



Better regulation of party and election finance

A public consultation on the Electoral Commission's future enforcement policy following changes made by the Political Parties and Elections Act 2009

July 2009

Translations and other formats

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We are an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well-run elections.

Democracy matters

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1 Introduction to the consultation

Overview of the consultation

1.1 The Electoral Commission, the UK's regulator of political party and election finance, is inviting views on its future enforcement policy. The consultation is open until 1 November 2009. We are consulting now for two reasons:

1. We are planning to publish for the first time a comprehensive statement of our enforcement policy – what our objectives are in enforcing the law, and how we go about delivering those objectives. We are inviting all those with an interest to comment on our proposals before we publish our final enforcement policy.
2. We expect to obtain access to some new regulatory powers and sanctions during the next year, as a result of the Political Parties and Elections Act 2009 (PPE Act). The Act requires us to publish guidance on how we will use the new powers and sanctions, and to consult on that guidance. We will report on the outcome of the consultation to the Government before it finalises the detail of the new sanctions in secondary legislation.

1.2 The responses to this consultation will inform the final version of our enforcement policy, which we will publish before we begin to use the new sanctions.

About the Electoral Commission

1.3 The Electoral Commission is an independent regulator established by the UK Parliament. One of our objectives is ensuring the integrity and transparency of party and election finance. The Political Parties, Elections and Referendums Act 2000 (PPERA) as amended establishes controls on donations and loans to, and spending by, political parties and some other regulated entities. Regulated entities include campaigning 'third party' organisations, bodies participating in referendums, and 'regulated donees' (which include members of political parties, holders of elective office, and associations of party members). The Commission is responsible for ensuring that these individuals and organisations comply with the requirements of PERA.

1.4 It is vital for the health of our democracy that political parties and other campaigning organisations are able to develop policy, campaign, and get their messages across to voters. To be able to do this, they need to raise money to fund their activities. As the regulator of party and election finance, the Commission's role is to ensure transparency by building and maintaining confidence that the law on donations, loans, and spending are followed.

1.5 As political parties rely heavily on the contribution of volunteers, it is particularly important that we follow the principles of good regulation by taking a proportionate approach. Most of the organisations we regulate comply with

the rules, and we are committed to ensuring that those we regulate understand their regulatory obligations.

The Political Parties and Elections Act 2009

1.6 PPERA introduced a wide range of new regulatory requirements, with non-compliance treated as a criminal offence in most cases. The Commission's experience of operating the regulatory regime has demonstrated that it can often be inappropriate to refer breaches of PPERA to the police for criminal investigation. As a result, it has been difficult for the Commission to enforce the law effectively, proportionately, and in line with the principles of good regulation. This has been noted in a number of reports by the Commission and others, notably the Committee on Standards in Public Life.

1.7 The changes to the Commission's powers and sanctions introduced by the PPE Act will address this problem. The new investigatory powers provide the Commission with an extended capacity to investigate failures to comply with the PPERA's regulatory framework. The new range of flexible and proportionate civil sanctions offer alternatives to referral for criminal prosecution under the PPERA, allowing us to apply sanctions that are appropriate to the nature of each contravention. We will also be able to use new and constructive approaches to secure compliance with the law where appropriate, rather than imposing a traditional penalty such as a fine, or referring a case for criminal investigation. For instance, we could issue a notice requiring a non-compliant body to take specified steps in order to become compliant, such as amending systems or training party officers on how to fulfil their legal obligations.

1.8 In January 2009, during the passage of the Political Parties and Elections Bill through Parliament we published indicative guidance on our current enforcement policy and our proposed approach to the powers and sanctions in the Bill. The draft enforcement policy on which we are now consulting is based on that indicative guidance. We have revised and expanded it so that it sets out our proposed approach to each of the detailed new provisions of the PPE Act. Where we have amended our procedures since January, we have updated this paper to reflect the changes. Our recommendations to the Government on the content of the secondary legislation which will be needed to apply the new civil sanctions to particular offences and contraventions in PPERA will be based on this draft enforcement policy, taking into account responses to this consultation. Information on how to respond to the consultation is set out below in paragraph 1.13 of this document.

Contents of this consultation paper

1.9 The consultation paper begins with two chapters explaining the principles that inform the Commission's proposed regulatory approach. Chapter 3 describes our approach to risk-based regulation, including the use of risk assessment. Chapter 4 sets out our approach to supervision, investigations

and sanctioning, based on the new provisions in the PPE Act. A glossary of terms is included chapter 5. We welcome all comments on the approach set out in this enforcement policy, and have highlighted specific questions on which we would particularly welcome views. These questions are collected together on our consultation response form available on our website.¹ The appendices to the consultation paper explain in more detail how the principles set out in the earlier chapters of the enforcement policy will be applied in practice – for instance, the methodology for risk assessment and the processes for imposing and appealing against sanctions.

Who should respond to the consultation?

1.10 We welcome responses from everyone with an interest in the regulation of party and election finance. The consultation is likely to be of particular interest to those we regulate – registered political parties, their members and officers, and other regulated entities such as campaigning third party organisations and participants in referendum campaigns.

1.11 We want to hear particularly from those people who have legal responsibilities as party officers, such as volunteers who are the registered treasurer of a constituency branch of a large party. Party officers are welcome to respond directly to the consultation, and may also find it helpful to discuss it with their colleagues, such as the party headquarters staff responsible for compliance with the law. We are inviting those parties with accounting units to help us explain our proposals to party officers.

How to respond to this consultation

1.12 We particularly welcome responses to the specific questions set in bold type throughout the enforcement paper and collected together on our consultation response form available on our website.

1.13 The consultation will be open for 15 weeks from the launch date of 21 July 2009, and will therefore close on 1 November 2009. Please respond by this date. You can respond to this consultation in several ways:

- type your responses into the consultation response form, save the form and email it to péf@electoralcommission.org.uk
- print and complete the response form and post or fax it to:

The Electoral Commission
Attention: Party and Election Finance Directorate
Trevelyan House
Great Peter Street
London
SW1P 2HW
Fax: 020 7271 0505

¹ You can access the form at www.electoralcommission.org.uk/__data/assets/pdf_file/0011/78914/Better-regulation-of-party-and-election-finance-response-form.pdf

- send a letter or email to the above address

1.14 If you would like to discuss aspects of the draft enforcement policy we are consulting on, please email us at pef@electoralcommission.org.uk

1.15 When responding, please state whether you are responding as an individual or are formally representing the views of an organisation. If the latter, please make it clear who the organisation is, who it represents and (where applicable) how the views of its members were assembled.

1.16 Responses received may be published on the Commission's website. If you wish your response to remain confidential (either in full or in part) please make this clear in your response.

Next steps

1.17 We will consider responses carefully before finalising the enforcement policy. We will also publish a summary of the responses, and our response to them, on our website.

1.18 Following consideration of the responses and any subsequent revision to the enforcement policy, we will provide advice to the Government on the matters that need to be prescribed by secondary legislation – these include the level of fixed monetary penalties, the criteria for setting the level of variable monetary penalties and non-compliance penalties, and the offences and contraventions that will have sanctions attached.

1.19 Once the Secretary of State has laid this secondary legislation for Parliament's consideration we will publish the final version of our enforcement policy on our website to provide those we regulate with sufficient notice before the new arrangements commence. Breaches of the legislation that take place after the commencement of the secondary legislation will be dealt with in accordance with the new policy. Those matters that come to our attention following commencement, but where the activity took place before the commencement date, will be dealt with using the powers and sanctions that were available to us at the time the breach took place.

2 Executive summary of the enforcement policy

This executive summary explains the principles underlying our proposed enforcement policy and the way in which we expect to use the new powers and sanctions provided by the Political Parties and Elections Act 2009 (PPE Act). The full enforcement policy paper sets these out fully and also highlights some key questions. Appendices to the enforcement policy paper set out the proposed detail of the new powers and sanctions.

Why we regulate

2.1 Active political parties are a vital ingredient of democratic politics. They set out competing views and policies for voters to choose from peacefully at elections. Parties need money to campaign and develop their policies, and to communicate with voters, and it is important that the public knows where that money is coming from, and has confidence that it comes from acceptable sources. The Electoral Commission is responsible for ensuring the transparency and integrity of party and election finance. Under legislation introduced in the Political Parties, Elections and Referendums Act 2000 (PPERA), political parties and some other regulated entities have to:

- report to us on the donations and loans they receive and send us their accounts, so that we can publish that information
- make sure that they only accept donations and loans from 'permissible' sources linked to the UK, such as individuals on the electoral register, and
- stay within spending limits at election campaigns, and report to us on what they have spent

2.2 Our regulatory role is to ensure that the organisations and individuals that we regulate follow these rules. Our published enforcement policy will set out how we carry out this role.

How we regulate

2.3 We aim to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. The objectives of our enforcement activity are to:

- ensure the transparency that voters expect
- eliminate any benefit that those we regulate may obtain by failing to comply with the law
- bring those who are not complying into compliance, and
- deter non-compliance

2.4 Many of the individuals responsible for complying with the law at the local level are volunteers. It is therefore particularly important that we pursue these objectives in a proportionate way, taking the facts of each case into

account and only taking action when it is necessary in order to achieve our objectives.

2.5 The key elements of our regulatory work are advice and risk assessment, and enforcement casework including sanctioning. This executive summary gives a brief overview of our approach to each of these tasks, and makes cross-reference to more detailed discussion in the relevant sections of the consultation paper.

Advice and risk assessment

2.6 Wherever possible we aim to secure compliance by helping those we regulate to understand the law and get things right, rather than by taking enforcement action after things go wrong. Our advice and guidance team is always ready to provide informal advice and can also provide formal written opinions on difficult issues if needed. We are currently reviewing our regulatory guidance to ensure that it meets the needs of those we regulate.

2.7 In future we will use formal risk assessment tools to help us understand when it may be appropriate to offer advice proactively, and how best to target our advice and auditing resources. To do this we will develop profiles of key organisations we regulate, including registered parties and those accounting units and campaigning third parties that we deal with on a regular basis. We call these organisations regulated entities. Chapter 3 of the consultation paper set out the criteria we intend to use for assessing risk.

Enforcement casework

2.8 We may consider taking enforcement action in a particular case for a number of reasons: because a statutory report is not submitted to us, or a submitted report indicates a potential breach of the law; because we receive an allegation that the law has been broken; or because we become aware of a potential problem through another route, such as a press report.

2.9 When we assess a case to decide whether to take action, such as reviewing or investigating the case, we will consider three factors:

- **the evidence** – whether there is evidence, or a credible source of information, relating to a potential breach of the law. We will not take action on the basis of mere assertion or speculation about a breach.
- **the public interest** – we will not take action if the potential benefit of doing so is outweighed by public interest considerations, such as if the organisation involved no longer exists, or an individual is seriously ill.
- **proportionality** – we will only take action if the resources needed to deal with the case are justifiable in view of the seriousness of the potential breach, and/or the deterrent effect of pursuing the case.

2.10 Depending on these tests and the facts of each case, we may decide to take no action, to offer advice or guidance to the regulated entity involved, or to pursue enforcement action – either a case review or a formal investigation

using our legal powers to seek information. If we decide to take enforcement action, we will advise those involved and seek to reach a prompt decision on whether a sanction is needed. Chapter 4 of our consultation paper gives more information on our investigatory powers and on how we take decisions on enforcement casework (paragraphs 4.1–26).

Sanctioning

New sanctions

2.11 The legislation which set up our regulatory regime in 2000 created a number of new legal obligations. In most cases, the sanction for failing to comply with the law is prosecution for a criminal offence. However, criminal investigation may sometimes be a disproportionate sanction, and the PPE Act gives us access to a range of new civil sanctions that can be used instead of a criminal prosecution. The sanctions include financial penalties and non-financial tools such as a ‘compliance notice’, a legally binding notice requiring a regulated entity to take specified action to come into compliance with the law. The PPE Act also enables a regulated entity that has broken the law to offer us a formal ‘enforcement undertaking’ setting out the steps it will undertake to come into compliance and make restitution for the breach.

2.12 Chapter 4 of the consultation paper (paragraphs 4.31–78) explains what the new sanctions are, how they work and how we propose to use them. The key features of the new sanctions, including the processes we must use to impose them and the processes that regulated entities may use to appeal against them, are defined by the PPE Act. The PPE Act does not specify in detail how the sanctions should apply, and how we should take decisions about using them. However, it does require us to consult on and issue a policy on this. The responses to this consultation will inform the final version of our enforcement policy guidance, which we will publish before we begin to use the new sanctions. We will need to follow our enforcement policy in carrying out our regulatory functions. We will also pass consultation responses to the Government so that it can consider them when drawing up detailed secondary legislation about how the sanctions should apply to different offences.

Deciding when to impose a sanction

2.13 If we are satisfied after a review or investigation that the evidence indicates beyond reasonable doubt that a breach has occurred, we will consider whether it is appropriate to impose a sanction. We will then apply the following tests:

- **The public interest** – in the light of the facts of the case, we have to consider whether there is a public interest reason not to impose a sanction – for instance, if the regulated entity involved has ceased to exist.
- **Proportionality** – we have to decide what kind of sanction, if any, it is proportionate to impose in order to achieve our enforcement objectives.

2.14 In the light of these tests, we will decide on the appropriate course of action. Broadly, there are four types of response available to us. Our enforcement policy paper (paragraph 4.30) sets out these options and gives examples of the kind of cases where each option will apply.

1. **Take no action** – where a breach of the law is trivial, appears unlikely to be repeated and poses no material threat to the transparency and integrity of party and election finance, we will usually take no further action.
2. **Offer support and sanction where needed** – where a breach indicates that a regulated entity needs to change its behaviour or improve its capacity to comply with the law, but we are satisfied that it can do so without the spur of a formal sanction, we will usually offer support such as advice or training to help it come into compliance. However, where the breach attracts a standard monetary penalty, for example for failing to provide a statutory return, that penalty will be an option.
3. **Require improvement** – where a regulated entity is repeatedly failing to meet its obligations, but the failures are not significant enough to require a criminal or very substantial civil sanction, we will offer support backed up with an appropriate sanction to encourage compliance. This may be a financial penalty and/or a compliance notice requiring the entity to take steps to become compliant.
4. **Seek restitution and deter non-compliance** – where a breach may have a significant impact on the transparency or integrity of party and election finance, or involves deliberate intent to get around the rules, we will seek to impose an appropriately severe civil sanction or – where we conclude that it is in the public interest to do so – refer the case to the police, or the Procurator Fiscal in Scotland.

2.15 In each case we will use the sanctioning option that we consider most likely to achieve our enforcement objectives in a proportionate way. The new sanctions provide us with alternatives to referring matters for criminal prosecution, making it easier for us to apply sanctions that are appropriate to the nature of each offence or contravention. We will also be able to use new and constructive approaches to secure compliance with the law where appropriate, rather than imposing a traditional penalty such as a fine, or referring a case for criminal investigation.

Public information about our enforcement and sanctioning work

2.16 Our enforcement policy paper (paragraphs 4.79–81) sets out our approach to the disclosure and publication of information about our enforcement work. Where we launch an investigation we will notify those involved and issue a press release, unless there is a good reason not to do so, such as a possible adverse impact on the investigation. We will also notify those involved and issue a press release at the conclusion of an investigation, to explain the outcome, the rationale for our decisions, and (after the relevant appeal period has ended) any sanction imposed. We will also issue a press release and publish information about cases which we refer to the police or

Executive summary of the enforcement policy

prosecuting authorities for criminal investigation, and when we undertake civil litigation. We have a statutory obligation to publish information in our Annual Report on the use of our investigatory powers and civil sanctions. Our consultation invites views on the scope of the information we should publish.

3 Principles of our risk-based regulation

Risk-based regulation and the work of the Electoral Commission

3.1 Wherever possible, we seek to use advice and guidance, rather than enforcement action, in order to secure compliance with the law. This reflects one of the key principles of good regulation, as set out in Sir Philip Hampton's report *Reducing Administrative Burdens: Effective Inspection and Enforcement*² – 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 securing compliance.

3.2 We provide advice and guidance in a variety of ways. We explain the requirements of the Political Parties, Elections and Referendum Act 2000 (PPERA) to political parties, recognised third parties, and permitted participants in referendums when they first register with us. We publish guidance on a wide range of subjects, and are currently reviewing the way in which we structure and provide guidance material to ensure that it meets the needs of those we regulate. We provide advice on specific issues where requested (including formal advisory opinions on novel and complex legal issues), and we offer training where needed.

3.3 We understand that in some cases those we regulate may be reluctant to seek our advice because they do not want to admit that they may not be compliant. Where a request for advice throws up evidence of non-compliance, our response will depend on the circumstances of each case. If we conclude that the non-compliance is not significant, and the advice we give is promptly followed so that compliance is quickly achieved or the party or individual takes steps to ensure that it does not benefit from non-compliance, the case will generally not be referred for consideration of enforcement action.

3.4 If it is clear that there has been significant past non-compliance then we may need to refer the case to our enforcement team for consideration, but the decision on what action to take will take into account all relevant factors including whether the party or individual brought this matter to our attention in an attempt to seek advice. In many cases, seeking advice and endeavouring to ensure compliance will be strong mitigation and may lead to a decision that no further action is required, although this will always depend on the facts in any particular case. Conversely, where we offer advice to a regulated entity on how to comply with the law, and that advice is not followed, we may take that into account in considering our response to any subsequent non-compliance.

² The Hampton report is available from www.berr.gov.uk/files/file22988.pdf. It sets out principles of good regulatory practice including the use of risk assessments, provision of authoritative and accessible advice, and proportionate and meaningful sanctions. These principles are reflected in the Better Regulation Executive, *Regulators' Compliance Code* (17 December 2007), Available at www.berr.gov.uk/files/file45019.pdf

3.5 Another key principle of good regulation is that we should only take enforcement action where it is necessary and proportionate to do so. Chapter 4 of this enforcement policy explains how we use the powers and sanctions available to us in accordance with this principle. This chapter sets out how we target our regulatory activity efficiently – including the provision of advice and guidance, as well as investigations and sanctioning – to do as much as possible to ensure the transparency and integrity of party and election finance within the resources available to us.

Risk assessment of regulated organisations

3.6 Over 300 political parties are registered with the Commission, and the larger parties have many registered ‘accounting units’ such as constituency associations, which have their own legal obligations under the PPERA. To help us deploy our resources effectively, we are developing formal risk assessment tools, based on the principles set out in the Hampton report. The purpose of these tools is to provide a transparent and consistent way of assessing:

- the likelihood that those we regulate may experience difficulties in complying with the law, and
- the impact that such problems could have on the public’s view of the integrity and transparency of political financing

3.7 Over time we intend to develop a risk assessment profile of each registered political party, and of those party accounting units and other regulated organisations (such as campaigning third parties) that we deal with on a regular basis. We intend to only share the profile with the entity concerned as it is an internal tool that we will use to prioritise regulatory resources based on the potential risk posed by the entity.³ Further information is provided at paragraph 3.19. These profiles will give an overview of the regulatory risk that each organisation appears to be exposed to, relative to the other organisations we regulate. We **do not** propose to develop profiles of regulated individuals, such as holders of elective office. Those individuals regulated by PPERA have fewer regulatory obligations than registered parties, and it would be both impractical and disproportionate to attempt to profile the capacity of regulated individuals to comply with the law.

3.8 Each profile will consist of two parts, covering:

- data on the organisation’s past financial and compliance record, and
- any relevant information the Commission holds about the organisation’s current position and governance, and any external factors that may affect its future ability to comply with the law, such as changes in its funding environment

³ This use of risk profiles is an approach taken by other regulators such the Financial Services Authority.

Financial and compliance records

3.9 The first part of the profile will consist of a regularly updated assessment against specific criteria, drawing on the objective data that is available to us about each organisation's past compliance record and the scale and complexity of its financial operations. Experience suggests that these are key indicators of both the likelihood of future compliance problems, and the impact of such problems on public confidence in the transparency and integrity of political finances. Assessing an organisation against these criteria will therefore provide a straightforward outline of the likely risk level of a given organisation in comparison to others, based on publicly available information. We will use the results of these assessments to inform how we target our regulatory resources, both in terms of advice and guidance and in respect of our inspection and audit work, such as our use of the power in PPERA to require audits of party statements of accounts.

3.10 Where issues of repeated or severe non-compliance come to our attention from the activity we undertake as a result of risk assessments we may consider it appropriate to refer such matters for enforcement activity. We will not, however, seek to use our supervisory power of entry to a party's premises after commencing a review or investigation into a breach of PPERA. Further information about the Commission's supervisory powers is included in chapter 4 (paragraphs 4.7–9).

3.11 The criteria we will use initially for this part of the assessment can be grouped under three headings which are explained below: compliance record, financial data, and operational scale. We may introduce other relevant factors as a result of our experience of using the profiles.

1. The **compliance record** assessment will include consideration of past reporting performance and substantiated evidence of non-compliance with the rules, usually over a period of three years. We will also take into account compliance with routine registration requirements such as the annual confirmation of the organisation's registered details.
2. Our assessment of **financial data** will be based on key indicators taken from statements of accounts that parties are required to provide to us under PPERA.
3. We will assess **operational scale** by looking at reported turnover, the number of accounting units registered by the party and the number of elections it has contested in recent years. A list of the proposed criteria is set out in Appendix A – Criteria for risk and impact profiling.

Governance and external factors

3.12 The second part of the profile will consist of an assessment of any other relevant information that we hold about the organisation's governance and its present (and likely future) capacity to comply with its obligations under PPERA. It will also cover any information about external factors that may influence either the likelihood of compliance problems, or the impact that such problems would be likely to have on confidence in the transparency and integrity of political finances.

3.13 This part of the profile is more subjective than the first part, since it is not based on a set of publicly reported data. As such, it will not on its own provide a sound basis for targeting our use of statutory audit and inspection powers that have the potential to place an administrative burden on those we regulate. It will therefore be used to inform our use of our advice and guidance resources, in line with the principles of good regulatory practice. If this part of the profile indicates that an organisation is at increasing risk of non-compliance and/or that such non-compliance would have a significant impact on transparency and integrity, we will prioritise our resources and offer the appropriate support to the organisation concerned.

3.14 Again, the criteria we will use for this part of the assessment can be grouped under three headings: public profile, governance and capacity, and external factors.

1. The assessment of **public profile** will include whether the organisation concerned is represented or holds power in an elected body, such as the UK Parliament, one of the devolved parliaments or assemblies, the European Parliament, or a significant regional or local body.
2. The assessment of **governance and capacity** will consider any problems apparent when the organisation first registered with us, and whether the organisation's compliance infrastructure (records, systems and staff) appears adequate to deal with the scale of its fundraising operations and spending. It will also take into account any material change in structure, governance or leadership over time, and any significant change in the organisation's policies, campaigning or fundraising methods which may affect the sources or volume of its funding.
3. The assessment of **external factors** will take into account changes in the external environment that may affect the organisation's sources of funding, such as economic difficulties. A list of current criteria is set out in Appendix A.

Our proposal for campaign monitoring

3.15 The Commission's regulatory remit is to monitor and secure compliance with the regulatory regime set out in PPERA, and with other legal requirements relating to spending by, and donations to, candidates at elections. In the run-up to each significant electoral event in the UK, the Commission therefore has to decide how best to allocate its resources to monitor election campaigning, including the real time observation of campaigning in order to assess the likely levels of spending involved, and the post-election scrutiny of party campaign spending returns and candidate expenses returns.

3.16 At present we seek to do this in a risk-based way using a high-level analysis of the risk of damage to the integrity and transparency of political finances, looking at specific factors in England, Scotland, Wales and Northern Ireland as appropriate. For example, in the case of the June 2009 elections the Commission decided to carry out a certain amount of desk-based

campaign monitoring for the European Parliament elections, and to scrutinise all party campaign spending returns in respect of those elections, but not to examine individual candidate expenses returns in respect of the local elections in England.

3.17 In parallel with our risk profiling of regulated organisations, we are now developing a more rigorous method for evaluating high-risk electoral events and prioritising our use of resources for campaign monitoring and the scrutiny of spending returns. This will look at specific electoral ‘battlegrounds’, such as constituencies in UK Parliamentary general elections, regions in European Parliament elections and aspects of elections in devolved areas. It will assess each electoral area against criteria including:

- historic data or projections suggesting that the contest will be marginal or particularly hard-fought
- any evidence of significant funding flowing into organisations campaigning in the relevant area, including locally-based parties and the accounting units of larger parties, either via reported donations or through transfers from other parts of an organisation
- any evidence of significant campaign spending by such organisations, or by national organisations targeting activity in the area
- any evidence that one or more candidates (or prospective candidates) may have a higher than usual personal profile, for example where two sitting holders of elective office are competing against each other because of a boundary change, and
- a historic record of non-compliance by one or more of the participating organisations

3.18 We will draw on this assessment in planning how to deploy and prioritise our campaign monitoring and scrutiny resources for major electoral events. The extent of the monitoring we carry out will depend on our available resources, the type of election and the risks (likelihood and impact) involved.

Public information about our risk-based approach

3.19 Following good practice established by Sir Philip Hampton and the Regulators’ Compliance Code, we will be publishing our risk methodology alongside our final enforcement policy. We will not publish the results of our risk assessment profiling, but we will share them with the relevant regulated entity. Our assessment of financial and compliance records will be based on information that is publicly available through our website. Our assessment of governance and external factors will reflect information from a variety of sources which may include confidential exchanges with the relevant regulated entity. These assessments may be of public interest but given the need to preserve the confidence of those we regulate we believe that the potential harm caused by placing this internal information in the public domain would outweigh any benefit and could be detrimental to the effective conduct of public affairs.



Consultation questions

- Q1. We are proposing a system of risk assessment for regulation. Are you aware of any reasons why the approach outlined in this paper does not meet the principles of good regulatory practice?
- Q2. We intend to use our limited resources in the most efficient way possible to work toward the aim of increasing public confidence in the democratic process. To do this we propose to use risk assessments to prioritise how we use our resources. Do you agree that this is a suitable approach? Please set out any alternative approaches you would like us to consider.
- Q3. We have set out criteria we plan to use to develop profiles of political parties and accounting units. These are based on financial information, compliance history, governance and external factors. Do you agree with these criteria? Please tell us about any other criteria that you feel we should also take into account when developing these profiles.
- Q4. In order to maintain the confidence of those we regulate, we consider it appropriate to only share the risk profile with the regulated entity concerned. Do you agree? If not, please outline the case for making such information public.

4 Principles of our enforcement and sanctions policy

Overview

4.1 This section of the enforcement policy sets out the principles that underlie the supervisory, investigatory and sanctioning aspects of our regulatory role. Our detailed proposals on the sanctions that should apply to different offences and contraventions of the Political Parties, Elections and Referendums Act 2000 (PPERA), the way in which we should calculate financial penalties, the circumstances in which we will accept voluntary enforcement undertakings, and other detailed information are set out in the appendices.

The objectives of our enforcement work

4.2 Wherever possible, we seek to use **advice and guidance** in order to secure compliance, in line with good regulatory practice. We are committed to providing those we regulate with a clear understanding of their regulatory obligations. Political parties, recognised third parties and permitted participants in referendums are required to register with us; when they do so, we explain the requirements of PERA and what they need to do in order to comply with the law. We produce guidance on a wide range of subjects, respond to requests for advice, and provide training where requested. We will take **enforcement action** where it is necessary and proportionate to do so.

4.3 The overall objectives of our enforcement action are to:

- ensure the transparency of party and election finance that voters expect
- eliminate any financial gain or benefit from non-compliance
- bring non-compliant bodies into compliance, and
- deter non-compliance by regulated entities

4.4 When concerns about non-compliance come to our attention we first undertake an initial assessment (outlined below in paragraphs 4.10–17) to determine the most appropriate course of action. At this point we may decide to provide advice and guidance, or that no further action is required, or that it is appropriate to keep the case under review or begin a formal investigation.

4.5 Only after reviewing or investigating a matter where we conclude beyond reasonable doubt that the law has been broken will we consider the most proportionate form of sanction (further information about the decision-making process is found at paragraph 4.27). This will allow us to take into account the severity of any non-compliance and the individual circumstances of each case before making any decision to:

- **take no action** – where the breach is considered trivial or significant public interest factors against taking a decision exist, or

- **offer support, and sanction where needed** – where a breach points to a regulated entity needing to improve its capacity to comply with the law, but where we are satisfied the regulated entity is willing and able to comply in the future we will encourage the regulated entity to use the advice and guidance available. Where a breach is of the kind that attracts a standard penalty fixed monetary penalty, that will also be an option, or
- **require improvement** – by giving the regulated entity a clear direction to change the way they do things in order to come into compliance and demonstrate to our satisfaction that they have done so, and backing this up with civil sanctions where needed, or
- **seek restitution and deter future non-compliance** – this will be particularly relevant in cases involving repeated non-compliance, high value transactions, and those involving deceit. This may include investigation leading to civil or criminal sanctions.

Our powers to monitor and secure compliance

4.6 The Political Parties and Elections Act 2009 (PPE Act) restates the supervisory powers available to the Commission and provides additional investigatory powers. Supervisory powers (described below) are available to us for the routine purposes of monitoring compliance with the controls contained in the PPERA. The investigatory powers available to the Commission can be used only when we suspect that someone has broken the law, but these may be applied to any person or organisation (for example a person or organisation that has made a donation), not just those we regulate.

How and why we use our supervisory powers

4.7 As part of our statutory role of monitoring compliance with the law we sometimes need to obtain information from, and visit premises used by, those we regulate, such as a political party, members' association⁴, registered third party or permitted participant. For instance, we do this when auditing the use of policy development grants as part of our work to audit the use of the policy development grants to political parties that we administer. Where possible we prefer to seek to do this on a voluntary basis, giving advance notice if we wish to visit premises. However we have statutory powers to ensure that we can obtain information if necessary.

4.8 Where we have been refused access to premises following a request, we also have a power to ask a magistrate to agree to issue a warrant allowing entry. To do this we have to be able to convince the magistrate that:

- there are reasonable grounds for believing that there are documents relating to the income and expenditure of the organisation or individual on the premises

⁴ Terms such as members' association and permitted participants are explained in the glossary in chapter 5.

- we need to inspect the documents for the purposes of carrying out functions of the Commission other than investigatory functions, and
- we have requested permission to inspect the documents on the premises and it has been unreasonably refused

4.9 We cannot use this power of entry to inspect documents for the purpose of conducting an investigation into a suspected breach of the law. Our powers relating to investigation of breaches of the law are separate and detailed in paragraphs (paragraphs 4.18–22).

How and why we review and investigate possible breaches of the law

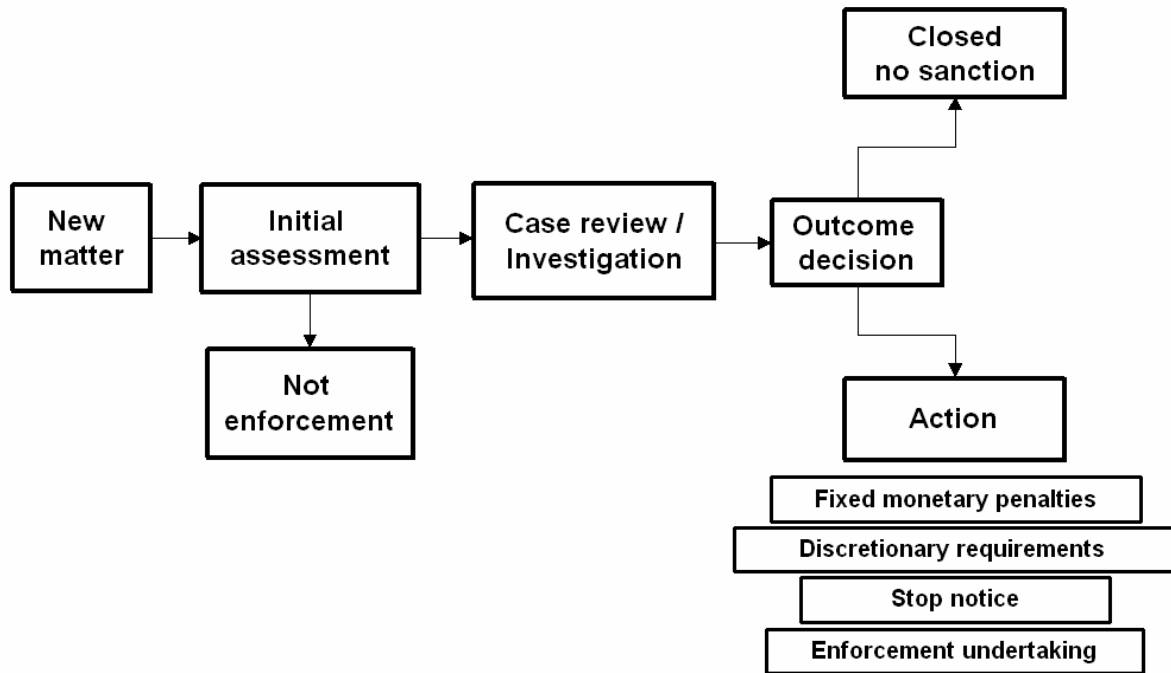
4.10 We may instigate investigatory activity for a number of reasons:

- we monitor the timeliness and content of returns to ensure their accuracy and compliance with statutory requirements, taking enforcement action where appropriate
- we receive complaints about alleged breaches of the law, to ensure consistency, we use a formal process to consider and assess allegations to establish whether there are grounds to review or investigate, and
- we may take action on our own initiative. For instance if we become aware of a potential breach of the law through internal or external correspondence or press reports, but we have not received a formal allegation, we use the same formal process we use for allegations to consider and assess whether grounds exist to review or investigate further or whether the matter is for advice and guidance

How we decide when to undertake a case review or investigation

4.11 Where a review of a statutory return, an allegation, or other information suggests that we need to find out whether a regulated entity has broken the rules we consider each case on its own merits to ensure that any action we take is necessary, proportionate, and consistent. Figure 1 below summarises the case review, investigatory and decision-making processes that are described in the remainder of this section.

Figure 1: Case review, investigatory and decision-making processes



4.12 Our first step is to undertake an initial assessment. We will consider the information available and any Commission records or information held. We will not, however use our powers to seek any additional evidence at this point.

4.13 The initial assessment will enable us to classify the case in one of the following categories:

- **a case not requiring any enforcement action** – we may offer advice to the organisation concerned where appropriate, for example providing guidance on valuation and the treatment of non-cash donations, to ensure future compliance with the rules on reporting
- **a case under review** for a time-limited period, which may in due course lead to investigation, or
- **a case under investigation**, where formal interviews or the use of our statutory powers are required

Case under review

4.14 A new matter will become a case under review if:

- we have evidence or have identified a credible source of information indicating a potential breach of party and election finance legislation, not merely assertion of, or speculation about, a breach

Example

Where a complainant states that they believe a regulated donee may have accepted an impermissible donation because the person has been in touch with a donor not on the electoral roll, this would not in itself be grounds to review the case. However, if the complainant had direct knowledge of the alleged donation or has stated that they may have relevant information by an identifiable individual who has such knowledge, this may be grounds for reviewing the case.

- it appears to require a review which is proportionate. A review will be proportionate if the resources to review the case are justified in the light of all relevant factors by:
 - the seriousness of the potential breach and therefore the extent to which it may undermine the integrity and transparency of party and election finance, and/or
 - the deterrent effect of an investigation on those involved and on others who may otherwise be likely to commit a further or similar breach

Example

Where a complainant states that a party has accepted a substantial impermissible donation and has neither returned nor reported it, review (and potentially investigation) will generally be proportionate in terms of seriousness. However, where a complaint relates to a low value impermissible donation accepted by a party three years ago then returned to the donor (but outside the time limit prescribed by PPERA), and to investigate the matter would require a significant number of interviews with individuals no longer working for the party who would be resource intensive to identify or contact, we may conclude that it would not be a proportionate use of public money to investigate.

- the benefits of a review outweigh any factors suggesting that a review is not in the public interest, for instance the serious ill-health of an individual, or where a party has ceased to exist some time ago

Example

Where a complainant states that a now defunct and de-registered minor party may have accepted impermissible donations, the cost of investigative action to the public purse is unlikely to be in the public interest.

4.15 Cases under review do not involve the use of formal interviews or the use of statutory investigatory powers. However, a matter under review may escalate to being classified as a formal investigation during the review process should this be necessary.

Case under investigation

4.16 The PPE Act provides us with powers to carry out investigations in cases where we have reasonable grounds to suspect that the law has been broken.

4.17 We will only use our investigatory powers where it is reasonable and proportionate to do so using the test of proportionality described at 4.14. In cases where we decide that we need to use formal interviews or statutory powers to determine whether a breach has occurred within the statutory timescale or, if a breach clearly has occurred within the timescale, whether to impose a sanction or make a referral for criminal prosecution, our enforcement activity will be formally designated as an investigation.



Consultation question

Q5 The consultation paper (paragraphs 4.14–4.17 of the consultation paper) sets out the factors we plan to use to determine what action to take arising from a new matter. Do you agree with this approach? Are there any additional factors that you feel should be taken into consideration when we are assessing whether to take further action arising from a new matter?

Seeking information as part of an investigation

4.18 In cases where we have reasonable grounds to suspect that the law has been broken, we will expect to use the following steps when seeking information as part of an investigation, unless there is good reason to do otherwise:⁵

1. we will seek information from the individual or organisation on a voluntary basis
2. if the individual or organisation does not voluntarily co-operate with requests for information, we will use our statutory powers to require documentation, information or an explanation by disclosure notice and/or to require persons to attend an interview
3. if the individual or organisation does not comply with a disclosure notice, and if it is necessary and proportionate to take further action, we will use our powers to seek compliance with the notice (this power using a court order is set out in paragraphs 4.21–22 below). We expect to use the courts to secure compliance with a disclosure notice as a last resort.

How we use investigatory powers

4.19 Where the information we request on a voluntary basis is not provided, we may issue a statutory disclosure notice to require any person to produce documentation, information, or an explanation of their activities within a reasonable timeframe we specify in the notice. The length of time we specify for the production of information will depend on the quantity and complexity of

⁵ The reference to ‘good reason to do otherwise’ reflects the fact that on rare occasions, it may be in the public interest for the Commission to use its statutory powers immediately. For instance, this may be required if crucial evidence is at risk of being destroyed or removed.

the information being sought. If a person does not possess documents or knowledge of the requested information they should explain that this is the case. It is a criminal offence to fail to comply without reasonable excuse with a disclosure notice.

4.20 We may also require anyone we reasonably believe may have any relevant information, to attend an interview and answer any questions we reasonably consider to be relevant. The normal protections relating to evidence that is self-incriminating not being admissible in criminal proceedings apply.

Court orders

4.21 In circumstances where the Commission has reasonable grounds to suspect an offence or contravention has been committed we may issue a disclosure notice for documents, information or an explanation, as described above. It is an offence for a person not to comply with a disclosure notice, obstruct the Commission, or provide false information. If the recipient does not respond to the disclosure notice, we also have powers to apply to the High Court (or Court of Session in Scotland) for a **disclosure order** to require compliance with the delivery of documents or the provision of information or explanation.

4.22 The Court will only grant such an order where we demonstrate that:

- the Commission has issued a disclosure notice
- there are reasonable grounds to suspect a person (not necessarily the respondent) has committed an offence or contravention under or by virtue of PPERA
- there are documents or information, which:
 - have not been produced in compliance with an earlier notice
 - are reasonably required by the Commission for investigating the offence or contravention, and
 - are in the custody or control of the respondent

Timescales

4.23 The time taken to complete a review or investigation depends on the nature and facts of the case. Where there is a great deal of evidence to collect and assess, or where the potential breach relates to a particularly complex or untested area of the law, the case is likely to take longer. We recognise that it is in the public interest, and in the interests of natural justice for those involved, for us to conclude our casework as quickly as possible. However, this must be balanced with our duty to conduct a fair and thorough investigation.

4.24 Cases under review are time limited and are generally less complex than investigations as they do not involve us using formal interviews or investigatory powers. We will undertake regular assessments (at least once a month) which will result in us determining whether to:

- re-designate the case as an investigation, or
- close the case with no further enforcement action, or
- close the case and impose a civil sanction, or
- continue to review the case

4.25 Cases under investigation will be assessed regularly and closed with no further action if we conclude that they are unlikely to result in a finding of a breach. We set ourselves a target of resolving 90% of cases within six months.⁶

4.26 We can only retain documents delivered in accordance with a court order for three months, unless proceedings have commenced in relation to a criminal offence. In practice we will return documents more quickly than this if they are of no relevance in an investigation.

Determining the most appropriate action

The decision-making framework

4.27 After we conclude a review or investigation we consider the most appropriate action to take. We first apply an evidential test to determine whether a breach has occurred. If it has, we then apply a public interest test to confirm whether a sanction is appropriate. These tests are described below.

Evidential test

4.28 The evidential test will be met where there is evidence which satisfies us beyond reasonable doubt that a regulated entity has breached the law.

Public interest test

4.29 To decide whether a civil sanction would serve the public interest, we weigh up the factors for and against sanctioning, which may include the following:

Factors in favour of a sanction:

- A sanction would provide a deterrent effect to the entity who may otherwise commit a similar offence again.
- A sanction would remove any benefit gained by the entity.
- A sanction would maintain public confidence in the regulatory regime.
- The offence undermines the integrity or transparency of party and election finance.
- The entity has, without good reason, not accepted or adhered to our offers of advice on how to comply with the relevant law.
- A sanction would deter others who may otherwise commit a similar offence.

⁶ The Electoral Commission, *Corporate Plan 2009–10 to 2013–14*, HC 389, p 9.

Factors against a sanction:

- The offence is trivial.
- The effect of a sanction on the entity would be disproportionately detrimental.
- The imposition of a sanction would seriously aggravate any serious physical or mental ill-health.
- The cost to the public purse of the imposition of the sanction would not be justified by the benefit to the public.
- The entity has made a genuine effort to follow our guidance or previous advice on how to comply with the relevant law.



Consultation question

Q6. Do you agree with the factors (paragraph 4.29 of the consultation paper) we are proposing to use to determine whether there are sufficient public interest reasons not to impose a sanction? Please tell us if there are any factors you feel should or should not be taken into consideration.

4.30 In the light of these tests, we will decide on the appropriate course of action. Broadly, there are four types of response available to us:

1. Take no action – this is likely to be appropriate where we conclude that the breach was so trivial or inadvertent, and the risk of the regulated entity failing to meet the relevant obligation in future so slight, that it is not proportionate for us to take any action. It will also be appropriate if there is a significant public interest factor against taking action, such as a political party's registered office holders emigrating and the party ceasing to exist.

Example 1

A party submits a quarterly donation return on the due date, but from which a page is missing, having been left on a photocopier. The missing page is submitted the following day.

Example 2

A small party with no elected representatives and no reportable donations in its history changes its registered leader without notifying the Commission.

2. Offer support, and sanction where needed – this is likely to be appropriate where we conclude that the breach points to a need for the regulated entity to change its behaviour or improve its capacity to comply with the law, but we are satisfied that the entity in question is willing and able to bring itself into compliance without the ongoing threat of sanctions. Our usual response in such cases will be to explain to the regulated entity that it has contravened the law and to offer support such as advice or training to help it comply in the future. Where the

contravention is of a kind that would attract a standard penalty such as a fixed monetary penalty, that penalty will also be available.

Example

A newly registered party fails to submit either of its first two quarterly donation returns on time, because it has not developed an effective administration system for submitting returns, but it is in the process of doing so and has sought and is acting on advice from the Commission.

3. **Require improvement** – this is likely to be appropriate where a regulated entity is repeatedly failing to meet its legal obligations, but the failures are not of a level to require consideration of a criminal or very substantial civil sanction. In these cases we will offer support such as advice or training to help the entity to comply in the future, but we will also seek to back this up with appropriate sanctions – for instance, a variable monetary penalty to incentivise future compliance, and/or a compliance notice to require the entity to take certain steps to bring itself into compliance with the law. Our decision in each case will take into consideration the need to deter future non-compliance by those we regulate.

Example

A party has repeatedly failed to submit donation returns, loan returns and statements of accounts on time over its four year history despite a number of fixed monetary penalties. Some returns remain outstanding and some penalties have not been paid and are subject to recovery action. The party has not acted on offers of advice and guidance from the Commission in the past.

4. **Seek restitution and deter future non-compliance** – this is likely to be appropriate in cases that may have a significant impact on confidence in the transparency and integrity of party and election finance – for instance, those involving significant amounts of money, repeated material failures to comply, or offences involving deliberate intent to get around the rules. In these cases, we will seek to impose appropriate civil sanctions, such as a substantial variable monetary penalty and/or a compliance/restoration notice, or a stop notice or, where we conclude that it is in the public interest to do so, we will refer such cases to the police (the Procurator Fiscal in Scotland). Our decision in each case will take into consideration the need to deter future non-compliance by those we regulate.

Example

A party has failed to return or report six substantial donations from an impermissible donor during a reporting quarter through an agent and did not disclose relevant information to the Commission despite repeated requests.

The sanctions available to us

4.31 Where we are satisfied beyond reasonable doubt that there is evidence to show that there has been a breach of the law, we have a range of sanctions available to support the objectives of our enforcement policy.

Existing sanctions

4.32 PPERA provides criminal sanctions for offences committed under the Act. However, referral for criminal prosecution may not always be a proportionate response to the nature of the breach. Although PPERA provided a limited number of civil penalties for the late submission of statutory returns (which will be repealed when the new civil sanctions commence) and we can apply to a magistrate for forfeiture of funds from impermissible or unidentifiable sources, these only apply to a small part of the party and election funding rules. Where we have used civil penalties for late submission of quarterly returns we have seen a significant increase in compliance.

Sanctions available in the future

4.33 The PPE Act includes a range of civil sanctions that may be prescribed through secondary legislation to apply to offences and contraventions of PPERA. The new civil sanctions are based on sanctions included in the Regulatory Enforcement and Sanctions Act 2008,⁷ which implements recommendations from a review conducted by Professor Richard Macrory to examine how regulators could best use sanctions to achieve compliance.⁸

4.34 Following consultation on this draft enforcement policy, the Commission will make recommendations to the Government on how the new sanctions should be prescribed in secondary legislation. Subject to the outcome of this consultation we expect to recommend the following approach, which is consistent with the views expressed by Government ministers during Parliamentary debate on the PPE Bill:⁹

- the full suite of new civil sanctions should be applicable to the vast majority of offences contained in PPERA, since they will allow a much more proportionate and flexible approach to enforcement, as outlined below
- however, a limited number of offences in PPERA (including some created by PPERA) should remain subject to criminal prosecution only, since they relate to deliberate intent to mislead or to get round the rules. In our view examples of such offences include:
 - knowingly giving the treasurer of a political party false information about a donation, or withholding information about donations from a treasurer with intent to deceive (Section 61(2)(a) of PPERA)

⁷ The Regulatory Enforcement and Sanctions Act 2008, is available at: www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080013_en.pdf

⁸ Professor Richard Macrory, *Regulatory Justice: Making Sanctions Effective, Final Report*, (November 2006), available at www.berr.gov.uk/files/file44593.pdf

⁹ House of Lords Debate, 15 June 2009, column 879

- altering, concealing or destroying documents relating to the financial affairs of supervised organisations or individuals (Section 148(1) of PPERA)
- knowingly supplying false information in response to a request for information (Section 148(2)(b) of PPERA)
- intentionally obstructing an investigator (Schedule 19B of PPERA as amended by the PPE Act, paragraph 14(2))
- knowingly or recklessly making a false declaration as to the source or value of a donation (Section 54A(6) of PPERA as amended by the PPE Act)



Consultation question

Q7. Do you agree that certain offences under the Political Parties, Elections and Referendums Act 2000 (PPERA), such as those listed in paragraph 4.34 of the consultation paper, should remain only subject to criminal prosecution?

4.35 The new range of flexible and proportionate civil sanctions, set out below, will provide us with alternatives to referring matters for criminal prosecution. They will make it easier for us to apply sanctions that are appropriate to the nature of each offence or contravention. We will also be able to use new and constructive approaches to secure compliance with the law where appropriate, rather than imposing a traditional penalty such as a fine, or referring a case for criminal investigation. For instance, we could issue a notice requiring a non-compliant body to take specified steps in order to become compliant, such as amending a party's systems or training its officers on their legal obligations, or we could accept enforcement undertakings.

4.36 In line with the objectives of our enforcement activity, we will use our civil sanctions in a proportionate way to eliminate benefits obtained from non-compliance, to bring non-compliant bodies into compliance, and to deter future non-compliance by those we regulate.

4.37 The graduated nature of the civil sanctions available provides us with a flexible sanctioning regime to tailor the sanction to the level of the breach. For instance, we would be able to impose a variable monetary penalty of an appropriate scale, and/or a compliance notice dealing either with a particular failing (for example, the lack of a system to ensure reporting of particular information on time) or a more general lack of capacity (for example, requiring a regulated entity to cooperate in training its officers in their legal obligations).

4.38 There is one exceptional sanction, a **stop notice**, which will enable us to take action to stop potentially unlawful acts from occurring or to stop unlawful activity continuing. We can use a stop notice to prevent an imminent serious breach of the law, such as campaigning action that would breach an election spending limit. This will allow us to avert an illegal action aimed at materially

influencing an election, rather than waiting until the damage is done before applying a sanction. Unlike fixed monetary penalties and discretionary requirements, stop notices do not require a criminal standard of proof. Therefore the PPE Act sets a high threshold before they can be issued; there must be a significant risk of an event that would seriously damage public confidence in the effectiveness of the regulatory regime.

4.39 In cases where the full suite of civil sanctions is applicable to an offence, we may specify in our final published enforcement policy that our policy will be to rely primarily on a sub-set of those sanctions in respect of that offence. For instance (as discussed in paragraphs 4.44–47) we would expect to impose a fixed monetary penalty rather than a more severe sanction in the case of a slightly overdue quarterly donation return, which is an offence under section 65(3) of PPERA. Conversely, a fixed monetary penalty is unlikely to be appropriate in the case of an offence such as facilitating an impermissible donation (Section 61(1) of PPERA). However, the legislation implies significant flexibility for us to decide on the most appropriate sanction, and we believe it appropriate that this flexibility is carried through in the secondary legislation. This will enable appropriate flexibility to meet a specific set of facts, since our experience of operating the new sanctions may lead us to amend our policy approach over time.

4.40 The 2009 Act also allows for the new civil sanctions to be made available in respect of contraventions of PPERA which are not criminal offences. There are several significant contraventions of PPERA which are not offences, and therefore cannot be sanctioned at present. These would have to be prescribed in secondary legislation, and again, we will make recommendations to the Government on this in the light of the outcome of this consultation. It is for the Government to determine which, if any, of the contraventions of PPERA that are not offences ought to be open to civil sanction. Our current view is that in order to ensure public confidence in the funding regime of party and election finance by promoting transparency and integrity it would be helpful to make the civil sanctions available in respect of the following contraventions of PPERA:

- failure to notify the Commission of changes in a political party's registered details (Section 31 of PPERA)
- failure to keep accounts (Section 41(1) of PPERA)
- failure to maintain accounts for six years (Section 41(4) of PPERA and Section 41(5) of PPERA) and
- failure to give details of the nature of a non-cash donation (Schedule 6, paragraph 4(3) of PPERA)

4.41 We would expect to rely on fixed monetary penalties to sanction the first of these contraventions, and to use either a fixed monetary penalty, a variable monetary penalty or a compliance notice as appropriate in respect of the others.



Consultation question

Q8. Do you agree that the contraventions listed in paragraph 4.40 of the consultation paper should attract civil sanctions? Are there any other contraventions under PPERA to which you think civil sanctions should apply?

How we use sanctions to secure compliance

4.42 Table 1 provides an illustration of how we may apply each of the sanction options available to us, and further information on each sanction.

Table 1: How we may apply sanctions

Sanction	Example
No action	where a contravention is trivial and the entity is considered unlikely to repeat it in future or there is a public interest reason to take no action
Fixed monetary penalty	low level non-compliance such as the late delivery of statutory information
Variable monetary penalty	more serious breaches than for fixed penalties where a fine can be set at a level to reflect the gravity of the offence
Compliance requirement	where we identify that a regulated entity needs to improve its capacity to comply, for example, by training staff or changing systems
Restoration requirement	to ensure a non-compliant entity makes good a contravention, for example, by giving up benefits received as a result of the contravention
Stop notice	a ‘real time’ sanction only to be used where there is a serious risk of damage to public confidence in the regulation of party funding
Enforcement undertaking	can be offered by a regulated entity that is aware it is non-compliant, in any circumstances

Sanction	Example
Court ordered forfeiture (existing sanction)	limited application, including donations and loans over the permissible threshold from impermissible and unidentifiable sources accepted by a regulated entity
Referral for criminal prosecution (existing sanction)	cases with significant impact on confidence in the transparency and integrity of party and election finance, such as those involving large amounts of money, repeated material failures to comply, or deliberate intent. The Commission will only refer where we decide that it is in the public interest to refer.

How sanctions will apply

4.43 The way in which we propose to use each of these sanctions is outlined in paragraphs (4.44–70). Detailed information about the processes for their use is set out in the appendices.

Our proposal for using fixed monetary penalties¹⁰

4.44 Fixed monetary penalties are fines of a specified amount. They will be appropriate in cases of low level non-compliance. We are proposing using fixed monetary penalties for a limited number of offences, relating to the late delivery of statutory information (for example, quarterly returns and statements of accounts). We can only apply a fixed monetary penalty where we are satisfied to the criminal standard of proof (beyond reasonable doubt) that a breach has occurred.

4.45 We are proposing to use fixed monetary penalties for offences with a lower impact on the transparency and integrity of party finance. These mainly relate to submitting information within statutory deadlines. For example we consider that quarterly donation and loan returns submitted up to 28 days after the deadline should attract a fixed monetary penalty. If a return is not provided within this timeframe then we would consider using a stronger sanction, such as a discretionary requirement (see paragraphs 4.48–4.60 and Appendix C). One exception to this approach is the requirement for parties to provide weekly donation and loan returns in the weeks leading up to a general election. We consider that any failure to submit returns during this period will impact considerably on transparency and we propose using variable monetary penalties for this offence.

¹⁰ See Appendix B for more information on fixed monetary penalties

Example 1

If 'Party A' submits its quarterly donation return to the Commission six days late, it would receive a fixed monetary penalty of £200.

Example 2

'Party B' submits its quarterly donation return two months late, resulting in a variable monetary penalty of £1,000 being issued.

Example 3

'Party C' reports one week late during a general election campaign. As the party has withheld significant information about its funding during a critical time in the election cycle it would receive a variable monetary penalty, of an amount depending on the circumstances.

4.46 The level of a fixed monetary penalty will ultimately be a decision for the Government and will be set out in secondary legislation which follows the PPE Act. We will provide Government with our views on the appropriate level taking account of our operational experience and the views generated by this consultation. At present, we consider that a £200 fixed monetary penalty is an appropriate deterrent to non-compliance for parties and accounting units. We do not propose to recommend a smaller penalty for accounting units, as in many cases accounting units will be better equipped to comply with the law than small parties, due to available support from their central party organisation.

4.47 We will only impose a fixed monetary penalty after we have provided an initial notice to the regulated entity in question, explaining the grounds for the penalty and setting out their rights to make representations and the period to do this. Following careful consideration of any representations, we may take no further action or, if we decide that a sanction is appropriate, we will then issue a final notice confirming the penalty and explaining payment arrangements and rights of appeal.



Consultation questions

- Q9. If you do not agree that £200 is a suitable level for a fixed monetary penalty, what do you think is a suitable amount and why?
- Q10. We consider non-compliance by parties with the weekly reporting requirement in the lead up to a UK Parliamentary general election sufficiently high impact to consider using variable monetary penalties (rather than fixed monetary penalties). Do you agree? If not, please tell us why.

Discretionary requirements¹¹

4.48 There are a range of ‘discretionary requirement’ civil sanctions, comprising **variable monetary penalties, compliance requirements, and restoration requirements**. These sanctions may be used either on their own or combined. They will allow us to apply flexible and proportionate sanctions to cases of non-compliance which are more serious than those involving fixed penalties, but not serious enough to require referral to the police.

4.49 The process for issuing a discretionary requirement broadly follows that set out in paragraph 4.47 for a fixed monetary penalty and is outlined in more detail in Appendix C.

Variable monetary penalties

4.50 The PPE Act provides that variable monetary penalties may be set at an amount determined by the Commission (capped at the statutory maximum for summary offences). The guidance that we are consulting on (through this draft enforcement policy) must also set out the matters that we are likely to take into account when determining the amount of the penalty. We consider it important that the scales for the calculation of variable monetary penalties are flexible to take into account the seriousness of the offence and whether or not the penalty is to be applied in isolation, or alongside a compliance or restoration notice. We propose that the amount of a variable monetary penalty be set at an appropriate level to remove any financial benefit arising from the offence and to take into account the circumstances. For instance, we are likely to consider imposing a variable monetary penalty in circumstances where:

- the non-compliance appears to be more than a simple administrative failure
- the non-compliance has been deliberate or reckless
- it is a repeat offence or there is a history of poor compliance
- restoring the situation or requiring actions under a compliance notice would not itself be likely to prevent further non-compliance
- there is a need for a deterrent effect in relation to other regulated entities

4.51 Our assessment of the circumstances of the offence will take into account all relevant aggravating and mitigating factors including:

Aggravating:

- magnitude of the breach, for example the harm caused to public confidence in the democratic process, the duration of the non-compliance
- a history of non-compliance by the regulated entity
- financial gain or other advantage to the regulated entity or others as a result of non-compliance with regulations
- uncooperative conduct of the regulated entity after the non-compliance has been discovered

¹¹ See Appendix C for more information on discretionary requirements.

- where previous action by the Commission, or other regulator, to help the regulated entity into compliance, has not been adhered to
- dishonesty
- continuing to deny the facts despite clear contrary evidence, and
- seeking unfairly to blame other people

Mitigating:

- a previously good compliance record
- action taken to eliminate or reduce the risk of damage resulting from regulatory non-compliance
- voluntary reporting of regulatory non-compliance
- actions taken to repair the harm done by regulatory non-compliance
- cooperation with the Commission in responding to the non-compliance
- an honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the statutory requirements, particularly where such a view has been formed after taking appropriate advice
- substantiated evidence that the member's actions have been affected by ill-health, and
- recognition that there has been failure to follow the statutory requirements

4.52 This is not an exhaustive list of factors and we will take all relevant circumstances into account in each case.

Example

A party fails to report several substantial donations during one quarter from a particular donor until a journalist reports the omission some months later. We would consider a variable monetary penalty to be the most appropriate sanction.

4.53 When determining the level of the variable monetary penalty, we cannot exceed the maximum level of the fine that could be ordered for that offence. Our approach to determining the level will be based on whether the offence involves financial transactions, non-financial transactions, or is an offence with a statutory maximum fine of £5,000. We propose to set a minimum amount of £500 for variable monetary penalties to reflect the graduation in seriousness of the sanction, sufficiently differentiated from the lower level fixed monetary penalty.

4.54 Where the statutory maximum fine for a summary offence (that may apply to financial or non-financial transactions described below) is capped at £5,000, the penalty will range between 10% and 100% of the £5,000 maximum. Offences that are capped at the statutory maximum relate to administrative breaches such as acting without authorisation, failing to notify the responsible person, or the payment of invoices being made outside the specified time limits. Three new offences established by the PPE Act also have penalties capped at the statutory maximum: failure to comply with one of the Commission's investigatory powers without a reasonable excuse, intentionally obstructing an investigator, and failure by an unincorporated

association to give notification or report within a specified period. These ‘capped summary offences’ make up around 20% of all offences under PPERA, as amended.

4.55 We propose that variable monetary penalties for non-compliance involving a financial transaction such as a donation or loan should be set in a range between 25% and 200% of the value of the specific donation or transaction. Examples of offences involving financial transactions include: facilitating making a false declaration (Section 61(1)), PPERA, facilitating a regulated transaction involving an unauthorised participant (Section 71L(9), PPERA).

4.56 Offences under PPERA may also involve non-financial transactions, often relating to breaches of campaign controls. For example such offences include exceeding statutory limits on campaign expenditure (Section 79(2), PPERA), and failing to comply with the requirements for campaign expenditure returns (Section 82(4)(b), PPERA). For political parties, accounting units and regulated donees we have a donation reporting history to give us an indication of the resources of such entities. As such we propose that penalties should be set with reference to a scale ranging between 0.25% and 2% of reportable donations for the previous four quarters, where available. For campaigning organisations such as regulated third parties and permitted participants that do not have to report donations to us on an ongoing basis, we propose to base variable monetary penalties on a scale of up to 10% of the relevant campaign expenditure limit. We think that this provides us with sufficient flexibility to calculate sanctions proportionately and we will take into account the resources of the entity as far as we are able to ascertain in doing this.

Example

A registered third party spends £1.2 million during the regulated period, exceeding the limit of £988,000 during UK Parliamentary general election period. In considering the level of variable monetary penalty to apply, we would be able to consider a fine of up to £98,000 (i.e. up to 10% of the spending limit) depending on the aggravating and mitigating circumstances of the case.



Consultation questions

Q11. Discretionary requirements are set out in paragraphs 4.48–56 of the consultation paper. Are there any other criteria you feel we should take into account to ensure variable monetary penalties are applied proportionately?

Q12. Do you agree that the proposed scales for variable monetary penalties provide sufficient scope for flexible sanctioning? What alternatives would you recommend?

Compliance requirements

4.57 We will use compliance requirements to set out what a regulated entity must do, within a specified period, so that the offence does not continue or recur, for instance, changing internal processes or undertaking training in the requirements of the law. If we intend to issue a compliance requirement we will first issue an initial notice explaining what we propose, and giving the organisation or person concerned the opportunity to make representations. We will consider any representations and will then decide either to take no further action, or to issue a final notice imposing the compliance requirement we proposed in the initial notice, or a modified version of that requirement. This final notice will set out what the compliance requirement is, the grounds for imposing it, the timescale to undertake the required action, the consequences of non-compliance and how to go to a court to appeal against the final notice.

Example

A party consistently fails to provide all information required in its statutory returns, apparently due to lack of understanding of the requirements by the relevant party staff. A requirement for the party to train all its officers and members responsible for submitting statutory returns would be issued.

4.58 When the regulated entity demonstrates to our satisfaction they have undertaken the requirement we will issue a completion certificate. The Government may set the criteria, or minimum or maximum amounts for non-compliance penalties in secondary legislation for Parliament's consideration. We suggest that a penalty for non-compliance with non-financial penalties, such as a compliance requirement, be no less than the cost of undertaking the required activities. The process we will use to impose and enforce compliance requirements is set out in further detail in Appendix C.

Restoration requirements

4.59 We will use restoration requirements to set out what a regulated entity must do, within a specified period, to restore the position to what it would have been had no offence had been committed, as far as possible, for example, to surrender benefits obtained as a result of an impermissible transaction. The process set out above for compliance requirements in paragraph 4.58 will also

apply for restoration requirements. Further detail on restoration requirements is set out in Appendix C.

4.60 We may use restoration notices as a sanction either singularly or combined with other discretionary requirements in any situation where a regulated entity has obtained a benefit from non-compliance, and that benefit can be removed by requiring them to return the position to what it was before the breach occurred.

Stop notices¹²

4.61 A stop notice will enable us to require a regulated entity to cease an activity that poses a serious risk of damaging public confidence in the regulation of political funding. We are only able to use a stop notice in circumstances where we reasonably believe a person is undertaking or is likely to undertake an activity that poses such a risk. This is the only sanction that we can use pre-emptively, to prevent an offence being committed. The stop notice will set out the steps the person must take, the grounds under which the notice is served, means for appeal and consequences of not complying with a notice. When the Commission is satisfied that the steps in the notice have been taken we will issue a **completion certificate**. It is a criminal offence not to comply with a stop notice, attracting a maximum fine of £20,000.

Example

A campaigning organisation registered as a third party has previously acknowledged having spent up to £100,000 of the expenditure limit for a general election with two weeks to go until polling day, and has now issued a press release announcing a '£200,000 poster campaign' to begin within days of the poll. The Commission would issue a stop notice to prevent it undertaking any further campaign activity.

4.62 Further information about the use and application of stop notices is included at Appendix D.

Enforcement undertakings¹³

4.63 A regulated entity may offer to enter into an **enforcement undertaking** on its own initiative in order to make amends for a contravention of the law.

4.64 We are not obliged to accept an enforcement undertaking, however we will consider seriously all offers to enter an enforcement undertaking.

4.65 Enforcement undertakings will allow regulated entities to propose, and the Commission to consider, innovative ways of making restitution and promoting compliance. Since they will only be used at the initiative of regulated entities, we will consider whether their use is appropriate on a case-by-case basis.

¹² See Appendix D for more information on stop notices

¹³ See Appendix E for more information on enforcement undertakings.

4.66 When considering whether or not to accept an enforcement undertaking we will take into account, but are not limited to, the following factors:

- whether or not the matter was voluntarily reported
- the seriousness of the non-compliance
- the involvement of any dishonesty, deception or wilful misrepresentation, or conversely a genuine misunderstanding of the statutory requirements
- the cost of a full investigation
- the entity's compliance record
- whether or not there have been previous enforcement undertakings from the entity for the same or similar non-compliance
- the likelihood of restoring the position of those involved
- the likelihood of the undertaking preventing similar non-compliance in the future
- the need to provide deterrence to those we regulate
- the level of acceptance of the non-compliance by the entity
- any advice given directly to the entity on the relevant statutory requirement(s)
- any apology or contrition expressed

4.67 Where a regulated entity agrees an enforcement undertaking with us but then fails to deliver on that undertaking, we will have the option of imposing a sanction in respect of the original offence. Further information about the process we will use to consider enforcement undertakings is set out in Appendix E.



Consultation question

Q13. Are there other criteria (paragraphs 4.63–7 of the consultation paper) you feel we should use when we are considering whether to accept an enforcement undertaking, for instance to ensure consistent and fair treatment of those we regulate?

Forfeiture and controls on impermissible and anonymous donations and loans

4.68 PPERA, as amended by the PPE Act, provides two separate sanctions for cases where a donation or loan from an impermissible donor or an unidentifiable source is accepted by a regulated entity. First, it is a criminal offence to retain such donations. Second, the Commission can apply to the courts under a civil process seeking forfeiture by the recipient of an amount equal to the donation, which is payable to the Consolidated Fund. To date the Commission has not referred a suspected offence under these provisions for criminal investigation. It has been our policy since February 2007 to seek forfeiture of impermissible donations which a regulated entity has accepted.

4.69 Forfeiture remains a stand-alone provision which may be applied with or without the use of other sanctions arising from any criminal offence. Our future policy, in cases where a regulated entity has accepted an impermissible donation, will be to take the most appropriate action in each case to obtain the desired outcome under our decision-making framework.

Referral for criminal prosecution

4.70 We will only refer cases for a criminal prosecution where we believe it is in the public interest to do so because the alleged offence has had a significant impact on public confidence in the transparency and integrity of party and election finance. The question of what is in the public interest will be determined on the facts and circumstances of each case.

The sanctioning process

4.71 We can only impose a civil sanction (with the exception of stop notices and enforcement undertakings¹⁴) where we are ‘satisfied beyond reasonable doubt’ that an offence or contravention has occurred.

4.72 The following process summarises the steps that we will take when considering imposing a sanction (other than a stop notice, or agreeing to an enforcement undertaking) that are set out in detail in the appendices. Before we impose a sanction on a regulated organisation or person, we will give them an initial notice of our intention to impose a sanction. The notice will include information setting out the grounds for the notice, the amount of any financial penalty, opportunities to make representations and the timescale. The entity may then either discharge liability by making immediate payment of an amount equal to the penalty,¹⁵ await the civil sanction, or make representations and objections. We may decide to modify the sanction in response to representations, for instance by amending the value of a financial penalty.

4.73 If we decide to continue with the imposition of a sanction, we must then issue a final notice confirming:

- the grounds for us imposing the sanction
- how to make payment
- that the entity has 28 days from receipt to make payment

¹⁴ A stop notice may be used to take action without proof that the law has been contravened. We can use a stop notice to prevent an imminent serious breach of the law. A high threshold is required where there must be a significant risk of an event that would seriously damage public confidence in the effectiveness of the regulatory regime. We only require reasonable grounds that a person has committed an offence to accept an enforcement undertaking offered. This reflects the fact an enforcement undertaking is a mechanism for a regulated entity propose steps it will take to make amends for a contravention of the law. The Commission may choose whether or not to accept the undertaking, the criteria we use is outlined in paragraph 4.66.

¹⁵ The PPE Act makes provision for early payment discounts along the lines of the civil sanction provisions in the Regulatory Enforcement and Sanctions Act. The Commission does not intend to apply early payment discounts.

- that if payment is not made within 28 days from receipt then late payment charges will be imposed
- rights of appeal
- the consequences of non-payment, such as civil debt recovery

4.74 The organisation or person in question may appeal our decision to the County Court (or in Scotland to the Sheriff).

How to make representations and appeals against sanctions

4.75 The sanctioning process is set out in the PPE Act and provides opportunities for representations and appeals against sanctions. A regulated entity may submit representations to us following the receipt of an initial notice setting out our intention to impose a sanction. The PPE Act provides for no more than 28 days from receipt of an initial notice for a fixed monetary penalty to make representations. However in our view we propose that 14 days is a more appropriate amount of time for a regulated entity. Under this proposed approach we will also consider granting extensions of this period up to an additional 14 days provided for in the legislation. The PPE Act provides that we must provide at least 28 days from receipt of a discretionary requirement for a regulated entity to make representations. We consider 28 days to be an appropriate amount of time for a regulated entity in receipt of a discretionary requirement to make representations. We propose also to include a provision to extend this where a regulated entity has a good reason for requiring additional time. We consider that this will provide regulated entities with sufficient time to respond to matters more complicated than simple administrative breaches.

4.76 Representations will be considered by a senior member of the Commission staff not involved in the case, before the Commission makes its final decision whether to proceed with the sanction in question.

4.77 If we decide to proceed with the sanction or an amended form of it, the regulated entity may appeal the decision to the County Court (or Sheriff in Scotland).

4.78 In the case of a stop notice, an appeal may be made to the County Court (or Sheriff in Scotland) against the decision to issue a stop notice, or to appeal against a decision made by the Commission not to issue a completion notice.

Public information about our enforcement and sanctioning work

4.79 The Commission's approach to the disclosure and publication of information about enforcement activity from the point of receipt of an allegation through to the issue of sanctions is set out in detail at Appendix F. In summary:

- We will acknowledge receipt of an allegation to the complainant. We will not proactively advise the subject or any other person that we are considering a matter until we have undertaken our initial assessment which will usually take up to five days. If a period of more than five days is required we will inform the subject that a complaint has been made and that we are assessing the matter. We will notify the subject/s of allegations of all outcomes of initial assessments.
- If we receive a media enquiry during the initial assessment we will notify the subject of the complaint and confirm that we will contact them once the initial assessment has been completed. We will acknowledge receipt of the allegation to the media.
- We will notify the parties when we open a case under review. We will not proactively publicise the fact that a case is under review. We will acknowledge there is a case under review, if specifically asked about it by the media, and will notify the subject of the initial media enquiry.
- When we launch an investigation we will notify the parties, and will proactively issue a press release and place information on our website, unless there is a good reason not to do so (such as the possible adverse impact on the investigation). We will also notify the parties, issue a press release and place information on our website at the conclusion of an investigation advising of the outcome, the Commission's rationale for its decisions and any sanction imposed. This will be done after the period for appeal has passed.
- A referral to the police, prosecution, civil litigation (such as forfeiture), or levying of a civil penalty will always be publicised by way of a press release and information will be placed on our website.

4.80 In addition to our policy to promote transparency by publicising information about our enforcement activity described above, under the PPE Act we also have a statutory obligation to publish information annually about our use of investigatory powers and civil sanctions.

4.81 We intend to discharge this obligation by publishing relevant information in the annual report that we submit to Parliament. This information will include:

- statistics on the number of case reviews (which do not involve the use of our statutory investigatory powers) and investigations we undertook and the number resulting in sanctions or no further action, with summary reports (in full or anonymously as appropriate, for example where a case has not been publicised and is not in the public domain, we will only publish anonymous information).
- statistics on the number of disclosure notices issued (both for supervisory and investigatory purposes), properties entered for inspection in relation to supervisory activities, interviews held, and applications to the High Court for disclosure orders, disclosure orders granted, with reference to an annex of summary reports (in full or anonymously)
- statistics on the number of sanctions imposed and not overturned on appeal, including fixed monetary penalties, discretionary requirements,

- stop notices served, and enforcement undertakings accepted, with reference to an annex of summary reports
- statistics on referrals to the police, prosecutions, and the use of forfeiture



Consultation question

Q14. Do you agree with this approach to publication? Are there circumstances in which you feel we should publish more than anonymous information for cases where there has been no breach of the law?

Q15 Under the PPE Act we have to annually publish details of our sanctioning activity. We invite views on the level of detail that should be included in our annual report about individual cases where we have imposed sanctions.

5 Glossary of terms used in this paper

Completion certificate	A certificate issued on compliance with a stop notice
Compliance certificate	A certificate issued on compliance with a compliance or restoration notice
Compliance notice	A notice setting out set out actions that must be undertaken so that the offence does not continue or recur
Contraventions	Breach of a prescribed requirement in the Political Parties, Elections and Referendums Act 2000 which is not a criminal offence
Disclosure notice	Commission issued notice requesting documents, information or an explanation
Disclosure order	Court order to require compliance with the delivery of documents or the provision of information or explanation
Discretionary requirement	A range of civil sanctions, comprised of variable monetary penalties, compliance requirements, and restoration requirements. These sanctions may be used either on their own or combined
Enforcement activity	Consideration of a case by either review or investigation that may lead to a sanction
Enforcement undertaking	An agreement proposed by a regulated entity to undertake specified actions to make amends for a contravention of the law
Final notice	A notice imposing the final sanction. Issued after consideration of representations or on the expiry of a specified time limit
Fixed monetary penalty	A fine of a specified amount prescribed by the Secretary of State
Initial assessment	An assessment of a new matter to decide how or if it will progress
Initial notice	A notice setting out the reasons for the imposition of a civil sanction and the penalty
Investigation	Consideration of a case where it appears that formal interviews or the use of statutory powers will be required

Members' association	An organisation that consists wholly or mainly of members of a political party involved in political activities
Permitted participant	Any campaign groups, including political parties, who intend to spend more than £10,000 on a referendum campaign
Prescribed	The provision of additional information in an order made by the Secretary of State which is supplementary to the original legislation
Regulated donee	<p>Regulated donees are:</p> <ul style="list-style-type: none"> • Members of registered political parties • Holders of relevant elective office • Members' associations <p>They are subject to controls on donations and loans they accept in connection with their political activities.</p>
Regulated entity	An individual, group, organisation, political party, etc that is regulated under the Political Parties, Elections and Referendums Act 2000
Representations	Reasons provided by the recipient of an initial notice setting out why a sanction should be modified or not imposed
Restoration notice	A notice setting out actions that must be undertaken to restore the position, as far as possible, to what it would have been had no offence had been committed
Review	Consideration of a case where it appears that formal interviews or the use of statutory powers will not be required
Risk assessment	Process to determine the regulatory risk that an organisation appears exposed to, relative to the other organisations
Stop notice	A notice to a regulated entity requiring an activity to cease
Third party	An individual or organisation that is not standing or fielding candidates at an election, but which campaigns for or against a political party, parties or category of candidates at an election
Variable monetary penalty	A fine set at an appropriate level to reflect the gravity of the offence.

Appendix A – Criteria for risk and impact profiling

This appendix sets out the proposed criteria for use in our risk and impact profiling of regulated organisations, as described in chapter 3 – Principles of our risk-based regulation – of this paper.

Financial and compliance records

Compliance records

This category evaluates the past compliance of the party with the requirements of Political Parties, Elections and Referendum Act 2000 (PPERA). Criteria:

- failure to submit accounts or other statutory returns due in the last three years
- late submission of statements of accounts due in the last three years
- late submission of quarterly donation or loan returns in the last three years
- late submission of campaign expenditure returns in the last three years
- late submission of weekly donation or loan returns [only applicable for the audit year in which the returns were submitted]
- individual donations or loans reported late in the last year
- substantiated evidence of other non-compliance with the financial requirements of PPERA in the last three years, including any sanctions imposed by the Commission
- late submission of annual confirmation of registration details in the last three years [lower weighting]
- instances of registered details not up to date in the last three years [lower weighting]

Financial data

This category evaluates key data from annual statements of accounts, and also registers the receipt of public funds from the Commission. Criteria:

- reported turnover
- level of debt or surplus cash as a percentage of annual income¹⁶
- material inaccuracies in accounts in the last three years¹⁷
- receipt of policy development grants (public funds) from the Commission¹⁸

¹⁶ These ratios highlight financial positions which may warrant closer attention than usual to statutory returns from the regulated organisation, for instance because they are likely to lead to a gap between the level of reported donations and the likely level of campaign spending during regulated periods.

¹⁷ This may include, but is not limited to, accounts being qualified by an auditor.

¹⁸ Non-compliance by a party receiving public funds is inherently likely to have a significant impact. The Commission audits all recipients of its policy development grants.

Operational scale

This category assesses the complexity of the party, identifying indicators of greater organisational requirement. Criteria:

- number of accounting units
- whether the organisation has been required to submit quarterly donation and loan returns in the last year, i.e. is not exempt due to non-receipt of donations and loans
- number of relevant elections or by-elections¹⁹ contested in the last three years

Governance and external factors

Public profile

Criteria:

- represents or holds power in an elected body (UK Parliament, devolved parliament or assembly, European Parliament, regional or local assembly or council)
- significant profile at registration, e.g. with high-profile founders or funders²⁰

Governance and capacity

Criteria:

- process of registration with the Commission indicates limited capacity to comply with future regulatory requirements
- compliance infrastructure (e.g. records, systems, staff) inadequate to deal with scale of fundraising
- significant structural change (e.g. party schism or merger), sudden change in Parliamentary or organisational leadership, change to governance arrangements
- significant change in policy, campaigning or fundraising methods that may affect sources or volume of funding

External factors

Criteria:

- changes in the external environment that may affect sources or level of the organisation's funding

¹⁹ Relevant elections or by-elections are those for European Parliament, UK Parliament, Scottish Parliament, Welsh Assembly or Northern Ireland Assembly.

²⁰ This may indicate that the organisation has accumulated significant levels of donations before becoming subject to the requirements of the PPERA

Appendix B – Fixed monetary penalties

Description

The levels of fines and periods of time (subject to the constraints of the Political Parties and Elections Act 2009) outlined below will be dependent on the recommendations we make to the Government following this consultation. The final decisions will be a matter for the Government.

A fixed monetary penalty (FMP) will be used for low levels of regulatory non-compliance. Where we are satisfied beyond reasonable doubt that an offence has been committed, or a prescribed contravention breached, we may issue a FMP on notice on:

- a person
- registered party, or
- permitted participant

Time limited offences

We propose to use an FMP where there has been a breach of a ‘time limited’ offence such as:

- failure to submit statements of accounts (SOA) on time
- failure to deliver donation reports to Commission on time
- failure to deliver transaction reports to Commission within time limits
- failure to deliver campaign expenditure returns and auditor’s reports to the Commission

If the necessary documents are submitted within 28 days from the date they were due, an FMP of £200 will be imposed.

Where the required documentation is not submitted within 28 days of the due date then we will view the breach as a more substantial offence and the sanctioning process will elevate to one or more discretionary requirements as set out in Appendix C.

Contraventions

A breach of Section 31 of the Political Parties, Elections and Referendums Act 2000 (PPERA), which relates to the failure by a registered treasurer to notify the Commission of changes in a political party’s officers or other relevant details, will attract a FMP of £200. The process will commence with an initial notice as set out below. Contraventions of Section 41 requirements relating to the obligations of registered treasurers to keep and maintain accounts are proposed to also attract either a FMP or discretionary requirement. Although Section 41 contraventions are not ‘time limited’, an FMP of £200 will remain a sanctioning option, depending on the facts of the case.

Process

A flowchart (figure B1) setting out the process for FMPs can be found on page 51.

On the expiry of the compliance time limit, we will write to the regulated entity to advise:

- that the statutory return is overdue
- that the entity may be liable to a penalty
- the level of FMP that may be payable if the documents are submitted within certain timescales, and
- that more severe discretionary requirements may be imposed if the situation is not rectified within the FMP timescales

If the required documents are submitted within 28 days of the due date

Initial notice

On receipt of the required documentation, we will issue an initial notice to the regulated entity stating that we intend to impose an FMP. The initial notice will set out:

- the grounds for the proposed FMP
- the amount payable to discharge liability for the FMP, which will be set at a level equal to the FMP
- that payment of the amount will discharge liability
- the circumstances where we may not impose an FMP, such as where the entity has a valid defence
- the fact that the entity has 14 days from receipt of the initial notice to make payment or to make representations to us and that any requests for an extension to this period will be considered on a case-by-case basis, and
- details of how to make payment or representations

Payment of discharge amount

Details on how to discharge liability will be set out in the notice under 'How to make payment'.

Representations

Within 14 days of receipt of the initial notice (or any extended period as agreed), we will consider representations made in writing. Information on how to make written representations will be set out in the notice.

Any representations or objections will be considered by a senior officer of the Commission who was not involved in making the initial decision on whether or not to impose an FMP.

We will consider any representations as soon as practicable after receipt.

After considering representations, we will either:

- confirm and impose the FMP through a final notice, or
- write to the entity to confirm that the matter has been closed and that we will not be taking any further action

Final notice

If no representations, or requests for an extension, are received within 14 days from receipt of the initial notice, or the FMP is confirmed following representations, we will issue a final notice imposing the penalty.

The final notice will set out:

- the grounds for us imposing the FMP
- how to make payment
- that the entity has 28 days from the final notice to make payment
- that if payment is not made within 28 days then late payment charges will be imposed
- rights of appeal, and
- the consequences of non-payment, such as civil debt recovery

If the required documentation is not submitted within 28 days of the due date

If the required documentation is not received within 28 days of the due date, we will view the breach as a more substantial offence and the sanctioning process will elevate to one or more discretionary requirements as set out in Appendix C.

On expiry of 28 days from the due date we will issue the entity with an initial notice setting out our proposals for the levels of any variable monetary penalty and any other discretionary requirement.

Details of the discretionary requirements process is set out in Appendix C.

How to pay

Details on how to make payment will be set out in the notice.

Late payment charges and consequences of non-payment

The day after the date by which the penalty should have been paid (28 calendar days following a final notice being issued), a late payment charge of 25% of the original penalty will be added to the amount of the original penalty.

The day after 56 calendar days have passed since the final notice was issued and no payment or representations have been received, 50% of the original penalty will be added to the amount of the original penalty.

We may instigate civil debt recovery proceedings if no payment or representations have been received after 84 calendar days from the issue of a final notice.



Consultation question

Q16. Do you agree with our proposed application of late payment penalties? If not, how do you think the Commission should go about the recovery of unpaid penalties?

Q17 Are there any factors or exemptions that you feel we should consider when recovering late payment of penalties?

Appeals

The entity has the right to appeal to the County Court (or in Scotland to the Sheriff) against the issue of a final notice on the basis that it was based on an error of fact, it was wrong in law, or it was unreasonable.

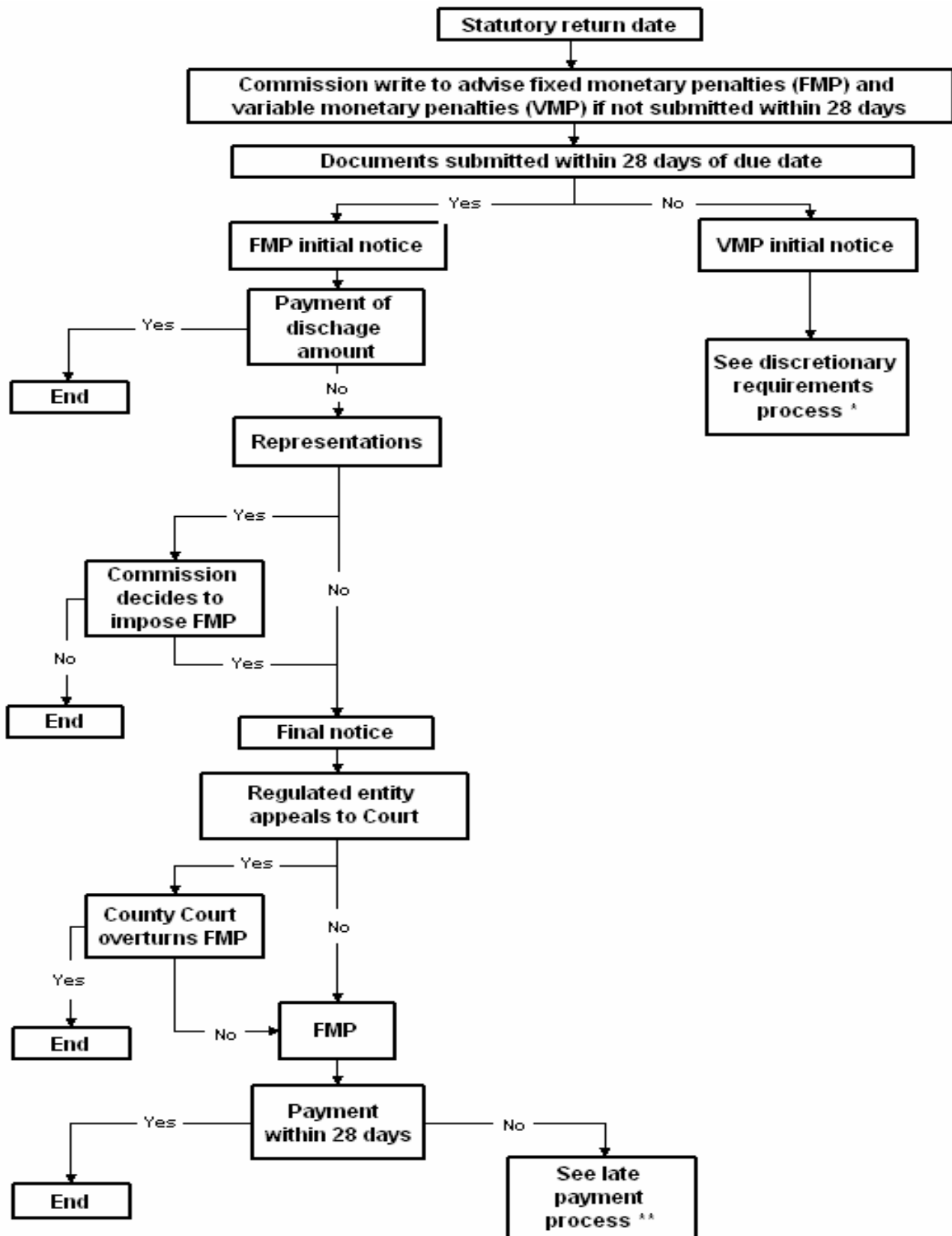
Criminal proceedings and effect of discharge

We may not instigate criminal proceedings for the breach for which we have issued a notice until such time as the period for discharging liability has expired.

If liability has been discharged, a person cannot be convicted of that offence.

Once we have imposed an FMP, a person cannot at any time be convicted of the offence that gave rise to the FMP.

Figure B2: Fixed monetary penalties process



* See page 54.

** See page 58.

Appendix C – Discretionary requirements

Description

The levels of fines and periods of time (subject to the constraints of the Political Parties and Elections Act 2009) outlined below will be dependent on the recommendations we make to the Government following this consultation. The final decisions will be a matter for the Government.

Discretionary requirements are a package of sanctions that we may impose either on their own or in combination with each other. We will use them in response to mid- to high-levels of regulatory non-compliance.

Where we are satisfied beyond reasonable doubt that an offence has been committed, or a prescribed contravention breached, we may impose one or more discretionary requirements by notice on:

- a person
- registered party
- recognised third party, or
- permitted participant

We may use the following three discretionary requirements in any chosen combination and the individual circumstances of each case will determine the most effective combination.

1. **Variable monetary penalties (VMPs)** will be set at a level that removes any financial gain from committing the offence and takes account of factors such as the gravity of the failure and the history of compliance. They will be subject to a minimum of £500 to reflect a graduation from lower level fixed monetary penalties.
2. **Compliance notices** will be used to secure steps needed for a regulated entity to bring itself back into compliance, for example, by changing a process or providing training.
3. **Restoration notices** will be used to ensure that a regulated entity deals with the consequences of the offence by returning the position of all those involved, so far as possible, to the position they would have been in had the offence not been committed.

Process

A flowchart (figure C1) setting out the process for discretionary requirements (including VMPs) can be found on page 54.

Where we are satisfied beyond reasonable doubt that an offence has been committed, or a prescribed contravention breached, we may issue an initial notice indicating our intention to impose one or more discretionary requirements.

Initial notice

5.1 The initial notice will set out:

- the grounds for the proposed discretionary requirement(s)
- the amount of any proposed VMP
- the conditions of any proposed compliance or restoration requirements
- the fact that the entity has 28 days from receipt of the initial notice to make representations to us and that requests for an extension to this period will be considered on a case-by-case basis
- details of how to make representations
- the circumstances where we may not impose a discretionary requirement, such as when there is a valid defence, and
- the consequences of non-payment or non-compliance

Representations

Within 28 days of receipt of the initial notice (or any extended period as agreed), we will consider representations made in writing. Information on how to make written representations will be set out in the notice.

Any representations or objections will be considered by a senior officer of the Commission who was not involved in making the initial decision on whether or not to impose a discretionary requirement.

We will consider any representations as soon as practicable after receipt.

After considering representations, we will either:

- confirm and impose the discretionary requirement(s) through a final notice, or
- modify the discretionary requirement(s) or impose any other discretionary requirement(s), or
- write to the entity to confirm that the matter has been closed and that we will not be taking any further action

Final notice

If no representations, or requests for an extension, are received within 28 days from receipt of the initial notice, or the discretionary requirement(s) is confirmed, modified or substituted following representations, we will issue a final notice imposing the penalty.

The final notice will set out:

- the grounds for us imposing the discretionary requirement
- how to make payment of any VMP
- that the entity has 28 days to make payment
- that if payment of any VMP is not made within 28 days of it being issued then a late payment charge will be imposed

- that if the terms of any compliance or restoration notice are not complied with within the specified time limit then a non-compliance penalty may be imposed
- rights of appeal, and
- the consequences of non-payment or non-compliance, such as civil debt recovery or a non-compliance penalty

Closure of matter

We will write to the entity concerned to confirm that the matter has been closed once all the discretionary requirements imposed have been complied with.

Late payment charges and consequences of non-payment and non-compliance with a notice

Variable monetary penalties

The day after the date by which the penalty should have been paid (28 calendar days following a final notice being issued), a late payment charge of 25% of the original penalty will be added to the amount of the original penalty.

The day after 56 calendar days have passed since the final notice was issued and no payment or representations have been received, 50% of the original penalty will be added to the amount of the original penalty.

We may instigate civil debt recovery proceedings if no payment or representations have been received 84 calendar days from the issue of a final notice.

Compliance and restoration notices

As a result of the wide-range of possible conditions that may be attached to compliance and restoration notices, it is impractical to prescribe standard non-compliance penalties that would cover the diverse set of potential situations.

We will, however, provide details of the non-compliance penalty in the initial and final notices. Although the non-compliance penalty will be appropriate and proportionate to the requirements in the notice, it will be set at an amount higher than the anticipated cost of compliance so as to incentivise compliance.

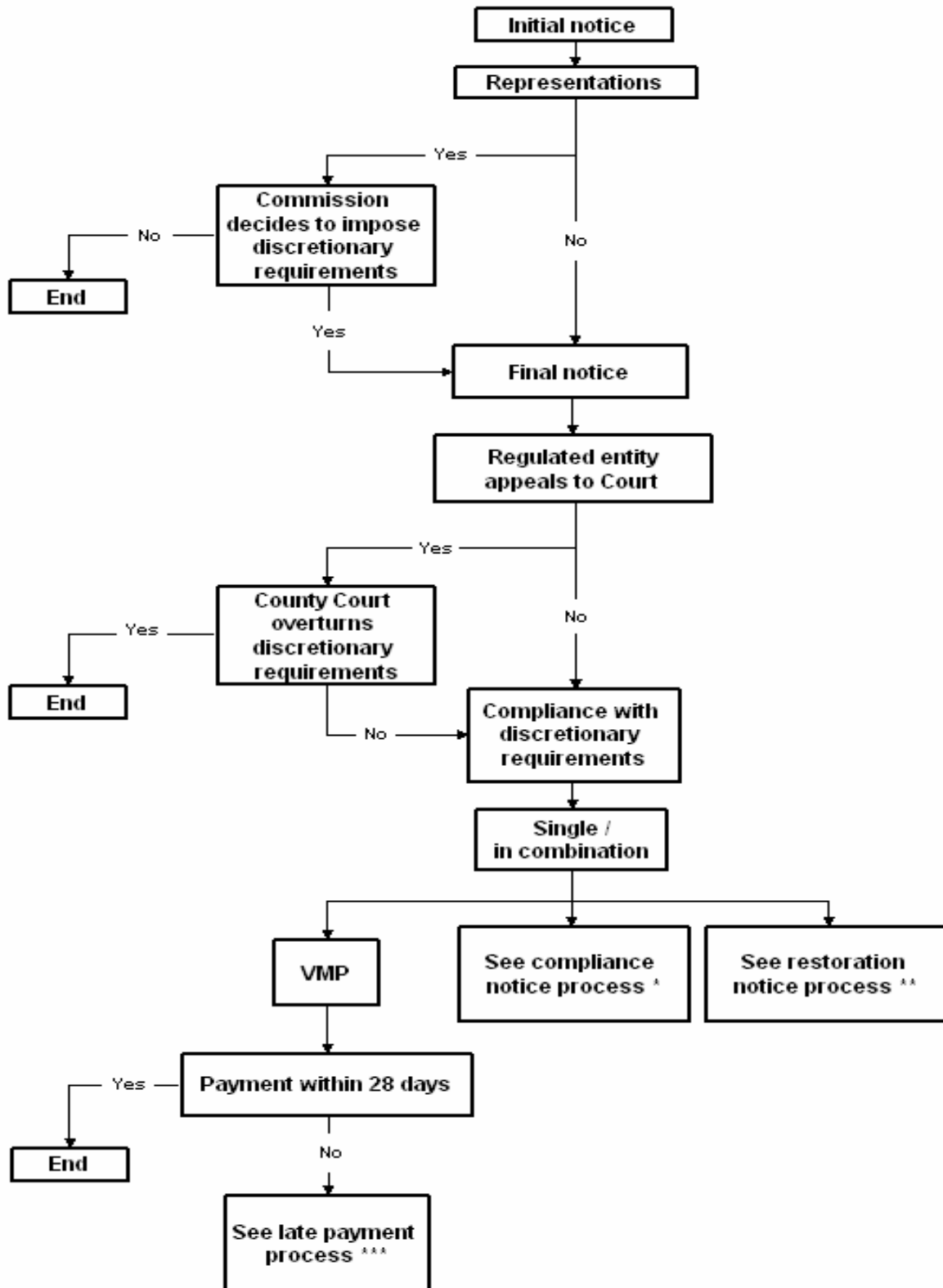
Appeals

The entity has the right to appeal against the issue of a final notice to the County Court (or in Scotland to the Sheriff).

Criminal proceedings

A person on who a discretionary requirement has been imposed may not at any time be convicted of the offence that gave rise to the requirement, except where the requirement imposed is a non-monetary one and the person has not complied with it.

Figure C1: Discretionary requirements (including variable monetary penalties)



* See page 61.
 ** See page 65.
 *** See page 58.

Variable monetary penalties

Variable monetary penalties (VMPs) will be set at a level that removes any financial benefit from committing the offence and takes account of factors such as the gravity of the failure and the history of compliance.

VMPs are likely to be used both individually and with compliance and restoration notices and will cover a wide variety of situations. We will consider imposing a VMP in the following circumstances (though this is not an exclusive list):

- the non-compliance appears to be more than a simple administrative failure
- the non-compliance has been deliberate or reckless
- it is a repeat offence or there is a history of poor compliance
- where restoring the situation or requiring actions under a compliance notice would not itself be likely to prevent further non-compliance
- there is a need for a deterrent effect in relation to other regulated entities

Process

The processes for the initial notice, representations, final notice, and closure of the matter are set out on pages 47–9 of this appendix.

Calculating the level of variable monetary penalties

The calculation of the level of VMP falls into three distinct areas:

- financial transaction non-compliance
- non-financial transaction non-compliance, and
- offences with a statutory maximum fine of £5,000 (including all prescribed contraventions)

Seriousness criteria

5.2 Whichever category of VMP applies, we will firstly assess the seriousness of the breach taking into account, but not limited to, the following criteria:

Aggravating:

- magnitude of the breach, for example the harm caused to public confidence in the democratic process, the duration of the non-compliance
- a history of non-compliance by the regulated entity
- financial gain or other advantage to the regulated entity or others as a result of non-compliance with regulations
- uncooperative conduct of the regulated entity after the non-compliance has been discovered

- previous action by the Commission, or other regulator, to help the regulated entity comply, has not been adhered to
- dishonesty
- continuing to deny the facts despite clear contrary evidence, and
- seeking unfairly to blame other people

Mitigating:

- a previously good compliance record
- action taken to eliminate or reduce the risk of damage resulting from regulatory non-compliance
- voluntary reporting of regulatory non-compliance
- actions taken to repair the harm done by regulatory non-compliance
- cooperation with the Commission in responding to the non-compliance
- an honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the statutory requirements, particularly where such a view has been formed after taking appropriate advice
- substantiated evidence that the member's actions have been affected by ill-health, and
- recognition that there has been failure to follow the statutory requirements

Financial calculation

Following assessment of the seriousness of the breach, a calculation of the level of the VMP will be made depending on the category of non-compliance. The categories have either four or five bands (to be selected using the seriousness criteria) and are based on a proportion system.

The calculation of the level of a VMP will be subject to a minimum of amount of £500 to reflect a graduation from lower level fixed monetary penalties.

Financial transaction non-compliance

Where a financial transaction is involved, the VMP will be based on the value of the transaction.

The five bands are: 25%, 50%, 100%, 150%, and 200%.

Non-financial transaction non-compliance

Where a non-financial non-compliance is involved, the VMP will be based on the total reported donations by the party during the four quarters prior to the one in which the non-compliance occurred. Where there are less than four quarters of reported donations (such as a new party), the VMP will be based on the total reported donations.

The five bands are 0.25%, 0.5%, 1%, 1.5%, and 2%.

For campaigning organisations, such as regulated third parties and permitted participants, that do not have to report donations on an ongoing basis, the level of the VMP will be calculated up to 10% of the relevant campaign

expenditure limit. The calculation will take into account the circumstances of the breach and the resources of the organisation.

Offences with a statutory maximum fine of £5,000

Where the offence or contravention has a statutory maximum fine of £5,000, the VMP will be capped at the maximum £5,000.

The four bands are 10%, 25%, 50%, and 100%.

How to pay

Details on how to make payment will be set out in the final notice.

Late payment charges and consequences of non-payment

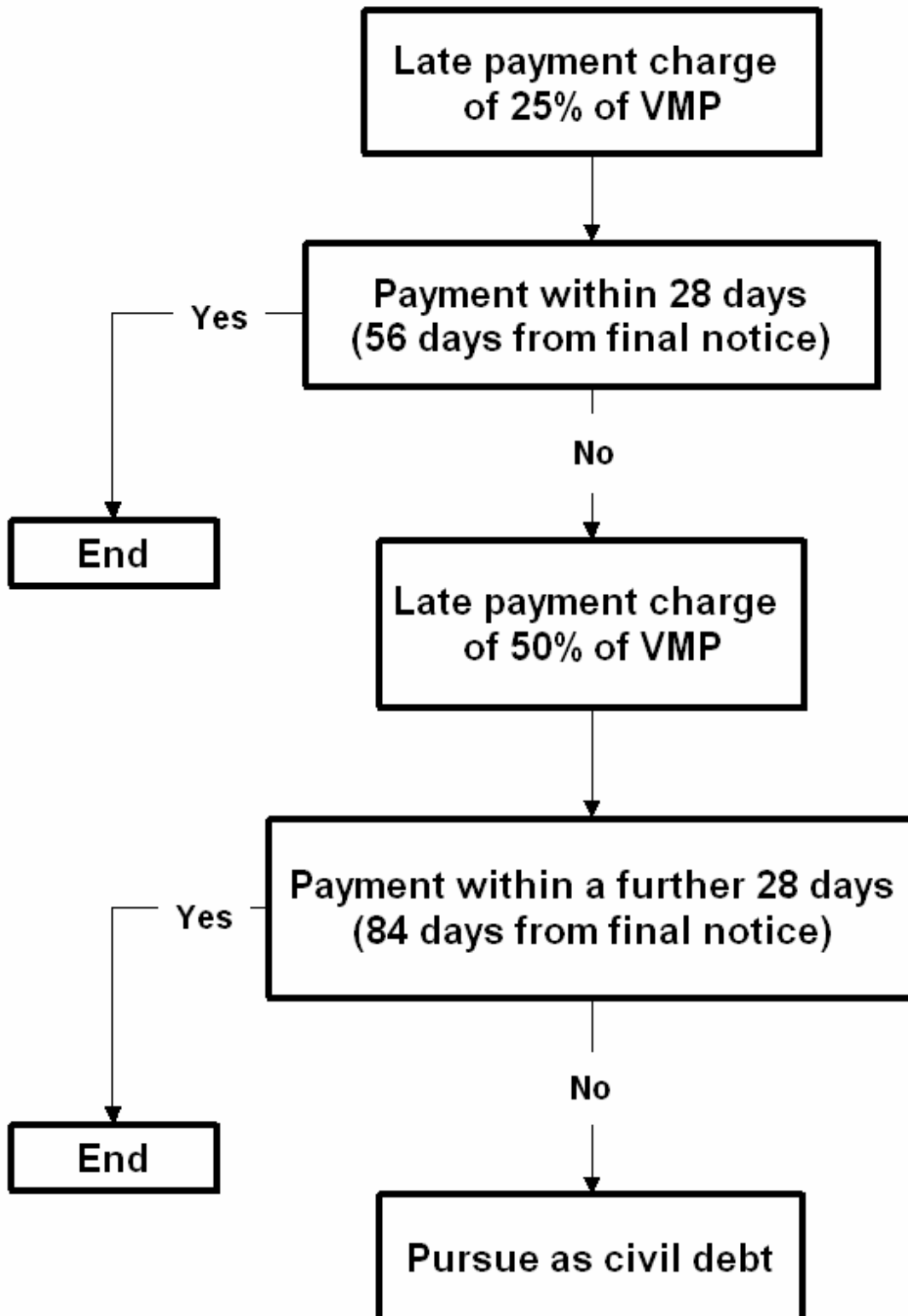
A flowchart (figure C2) setting out the process for late payment charges can be found on page 58.

The day after the date by which the penalty should have been paid (28 calendar days following a final notice being issued), a late payment charge of 25% of the original penalty will be added to the amount of the original penalty.

The day after 56 calendar days have passed since the final notice was issued and no payment or representations have been received, 50% of the original penalty will be added to the amount of the original penalty.

We may instigate civil debt recovery proceedings if no payment or representations have been received after 84 calendar days from the issue of a final notice.

Figure C2: Late payment penalty process



Compliance notices

A compliance notice will give notice of the steps that are required to be taken by a regulated entity to avoid future non-compliance, for example, by changing a process or providing training.

Compliance notices are likely to be used both in isolation and with variable monetary penalties and restoration notices, and will cover a wide variety of situations. We will impose a compliance notice where we consider, but not limited to, the following:

- there are clear and definable actions that it is practicable to require the regulated entity to take within a prescribed timescale
- that the action required by the compliance notice will, if undertaken, prevent or reduce the likelihood of the non-compliance reoccurring, and
- compliance with the notice will further enhance the integrity and transparency of party and election finance

Process

The processes for the initial notice, representations, final notice, and closure of the matter are set out on pages 47–9.

A flowchart (figure C3) setting out the process for compliance notices can be found on page 61 of this appendix.

Complying with a compliance notice

When a regulated entity is of the view that it has complied with the terms of the compliance notice, the entity should notify us with supporting information so that we may consider issuing a compliance certificate.

Applications for a compliance certificate can be made in writing. Details of how to make a written application will be set out in the notice.

We will consider any application for a compliance certificate as soon as practicable after receipt.

Issue of compliance certificate

Following receipt of an application for a compliance certificate, we will consider the evidence provided and any representations made during any interview before we issue a compliance certificate.

If we are of the view that a regulated entity has met the terms of the compliance notice, we will issue a compliance certificate to confirm compliance with the terms of the notice.

Refusal to issue a compliance certificate

If, following consideration of an application for a compliance certificate, we are of the view that the entity has not complied with the terms of the compliance notice, we will write to inform the entity of our decision and provide advice on further steps required to comply.

Once these further actions have been undertaken, the entity may apply again for a compliance certificate to be issued.

Appeals against decision not to issue a compliance certificate

Where we have refused to issue a compliance certificate the entity may appeal against that decision in writing. Details of how to make a written appeal will be set out in the notice.

Any appeal against a decision to refuse to issue a compliance certificate will be considered by a senior officer of the Commission who was not involved in making either the initial decision to impose a discretionary requirement, or in the decision to refuse to issue a compliance certificate.

We will consider any appeal as soon as practicable after receipt.

After considering an appeal, we will either:

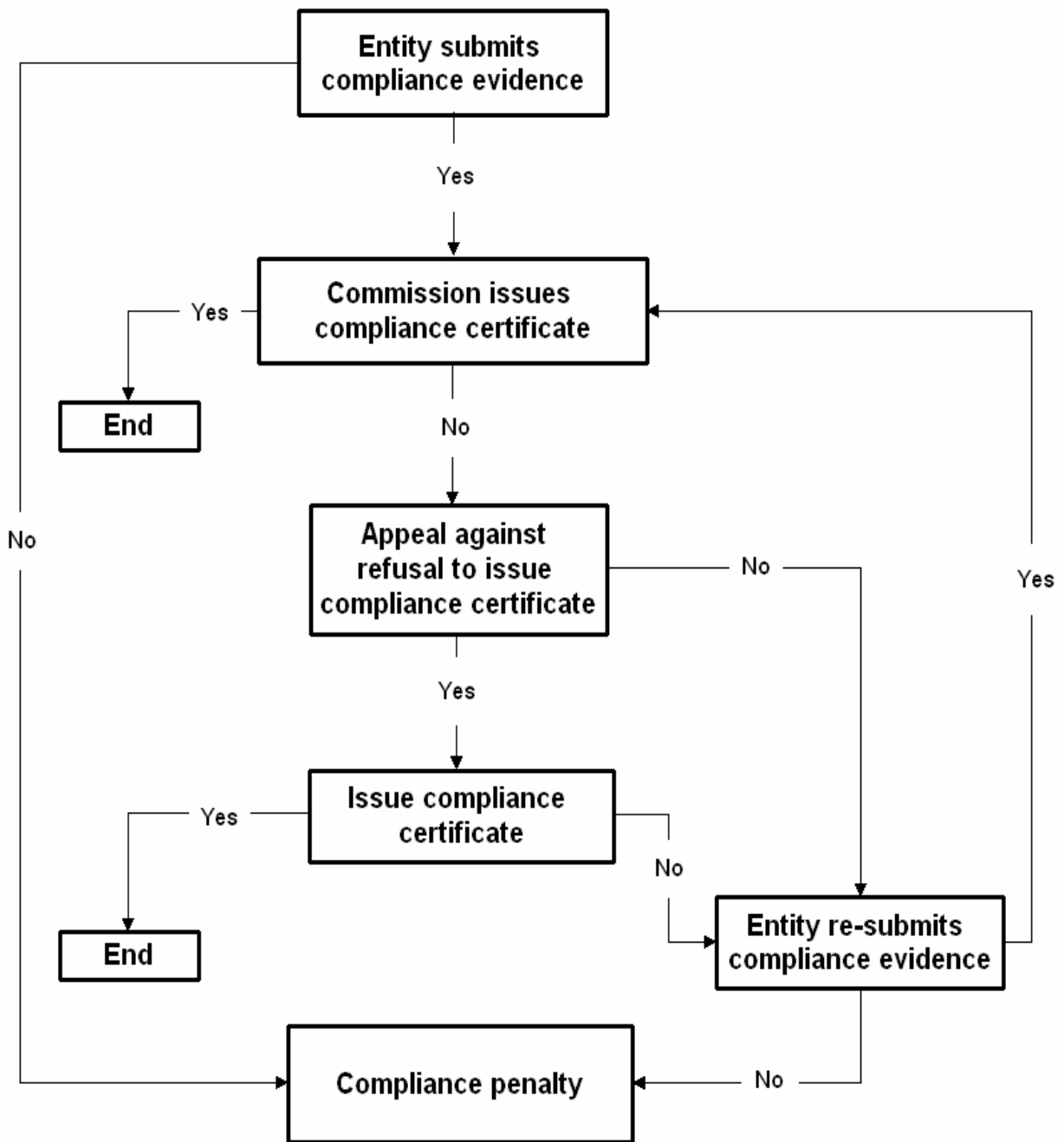
- confirm the refusal to issue a compliance certificate and restate, modify, or impose any other actions that the entity is required to take to comply with the compliance notice, or
- issue a compliance certificate

Non-compliance

As a result of the wide-range of possible conditions that may be attached to a compliance notice, it is impractical to prescribe standard non-compliance penalties that would cover the diverse set of potential situations.

We will, however, provide details of the non-compliance penalty in the initial notice. Although the non-compliance penalty will be appropriate and proportionate to the requirements in the notice, it will be set at an amount higher than the anticipated cost of compliance so as to incentivise compliance.

Figure C3: Compliance notice process



Restoration notices

A restoration notice will be used to ensure that a regulated entity deals with the consequences of the offence by returning the position of all those involved, so far as possible, to the position they would have been in had the offence not been committed.

Restoration notices are likely to be used both in isolation and with variable monetary penalties and compliance notices and will cover a wide variety of situations. We will impose a restoration notice where we consider, but not limited to, the following:

- it is practicable, either wholly or in part, to restore the situation to prior to the non-compliance
- compliance with the notice will further enhance the integrity and transparency of party and election finance

Process

The processes for the initial notice, representations, final notice, and closure of the matter are set out on pages 47–49, for fixed money penalties.

A flowchart (figure C4) setting out the process for restoration notices can be found on page 64 of this appendix.

Complying with a restoration notice

When a regulated entity is of the view that it has complied with the terms of the restoration notice, it should apply to us for the issue of a compliance certificate.

Applications for a compliance certificate can be made in writing. Details of how to make a written application will be set out in the notice.

We will consider any application for a compliance certificate as soon as practicable after receipt.

Issue of compliance certificate

Following an application for a compliance certificate, we will consider the evidence supplied in support of the application and any representations made during any interview before making a decision on issuing a compliance certificate.

If we are of the view that an entity has complied with the terms of the restoration notice, we will issue a compliance certificate to confirm compliance with the notice.

Refusal to issue a compliance certificate

If, following consideration of an application for a compliance certificate, we are of the view that the entity has not complied with the terms of the restoration notice, we will write advising of our decision not to issue a compliance certificate and provide advice on what further steps need to be taken to comply with the restoration notice.

Once these further actions have been undertaken, an entity may apply again for a compliance certificate to be issued.

Appeals against decision not to issue a compliance certificate

Where we have refused to issue a compliance certificate an entity may appeal against that decision in writing. Details of how to make a written appeal will be set out in the notice.

Any appeal against a decision to refuse to issue a compliance certificate will be considered by a senior officer of the Commission who was not involved in making either the initial decision to impose a discretionary requirement, or in the decision to refuse to issue a compliance certificate.

We will consider any appeal as soon as practicable after receipt.

After considering an appeal, we will either:

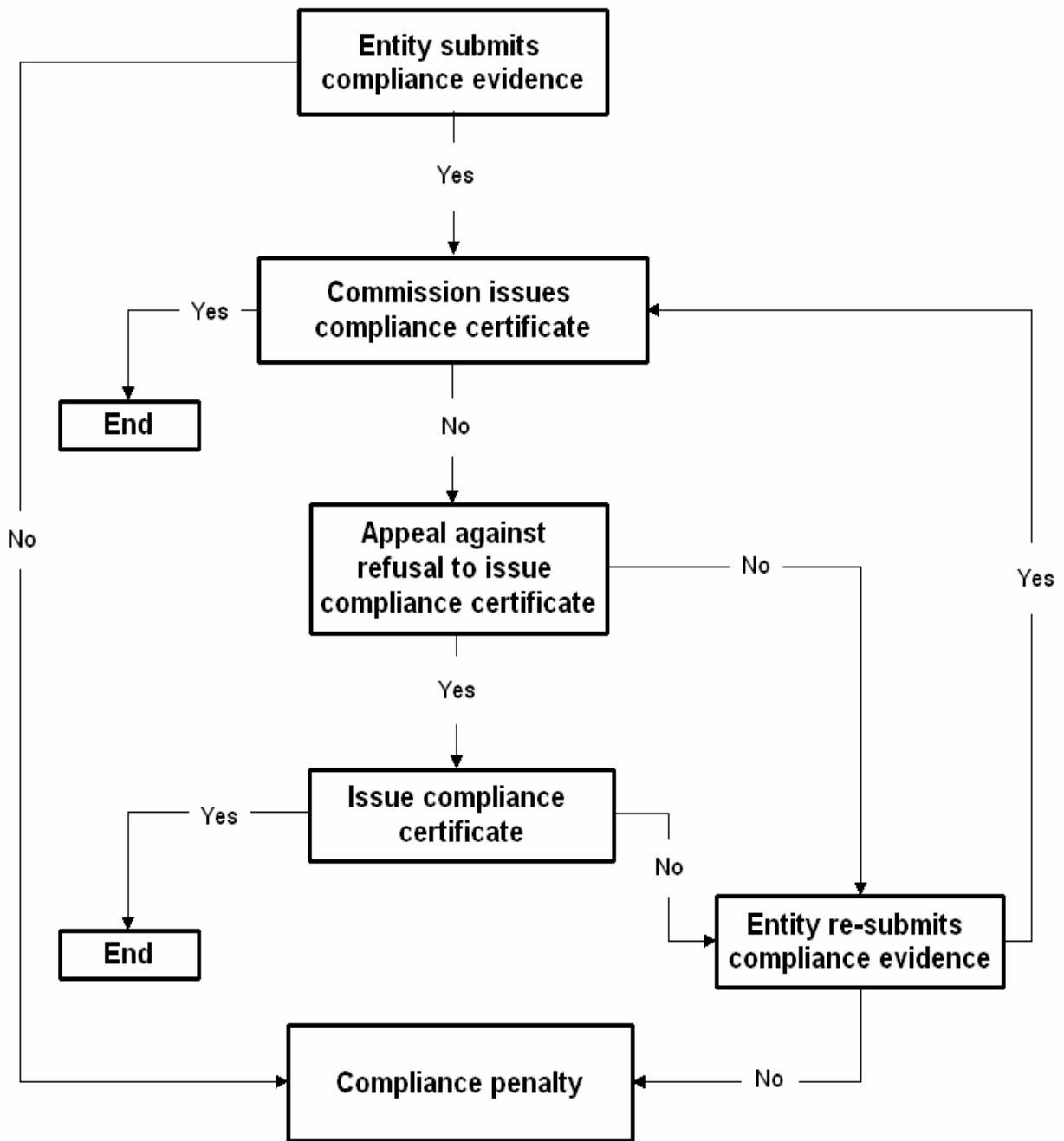
- confirm the refusal to issue a compliance certificate and restate, modify, or impose any other actions that are required to be taken to comply with the restoration notice, or
- issue a compliance certificate

Non-compliance

As a result of the wide-range of possible conditions that may be attached to restoration notices, it is impractical to prescribe standard non-compliance penalties that would cover the diverse set of potential situations.

We will, however, provide details of the non-compliance penalty in the initial notice. Although the non-compliance penalty will be appropriate and proportionate to the requirements in the notice, it will be set at an amount higher than the anticipated cost of compliance so as to incentivise compliance.

Figure C4: Restoration notice process



Appendix D – Stop notices

Description

We may issue a stop notice to require a person to cease an activity that presents a significant risk of seriously damaging public confidence in the democratic process.

There is a high threshold that needs to be met before a stop notice may be served, including where:

- the person is carrying on or is likely to carry on the activity
- we have a reasonable belief that the activity being carried on involves, or is likely to involve, the person committing an offence under Political Parties, Elections and Referendum Act 2000 (PPERA) or contravening a prescribed restriction or requirement provided by PERA, and
- we reasonably believe that the activity as carried on, or likely to be carried on, by the person will seriously damage confidence in the democratic process or presents a significant risk of doing so

Example 1

It comes to the Commission's attention that an unrecognised third party is about to exceed the spending limits. We may consider it appropriate to issue the third party (individual/organisation) with a stop notice requiring them to cease incurring further controlled expenditure until they register to become a recognised third party under PERA. This stop notice would address the breach in real time.

Example 2

It comes to the Commission's attention that a person is incurring controlled expenditure by, or on behalf of, a recognised third party without the authority of a responsible person. We may consider it appropriate to issue a stop notice to the non-compliant person to require them to stop incurring controlled expenditure without the authority of a responsible person. Again, the stop notice would address the breach in real time.

Process

A flowchart (figure D1) setting out the process for stop notices can be found on page 68.

In circumstances where the threshold set out above is met, we may serve a stop notice.

The stop notice will include:

- the grounds for serving the notice
- the rights of appeal, and
- the consequences of not complying with the notice

Completion certificate

At any time after we have issued a stop notice, an entity may apply to us for a completion certificate to indicate that it has taken the steps specified in the notice.

Applications for a completion certificate can be made in writing. Details of how to make a written application will be set out in the notice.

Following an application for a completion certificate, we will consider the evidence supplied in support of the application and any representations made during any interview before making a decision on issuing a completion certificate.

If we are of the view that an entity has taken the steps specified in the notice, we will issue a completion certificate to confirm compliance with the notice.

If, following consideration of an application for a completion certificate, we are of the view that an entity has not yet taken the steps specified in the notice, we will write to advise of our decision not to issue a completion certificate and provide advice on what further steps need to be taken to comply with the notice.

We will make a decision on whether or not to issue a completion certificate within 14 days of receipt of the application.

Appeals

The entity has the right to appeal against both the issue of a stop notice and any refusal to issue a completion certificate.

Issue of a stop notice

The entity has the right to appeal against the issue of a stop notice to the County Court (or in Scotland to the Sheriff) against the issue of a stop notice on the basis that it was:

- based on an error of fact
- it was wrong in law
- the decision was unreasonable
- any specified step in the notice is unreasonable, or
- the entity has not committed, or would not be likely to, commit an offence or contravention, and would not have done so even if the stop notice had not been served

Refusal to issue a completion certificate

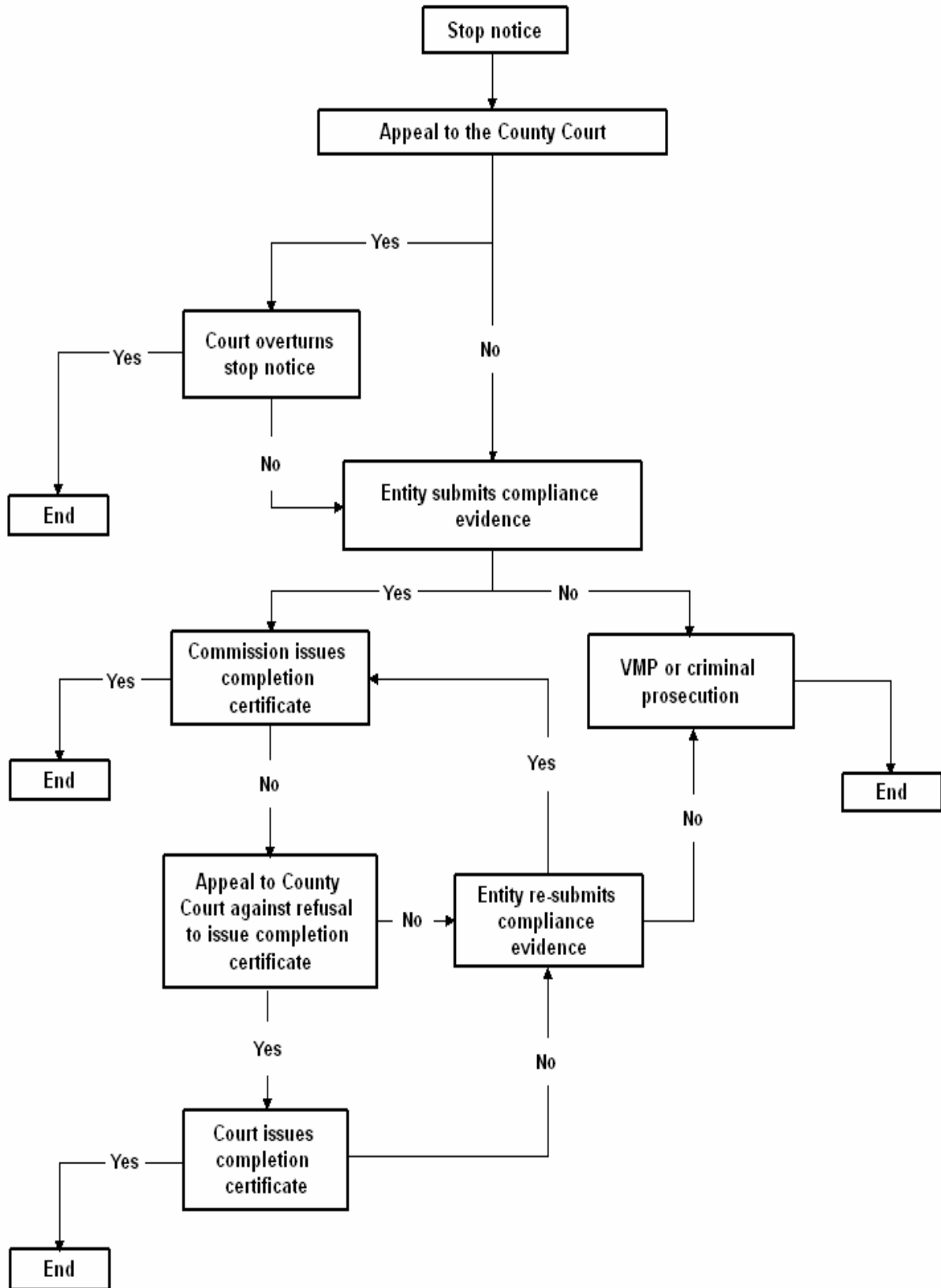
The entity has the right to appeal to the County Court (or in Scotland to the Sheriff) against the refusal to issue a completion certificate on the basis that it was:

- based on an error of fact
- it was wrong in law, or
- was unfair or unreasonable.

Non-compliance with a stop notice

A person who does not comply with a stop notice will be guilty of an offence under Schedule 19C(14) of the Political Parties, Elections and Referendums Act 2000, which attracts a penalty of either a variable monetary penalty or criminal prosecution, subject to Royal Assent.

Figure D1: Stop notice process



Appendix E – Enforcement undertakings

Description

A regulated entity may offer to enter into an enforcement undertaking on its own initiative in order to make amends for a contravention of the law.

The action that a regulated entity can offer to undertake must be:

- to secure that the offence or contravention does not continue or recur, and
- to secure that the position is restored, so far as possible, to what it would have been if the offence or contravention had not been committed

We will always take offers of such undertakings seriously and give them careful consideration. However, we are not obliged to accept an offer of an enforcement undertaking.

Each offer of an enforcement undertaking will be considered on its own merits.

Process

A flowchart (figure E1) setting out the process for enforcement undertakings can be found on page 72.

Where we have reasonable grounds to suspect that a regulated entity has committed an offence, or breached a contravention, we may accept an enforcement undertaking.

The undertaking must specify:

- the action the entity will take to ensure the offence or contravention does not continue or recur
- the action the entity will take to secure that the position is restored, so far as possible, to what it would have been if the offence or contravention had not been committed, and
- the timescale for compliance

Time limits

Offers of an enforcement undertaking during the course of an enforcement activity must be made before the date of the final notice.

Criteria to be taken into account when considering accepting an enforcement undertaking

When considering whether or not to accept an enforcement undertaking we will take into account, but are not limited to, the following factors:

- whether or not the matter was voluntarily reported
- the seriousness of the non-compliance
- the involvement of any dishonesty, deception or wilful misrepresentation, or conversely a genuine misunderstanding of the statutory requirements
- the cost of a full investigation
- the entity's compliance record
- whether or not there have been previous enforcement undertakings from the entity for the same or similar non-compliance
- the likelihood of restoring the position of those involved
- the likelihood of the undertaking preventing similar non-compliance in the future
- the need to provide deterrence to those we regulate
- the level of acceptance of the non-compliance by the entity
- any advice given directly to the entity on the relevant statutory requirement(s)
- any apology or contrition

Refusal to accept an enforcement undertaking

Where we have refused to accept an offer of an enforcement undertaking, an entity may make representations as to why the enforcement undertaking should not have been refused.

Details on how to make written representations will be set out in the notice.

Any representations or objections will be considered by a senior officer of the Commission who was not involved in making the decision to refuse to accept the enforcement undertaking.

We will consider any representations as soon as practicable after receipt.

After considering representations, we will either:

- confirm the refusal to accept the enforcement undertaking
- provide advice on what modifications could be made to the enforcement undertaking before resubmission, or
- accept the enforcement undertaking

Complying with an enforcement undertaking

When an entity is of the view that it has complied with the terms of the enforcement undertaking, it should notify us with supporting information so that we may consider issuing a compliance certificate.

Applications for a compliance certificate can be made in writing. Details of how to make a written application will be set out in the undertaking.

We will consider any application for a compliance certificate as soon as practicable after receipt.

Issue of compliance certificate

Following receipt of an application for a compliance certificate, we will consider the evidence provided and any representations made during any interview before we issue a compliance certificate.

If we are of the view that an entity has met the terms of the enforcement undertaking, we will issue a compliance certificate to confirm compliance with the terms of the undertaking.

Refusal to issue a compliance certificate

If, following consideration of an application for a compliance certificate, we are of the view that an entity has not complied with the terms of the enforcement undertaking, we will write to inform the entity of our decision and provide advice on further steps required to comply.

Once these further actions have been undertaken, an entity may apply again for the issue of a compliance certificate.

Appeals against decision not to issue a compliance certificate

Where we have refused to issue a compliance certificate an entity may appeal against that decision in writing. Details of how to make a written appeal will be set out in the undertaking.

Any appeal against a decision to refuse to issue a compliance certificate will be considered by a senior officer of the Commission who was not involved in making either the initial decision to agree to the enforcement undertaking, or in the decision to refuse to issue a compliance certificate.

We will consider any appeal as soon as practicable after receipt.

After considering an appeal, we will either:

- confirm the refusal to issue a compliance certificate and restate, modify, or impose any other actions that are required to be taken to comply with the enforcement undertaking, or
- issue a compliance certificate

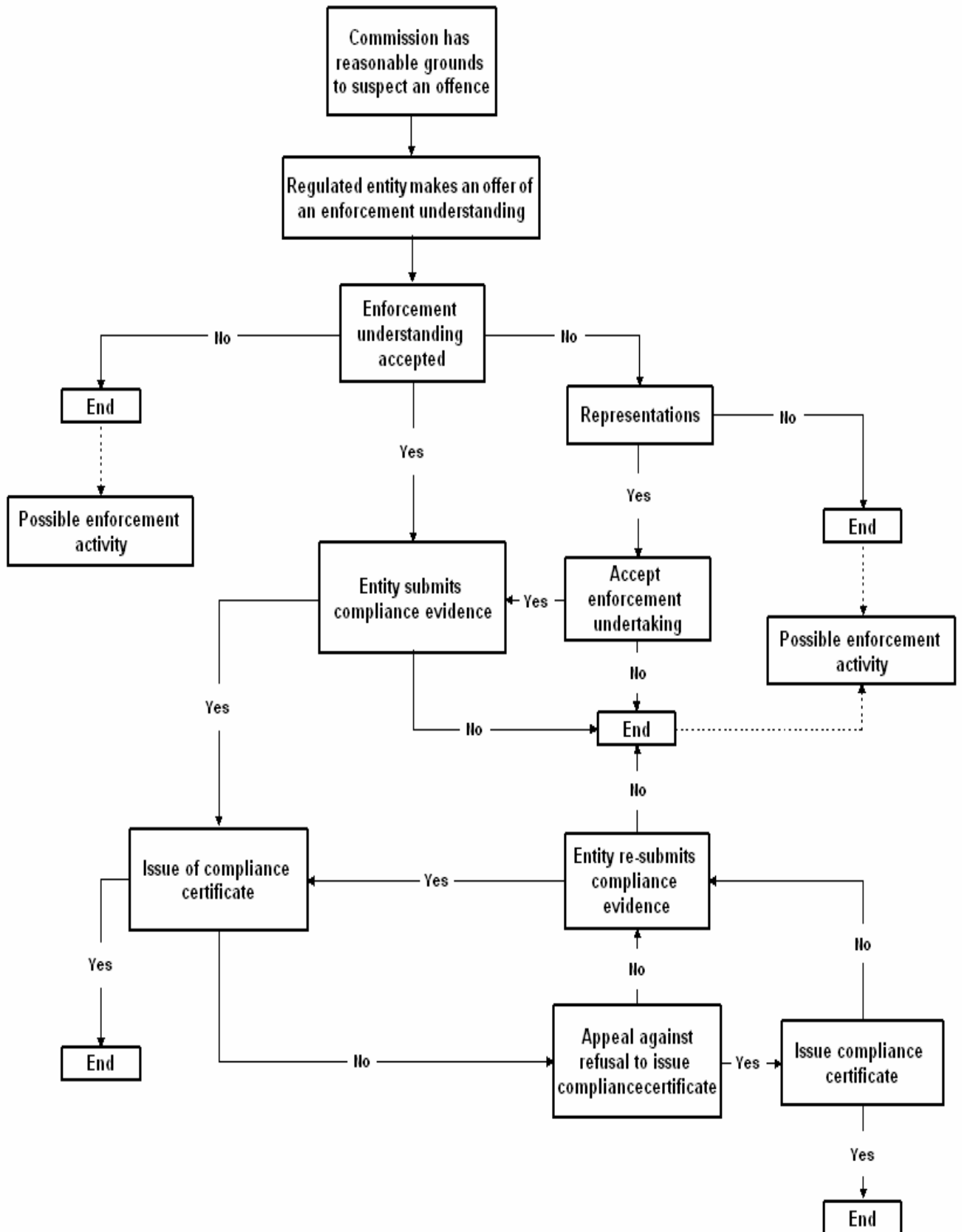
Criminal proceedings and effect of discharge

If we accept an enforcement undertaking, the entity cannot then be convicted of an offence or have a fixed monetary penalty or discretionary requirement imposed on it for the act or omission to which the undertaking relates unless it fails to comply with the enforcement undertaking.

Non-compliance

Non-compliance with an enforcement undertaking will mean that one or more of the sanctions that were available for the original breach may be imposed.

Figure E1: Enforcement undertakings process



Appendix F – Publication and disclosure policy

Instigation of a new matter

We aim to complete the initial assessment of any matter entered into our casework system within five working days. On that basis, we generally will not advise the person or body that is the subject of the complaint until we have undertaken the initial assessment.

If a period of more than five days is required for the initial assessment we will inform the subject that a complaint has been made and that we are assessing the matter.

If pending an initial assessment there has been a media enquiry about the matter, we will, unless we are able to finalise the assessment at that time, notify the subject of the complaint and confirm that we will contact them once the initial assessment has been completed. We will acknowledge receipt of the allegation to the media.

We will confirm receipt of the allegation to the complainant.

Closure of matter after initial assessment

Where we have completed our initial assessment in relation to an allegation received and decided to close the matter, we will advise the subject of the allegation that we have looked into the matter and concluded that there is no case to answer. We will also advise the complainant of the outcome.

Cases under review

We will advise the subject and the complainant that the case is under review and will also advise them of the outcome of the review.

We will not proactively publicise the fact that a case is under review. We will acknowledge there is a case under review. If specifically asked about it by the media, and will notify the subject of the initial media enquiry.

However, if we receive a specific enquiry relating to a case under review, and the matter has been reported in the media, we will confirm that the case is either under review or not.

Requests for details of ongoing reviews under the Freedom of Information Act 2000 will be considered on their merits in accordance with the legislation. Exemptions from release of information for reasons of ‘investigation’ within the terminology and meaning of the legislation, for example, are likely to apply.

Investigations

Commencement

Once we have taken the decision to instigate an investigation, the subject and complainant will be advised and we will issue a press release and place information on our website advising that we are undertaking an investigation, unless there is a good reason not to do so (such as the possible adverse impact on the investigation).

During an investigation

We will not provide ongoing updates during the course of an investigation other than to confirm that the investigation is ongoing.

Requests for details of ongoing investigations under the Freedom of Information Act 2000 will be considered on their merits in accordance with the legislation. Exemptions from release of information for reasons of 'investigation' within the terminology and meaning of the legislation, for example, are likely to apply.

Conclusion of matter

At the conclusion of an investigation, or at the end of a review where a sanction has been imposed, we will advise the subject and the complainant of the outcome of the investigation or review and provide them with a summary report which will include:

- the name of the subject and complainant
- a description of the allegation
- the matters that were considered
- the facts of the matter
- any investigatory powers used
- the rationale for our decision, and
- any further action taken, including sanction imposed or referral for advice and guidance

If our investigation concludes that the allegation has not been substantiated, we will advise the subject that we intend to publicise the conclusion of the investigation. Although we will take into account any representations made by the subject about publication, our general practice is to issue a press release and place information on our website advising of the outcome of the investigation, and providing a link to the summary report.

If our investigation concludes that the subject has breached the law, we will issue a press release and place information on our website advising of the outcome of the investigation, including any further action, and providing a link to the summary report.

Closed matters

Requests for details of closed initial assessments, reviews or investigations under the Freedom of Information Act 2000 will be considered on their merits in accordance with the legislation. Factors such as the passage of time and impact of release of information on the effective operation as a regulator will be included in considering whether exemptions may apply (for example, from release of information for reasons of ‘investigation’ within the terminology and meaning of the legislation).

Referral to the police, prosecution or civil litigation

A referral to the police, prosecution, civil litigation (such as forfeiture), or levying of a civil penalty will always be publicised by way of a press release and information will be placed on our website.

Annual report

We are required under paragraph 16 of Schedule 1 and paragraph 27 of Schedule 2 of the Political Parties and Elections Act 2009 to report annually on the use of our investigatory powers and civil sanctions.

The annual report will include:

- **Reviews (where we have not used our statutory powers)** – statistics on the number of case reviews and investigations undertaken with reference to an annex of summary reports (anonymised reports will be provided for those reviews where no sanction was imposed)
- **Use of statutory investigatory powers** – statistics on the number of disclosure notices issued (supervisory and investigatory), properties entered for inspection, interviews held, and applications to the High Court for disclosure orders, and the number of disclosure orders made, with reference to an annex of summary reports (both full and anonymised)
- **Use of civil sanctions** – statistics (where the penalty was not overturned on appeal) on the number of fixed money penalties, the number and type of discretionary requirements imposed, stop notices served, and enforcement undertakings accepted, with reference to an annex of summary reports
- **Legal process** – statistics on referrals to the police, prosecutions, or civil litigation (such as forfeiture)

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