly relevant to the large Westminster-based parties. Other political parties and regulated organisations and individuals do not generally reach the £7,500 reporting threshold for sponsorship.

3.89 The current sponsorship rules provide a relatively small amount of additional transparency. Since 2001, only £1.9m of sponsorship has been reported out of a total of around £554m of reported donations.

Issue

3.90 Parties have raised concerns that the current provisions require details of what they view as commercial transactions to be published as a type of donation. They argue that this confuses sponsors and can cause problems

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[53] Committee on Standards in Public Life, Thirteenth Report: *Political party finance Ending the big donor culture* (2011), Page 65 www.public-standards.gov.uk/wp-content/uploads/2012/11/13th_Report___Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf

[54] The exempt items are: income from admission charges; commercial rate adverts in publications; the purchase price of publications; and the cost of conference stands (up to a level set by the Commission).

because of the need for public companies to obtain shareholder consent to donations.

3.91 Parties have also reported that the current rules can be difficult to understand because of apparent inconsistencies. For example, adverts in a publication are exempt from being classed as sponsorship but other types of advertising, such as banners, are not. Conference stands are also treated differently from other types of sponsorship, as parties can charge up to a given 'commercial' rate set by the Commission without having to treat the income as sponsorship[55].

3.92 There are practical reasons why the rules are formulated in the way they are, such as not wanting to prevent overseas organisations being able to pay a reasonable commercial rate to have a stand at a conference. However, the cumulative effect of the rules and exceptions can be confusing.

Implications

3.93 We have considered whether the current level of transparency provided by the sponsorship provisions could be maintained whilst making the controls simpler, reducing burdens and encouraging participation by potential sponsors. We looked at options for change, including only requiring income that is not clearly commercial to be reported as a donation, or requiring all conference-related income to be reported but with exemptions from permissibility controls for payments such as conference stand fees. However, in practice these options appeared unlikely to be much simpler than the current rules. An alternative way of simplifying the current rules would be to revisit the underlying policy intention, and we discuss this briefly below. However, such changes are beyond the scope of this review, particularly given the potential links between the scope of the current rules and any wider proposals for changes to the party and election finance framework.

3.94 CSPL's Fifth Report, on which the sponsorship rules are based, viewed sponsorship as a method of providing financial support for a political party. The Report argued that sponsorship does not differ intrinsically from a donation, in circumstances where the effect of the sponsorship is to replace (and so to release) funds which the party would otherwise have to, or would like to, spend[56]. However, this is arguably also true of other commercial income which is not subject to the same kinds of rules as sponsorship.

3.95 This raises the question of whether the PPERA approach of treating sponsorship as a type of donation rather than as partly or wholly commercial income, with the associated burdens on parties and barriers to commercial sponsorship, is appropriate. There may be simpler ways of obtaining a reasonable level of transparency in respect of this type of funding, such as via

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[55] Sections 51 and 52(3), PPERA 2000

[56] Committee on Standards in Public Life, Fifth Report: *The Funding of Political Parties in the United Kingdom* (1998), paragraph 4.45 www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf

parties' statements of accounts. As mentioned earlier (footnote 7, page 10), there is currently no prescribed format for accounts, but the Commission has set out a voluntary format and intends to make it mandatory for the 2015 financial year for political parties and accounting units with an annual turnover of over £250,000. It is being mandated so that information is available to voters in a consistent, comparable format for those parties with significant financial resources.

Recommendation 23

This review has considered the purpose and scope of PPERA's rules on sponsorship. Given the points raised by political parties, the Government and, in due course, Parliament may wish to consider whether the rules on sponsorship can be framed in a simpler and more consistent way. We would be happy to contribute further to further work on this area of the rules.

Purpose and use of loan reports

Context

3.96 PPERA requires parties to report the full amount of any new loan and its terms when it is taken out. Thereafter, the party must report certain changes to the terms and confirm when the loan has been repaid. These details are reported in quarterly loan reports and the information is published on the Commission's registers. There is no requirement for parties to provide updated information on the amount outstanding on their loans. The information published on the Commission's registers only shows the opening balance of each loan, and any changes to the terms, until such time as the loan has to be totally repaid.

Issue

3.97 Data about long-term loans displayed on the Commission's registers only provides an illustration of the original amounts of loans entered into by donors. A voter cannot access any updated information about the actual level of debt that the party has to an individual lender. It has been suggested that the registers therefore provide an unrepresentative picture of a party's ongoing level of indebtedness.

3.98 Some political parties that contributed their views to the review noted that reporting more frequent data on existing loans might be difficult in practice and entail a new burden for central parties and their accounting units. They also suggested that it would be a potential duplication of what is already required to be reported in their annual statements of accounts.

3.99 There are currently 117 outstanding loans to parties over £7,500 on our registers and, in practice, the information provided in the annual statement of accounts is typically limited to the total balance of all outstanding loans, the total sum of all repayments and any new loans taken out that year. It is not possible to ascertain the amount outstanding on each individual loan.

Implications

3.100 The benefits of improving the level of transparency around loans through requiring parties to provide information on the outstanding value of their loans will need to be balanced against the additional burdens that would be placed on parties for making updates on a periodic basis.

3.101 It will also be important to consult the parties on any proposals for change so that the practical implications of the frequency and level of reporting can be taken into account. For example, it will be important to consider when parties normally have access to the information they are required to report to minimise potential compliance costs and burdens, while improving transparency.

Recommendation 24

This review has considered whether PPERA's current rules on loan reporting by political parties provide sufficient transparency. The Government and, in due course, Parliament may wish to consider whether the outstanding value of a loan should be updated periodically on the Commission's registers. It will be important to consult parties and us on the practical implications of any proposals for change. We would be happy to contribute to further work on this area of the rules.

4 Recommendations on campaign spending

Introduction

4.1 There have been restrictions on the amounts that candidates can spend at elections since the nineteenth century. Those rules have been updated and amended in recent years, for instance to cover a longer period in the run-up to some UK general elections. PPERA introduced the UK's first limits on the money that political parties and non-party campaigners can spend in the run-up to some elections, along with limits on campaigning at major referendums. In the words of the Government in 2000, the PPERA spending rules were intended to reflect the fact that spending by or on behalf of candidates "now forms only a proportion of what a party spends on contesting an election", and that limits on spending at constituency level therefore "no longer serve as an effective control on what the political parties as a whole spend on fighting elections"[57].

4.2 In this chapter, we recommend a variety of changes to the current rules. Some proposals will update and simplify the system, such as removing the need for parties and campaigners to get a court's approval to pay some campaigning costs. Others will also reduce burdens without impairing the effectiveness of the rules, such as recommendations to lower reporting requirements for parties and campaigners that incur little or no PPERA-regulated spending. We propose changes that would simplify the current candidate spending rules as far as possible, while enabling detailed information about candidate spending to be published online in future, as well as being made available for local inspection. We also recommend widening the scope of the PPERA spending rules in some areas, to cover political parties' staff costs related to campaigning, and a wider range of non-party campaigning activity. However, we recognise that these are complex and potentially controversial changes that would need further thought and consultation before they are implemented.

4.3 Before reading, please refer to our summary of terms used in this report, at paragraph 1.25.

[57] Paragraph 18, explanatory notes, PPERA, http://www.legislation.gov.uk/ukpga/2000/41/notes/division/2/6

Campaigners regulated by PPERA

Regulation of spending on staff time dedicated to campaigning by political parties and referendum campaigners

Context

4.4 There are limits on how much parties can spend on PPERA party campaigning at certain elections. PPERA contains a list of all the items controlled by these spending limits. The Secretary of State can amend the contents of this list to give effect to a recommendation by us, or after consulting us on the change[58].

4.5 At elections regulated by PPERA, parties must keep a record of all their campaign spending on these regulated items. They must send us this information in a spending return after the election. We publish party spending returns online to ensure there is transparency about campaign spending at elections[59].

4.6 In the Bill that became PPERA, spending on directly employed staff brought in to work on election campaigns was listed as an item that would count against parties' spending limits[60]. During the passage of the Bill there were debates as to whether directly employed staff costs, and a number of other items of regulated spending, should count against parties' limits. Objections to their inclusion included concerns that the list of items covered was too long, complex and burdensome, and that the provisions would be disproportionately burdensome on smaller parties. As a result, directly employed staff costs were explicitly excluded from the definition of campaign spending by political parties and referendum campaigners in PPERA as enacted[61].

Issue

4.7 Currently, the costs of directly employed staff brought in for an election campaign do not count against political parties' or referendum campaigners' spending limits. However, the following are controlled by:

- campaign staff who are seconded to parties by other organisations – these costs count towards the party's PPERA spending limit

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[58] Paragraph 4, Schedule 8, PPERA
[59] Data is available on PEF Online: The Commission's online registers, https://pefonline.electoralcommission.org.uk/search/searchintro.aspx
[60] Paragraph 1(8) Schedule 7, Political Parties, Elections and Referendums Bill (as presented to the House of Commons on 20th December 1999) www.publications.parliament.uk/pa/cm199900/cmbills/034/00034-ap.htm#sch7ptI
[61] Paragraph 2(1)(d) Schedule 8, PPERA

- campaign staff hired by parties via an agency – these costs also count towards the party's PPERA limit

- campaign staff employed by candidates – these costs count towards the separate candidate spending limit

- campaign staff who are seconded to candidates by other organisations – these costs also count towards the candidate's limit, and

- staff employed by non-party campaigners to produce and distribute election material – these costs count towards the non-party campaigner's PPERA limit.

4.8 Any additional administrative costs that parties or referendum campaigners incur due to campaigns are also counted against their spending limit as overheads. This includes the additional administrative costs resulting from taking on extra staff for a campaign, such as office space and higher phone bills.

4.9 The current exclusion of directly employed staff costs from the party spending controls is an inconsistency in the election rules, given the controls on other campaign staff working for parties, candidates and non-party campaigners. The exclusion also means that the party spending controls do not cover a potentially large strand of election campaign spending. This issue also applies to the current controls on spending by campaigners at referendums held under PPERA.

4.10 Bringing directly employed staff costs within the scope of the spending controls would have significant implications, which would need to be considered before the change could be implemented.

- It would impose new administrative burdens on parties, and the detail of what spending is covered would need to be carefully considered and defined. We have identified two possible options which are outlined below.

- It could take up a significant part of the larger parties' campaign spending under the current spending limits and the spending limits would therefore need to be re-visited.

- Any proposed changes to the controls on spending would need to take into account any reforms that result from the ongoing talks between the three largest Westminster parties on party funding.[62]

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[62] House of Commons Library Standard Note SN/PC/6123, *In brief: party funding*, (9 November, 2012) pp.8-9, www.parliament.uk/briefing-papers/SN06123

Possible solutions and feedback

4.11 In the course of the review, we developed two possible options for regulating directly employed campaign staff costs:

a) including the costs of all staff – including permanent employees – whose job is wholly or mainly focussed on campaigning during the regulated period for an election
b) including only the costs of temporary or fixed-term staff whose job is wholly or mainly focussed on campaigning during the regulated period for an election

Views of political parties

4.12 We sought views from political parties on the burdens these options would impose and how workable they would be in practice. The feedback from this testing was varied. Some larger parties took the view that, because this issue is so closely linked to the current party funding talks, it would not be appropriate to comment on the workability of detailed proposals. Some concerns were expressed that the options would be difficult to apply in practice, and that the associated regulatory burdens could outweigh the benefits of new controls. Other parties were strongly in favour of introducing these controls, with some surprised to find out that they were not already in place.

4.13 Our options propose that the costs of directly-employed staff should only be controlled where a staff member is spending all or most of their time engaged in campaign-related activities. If either of these options were to be adopted, the scope of this definition would need further consideration. For example, it could be argued that support staff, such as I.T technicians, do work related to election campaigns, because they provide parties with the tools to engage electronically with voters. We have noted these points and will raise them again for consideration if and when the controls on campaign staff costs are introduced.

Recommendation 25

In principle, campaign-related staff costs should be controlled by the limits on political party and referendum campaign spending.

The Government should give further consideration to this issue when proposals for wider changes to the rules are developed.

We have developed two options that could form the basis for further testing and consultation with political parties and other campaigners.

Controls on late claims paid by political parties, non-party campaigners and referendum campaigners

Context

4.14 There are controls on the payment of invoices and bills, (described as “a claim for payment” in PPERA), that parties, non-party campaigners and

referendum campaigners receive in relation to their campaign spending. These are based on equivalent controls on candidates under the RPA 1983. The underlying aim of the controls is to prevent campaigners and their suppliers colluding to evade the financial controls on campaigning. Providing a deadline for the receipt of claims, and having sanctions to deter non-compliance with these deadlines, helps ensure that evidence of regulated spending is submitted along with campaigners' spending returns.

4.15 Currently, parties and other campaigners regulated by PPERA must receive all their invoices and bills within 30 days[63] of polling day[64]. If they receive a claim for payment after that date, they have to seek leave from a court in order to be able to pay the provider. If they fail to obtain leave from a court before they pay the claim, they could be subject to a civil sanction or criminal prosecution.

Issue

4.16 Experience suggests that many claims that are not received by campaigners regulated by PPERA until after the 30 day deadline are late for simple administrative reasons. For example, a utilities provider may only bill a political party for payment on a quarterly basis. Use of the courts is a relatively inefficient and expensive way of dealing with such issues, and some political parties have found that courts are not familiar with the existence or purpose of these provisions.

Solution

4.17 We recognise that it is an inefficient use of the courts' time to deal with small payments caught by these provisions. However, we think the deadline for the receipt of claims, and the prospect of sanctions for paying claims received late without independent authorisation, still have a role in deterring attempts to evade spending controls. Therefore we propose that this responsibility be transferred to the Commission as the regulator of party and election finance. Since this is a substantial procedural change, it may be appropriate for the courts to retain oversight of late payments above a certain value, for instance, £10,000, at least initially.

Implications

4.18 There was a general view amongst the parties that contributed views to the review that the current provisions need revising, with all of them supporting our proposed recommendation for change. Our recommendation should reduce the administrative burdens on parties and other PPERA-regulated campaigners, and the costs associated with seeking leave for payment of late claims. However, we think it is necessary to have the power to issue civil sanctions to parties that receive claims late, even if we grant them leave to make the payment. This would ensure there remains an incentive for parties to receive claims on time.

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[63] This deadline was increased from 21 days by the Electoral Administration Act 2006
[64] Sections 77, 92, and 115 PPERA

4.19 The Scottish Independence Referendum Bill currently includes provision for the Commission to grant permission for the payment of claims received late.

Recommendation 26

The responsibility for granting permission to parties, non-party campaigners and referendum campaigners to pay most or all late invoices or bills from suppliers should be transferred to the Commission. Where it grants permission to pay a late claim, the Commission should have the ability to sanction the late receipt or payment of the claim in order to encourage compliance.

Controls on late claims paid by candidates

4.20 We do not think that it is currently appropriate for the Commission to be given the role of granting permission to pay claims received late by candidates[65]. We do not currently have investigatory powers or civil sanctions to deal with non-compliance by candidates, and these would be needed to create the right incentive structure for compliance within the proposed new system of seeking leave. However, this could be revisited if our recommendation that the Commission should be granted new powers and sanctions for candidate election finance offences at some elections is taken up. (This recommendation is explained later in the report at page 79).

4.21 In addition, election results can be challenged on the basis that a candidate has failed to comply with the rules on spending and donations. The interaction between these two provisions needs further consideration before moving away from a court-based system of granting leave for candidates to pay claims.

Requirements for political parties who do not incur campaign spending against their PPERA spending limit

Context

4.22 Currently, all parties that stand candidates at an election where the PPERA controls on party campaign spending apply must submit a PPERA spending return to us[66]. This is in addition to the candidate spending return, which candidates are required to submit to their local Returning Officer under the RPA 1983[67]. The PPERA return covers spending on activities seeking to

[65] Section 78, Representation of the People Act (RPA) 1983
[66] Section 82, PPERA
[67] For more information on the candidate rules, please see Appendix B

promote the electoral success of the party as a whole and its policies, rather than specific candidates of the party[68].

Issue

4.23 A number of parties contesting elections do not actually incur any PPERA party spending. For example, just over 70% of parties (98 parties) that stood candidates at the UK General Election in 2010 did not incur any spending that counted against their PPERA spending limit. Some of these parties only stood one candidate and may have registered with the Commission in order to be able to use a party name on the ballot paper. Others only incurred spending on individual candidates' campaigns, which is reportable by the candidate[69].

4.24 Where this happens and a party has not spent anything that needs to be reported under PPERA, there is no regulatory value in requiring them to submit a PPERA spending return that declares they have spent nothing. However, where parties spend nothing but fail to submit a statutory nil return, the Commission has to follow this up to establish whether regulated spending has been incurred.

Solution

4.25 Parties should only have to submit a PPERA spending return if they have spending to report.

Implications

4.26 Moving to reporting by exception in this way carries a risk that parties may spend money on party campaigning and fail to submit a return. However, this risk would be mitigated by the advice and guidance work we do with parties and the monitoring we undertake at elections. Where a party spends a small amount on party campaigning and fails to submit a return, the impact of that non-compliance on the regulatory regime is likely to be small.

Recommendation 27

Political parties should only be required to submit a PPERA spending return if they incur regulated PPERA campaign spending.

Notional spending threshold for political parties and other PPERA campaigners

Context

4.27 Notional spending is the difference in value between the commercial rate for an item or service and the price that is actually paid for it[70]. When reporting

[68] For more information on these PPERA party spending rules, please see Appendix B
[69] Section 81, RPA 1983
[70] Section 73, PPERA

on their spending, parties and campaigners must record the full commercial value of these items or activities as notional spending if:

- They receive the item free of charge or at a non-commercial discount of more than 10%, and
- The difference in value between the commercial rate and what they pay is over £200.

4.28 If the discount is of 10% or less, or the difference in value is £200 or less, campaigners only need to record the amount actually paid for the item.

4.29 Notional spending over £500 is also treated as a non-cash donation by the person providing the discount[71], who must be a permissible donor.

Issue

4.30 In 2009, the Political Parties and Elections Act increased the permissibility threshold for donations from £200 to £500. However, the threshold for notional spending remained at £200. The difference between the permissibility threshold and the notional spending threshold sometimes causes confusion for parties and campaigners.

4.31 Evidence from spending returns at recent elections suggests that notional support of between £200 and £500 in value is unusual and constitutes less than 1% of total PPERA party spending. This suggests there is scope to reduce the burden created by the current rules by raising the notional spending threshold to match the permissibility threshold.

Solution

4.32 The threshold for notional spending should be increased to £500, the same as the permissibility threshold for donations.

Implications

4.33 A number of parties agreed with this proposal, although one party did express concern about its associated risks. We recognise there are risks associated with raising the notional spending threshold from £200 to £500. This increase would mean that larger amounts of notional spending than at present could be incurred without being reportable or counting against the PPERA party spending limit. However, given the evidence that notional party spending under £500 is infrequent and constitutes a small fraction of overall campaign spending, we think the risks of increasing the reporting threshold to £500 are acceptable and that this change would remove some administrative burdens for campaigners.

Recommendation 28

The PPERA thresholds for notional spending and donor permissibility should be equalised at £500.

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[71] Section 50, PPERA

Definition of regulated spending for non-party campaigners regulated by PPERA

Context

4.34 There are two sets of rules to regulate campaigning at elections by non-party campaigners or "third parties"[72]– people and organisations who are not standing for election, but try to influence voters' choices. In our guidance we describe these as the rules on 'local' and 'general' non-party campaigns. In this report, we refer to them as 'local' and 'PPERA' non-party campaigns (see the explanation of terms used in this report, paragraph 1.25).

4.35 The local rules, set out in the Representation of the People Act 1983, apply at all elections and place a limit on what people and organisations can spend on campaigning for or against a particular candidate in a ward, constituency or local electoral area[73]. This spending limit[74] covers spending on most campaign activities, including leaflets, meetings and websites.

4.36 The PPERA rules apply to spending at major elections by people and organisations campaigning for or against:

- specific political parties,
- parties or candidates that support particular policies or issues, or
- particular types of candidate[75].

4.37 The rules on PPERA non-party campaigning apply to 'election material' – that is, to the production and distribution of material (such as leaflets, adverts or websites) that (i) is made available to the public, and (ii) can *reasonably be seen as intended* to promote or oppose the electoral success of a party or group of candidates, or to enhance their standing. Since 'election material' is defined by *perceived* intent, something can be regulated as election material even if it is also intended to achieve another purpose, such as raising awareness of an issue. The rules only apply where campaigners spend over a threshold, to avoid regulating low-level campaigning[76].

4.38 It is inherently complex to regulate non-party campaigning because it involves a wide range of actors, including individuals, companies, charities and trade unions, as well as single-issue campaigners. Many of these spend most of their time engaged in activities that are not related to campaigning at elections. This means that the rules need to set a balance between enabling

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[72] While PPERA refers to these as third parties, we use the term non-party campaigners in our guidance and reports because it is often easier for campaigners and others to understand.
[73] Section 75, RPA 1983
[74] The local non-party campaigner spending limit depends on the type of election. For example, for a UK general election, the limit is £500 and applies from the date Parliament is dissolved. There is no spending limit on campaigning that happens before this date. .
[75] See Part VI, PPERA
[76] For more information on the level of these thresholds, see paragraph 4.51

participation in the democratic debate and appropriately controlling non-party campaigning that may affect the outcome of the election, while permitting continuity in non-election related activities.

Issues

Range of activities covered as regulated campaign spending

4.39 The controls on PPERA non-party campaigning apply only to election material, and not to other campaigning activity such as events, media work or market research on polling intentions. However, such activity is covered by the rules on local non-party campaigning, election campaigning by candidates and political parties, and campaigning at referendums.

4.40 Our review has considered the difference in the breadth of activities covered by the rules for these campaigners. We have not identified a clear reason why the non-party campaigner controls only apply to election material. The Fifth CSPL report proposed that a wider range of activities should be covered[77].

4.41 The difference means that there is a potential gap in the rules covering UK elections. For example, if a non-party campaigner organised a series of activities such as public rallies and media events, the only spending caught by the current rules would be any election material they make available to the public while doing so. However, if a non-party campaigner carried out these activities on behalf of a political party, the cost of the full range of activities would count towards the party's spending limit.

Lack of flexibility to update controls on non-party spending compared to other campaign expenditure

4.42 PPERA does not provide flexibility to update the rules on non-party campaigning through secondary legislation. However, the list of items defined as controlled campaign spending by political parties can be amended through order-making powers of the Secretary of State. These order-making powers apply either after consultation with the Commission or to give effect to a recommendation of the Commission.

Solution

4.43 To address these issues, the rules on PPERA non-party campaigning that is intended to influence voters should be changed to encompass a broader range of campaigning activities. They should more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. However, this would need careful consideration, as discussed below.

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[77] Committee on Standards in Public Life (CSPL), *The Funding of Political Parties in the United Kingdom: Volume 1 Report Cm 4057-I*, (October, 1998) paragraph 10.77 www.public-standards.gov.uk/wp-content/uploads/2012/11/5thInquiry_FullReport.pdf

4.44 In addition, the Government should have new powers to make revisions to the rules on PPERA non-party campaigning as campaign methods change over time. This should work in a similar way to the current powers to modify other definitions of regulated spending items.

Implications

4.45 Making changes to the range of activities covered by the non-party campaigner rules needs to be done carefully. As highlighted above, it would be important to take into account the range of campaigners that exist, and the need to set a balance between enabling participation in the democratic debate and appropriately controlling non-party campaigning that may affect the outcome of the election, while permitting continuity in non-election related activities.

4.46 It would also be important to assess the impact of these changes on us as the regulator, because they could widen the range of campaigners that we advise and regulate. We have considered these factors when making our recommendations, and Government, and in due course, Parliament would want to consider them carefully as well.

4.47 The new rules need to recognise that political parties and non-party campaigners have differing reasons for seeking to influence voters' choices. While political parties promote the electoral prospects of their candidates, non-party campaigners can have a wide range of motivations to promote or oppose electoral support for candidates, parties and policies. The rules should therefore be carefully drawn to focus on spending that relates to campaigning, rather than to other activities. For instance, if an organisation routinely buys opinion polling data to inform its policy development, any expansion of the PPERA rules to cover opinion surveys or polling should only cover spending that relates to influencing voting choices during the regulated period.

4.48 The spending limits on PPERA non-party campaigning would need to be reviewed if the scope of activities covered by the rules is widened. The Bowman case on local non-party campaigning highlighted the need to ensure that spending limits on non-party campaigning are sufficient to enable freedom of expression[78].

4.49 Charities can find it difficult to understand how the PPERA controls on campaigning at elections and referendums interrelate with charity law on political activity. Charities are allowed to engage in political activity but should avoid activity that is *party* political[79]. We are currently working with the UK's

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[78] The Bowman case concerned an anti-abortion campaigner whose spending on local leaflets exceeded the then RPA spending limit of £5 for a non-party campaigner. The ECHR ruled that if spending limits were set unreasonably low, this could effectively be seen as a bar on freedom of expression. The RPA limits were increased after that judgment

[79] The Public Administration Select Committee (PASC) published a report in June 2013 on Regulation of the Charitable Sector and the Charities Act 20006, including consideration of the rules governing political activity by charities. (see link below)

charity regulators to develop more guidance for charities on how the current rules will apply to charities at forthcoming electoral events[80].

4.50 CSPL's Thirteenth Report noted that a donation cap could be expected to lead to funding being diverted to other ways of influencing the political process, including non-party campaigns. In our view, it is likely that the current rules on non-party campaigning would need to be tightened if a donation cap on parties is introduced. These recommendations are not designed to prepare for those potential reforms, but would provide a basis for any future changes.

Recommendations 29 and 30

- The rules on PPERA non-party campaigning that is intended to influence voters should be changed so that they more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. It would be necessary to review the implications for the campaign spending limits set by PPERA.

and

- A new order-making power should be created to enable the Government to update the rules on PPERA non-party campaigning as campaign methods change over time.
- As with other PPERA and RPA order-making powers, it should apply either after consultation with the Commission or to give effect to a recommendation of the Commission.

Regulation of spending before campaigners register

Context

4.51 The PPERA non-party campaigning rules allow campaigners to spend up to a certain threshold before they have to register with us and comply with reporting and donation requirements. It can be an offence to spend over the threshold on campaign material without registering as a non-party campaigner[81]. The thresholds were proposed by the CSPL Fifth Report to ensure that non-party campaigners would not be automatically caught by the 'general' rules for very low cost activity. The thresholds are £10,000 for campaigning in England and £5,000 in each of Scotland, Wales and Northern Ireland. The same rules apply for referendum campaigners, but the threshold is £10,000 for PPERA referendums in any part of the UK.

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www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/inquiries/parliament-2010/regulation-of-the-charitable-sector-and-the-charities-act-2006/

[80] We are currently working with the Charity Commission for England and Wales on applying lessons from the 2010 UK General Election to the forthcoming UK General Election, and the Office of the Scottish Charity Regulator (OSCR) on guidance for campaigners about the referendum on Independence for Scotland

[81] Section 94(4), PPERA

4.52 Campaigners must submit a spending return after the date of poll, but only have to itemise and provide evidence of spending incurred after the date when they notify their intention to register with us. Campaigners only need to report a **total figure** for any spending incurred before this point[82], whether or not such spending exceeds the threshold for registration.

Issue

4.53 The current rules leave it open to campaigners to choose to register only after they have started to incur substantial spending, and thus to avoid detailed disclosure of that spending (and therefore potentially challenge on the total spent).

4.54 Spending more than the relevant threshold without registering with us is an offence, and we can issue civil sanctions for non-compliance. We have not done so in the past, partly because we have not had civil sanctions available in past cases of late registration, and partly because there has been limited value in taking enforcement action when campaigners ultimately register and therefore report their spending.

Solution

4.55 We think that if non-party campaigners and referendum campaigners spend over the registration threshold it is reasonable that they should have to itemise any regulated spending they incur prior to their registration with us.

4.56 If campaigners had to provide details of all spending incurred before registering, this would reduce the incentive for deliberate late registration. In cases where a campaigner had good reasons not to record spending in the required detail before registering, we could take that into account in dealing with the resulting breach of the rules.

Implications

4.57 The current rules recognise that campaigners may not realise they are regulated (and therefore have to keep records) until after they have started campaigning. However, the rules still require campaigners to report the total they have spent over this period, so do not reduce the substantive regulatory burden on campaigners. Where people or organisations are spending substantial amounts on campaigning activity intended to influence voter choice in the run-up to an election, it seems reasonable that they should be able to show what they have spent it on. The evidence would be required to accompany the campaigner's spending return which is due to be submitted either 3 or 6 months after the date of poll, which is a reasonable time period in which to obtain copies of invoices and receipts if originals were not retained when the spending was incurred.

[82] Section 96(5), PPERA

Recommendation 31

Registered non-party campaigners and referendum campaigners should be required to report itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with the Electoral Commission.

Requirements for spending returns when a registered campaigner has not exceeded the registration threshold

Context

4.58 Non-party campaigners and referendum campaigners that intend to spend more than £10,000 (or £5,000 for non-party campaigners in Scotland, Wales and Northern Ireland) must register with us and comply with controls on their spending and funding.

Issue

4.59 Some campaigners register with us because they expect to spend more than the threshold, but then do not in fact spend enough to have needed to register. However, they are still required to submit a full statutory return with information about their spending and donations[83].

4.60 Requiring a full spending return from organisations that need not in fact have registered is an unnecessary administrative burden, and may discourage campaigners who are unsure how much they will spend from registering on a precautionary basis. From our point of view, it is helpful if organisations that are planning to campaign at elections and referendums register with us early on, so that we can offer advice and guidance on how to comply with the rules. However, if they subsequently spend less than the registration threshold there is no reason why they should have to submit a full return.

Solution

4.61 We think that the reporting requirements for non-party campaigns and referendum campaigners can be made more proportionate by requiring less information from those who register with us but then spend under the registration threshold.

Implications

4.62 Although our recommendation would reduce the current level of transparency for non-party campaigners and registered campaigners that spend less than £10,000 (or £5,000), the regulatory impact will be minimal, since it would not in fact have been necessary for these organisations to register with the Commission.

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[83] For non-party campaigners see Section 96, PPERA and for campaigners at referendums see Section 120, PPERA

4.63 The Scottish Independence Referendum Bill currently includes this provision for registered campaigners at the referendum.

Recommendation 32

Registered non-party campaigners and referendum campaigners that spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

Referendum campaigners – requirement to make a declaration of the outcome supported

Context

4.64 Campaigners that intend to spend more than £10,000 at PPERA referendums must register with us. Once registered, campaigners have to follow rules on donations, spending and reporting. The registration requirement also applies to political parties that intend to campaign at a referendum.

4.65 To register, each campaigner must submit a declaration stating the outcome or outcomes for which they propose to campaign[84].

Issue

4.66 The PPERA registration and declaration system does not restrict the number of outcomes for which a campaigner can register, or require any link between that declaration and the outcome for which the campaigner actually campaigns. For example, a campaigner could register for the 'Yes' outcome but then campaign for the 'No' outcome, or indeed for both outcomes, over the course of the campaign. The current requirement achieves no clear purpose and may actively confuse voters.

Solution

4.67 We think that the outcome declaration for referendum campaigners can be removed.

Implications

4.68 An alternative approach to removing the declaration requirement would be to make it more meaningful, by requiring that a registered campaigner can only incur referendum spending in support of the outcome for which they have registered. However, this would prevent organisations that wish to participate in a referendum campaign from deciding in good faith to switch their support to another outcome after they have registered, unless there is an option for registered campaigners to amend their declaration. The existence of such an option would again lead the value of the declaration requirement into question. One of the political parties has also raised some objections to this

[84] Section 106, PPERA

idea. On balance, we think the best solution is to remove the requirement altogether.

Recommendation 33

The requirement to declare which outcome(s) a campaigner proposes to campaign for when registering for a referendum should be removed.

Candidates

Candidate spending returns

Context

4.69 Every agent for a candidate standing for election must complete a spending return after the election. The return has to give information about authorised spending on campaigning during the regulated period that promotes the candidate's electoral success. It also has to provide information on any donations over £50 which contributed towards funding that campaigning. These returns have to be submitted to the relevant Returning Officer[85].

4.70 Along with the spending return, the agent must submit all accompanying invoices and receipts, any declaration of notional spending they have received, and a declaration confirming the return is accurate. Candidates must also submit a declaration.

4.71 At most elections, the Returning Officer must then make these documents available for inspection for two years after their receipt, either at their office or a convenient place chosen by them[86]. When doing so, they must redact the address details of individual donors and ensure all documents are redacted in accordance with data protection legislation. At certain elections, they must also circulate a notice in at least two local newspapers informing the public that the documents are available for inspection[87].

4.72 Returning Officers must also provide copies of these documents on request for a prescribed fee and at some elections they must forward un-redacted copies on to us for monitoring purposes[88]. After two years, the Returning Officer can either destroy the original documents or, if requested, return them to the candidate.

Issue

4.73 There is uncertainty as to whether the current legislation allows Returning Officers to publish candidate spending returns online as well

[85] Section 81, RPA 1983
[86] Section 89, RPA 1983
[87] Section 88, RPA 1983
[88] Section 87A, RPA 1983

making them available for inspection in a physical place, such as a local authority office. Making returns available online, at least for major elections, would improve transparency. The current requirement to circulate a notice in two newspapers is also restrictive and expensive compared to other alternatives, such as publishing the notice on the council's website. Given developments in technology, the current legislation is outdated.

4.74 It may be appropriate to make different provisions for different types of election. At local government elections, it may be appropriate for returns to be available only locally. For elections such as UK Parliamentary general elections, there is a stronger case for publishing returns online. Any reform in this area should allow for an incremental and flexible approach to change.

Solution

4.75 The provisions about making candidate returns available for inspection should be updated to take into technological change for major elections.

Implications

4.76 Moving to the online publication of candidate returns will require careful preparation. We will need to provide guidance and support for Returning Officers, including on data protection issues. We will also have to review the current range of forms used for candidate spending and encourage the use of simpler forms which readers can readily understand. Currently, it can be difficult for readers to understand which information on a spending return is legally required or optional.

4.77 We have had positive feedback from administrators about our proposals for online publication. However, as the publishers of candidate returns, local authorities will also have to make sure they have the capacity and technical ability to make the documents available online in a timely fashion. We do not think the online publication of candidate returns would have any major resource implications for local authorities. Feedback from administrators suggests that allowing them to advertise the returns' availability online could save money.

4.78 These proposals would make it easier for many people to access information about candidate spending. They would supplement rather than replace the current arrangements for physical inspection of the information.

Recommendations 34 and 35

The RPA 1983 should be changed so Returning Officers are able to fulfil their duty to advise the public that spending returns are available for public inspection by publishing a notice online as well as, or instead of, in two newspapers.

There should be an Order-making power added to the RPA 1983 to allow the Secretary of State to determine how candidate spending returns are made available for inspection or published at each election.

- The Secretary of State should initially use this Order-making power to confirm that Returning Officers can publish candidate spending returns online.

- As with other PPERA and RPA order-making powers, it should apply either after consultation with the Commission or to give effect to a recommendation of the Commission.

Simplifying rules on pre-candidacy spending and donations

Context

4.79 There are limits on how much candidates can spend at elections[89] and controls on the sources of donations towards their campaigning[90]. The regulated period when these controls apply usually starts when individuals formally become a candidate and ends on polling day.

4.80 In 2003 the Commission recommended that the regulated period for candidates at elections where there are PPERA party spending controls[91], be extended to four months[92]. However, this recommendation was not taken forward in the Electoral Administration Act 2006 when other recommendations from the Commission's 2003 report were implemented.

4.81 In response to continuing concerns about levels of campaigning before people officially became a candidate, the Political Parties and Elections Act 2009 introduced new controls on pre-candidate spending and donations for UK Parliamentary general elections. These applied where a Parliament has sat for more than 55 months and were designed to regulate pre-candidacy spending and donations in the context of uncertainty over the day of poll. They created a new, separate regulated period which imposes a separate pre-candidacy spending limit[93], known as the 'long' campaign. This was in addition to the existing spending limits that began when an individual formally became a candidate, which became known as the 'short' campaign.

4.82 At the 2010 UK Parliamentary general election, the new pre-candidacy 'long' regulated period ran from 1 January 2010 until the dissolution of Parliament on 12 April. The usual regulated period then applied to candidates for the 'short' period from dissolution until the poll on 6 May. Similar pre-candidacy provisions were introduced for the 2011 Scottish Parliament

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[89] Section 76, RPA 1983 and
[90] Schedule 2A, RPA 1983
[91] For more information on the PPERA party spending controls, see Appendix B
[92] The Electoral Commission, Political Parties, Elections and Referendums Act 2000 (PPERA): Recommendations for change, (June, 2003) p.30, www.electoralcommission.org.uk/__data/assets/pdf_file/0003/63993/PPERA-report---Recommendations-for-change.pdf
[93] Section 76ZA, RPA 1983

elections[94], although the wording of the Order meant that donations towards spending during the new 'long' campaign were not regulated. Pre-candidacy regulation has not been introduced for other elections[95].

Issue

4.83 Our experience from the 2010 UKPGE and the 2011 Scottish Parliament elections shows that having two separate regulated periods confuses candidates and agents. For example, out of over 4,000 candidates who submitted returns for the 2010 UK general election, more than 1,000 candidates' agents appear to have had problems understanding the new rules, which could have led to unintentional breaches of the law. Based on analysis of spending returns, we think these problems were caused largely by having to comply with two separate spending limits in respect of a single election campaign[96].

4.84 The Fixed Term Parliaments Act 2011 has set the date for future UK Parliamentary general elections[97], barring early dissolution. Based on the Act, the 2015 general election will be held on 7 May. Despite this, the 'long' and 'short' candidate periods introduced in 2009 will continue to apply to the general election in May 2015, unless the rules are amended before then[98].

4.85 Replacing the current arrangements with a single regulated period and spending limit would reduce the administrative burdens that the current rules impose on candidates and agents, and the risk of accidental non-compliance with the rules.

Solution

4.86 There is scope to simplify the current controls on pre-candidacy spending and donations. However, the options for change raise policy issues which would need further consideration and consultation with campaigners, and we discuss these below.

Implications

4.87 As described in our regulatory report on the 2010 UK general election, the new period of pre-candidacy regulation improved the transparency of local campaigns before the dissolution of Parliament[99]. During the three months of

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[94] Article 43, Scottish Parliament (Elections etc.) Order 2010

[95] The review has only considered how to simplify the pre-candidacy rules where they currently exist. We have not considered how they could be applied to elections to other legislatures or whether the lengths of the existing controls are still appropriate, as this is beyond the scope of the review.

[96] This is based on an analysis of spending returns from the 2010 UKPGE, forwarded to us

[97] Section 1(2), Fixed-term Parliaments Act 2011

[98] While there is now greater certainty over when UK Parliamentary general elections will be held because of the Fixed Term Parliaments Act, there are still circumstances in which a snap election can take place. In such cases, no pre-candidacy limits will apply. The same applies for general elections to the Scottish Parliament.

[99] The Electoral Commission, *UK general election 2010: Campaign spending report*, (February, 2011) p.22

the ‘long’ campaign, candidates spent over £11million and received over £10million in reportable donations[100]. This is in addition to the £15million spent by candidates during the 'short' campaign between Parliament’s dissolution and polling day.

Potential effect on spending patterns

4.88 Replacing the current arrangements with a single regulated period and spending limit would simplify the requirements for agents. However, introducing a single limit based on the combined ‘long’ and ‘short’ limits would allow candidates to use what is currently four months-worth of campaign resources in the last few weeks before the day of poll.

4.89 For example, at the 2010 UK Parliamentary general election, the spending limit for the long campaign was around £30,000 in each constituency, while the spending limit for the short campaign was around £10,000. Combining the two limits into one would create a spending limit of £40,000, which candidates could choose to spend during the final weeks of the campaign. This is substantially more than the level of spending that the current ‘short’ limit allows, and could lead to perceptions that candidates with substantial resources have an unfair advantage.

Views of political parties

4.90 We have discussed this option with the political parties that contributed to the review. The majority of these parties supported the idea of a single regulated period with a single spending limit. One party commented that they would favour any simplification of the candidate spending rules that could reduce the potential for compliance mistakes during the most intensive period of campaigning before an election.

4.91 Few of the parties we spoke with expressed concerns about creating the scope for significantly higher levels of campaigning by candidates in the final weeks before an election day. However, it was not possible for this review to seek views from the wide range of campaigners that could be affected by a change, including independent candidates or representatives of small parties. We therefore recommend that Government should consult on any proposed changes to the current ‘long’ and ‘short’ period of pre-candidacy regulation.

Recommendation 36

Experience from recent elections indicates that there is a case for combining the 'long’ and ‘short’ campaigns into one.

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www.electoralcommission.org.uk/__data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf

[100] Because the pre-candidacy controls were introduced close to the election, as part of the transitional provisions, the long campaign only ran from 1 January 2010 and not the full four months.

Government[101] should consult political parties and other campaigners on this change because it would allow significantly higher levels of spending close to polling day and could disadvantage candidates with relatively limited funds.

Clearer candidate spending limits

Context

4.92 At most elections, candidates and their agents have to calculate their spending limits[102]. The limits are based on a fixed amount plus a certain amount for each registered elector in the relevant area at a given point in time. At elections above local government level, the limit also takes into account the type of electoral area. The amount per voter in rural (county) constituencies is larger than the one for urban (borough/burgh) areas. The per voter calculation is based on the number of registered voters on the last date for publication of the notice of election; this is between 15 and 25 working days before the day of poll, depending on the election.

4.93 Candidates and agents do not have to calculate their spending limit at the following elections, as it is specified on the face of the legislation:

- Greater London Authority[103]
- Police and Crime Commissioners in England and Wales[104]
- by-elections to the UK Parliament[105], Scottish Parliament[106], National Assembly for Wales[107] and Northern Ireland Assembly[108]

Issue

4.94 This means that, for the majority of elections, candidates and agents have to calculate their spending limits on the basis of the number of voters on the register weeks before the date of the poll. Our experience has shown that this causes problems for both campaigners and electoral administrators. We have reported some of these issues in our spending reports for the 2001[109],

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[101] This recommendation applies to UK Parliamentary general elections, which the UK government has legislative responsibility for, and Scottish Parliamentary general elections, which is the responsibility of the Scottish government.
[102] Section 76(2), RPA 1983
[103] Article 3, The Greater London Authority Elections (Expenses) Order 2000
[104] Article 35, The Police and Crime Commissioner Elections Order 2012
[105] Section 76(2)(aa), RPA 1983
[106] Article 42(3), The Scottish Parliament (Elections etc.) Order 2010
[107] Article 47(3)(b), The National Assembly for Wales (Representation of the People) Order 2007
[108] Schedule 1, The Northern Ireland Assembly (Elections) Order 2001 (as amended)
[109] The Electoral Commission, *Election 2001: Campaign spending*, (November, 2002) p.47 www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0017/13157/Election2001Campaignspendingfinalpdf_7546-6677__E__N__S__W__.pdf

2005[110] and 2010[111] UK Parliamentary general elections. The issues have included:

- Candidates and agents using an incorrect or out of date figure to calculate the limit
- Candidates and agents not knowing the type of constituency they are contesting, leading them to believe their limit is higher or lower than it actually is
- Where there are pre-candidacy limits, agents do not know the actual amount until well into the campaign

4.95 Consequently some candidates have accidentally spent over the limit. While it has not been proportionate to pursue any regulatory action in these cases, it is clearly undesirable that the rules create the risk of unintentional non-compliance.

4.96 To reduce the risk of candidates spending over the limit, we ask Returning Officers to provide them with the electorate figure and the other information they need to know what their limit is. This is not a legal duty on Returning Officers but it is good practice, and we monitor it through our performance standards framework.

4.97 However, the current formula-based approach, using an electorate figure based on a date near to the day of poll, imposes an unnecessary burden on administrators at a time when they are very busy. This is a particular issue at local government elections, where there can be a substantial number of candidates requesting this information.

Solution

4.98 To reduce the risks of unintended non-compliance with the rules, the spending limits should be made clearer for candidates and their agents. We have identified three potential ways of achieving this. Due to the different types of elections, some options are more suitable for certain contests than others.

4.99 The options we have identified are:

Option 1:
Specify the actual limits for each electoral area on the face of the legislation. The limits would be calculated using a formula that takes into account the number of electors in each electoral area. *This approach is currently used at the Police and Crime Commissioner elections.*

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[110] The Electoral Commission, *Election 2005: Campaign spending*, (March, 2006) p.36 www.electoralcommission.org.uk/__data/assets/pdf_file/0005/47183/CampaignSpendingweb_20371-14985__E__N__S__W__.pdf

[111] The Electoral Commission, *Election 2010: Campaign spending report,* (February, 2010) pp.27-29 www.electoralcommission.org.uk/__data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf

Option 2:
Specify a single, standard limit for all or most electoral areas. Electoral areas with a particularly large or small electorate could be given a suitably adjusted spending limit. *This approach is currently used at the Greater London Authority elections and by-elections for the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.*

Option 3:
Set an earlier date at which the number of electors in each electoral area determines the value of the spending limit.

Implications

4.100 The implications depend on the solution chosen for each election.

Options 1 and 2 provide the most certainty for candidates, because the limits would be set out in legislation and could then be included in our guidance for candidates, agents and Returning Officers.

4.101 Option 1 provides an individual limit for each electoral area, allowing the limit to reflect varying geographical size and electorates. This approach was taken for the 2012 Police and Crime Commissioner elections (PCC) on our advice. Based on our analysis of the returns submitted at the 2012 PCC election, almost 90% of candidates and agents reported the correct spending limit on their return. This is much higher than at the 2010 UKPGE, where fewer than 50% of candidates and agents sampled reported the correct number of registered electors that defined their spending limit.

4.102 The downside of this approach is that for some elections, the list of limits for each electoral area would be very long (e.g. 650 limits would have to be set out in legislation for UK Parliamentary general elections), and the limits would need to be revised regularly if the link between spending limits and electorates is to be maintained. Option 2 would therefore be legislatively simpler than option 1, but would weaken the link between the candidate spending limit and the size of each electorate.

4.103 At some elections such as local government elections, option 1 would not be practicable because there are too many electoral areas to set out each individual limit in legislation, and option 2 may be undesirable because variations in electorate size may make it difficult to use a standard limit.

4.104 Option 3 would mean that the individual limits would not be set out in legislation, but it would still enable candidates and agents to obtain the electorate figure well in advance of the regulated period. This would be particularly helpful at elections where there are pre-candidacy controls on spending. It could also help reduce the pressure on administrators in the run-up to elections, since the relevant figures could be published well in advance.

4.105 Option 3 could be implemented by EROs calculating and publishing the spending limit for their area soon after the revised relevant date. This would have to take into account any ongoing impacts from implementing Individual

Electoral Registration (IER) and therefore should be consulted on in due course.

4.106 The solution adopted for each election should minimise the burdens on both campaigners and electoral administrators, whilst making it simpler for candidates to know their limit. In turn, this should help reduce the risk of unintentional non-compliance with the rules. We would be happy to work with governments to identify which option is most appropriate for each election.

4.107 All the parties that contributed views to the review agreed that the rules for determining candidate spending limits are complex, and many had examples of candidates or agents finding it hard to establish the correct limit. Some agreed that limits should be stated on the face of the legislation (options 1 and 2), others felt that the issue could be rectified by bringing forward the date upon which the number of electors is set (option 3). However, those favouring option 3 recognised that plans for the introduction of IER could affect this solution.

Recommendation 37

Candidate spending limits should be defined in such a way that candidates and agents can work out their spending limit easily, in good time for them to plan their election campaign.

Candidate personal expenses

Context

4.108 The concept of personal expenses dates back to the late nineteenth century. Since then it has always been defined broadly, but clearly includes the reasonable travel and accommodation costs of candidates[112]. Although these expenses have always been reportable, they have never counted against candidates' spending limits at UK Parliamentary elections[113]. Similar rules have been applied to all other elections except local government elections, where personal expenses are both reportable and count against a candidate's spending limit.

Issue

4.109 It may be that personal expenses are counted against the local government spending limit because, as candidates at these elections are required to have a connection to the area they are contesting, these expenses are seen as unnecessary. However, at some local government elections, the size of certain electoral areas and the geographically dispersed nature of the population mean that candidates can incur significant personal expenses, such as hotel costs. Where this happens, it will reduce the proportion of their

[112] Section 118, RPA 1983
[113] Section 76(5), RPA 1983

spending limit that they can use on campaigning materials, and may restrict their ability to get their messages across to voters[114].

Solution

4.110 Personal expenses should not count against a candidate's spending limit at local government elections.

Implications

4.111 Requiring candidates to continue reporting their personal expenses will provide transparency and help to deter any attempt to use this exemption to evade the spending limits.

Recommendation 38

Candidates' personal expenses should no longer count towards their spending limit at local government elections. However, personal expenses should continue to be reported on the spending return, as they are at other elections.

Expenses related to candidate's disability

Context

4.112 In 2012, the government ran a pilot fund – the Access to Elected Office for Disabled People Fund (A2EO) – to provide grants to disabled people with extra support needs at elections.

Issue

4.113 The Fund has raised the issue of how costs incurred to meet additional support needs of disabled people are treated under the candidate spending rules[115]. Some of these costs are clearly within the definition of personal expenses, so do not count against the spending limit at all contests except local government elections. If recommendation 38 above is adopted, these costs would no longer count against the spending limit at local government election.

4.114 However, it is not always clear that costs relating to these additional support needs fall within the current definition of personal expenses, which is broad, as discussed above (see paragraph 4.108). This uncertainty is

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[114] We commented on this in our recent on the Scottish local elections held in 2012
The Electoral Commission, *Scottish council elections 2012, Report on the administration of the elections held on 3 May 2012* (September, 2012), paragraph 3.25

[115] The government has passed an Order that exempts certain items from counting against a candidate's spending limit so long as:
• The candidate has received the money from the Fund before the deadline for reporting on spending after an election;
• The money was spent in accordance with the Fund's terms and conditions; and
• The money was spent to remove or reduce barriers to seeking election.
The Representation of the People (Election Expenses Exclusion) Order 2013 has effect from the end of March 2013 to the end of June 2014.

unhelpful for disabled candidates who incur these costs and creates an unnecessary risk that they may unintentionally fail to comply with the rules on candidate spending.

Solution

4.115 Spending on a disabled candidate's support costs should not count against their spending limit at any election.

Implications

4.116 This would increase certainty for disabled candidates incurring extra support costs and should decrease the risk that they will unintentionally fail to comply with the candidate spending rules.

Recommendation 39

Government[116] should legislate to ensure that, where disabled people standing for election incur costs relating to additional support needs, those costs are treated as personal expenses for the purpose of the candidate spending rules. In line with our recommendation on candidates' personal expenses, these types of costs should not count against the spending limit at any election.

Authorised spending on a candidate's return

Context

4.117 A candidate's election agent can authorise someone else to incur election spending. Where this authorised spend is over a certain amount[117], the person who has incurred the spending has to submit a separate spending return and declaration to the Returning Officer, which must also be accompanied by the agent's written authorisation. This is deemed to form part of the candidate's spending return.

Issue

4.118 The requirement for a separate spending return in these instances is double reporting. All spending authorised by the agent must be recorded in the candidate's spending return. The requirement for a separate return does not provide any added benefit and can cause confusion.

[116] The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary and Scottish local government elections.

[117] Only spending over the "permitted sum" needs a separate spending return under Section 75(2) RPA 1983

Recommendation 40

The reporting of spending on candidates' campaigns should be streamlined by removing the requirement for people who have been authorised to incur spending by the election agent to submit a separate return of that spending[118].

Candidates who share resources

Context

4.119 At some elections the spending limit for a candidate is reduced if that candidate and others share resources for their campaign, such as agents and leaflets[119].

Issue

4.120 The list of items that count towards the candidate spending[120] limit has been updated in recent years. However, the definition of candidates who are treated as sharing resources has not been. As well as including resources such as shared leaflets and agents, it includes items such as "clerks" and "messengers", which are not relevant to modern election campaigns.

4.121 More significantly, there is currently no requirement for agents to declare on the spending return whether their candidate is sharing resources and, therefore, subject to a reduced spending limit. This means it is difficult for voters and the Commission to see whether their spending is within the relevant limit.

Solution

4.122 The rules on candidates who share resources should be updated to take into account modern campaign practices. There is also scope to reduce the burdens for agents who are responsible for reporting on the spending and donations of two or more candidates who share resources.

Implications

4.123 Updating this definition will help ensure that the legislation reflects modern campaigning. Requiring agents to make it clear if their candidate is sharing resources will help both us and voters check whether they have spent within their spending limits. We recognise that requiring agents to declare this would be a small additional administrative burden, but think this is offset by the increased transparency it brings.

4.124 Allowing agents of two or more candidates to submit a single spending return should be a reduction in their administrative burdens. Doing this may

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[118] The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary and Scottish local government elections.
[119] Section 77, RPA 1983
[120] Schedule 4A, RPA 1983

also help us and members of the public to understand where candidates have campaigned together at elections.

Recommendation 41

The definition [in the RPA 1983] of candidates who are treated as sharing resources should be updated to reflect the current scope of the candidate spending rules and the nature of modern campaigning.

Where a candidate is sharing resources with others, the agent should be required to make this clear on their spending return.

Where candidates share an election agent, the agent should be able to account for those candidates' spending and donations in a single spending return.

Imprints on campaign materials

Imprint rules for campaign material regulated by PPERA

Context

4.125 PPERA requires political parties, non-party campaigners and referendum campaigners to include certain details ("imprints") on printed campaign material[121]. This allows members of the public to identify who is responsible for the material and who printed it. A breach of this requirement is an offence, for which we have civil sanctioning powers. We have made a separate recommendation regarding our regulatory remit for certain PPERA offences, including imprints, at paragraphs 5.16-5.34.

4.126 The RPA 1983 also requires candidates to include imprints on printed campaign material[122]. Our regulatory role for candidates only covers the rules on spending and donations[123]; it does not cover these rules on candidate imprints. We do not have the function of monitoring and ensuring compliance with the rules on local non-party spending or imprints. Breaches of these rules are a matter for the police.

Issue

4.127 Although campaigners are increasingly engaging with voters via electronic means, such as text and email, there is currently no requirement for them to include information in non-printed campaign material to show who is responsible for it. Many campaigners already include such information as good practice. However, to ensure voters can see who is responsible for non-

[121] Section 143, PPERA
[122] Section 110, RPA 1983
[123] Section 145(1)(b), PPERA

printed campaign material, it should become a statutory requirement under PPERA.

Solution

4.128 We think the legislation should be updated so it is a requirement to include proportionate imprints on electronic PPERA-regulated campaign material.

Implications

4.129 There were no objections from parties to this recommendation, and some highlighted they already provide this information as good practice. However, it was stressed that there would need to be careful consideration of how this was drafted in the legislation.

4.130 PPERA already includes a power to extend the current imprint requirements to cover non-printed material[124]. Since many non-printed communications, such as Tweets, are inherently short, any new requirement would have to include some discretion as to the exact form and location of this information. We would expect to produce guidance setting out what we regard as appropriate for common forms of non-printed material. We recognise that some PPERA campaigners have to provide similar information under different pieces of legislation – for example, companies are required by regulations to provide their company details on their websites and other electronic material[125].

Recommendation 42

The Government should introduce requirements for political parties, national non-party campaigners and referendum campaigners to include proportionate imprints on online and electronic campaign material.

Imprint rules for candidate campaign materials

4.131 The above recommendation only relates to material produced by parties, non-party campaigners and referendum campaigners. At present we think that it would be disproportionate to introduce this requirement for candidates and local non-party campaigners, given that breaches of the candidate and local non-party campaigner rules on imprints can only be sanctioned by criminal prosecution. We will continue to encourage candidates to use imprints on electronic material as good practice.

4.132 If, as we propose below at paragraph 5.10, we obtain new regulatory powers and sanctions for certain candidate offences, it may be appropriate to extend our regulatory remit to include candidate imprints. However, this would need careful consideration of the evidence for change. In the meantime, we

[124] Section 143(6), PPERA
[125] The Companies (Trading Disclosures) Regulations 2008

will assess available records of breaches of the candidate imprint rules to assess whether there may be a case for change.

5 Enforcement of the rules

Introduction

Enforcement of the rules

5.1 The current arrangements for dealing with breaches of the rules on political finance in the UK are a patchwork depending on the type of campaigner concerned. Most breaches of the rules are currently criminal offences. The Electoral Commission is responsible for securing compliance with the rules that cover political parties, candidates at elections, some non-party campaigners at elections and referendums, and some other regulated individuals and organisations. Since 2010 we have had robust investigatory powers to deal with suspected breaches by parties and campaigners, and have been able to impose civil sanctions for many breaches. However, there are some breaches, including all those involving candidates, for which we have no sanctioning powers. We can only refer such cases to the police or prosecuting authorities for criminal investigation.

5.2 In this chapter, we recommend changes that would, over time, strengthen our powers to address alleged breaches by candidates at major elections. This should improve public confidence that the rules are effectively enforced. We would, however, not expect these to be in place before 2020. We also propose that a number of breaches of the PPERA rules that are essentially administrative should no longer be framed as criminal offences, but should become purely civil. We hope that this will encourage participation in the political process; some parties have told us that the prospect of criminal investigation for breaching an administrative requirement is understandably off-putting, particularly for volunteer officers. Finally, we recommend some smaller changes to address technical problems with our current sanctioning powers.

5.3 Before reading, please refer to our summary of terms used in this report, at paragraph 1.25.

Changes to our powers and sanctions

Enforcement of the rules for candidates and local non-party campaigners (RPA rules)

Context

Candidates

5.4 We have the role of monitoring and taking steps to secure compliance with the rules on election candidates' spending and donations under the RPA 1983, as well as the PPERA rules on the funding and spending of political parties and other campaigners[126].

5.5 As described above, since December 2010 we have had stronger investigative and sanctioning powers for most breaches of the PPERA rules, including the ability to use a range of flexible civil sanctions to encourage compliance. However, the new powers and sanctions do not apply to the rules on candidates[127]. This means that, where we have grounds to suspect there has been a breach of these rules, we do not have the tools to investigate or impose sanctions. In most cases our only options are to refer suspected breaches for criminal investigation, or to offer further guidance to reduce the risk of future breaches[128].

Local non-party campaigners

5.6 The RPA 1983 also imposes controls on the amount that local non-party campaigners can spend on campaigning for or against a candidate (the limit is £500 at a UK Parliamentary general election)[129][130]. There are no controls on the donations these campaigners receive, and they are not required to submit a spending return. We do not have any role in monitoring or ensuring compliance with the spending limits on local non-party campaigners. Any suspected breach of these spending limits is a matter for the police.

Electoral conduct

5.7 There are also rules on elements of candidates' and local non-party campaigners' campaigns other than spending and donations. These relate to electoral conduct and general corrupt and illegal practices, such as paying someone to withdraw their candidacy and making false statements about candidates. Again, we do not regulate these rules and they are a matter for the police, prosecuting authorities and the courts.

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[126] Section 145, PPERA
[127] Part 1, Political Parties and Elections Act (PPEA) 2009
[128] We can also seek forfeiture of impermissible donations to candidates. We have some powers to request information from candidates and agents, but cannot use those powers in cases where we have reason to believe that a breach may have occurred.
[129] Section 75(1ZA), RPA 1983
[130] See page 79 for our recommendations on non-party campaigners regulated by PPERA

Issue

5.8 Currently we have a statutory remit to monitor and secure compliance with the rules for candidates, but we do not have the tools to do this effectively. We have seen some high-profile alleged breaches of the candidate rules, mostly at national elections, where referral for criminal prosecution was not considered in the public interest, but where it may well have been appropriate to issue a civil sanction or to investigate the allegation further if the powers to do so were available.

5.9 Recent elections have shown that local non-party campaigners can make relatively high profile interventions during elections. If future campaigns on similar lines appear to breach the rules, but it is not considered in the public interest to pursue a criminal investigation, that could also affect public trust in the regulatory system.

Solution

5.10 We think that extending our investigative and sanctioning powers at major elections for offences relating to candidate spending and donations would help ensure compliance with the rules at national elections and strengthen voters' trust in the regulatory system. However, we recognise that there would be an ongoing cost to setting up and maintaining the appropriate structures, including within the Commission, to make an enhanced regime work effectively.

5.11 If the Government does consider extending our powers over the candidate spending and donation rules, it would also make sense to review the current arrangements for regulation of local non-party campaigners, where responsibility currently rests with the police. Any proposed change to the current arrangements would need careful consideration of the resource implications for the Commission and the potential regulatory benefits. Since we do not regulate local non-party campaigning, we do not hold any data on current levels of activity or compliance with the rules, and are not able to assess the implications at present.

5.12 As with any significant reform to the regulatory regime, these kinds of changes would require a lead-in time to allow Government and Parliament to restructure the law, and then allow sufficient time for campaigners, the Commission and law enforcement authorities to adjust prior to implementation.

5.13 If these new powers and sanctions were introduced for all elections at once, there could be significant resource implications for the Commission, especially in years where there are a large number of local government seats being contested. This could create a high risk that we will not be able to deal with allegations in a timely manner, which in turn could erode trust in the regulatory system. We therefore propose that there should be a staged approach to introducing the Commission's new powers for different sets of elections. This should be defined by Order-making power to allow for greater flexibility.

Implications

5.14 The required changes to the legislation would need to be made in good time before they come into force, so that we can consult and publish a revised enforcement policy, and produce suitable guidance for candidates, agents and non-party campaigners on our approach to using the powers and sanctions. The earliest opportunity where we would expect to use these new powers is the UK Parliamentary general election in 2020.

5.15 There would also need to be further consideration of how these new powers and sanctions interact with the rules on election petitions and the disqualification of candidates. Where there are challenges to election results or proceedings that could result in the disqualification of a candidate, this should remain a matter for the courts. The Law Commission's current review of electoral law is considering these issues, and we will highlight our proposals as part of that work.

Recommendations 43 and 44

Candidates

The Commission should be provided with investigative powers and sanctions for offences relating to candidate spending and donations at specified elections. Given the lead-in time that would be required to prepare for these changes, we recommend that changes should apply to the 2020 UK general election at the earliest.

We think these tools should initially be available at elections where, from our experience, unsanctioned breaches of the rules are likely to have the most impact. These are elections to the following legislatures:

- UK Parliament
- Scottish Parliament[131]
- National Assembly for Wales
- Northern Ireland Assembly

Local non-party campaigners

If we are given investigative and sanctioning powers in respect of the candidate spending and donation rules at specified elections, the Government may also wish to review the current arrangements for ensuring compliance with the rules on spending by local non-party campaigners, where we currently do not have a role.

Any proposed changes to both sets of arrangements would need to consider the cost of setting up a new regulatory regime against the potential regulatory benefits.

[131] The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary elections.

Enforcement of the rules for campaigners regulated under PPERA

Context

5.16 PPERA imposes rules about political funding and campaign spending on political parties, non-party campaigners, referendum campaigners and other regulated individuals and organisations, and gives the Commission the role of ensuring compliance with the rules. If an individual or organisation does not comply with one of the rules, this is a breach of the rules which may lead to us taking enforcement action. (Enforcement of the separate rules about the funding and spending of candidates is discussed above at paragraphs 5.4 - 5.15)

The original PPERA penalties

5.17 Many breaches of the PPERA rules may amount to criminal offences, and initially the law provided us with very limited and inflexible sanctioning powers to deal with breaches. For example, there were prescribed fines for a limited number of breaches relating to the failure to deliver statutory reports on time, and there was no provision for discretion by the Commission in relation to the facts of the case or the level of the fine. For all other potential breaches where regulatory action may have been appropriate, our only option was to refer the case to the police or prosecuting authorities for criminal prosecution. In such cases, we therefore had to decide between referral for criminal prosecution (which was often not a proportionate response to the breach) or taking no action at all.

Changes to penalties in 2010

5.18 To address this problem, the Commission was given civil sanctioning powers for some breaches of PPERA in December 2010[132]. These were granted to enable us to regulate in a more proportionate way, and were modelled on powers given to other regulators under the Regulatory Enforcement and Sanctions Act 2008. In most cases, we can only use a civil sanction where it is established that a criminal offence has been committed[133]. Civil sanctions are not available in respect of 30 criminal offences in PPERA, such as those involving deliberate intent to evade the law, or wilful attempts to conceal evidence. These breaches can only be sanctioned by criminal prosecution.

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[132] Part 1, Political Parties and Elections Act (PPE) 2009

[133] There are 69 criminal offences for which civil sanctions are currently available. Civil sanctions are also available for eleven breaches which are not in themselves criminal offences. Further details are available in this list of the offences and sanctions on our website www.electoralcommission.org.uk/__data/assets/pdf_file/0006/106737/Table-of-offences-and-sanctions.pdf

5.19 Our enforcement policy[134] explains our investigative and sanctioning powers and how we use them to achieve our regulatory objectives, in line with the principles of good regulation. We published a report about our use of sanctions between 1 December 2010 and 31 March 2012[135] in July 2012.This period saw an increase in compliance with the rules on timely submission of statutory reports, such as statements of accounts and donation and loan reports. The new sanctions and the Commission's efforts to provide support and guidance to parties may account for this improving compliance trend.

Issue

5.20 The civil sanctions introduced in 2010 have provided greater flexibility to deal with non-compliance with many of the requirements of PPERA. However, the current arrangement of applying civil sanctions to criminal offences means that all breaches of the relevant rules have to be assessed as a potential criminal offence, regardless of the nature of the breach. This includes the failure to deliver statutory reports on time[136].

5.21 Many of the individuals responsible for complying with the law at the local level are volunteers. Our enforcement policy recognises that fact, and highlights the importance of regulating in a proportionate way[137]. Since acquiring sanctioning powers, our overall experience is that where volunteer treasurers fail to deliver reports on time, this is generally because of a lack of knowledge, understanding, or prioritisation of their compliance duties rather than deliberate non-compliance or reckless disregard of the rules. That being the case, we do not consider it appropriate that the whole regulatory system is structured around criminal offences.

5.22 During this review, some political parties told us that the prospect of an administrative error leading to a criminal offence can deter volunteers from taking on the treasurer role in party accounting units. A system structured around criminal offences appears disproportionate given that many breaches of PPERA are of an administrative nature.

Solution

5.23 The criminal offences that relate to essentially administrative requirements should be reframed as purely civil. We think that around 30 of the 69 criminal offences where civil sanctions are currently available could be decriminalised.

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[134] The Electoral Commission, *Enforcement Policy*, (December, 2010) www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf

[135] The Electoral Commission, *Use of new investigatory powers and civil sanctions*, (July, 2012) www.electoralcommission.org.uk/__data/assets/pdf_file/0011/149627/Powers-and-sanctions-report-2012.pdf

[136] Before 2010, late delivery of a statutory report was a criminal offence but could also be sanctioned by a separate civil fine.

[137] The Electoral Commission, *Enforcement Policy*, (December, 2010) p.3 www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdfAdd link to paragraph in enforcement policy

5.24 For example, removing criminal offences, but retaining civil sanctions, for failure to deliver statutory reports on time[138] would be sufficient to meet our enforcement objectives. Under the current rules, if a party treasurer submits a report late without reasonable excuse, even if subsequently providing all the required information, he or she commits a criminal offence. A criminal prosecution is likely to be a disproportionate sanction, and it is highly unlikely that a prosecution would ever occur in practice. With the more flexible civil sanction regime we now have (compared with the civil penalties available previously), we think there is no need for criminal offences to be attached to these breaches.

5.25 Under the proposed solution, submitting a report late would be considered as a civil breach of the rules. The range of possible sanctions (eg: a fine or compliance notice[139]) would not change, but no criminal offence would be committed. This means that there would not be any criminal liability for the breach, and therefore no possibility of any criminal prosecution arising from it.

5.26 There are other requirements in PPERA that could also be decriminalised, such as providing an incomplete report[140]. For instance, if a party treasurer has omitted information by mistake, we think it would be more proportionate to regard this as a civil breach of the rules. It is possible that information could be deliberately omitted to conceal an attempt to get round the rules. However, this kind of potential evasion could still be covered by other PPERA provisions, such as offences related to knowingly or recklessly making a false declaration[141], and other similar provisions could be added if necessary. We envisage that these offences will retain their criminal aspect.

5.27 A system based around civil sanctions for administrative breaches would be a more proportionate and effective approach to the regulatory system. The proposed approach would address the concerns raised by some parties about volunteers' perceptions of the rules and could have a positive impact on participation by party volunteers.

5.28 This solution would mean that around half of the 69 offences with civil sanctions prescribed would be decriminalised, with the outstanding offences remaining criminal. This proposal would not affect the 30 PPERA offences that are currently criminal only (as described above at paragraph 5.18).

Implications

5.29 There are some important structural issues to consider regarding the construction and assessment of breaches in the proposed model.

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[138] For example, Sections 65(3) and 47(1)(b), PPERA

[139] This is a notice setting out action that must be taken by the person or organisation that has breached the law, so that the breach does not continue or recur.

[140] For example, Section 65(4), PPERA

[141] For example Section 66(5), PPERA.

Standard of proof

5.30 Although the Commission is now able to impose civil sanctions for certain breaches, the criminal standard of proof ('beyond reasonable doubt') continues to apply[142]. For civil sanctions that could be imposed for administrative breaches, we consider that the civil standard of proof ('balance of probabilities') should apply. The criminal standard of proof should continue to apply for civil sanctions in respect of all criminal offences.

Reasonable excuse

5.31 Many of the current PPERA offences include a 'reasonable excuse' element, so no offence can be proven if the person or organisation involved can offer a reasonable excuse for a breach. The larger parties see this as an important safeguard, particularly for the volunteer treasurers of accounting units who would be deterred from taking on this role if faced with sanctions for a breach even where there is a reasonable excuse for non-compliance. Reasonable excuse provisions are common in criminal offences, and rarer (but not unknown) in civil offences. We are not recommending the removal of reasonable excuse provisions where they currently apply, but it would be necessary to consider how they should apply to requirements that are made purely civil. This is a question that Government and Parliament would wish to consider.

Levels of sanctioning in the future system

5.32 Under the proposed system, we would continue to follow our approach to sanctioning set out in our enforcement policy[143]. This means that we only impose a sanction where it is necessary to fulfil our regulatory objectives. Although changing from the criminal to the civil standard of proof could result in more findings of breach, we would not expect the number of sanctions to rise significantly compared to current practice.

Views of political parties

5.33 Political parties have expressed different views about the impact of these changes. Some parties said that the prospect of more findings of breach could improve compliance levels by providing a stronger incentive to follow the rules. One party highlighted its concerns that the change would increase case work levels and cause more work for parties, their volunteers and for the Commission. Other parties were reassured that the Commission would continue to follow its current sanctioning approach, and were therefore less concerned about the greater potential for findings of breach.

5.34 Most of the parties that contributed their views welcomed the idea of removing the criminal element from the system for administrative offences. Some party staff indicated that the change could have a positive impact on the recruitment and retention of volunteers.

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[142] Schedule 19C, PPERA 2000

[143] Whilst we would continue to follow our *approach* to sanctioning set out in our enforcement policy, we would consult on any material changes to the enforcement policy that may be required as a result of implementing this proposed new system

Recommendation 45

The criminal offences that relate to essentially administrative requirements should be reframed as purely civil. This change would remove the current criminal liability for breaches of these requirements, whilst the Commission would continue to have powers to impose civil penalties.

Possible wider changes to enforcement of the rules for campaigners regulated under PPERA

5.35 As noted above (paragraph 5.18), there are no sanctioning options available to the Commission in respect of certain criminal offences. If there is a suspected breach of one of these requirements, regulatory action will only follow if the relevant prosecuting authority considers that it is in the public interest to bring a criminal prosecution.

5.36 There may be scope to bring some of these criminal offences (which generally involve knowing or reckless dishonesty) into the Commission's sanctioning remit. This would enable us to use our enforcement capabilities to improve compliance where necessary.

5.37 Parliament would want to consider whether there is a case for this change, in light of experience since 2010. If this were to be taken forward, further consultation would be needed because of the implications of such a change for those we regulate and the Commission. If the Commission's sanctioning remit were expanded to cover these types of offences, it would involve a change in the scope of the Commission's role and procedural changes which would have resource implications.

Improvements and clarifications to the current enforcement rules

Ability to issue a subsequent sanction for a report where a sanction has already been applied

Context

5.38 PPERA places reporting requirements on political parties and other campaigners. These requirements provide transparency over funding and spending, and demonstrate compliance with permissibility controls and spending limits.

Issue

5.39 The current reporting requirements make it an offence to submit certain incomplete reports[144]. An issue has arisen in casework since we acquired the ability to issue civil sanctions for incomplete reporting. It has become clear that if we have issued a sanction for an incomplete donation return because a donation was reported late, we cannot subsequently issue a further sanction if another donation that should have been reported in that return is also reported late.

Solution

5.40 We should be able to issue a sanction in respect of any required information not contained in the return, whether or not another sanction has already been imposed.

Implications

5.41 This change would enable the Commission to deal proportionately with each omission from a statutory return, whether or not it is reported after another omission relating to the same return.

5.42 Some political parties have queried whether this change could lead to multiple sanctions in respect of the same compliance failure. As set out in our enforcement policy[145], the Commission only takes enforcement action where it is necessary and proportionate to do so. We would therefore only expect to impose multiple sanctions in respect of one return where the facts of the case justify this.

Recommendation 46

The law should be changed so the Commission is able to issue a sanction in respect of any donation, spending or other required information that is not reported in a statutory return. This should apply whether or not another sanction has already been imposed in relation to that return.

Ability to sanction a party or organisation rather than an individual

Context

5.43 The Commission has had civil sanctioning powers for some PPERA offences since December 2010.

Issues

5.44 Where an individual who is an officer of a political party or a responsible person for a campaign organisation commits a breach of PPERA that is classed as a contravention rather than a criminal offence, we can impose a

[144] For example, Section 62(4), PPERA 2000
[145] The Electoral Commission, *Enforcement Policy*, Paragraph 3.7 p.3 www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf

sanction on the relevant political party or campaign organisation instead of the individual. It is often more proportionate to sanction the organisation rather than the individual – for instance, where the organisation has failed to give the individual the support they need to carry out their regulatory responsibilities.

5.45 However, we cannot currently sanction an organisation where the breach of PPERA committed by the individual is a criminal offence, rather than a contravention. This restricts our ability to impose proportionate sanctions in these circumstances. Our understanding is that the restriction is a technical consequence of the drafting of the civil sanctions Order, rather than a deliberate policy.

5.46 A separate but similar problem exists in relation to the PPERA controls on loans to members associations. Where the responsible person commits an offence in respect of the loan controls we cannot impose a sanction on the association[146], although we can do so where the responsible person commits an offence in respect of the donation controls[147]. Again, this restricts our ability to sanction breaches in a proportionate way. We believe that this too is a drafting issue rather than a deliberate policy.

Solution

5.47 We should be able to sanction either a party or organisation instead of an individual if that would be more proportionate in the circumstances.

Implications

5.48 The issue of civil sanctions imposed on parties and campaign organisations for breaches that are criminal offences committed by individuals can be addressed by amending the current civil sanctions Order. The UK Government consulted the Commission on a draft Order that would achieve this in May 2013.

5.49 Addressing the issue of sanctions for breaches in relation to the controls on loans to members associations would require changes to PPERA.

Recommendations 47 and 48

The Government should create an Order that would enable the Commission to sanction a party or organisation in circumstances where this would be more proportionate than sanctioning the individual who has committed the offence.

We should also be able to sanction a members association for the breaches of the loan rules rather than just the responsible person.

[146] Schedule 7A, Paragraph 8, PPERA 2000
[147] Schedule 7, Paragraph 8, PPERA 2000

Late payment penalties and timetable

Context

5.50 The secondary legislation on our civil sanctions provides that where a financial penalty is not paid within 28 days of receipt of the final notice imposing it, the value of the penalty increases by 25%. If the penalty is not paid within 56 days, the original value increases by 50%.

Issue

5.51 The current provisions for staged increases to the value of an unpaid financial penalty are not always effective in incentivising prompt payment.

Solution

5.52 A single substantial increase in the value of the penalty after a reasonable interval should promote timely payment of penalties, reducing our costs in chasing payment and potentially in bringing civil proceedings to recover the debt. The change would only apply in cases where the recipient of the penalty does not intend to appeal.

Implications

5.53 The current timetable for increasing the value of unpaid financial penalties should be shortened. Unpaid fixed and variable monetary penalties should increase by 50% 28 days after receipt of the final notice imposing the penalty.

Recommendation 49

The current timetable for increases in the value of unpaid fines should be shortened. Unpaid fixed and variable monetary penalties should increase by 50% 28 days after receipt of the final notice.

The Commission's regulatory remit

Context

5.54 PPERA frames the Electoral Commission's regulatory remit as covering (i) the requirements of Parts 3 to 7 of PPERA, which cover the statutory party accounting requirements, controls on donations and loans to parties and other regulated individuals and organisations, and controls on election and referendum spending; and (ii) the RPA rules on candidate spending and donations[148].

Issue

5.55 This current drafting of PPERA means that our remit is not formally expressed as including the provisions contained in Parts 2 and 10 of PPERA, which include the party registration and renewal requirements, and the rules for using imprints in PPERA election material. In contrast, the rules on

[148] Section 145(1) PPERA

imprints at referendums are formally within our remit because they sit in Part 7 of the Act.

5.56 However, the civil sanctions Order provides for the Commission to impose civil sanctions in respect of breaches of provisions in Parts 2 and 10 of PPERA[149].

Solution

5.57 Aligning PPERA's descriptions of our regulatory remit with our ability to impose civil sanctions would address this.

Recommendation 50

PPERA should make it clear that the offences and contraventions in Parts 2 and 10 (for example relating to requirements on party registration and imprints on campaign materials regulated by PPERA) for which the Commission has access to civil sanctions fall within our regulatory remit under s.145.

[149] The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010

6 Summary list of recommendations

Recommendations on party registration

Parties with low annual income and spending

Recommendation 1 – Accounts of political parties with low annual income and spending (page 12)
All parties that receive less than £500 and spend less than £500 in a calendar year should be exempt from submitting annual Statements of Accounts and should instead be required to submit an annual declaration confirming their exempt status. This should be submitted at the same time that parties with income and spending under £250k submit their Statements of Accounts.

Recommendation 2 - Minor parties (page 13)
The law should be changed so that the registration category of minor parties is closed to new applicants.

New political parties

Recommendation 3 - New political parties (page 15)
All new parties with assets or liabilities over £500 should be required to submit a declaration of assets and liabilities upon registration.

Registering and maintaining registered party identity marks and details

Recommendation 4 - Party registration tests (page 16)
Parliament should confirm that the "misleading the voter" test introduced in 2006 should only apply to the likelihood of a voter being misled about the effect of his vote when marking the ballot paper, for example to prevent a party from registering a name such as "*place your X here*".

Recommendation 5 - Descriptions and registered political parties (page 18)
Where a candidate represents a political party, it should be clear to voters which party the candidate represents. If a description is used on a ballot paper, the identity of the party must be clear.

The Government should consult political parties and the Commission on the practical considerations of achieving this change.

Recommendation 6 - Registered party office holders (page 19)
Political parties should be required to have at least two different officers filling the three main party officer roles (Leader, Treasurer and Nominating Officer) between them.

Recommendation 7 - Financial structure of parties (page 20)
Parties should be required to confirm the accurancy of their financial scheme on an annual basis and report any material changes. This process should become part of the annual confirmation of registered particulars, to avoid creating a separate burden for parties.

Recommendation 8 - Submission and publishing of party returns (page 21)
PPERA's terminology should be updated to reflect developments in reporting and publishing, including electronic submission and publishing of returns.

Recommendations on donation and loan controls

Accepting and reporting donations and loans

Recommendation 9 - Quarterly donation and loan reports (page 24)
The number of nil returns that a political party must provide before it is exempt from further quarterly reporting of donations and loans should be reduced from four to one.

Recommendation 10 - Pre-election reporting for UK general elections (page 26)
The requirement to submit weekly donation and loan reports before UK Parliamentary general elections should be replaced with a requirement to submit a single pre-election report.

The report should only be required from parties that are standing candidates in that election and receive a reportable donation or loan during the relevant period.

The reporting period should finish slightly earlier than at present and a new power should be introduced to allow for the deadline for pre-election reports to be amended the year before a general election.

Recommendation 11 - Aggregation of donations in quarterly donation reports (page 28)
It should be a requirement that, once a reportable donation has been made, all subsequent donations over £500 in a calendar year from the same source are reportable.

Recommendation 12 - Forfeiture of impermissible donations (page 31)

The existing forfeiture provisions should be changed so that, where an impermissible donation is accepted, it should be subject to a new civil process. The new civil forfeiture process should work as follows:

- The full amount of the impermissible donation should be forfeited, other than in exceptional circumstances where to seek forfeiture would be wholly unreasonable.
- The forfeiture process should be based on the PPERA process for imposing civil sanctions, with a right of appeal to the courts in cases where it is argued that the donation was not impermissible, or that there are exceptional circumstances which mean that forfeiture is not justified.
- It should remain a criminal offence to accept an impermissible donation without a reasonable excuse. We would retain the option of referring the case to the police or prosecuting authorities for criminal investigation, or imposing a civil sanction.

Recommendation 13 - Gifts given to political parties as bequests (page 33)

There is an inconsistency between the requirements placed upon political parties to check permissibility of donations given as bequests and the legal basis for parties to acquire the information needed to comply with that requirement.

EROs should be under a legal duty to provide information to a party to enable it to comply with its duty to check the permissibility of a bequest.

Recommendation 14 - Donations from Irish sources (page 34)

Currently the process for Irish citizens donating is complex and cumbersome. The UK Government should consider, in consultation with the Department of Foreign Affairs in Ireland, whether the current requirements on Irish donors could be reduced without unduly impacting on the PPERA regime.

Recommendation 15 - Regulated donee/holder of elective office register of donations (page 35)

To allow greater flexibility to address instances of dual reporting between the PPERA regime and elected bodies, and to remove dual publishing where appropriate, an order-making power should be created in PPERA to amend the requirements for reporting and publishing donations and loans to holders of elective office. Any order made under this power should be subject to agreement in each case between the relevant elected body, the Commission and the relevant Government(s).

Recommendation 16 - Controls on loans to candidates, non-party campaigners and referendum campaigners (page 37)

Appropriate loan controls should be introduced for candidates, non-party campaigners and referendum campaigners.

Clarifying aspects of the permissibility rules for donations and loans

Recommendation 17 - Donations paid in instalments and regular payments (page 38)
For the avoidance of doubt, PPERA should be amended to confirm that for:

Payments towards a fixed total
(i) the permissibility controls apply to each individual payment as they would have applied if the donation had been made in one instalment, and
(ii) aggregated individual payments are reportable once the reporting threshold is met

Other regular payments
(i) the permissibility and reporting requirements apply separately to each individual payment

Recommendation 18 - Payments from public funds (page 39)
For the avoidance of doubt, the status of payments from public funds should be clarified in PPERA.

Recommendation 19 - Permissibility of Scottish partnerships (page 40)
For the avoidance of doubt, PPERA should be amended to confirm that Scottish partnerships are permissible donors.

Recommendation 20 - Authorised participants for loans – trusts (page 40)
The Government should clarify whether loans from exempt trusts should be treated as permissible, in the way that donations are.

Recommendation 21 - Declarations by donors (page 41)
The Political Parties and Elections Act 2009 introduced new requirements for declarations by donors, but the rules have not yet been commenced. Before the Government brings these requirements into force it should address the unresolved aspects of the tax status declaration, including the aggregation requirements. It should also consider the scope for combining or otherwise streamlining the declarations in order to minimise administrative burdens on donors and the recipients of donations.

Issues for further consideration

Recommendation 22 - Permissibility status of companies making donations (page 43)
In the light of the implications of the current permissibility test, the Government and, in due course, Parliament should re-visit the underlying policy intention of the permissibility controls on companies.

Recommendation 23 - Sponsorship (page 45)
This review has considered the purpose and scope of PPERA's rules on sponsorship. Given the points raised by political parties, the Government and, in due course, Parliament may wish to consider whether the rules on sponsorship can be framed in a simpler and more consistent way. We would be happy to contribute further to further work on this area of the rules.

Recommendation 24 - Purpose and use of loan reports (page 46)
This review has considered whether PPERA's current rules on loan reporting by political parties provide sufficient transparency. The Government and, in due course, Parliament may wish to consider whether the outstanding value of a loan should be updated periodically on the Commission's registers. It will be important to consult parties and us on the practical implications of any proposals for change. We would be happy to contribute to further work on this area of the rules.

Recommendations on campaign spending

Campaigners regulated by PPERA

Recommendation 25 - Regulation of spending on staff time dedicated to campaigning by political parties and referendum campaigners (page 50)
In principle, campaign-related staff costs should be controlled by the limits on political party and referendum campaign spending.

The Government should give further consideration to this issue when proposals for wider changes to the rules are developed.

We have developed two options that could form the basis for further testing and consultation with political parties and other campaigners.

Recommendation 26 - Controls on late claims paid by political parties, non-party campaigners and referendum campaigners (page 52)
The responsibility for granting permission to parties, non-party campaigners and referendum campaigners to pay most or all late invoices or bills from suppliers should be transferred to the Commission. Where it grants permission to pay a late claim, the Commission should have the ability to sanction the late receipt or payment of the claim in order to encourage compliance.

Recommendation 27 - Requirements for political parties who do not incur campaign spending against their PPERA spending limit (page 53)
Political parties should only be required to submit a PPERA spending return if they incur regulated PPERA campaign spending.

Recommendation 28 - Notional spending threshold for political parties and other PPERA campaigners (page 54)
The PPERA thresholds for notional spending and donor permissibility should be equalised at £500.

Recommendation 29 - Definition of regulated spending for non-party campaigners regulated by PPERA (page 58)
The rules on PPERA non-party campaigning that is intended to influence voters should be changed so that they more closely reflect the scope of rules for political parties by covering events, media work and polling, as well as election material. It would be necessary to review the implications for the campaign spending limits set by PPERA

Recommendation 30 - Updating the rules on PPERA non-party campaigning (page 58)
A new order-making power should be created to enable the Government to update the rules on PPERA non-party campaigning as campaign methods change over time.

As with other PPERA and RPA order-making powers, it should apply either after consultation with the Commission or to give effect to a recommendation of the Commission.

Recommendation 31 - Regulation of spending before PPERA non-party campaigners and referendum campaigners register (page 60)
Registered non-party campaigners and referendum campaigners should be required to report itemised information for all regulated expenditure, including spending that is incurred before a campaigner registers with the Electoral Commission.

Recommendation 32 - Requirements for campaign spending returns when spending by a registered campaigner is under the registration threshold (page 61)
Registered non-party campaigners and referendum campaigners that spend less than the relevant registration threshold should only be required to submit a declaration that they have not exceeded the threshold, rather than complete a full spending return.

Recommendation 33 - Referendum campaigners – requirement to make a declaration of the outcome supported (page 62)
The requirement to declare which outcome(s) a campaigner proposes to campaign for when registering for a referendum should be removed.

Candidates

Recommendation 34 - Candidate spending returns (page 63)
The RPA 1983 should be changed so Returning Officers are able to fulfil their duty to advise the public that spending returns are available for public

inspection by publishing a notice online as well as, or instead of, in two newspapers.

Recommendation 35 – How candidate spending returns are made available for inspection or published at each election (page 63)

There should be an Order-making power added to the RPA 1983 to allow the Secretary of State to determine how candidate spending returns are made available for inspection or published at each election.

- The Secretary of State should initially use this Order-making power to confirm that Returning Officers can publish candidate spending returns online. Changes should allow for a transitional period and may need to be incremental.
- As with other PPERA and RPA order-making powers, it should apply either after consultation with the Commission or to give effect to a recommendation of the Commission.

Recommendation 36 - Simplifying rules on pre-candidacy spending and donations (page 66)

Experience from recent elections indicates that there is a case for combining the 'long' and 'short' campaigns into one.

Government should consult political parties and other campaigners on this change because it would allow significantly higher levels of spending close to polling day and could disadvantage candidates with relatively limited funds
** *This recommendation applies to UK Parliamentary general elections, which the UK government has legislative responsibility for, and Scottish Parliamentary general elections, which is the responsibility of the Scottish Government.*

Recommendation 37 - Clearer candidate spending limits (page 70)

Candidate spending limits should be defined in such a way that candidates and agents can work out their spending limit easily, in good time for them to plan their election campaign.

Recommendation 38 - Candidate personal expenses (page 71)

Candidates' personal expenses should no longer count towards their spending limit at local government elections. However, personal expenses should continue to be reported on the spending return, as they are at other elections.

Recommendation 39 - Expenses related to candidate's disability (page 72)

Government should legislate to ensure that, where disabled people standing for election incur costs relating to additional support needs, those costs should be treated as personal expenses for the purpose of the candidate spending rules. In line with our recommendation on candidates' personal expenses, these types of costs should not count against the spending limit at any election.
** *The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary and Scottish local government elections.*

Recommendation 40 - Authorised spending on a candidate's return (page 73)
The reporting of spending on candidates' campaigns should be streamlined by removing the requirement for people who have been authorised to incur spending by the election agent to submit a separate return of that spending
*** The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary and Scottish local government elections.*

Recommendation 41 - Candidates who share resources (page 74)
The definition [in the RPA 1983] of candidates who are treated as sharing resources should be updated to reflect the current scope of the candidate spending rules and the nature of modern campaigning.

Where a candidate is sharing resources with others, the agent should be required to make this clear on their spending return.

Where candidates share an election agent, the agent should be able to account for those candidates' spending and donations in a single spending return.

Imprints on campaign materials

Recommendation 42 - Imprint rules for campaign material regulated by PPERA (page 75)
The Government should introduce requirements for political parties, national non-party campaigners and referendum campaigners to include proportionate imprints on online and electronic campaign material.

Recommendations on enforcement of the rules

Changes to our powers and sanctions

Recommendation 43 - Enforcement of the rules for candidates (RPA rules) (page 79)
The Commission should be provided with investigative powers and sanctions for offences relating to candidate spending and donations at specified elections. Given the lead-in time that would be required to prepare for these changes, we recommend that changes should apply to the 2020 UK general election at the earliest.

We think these tools should initially be available at elections where, from our experience, unsanctioned breaches of the rules are likely to have the most impact. These are elections to the following legislatures:

- UK Parliament

- Scottish Parliament
- National Assembly for Wales
- Northern Ireland Assembly

Any proposed changes to these arrangements would need to consider the cost of setting up a new regulatory regime against the potential regulatory benefits.
*** The Scottish Government has legislative responsibility for the rules at Scottish Parliamentary elections.*

Recommendation 44 - Enforcement of the rules for local non-party campaigners (RPA rules) (page 79)
If we are given investigative and sanctioning powers in respect of the candidate spending and donation rules at specified elections, the Government may also wish to review the current arrangements for ensuring compliance with the rules on spending by local non-party campaigners, where we currently do not have a role.

Any proposed changes to these arrangements would need to consider the cost of setting up a new regulatory regime against the potential regulatory benefits.

Recommendation 45 - Enforcement of the rules for campaigners regulated under PPERA (page 84)
The criminal offences that relate to essentially administrative requirements should be reframed as purely civil. This change would remove the current criminal liability for breaches of these requirements, whilst the Commission would continue to have powers to impose civil penalties.

Improvements and clarifications to the current enforcement rules

Recommendation 46 - Ability to issue a subsequent sanction for a report where a sanction has already been applied (page 85)
The law should be changed so the Commission is able to issue a sanction in respect of any donation, spending or other required information that is not reported in a statutory return. This should apply whether or not another sanction has already been imposed in relation to that return.

Recommendation 47 - Ability to sanction a party or organisation rather than an individual (page 86)
The Government should create an Order that would enable the Commission to sanction a party or organisation in circumstances where this would be more proportionate than sanctioning the individual who has committed the offence.

Recommendation 48 - Ability to sanction a members association rather than the responsible person (page 86)
We should also be able to sanction a members association for the breaches of the loan rules rather than just the responsible person.

Recommendation 49 - Late payment penalties and timetable (page 87)
The current timetable for increases in the value of unpaid fines should be shortened. Unpaid fixed and variable monetary penalties should increase by 50% 28 days after receipt of the final notice.

Recommendation 50 - The Commission's regulatory remit (page 88)
PPERA should make it clear that the offences and contraventions in Parts 2 and 10 (for example relating to requirements on party registration and imprints on campaign materials regulated by PPERA) for which the Commission has access to civil sanctions fall within our regulatory remit under s.145.

Appendix A

Relevant reports

Electoral Commission reports and papers

Written evidence to the Northern Ireland Select Committee – Northern Ireland ((Miscellaneous Provisions) Bill (Draft), 2013
www.electoralcommission.org.uk/__data/assets/pdf_file/0019/154306/Northern-Ireland-Miscellaneous-Provisions-written-evidence-for-NI-affairs-Committee.pdf

Use of new investigatory powers and civil sanctions, 2012
www.electoralcommission.org.uk/__data/assets/pdf_file/0011/149627/Powers-and-sanctions-report-2012.pdf

Scottish council elections 2012: Report on the administration of the elections held on 3 May 2012, 2012
www.electoralcommission.org.uk/__data/assets/pdf_file/0019/150517/Scotland-elections-report-May-2012.pdf
(Paragraphs 3.14 – 3.33)

May 2011 polls: Campaign Spending Report, 2012
http://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/146668/May-2011-Campaign-spending-report.pdf
(Paragraphs 2.32 – 2.85, 3.17 – 3.33)

Referendum on the voting system for UK parliamentary elections: Report on the May 2011 referendum, 2011
www.electoralcommission.org.uk/__data/assets/pdf_file/0019/141328/Final-PVS-report.pdf
(Recommendations 10 - 18)

UK general election 2010, Campaign spending report, 2011
www.electoralcommission.org.uk/__data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf

Enforcement Policy, 2010
www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf

Submission to the Committee on Standards in Public Life's Inquiry, *Political party finance: Ending the big donor culture*, 2010
www.electoralcommission.org.uk/__data/assets/pdf_file/0014/106142/Party-funding-The-Electoral-Commissions-submission-to-the-Committee-on-Standards-in-Public-Life.pdf

Election 2005: Campaign spending The UK Parliamentary general election, 2006
www.electoralcommission.org.uk/__data/assets/pdf_file/0005/47183/CampaignSpendingweb_20371-14985__E__N__S__W__.pdf

Political Parties, Elections and Referendums Act 2000: Recommendations for change, 2003
www.electoralcommission.org.uk/__data/assets/pdf_file/0003/63993/PPERA-report---Recommendations-for-change.pdf

Election 2001 campaign spending, 2002
www.electoralcommission.org.uk/__data/assets/pdf_file/0015/154230/Campaign-spending-at-the-2001-general-election.pdf

Other relevant reports and papers

House of Commons Library Standard Note SN/PC/6123, *In brief: party funding,* 2012
www.parliament.uk/briefing-papers/SN06123

Committee on Standards in Public Life, Thirteenth Report, *Political party finance: Ending the big donor culture*, 2011
www.public-standards.gov.uk/wp-content/uploads/2012/11/13th_Report___Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf

Committee on Standards in Public Life, Fifth Report: *The Funding of Political Parties in the United Kingdom*, 1998
www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf

Appendix B

Overview of the party and election finance rules in the UK

This report has been drafted as a technical document that provides basic context for each issue, but assumes a general level of knowledge about the regulatory regime set out in PPERA and the RPA.

This appendix provides a simple introduction to the regime. For further background information, you can refer to our website guidance resources for those we regulate, available at: www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate

The legal framework

The Representation of the People Act 1983 (RPA) consolidated the existing rules for candidates, some of which dated back to the nineteenth century. However, at that time there, were still no rules regulating national campaigning by political parties, controls on donations or loans or any centralised transparency of funding or spending. These issues were considered in the Fifth Report of the Committee on Standards in Public Life which was published in 1998.

In 2000, the Political Parties, Elections and Referendums Act 2000 (PPERA) introduced the UK's first comprehensive regulation of political parties, non-party campaigners, referendum campaigners and other political actors. The purpose of the legislation was to increase confidence in the political process by introducing greater transparency to political finance, imposing a ceiling on national election spending and restricting the sources from which parties and other campaigners could accept funding.

Party registration

Political parties must register with us if they want their candidates to use their party name, a description of their party or their party emblem on a ballot paper. There are rules on the names, descriptions and emblems that parties can register with us. These rules are intended to make ballot papers clear and easy to use.

When registering, parties need to submit certain details about their party structure to us, including a financial scheme, their constitution and details of any branches of the party that manage their own finances ("accounting units"). They must also appoint people, most of the time volunteers, to the official roles of:

- Party leader

- Treasurer
- Nominating officer

Registered parties must keep details of these roles up to date and inform us of any changes. Every year we ask parties to confirm their registration details in an annual registration confirmation.

When parties register with us they are subject to certain on-going responsibilities and obligations. These include compliance with the rules on campaign spending, the controls on sources of funding and certain reporting requirements to ensure political finances are transparent.

Spending

The Political Parties, Elections and Referendums Act 2000 (PPERA) introduced a system of national spending limits on political campaigning, covering:

- political party campaigning at UK Parliamentary general elections, European Parliamentary elections, and elections to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly

- non-party campaigning for or against a particular party or group of candidates, at the same elections

- campaigning at referendums

These controls are additional to the limits on spending by individual candidates, and non-party campaigners for or against individual candidates, which were first introduced in 1883.

The limits on spending by political parties and campaigners at referendums include the costs of leaflets, advertising, polling, transport and events. They also include the costs of staff who are not directly employed by the party or campaigner, and any other costs incurred for them that they have authorised. However, unlike candidates at elections, they do not include the costs of directly employed campaign staff.

The controls on PPERA non-party campaigning apply to ‘election material’ – that is, to the production and distribution of material (such as leaflets, adverts or websites) that (i) is made available to the public, and (ii) can reasonably be seen as intended to promote or oppose the electoral success of a party or group of candidates, or to enhance their standing. This also includes the costs of staff producing and publishing this material.

Each spending limit is calculated by a formula set out in the legislation and applies during a ‘regulated period’. The regulated period for PPERA party and non-party campaigning at a UK general election is at least 365 days, ending on polling day. For other elections it is usually four months. The regulated

period for a referendum under PPERA is specified in the legislation providing for the referendum, and will usually be between 10 weeks and six months.

The value of the party spending limits depends on the countries, regions or constituencies each party is contesting. The limits for political parties at recent elections have been:

- at the 2010 UK Parliamentary general election, about £19m if campaigning throughout Great Britain and £540,000 in Northern Ireland
- at the 2009 European Parliamentary elections, about £3.1m if campaigning throughout Great Britain and £270,000 (including candidate spending) in Northern Ireland
- at the 2011 elections, about £1.5m for the Scottish Parliament, £600,000 for the National Assembly for Wales and £306,000 for the Northern Ireland Assembly elections

The limits for non-party campaigners are significantly lower. The limit for non-party campaigners for or against a party or group of candidates at the 2010 UK general election was around £1.15m across Great Britain and £34,000 in Northern Ireland. Non-party campaigners for or against an individual candidate at a UK general election can spend up to £500 in the period immediately before polling day.

Limits on candidate spending usually begin when the candidacy formally begins, although the rules for UK general elections were changed in 2009 so that for some elections, an additional ‘pre-candidacy’ regulated period begins several months before polling day. For the UK general election in 2010 the candidate limits were around £30,000 in the pre-candidacy period and £10,000 in the period immediately before the poll, depending on the size and type of the constituency. The Scottish Parliament adopted a similar regulated period for candidate spending at the 2011 Scottish Parliament general election.

Regulated periods often overlap. Where this happens, the spending limits for both elections are often combined, creating one extended regulated period for parties and non-party campaigners. For example, there were overlapping regulated periods and combined spending limits for the European and UK Parliamentary general elections in 2004/2005 and 2009/2010.

It is also possible for the regulated periods of two different electoral events to run separately but in tandem. For example, the regulated period and spending limits for the 2011 Parliamentary voting system referendum ran in parallel to the regulated periods and spending limits at the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly elections.

Donations

Controls on the sources of funding are one of the key elements of the regulatory regime introduced by the Political Parties Elections and Referendums Act (PPERA) in 2000, along with reporting requirements and controls on campaign spending. Political parties, and other regulated individuals and organisations (including non-party campaigners during election and referendum campaigns) can only accept donations worth over £500 from certain 'permissible' sources. Parliament raised the £500 threshold from £200 at the start of 2010 to reduce the regulatory burden on political parties.

The Committee's Fifth Report proposed that the categories of 'permissible' donors should be 'defined so as effectively to ban foreign donations'[150]. PPERA followed this approach, but in some respects it departed from the Fifth Report's recommendations in order to provide readily checkable tests of permissibility. For instance, while the Fifth Report proposed that individual donors should be permissible if eligible to be on an electoral register, PPERA provides that the individual must actually be on a register at the point when a donation is made. This is a much simpler test for parties and other recipients of donations to check than eligibility to be on a register, which can be hard to determine.

The categories of permissible donors to regulated entities in Great Britain are:

- an individual on an electoral register
- a company registered in and carrying on business in the UK, and incorporated in the EU
- a trade union registered in the UK
- a friendly society or building society registered in the UK
- a limited liability partnership registered in the UK
- an unincorporated association that is based in and carries on activities in the UK
- a political party registered in Great Britain (these can donate to other political parties, but not to non-party campaigners)

Political parties registered in Northern Ireland can also accept donations from certain Irish sources. Such donations cannot be transferred to parties registered in Great Britain.

Political parties, and other regulated individuals and organisations, must report donations and loans to us if their value is over a certain threshold. The purpose of the PPERA reporting requirements is to provide transparency about how political parties and other campaigners are funded.

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[150] Committee on Standards in Public Life, Fifth Report, *The Funding of Political Parties in the United Kingdom*, 1998 Recommendation 26, www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf

In 2009 Parliament decided to increase the donation reporting threshold from £5,000 to £7,500 for political parties and associations of party members, and from £1,000 to £1,500 for party accounting units and regulated individuals, with effect from the start of 2010. The purpose of the increase was to reduce the administrative burden on party volunteers.

There are similar rules on donations to candidates, although the permissibility and reporting thresholds for these donations are only £50. This is significantly lower than for parties and other regulated individuals and organisations.

Enforcement

The credibility of the Political Parties, Elections and Referendums Act 2000 (PPERA) regime depends to a great extent on the way in which it is enforced. Research carried out on behalf of the Commission on the regulation of party and election finance, with members of the public and volunteer staff members of political parties, has highlighted the importance of effective and independent regulation in this field.[151]

We aim to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible we seek to use advice and guidance, rather than enforcement action, in order to secure compliance. This reflects the principle that helping people to understand what they have to do from the outset, and supporting them to get it right, is the most effective way of promoting compliance. Since many of those responsible for complying with the rules at the local level are volunteers, it is particularly important that we make the rules as clear as we can, and we regularly review our written guidance to make it as accessible and user-friendly as possible.[152]

When the rules are broken we will take enforcement action where it is necessary and proportionate to do so. The objectives of our enforcement activity are to:

- ensure the transparency and integrity of party and election finance that voters expect
- eliminate any benefit that those we regulate may obtain by failing to comply with the law
- bring those failing to meet their regulatory obligations into compliance
- deter non-compliance

When first enacted, many of the PPERA requirements were only enforceable through criminal prosecution, which is often a disproportionate response to a failure to comply with the rules. In December 2010 we were given access to a

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[151] Brahm Ltd, 2010, section 6.9, www.electoralcommission.org.uk/__data/assets/pdf_file/0007/100141/Brahm-research-report.pdf

[152] Our guidance for political parties on managing donations and loans is available on our website, www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties/donations-and-loans.

broader set of investigatory tools and civil sanctions to deal with potential breaches of the PPERA rules political parties and no-party campaigners. These were introduced to allow us to be more flexible and proportionate in our approach to securing compliance with the legislation[153].

These new powers and sanctions respond to recommendations in the Committee's Eleventh Report, and are intended to give us better tools to operate as the regulator of the PPERA regime in a fully proportionate way. The new civil sanctions are only available in cases where we can establish that a breach has occurred to the criminal standard of proof – that is, beyond reasonable doubt. At the same time, our regulatory role under PPERA has expanded from 'monitoring compliance' with the regime, to also having statutory responsibility for 'taking steps with a view [to] ... securing compliance'. Our enforcement policy sets out how we use these tools and pursue this remit to ensure compliance with the regime. We also issue public reports on our enforcement activity each year as part of our annual reporting process[154].

We have the role of monitoring and taking steps to secure compliance with the rules on election candidates' spending and donations under the RPA 1983, as well as the PPERA rules on the funding and spending of political parties and other campaigners. Although we have received new powers and sanctions for PPERA offences, they do not apply to the rules on candidates. This means that, where we have grounds to suspect there has been a breach of these rules, we do not have the tools to investigate or impose sanctions. In most cases our only options are to refer suspected breaches for criminal investigation, or to offer further guidance to reduce the risk of future breaches[155].

The RPA 1983 also imposes controls on the amount that local non-party campaigners can spend on campaigning for or against a candidate. We do not have any role in monitoring or ensuring compliance with these limits. Any suspected breach of these spending limits is a matter for the police.

There are also rules on elements of candidates' and non-party campaigns other than spending and donations. These relate to electoral conduct and general corrupt and illegal practices, such as bribery and making false statements about candidates. Again, we do not regulate these and they are a matter for the police and the courts.

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[153] Further information is available in the enforcement section of our website www.electoralcommission.org.uk/party-finance/enforcement

[154] The following report details use of our sanctions covering the period 1 December 2010 to 31 March 2012; all subsequent information on use of our sanctions will be detailed in the relevant Electoral Commission annual report, www.electoralcommission.org.uk/__data/assets/pdf_file/0011/149627/Powers-and-sanctions-report-2012.pdf

[155] We can also seek forfeiture of impermissible donations to candidates. We have some powers to request information from candidates and agents, but cannot use those powers in cases where we have reason to believe that a breach may have occurred.

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We are an independent body set up by the UK Parliament. We regulate party and election finance and set standards for well-run elections. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

Putting voters first