The Electoral Commission

Chris Skidmore MP
Parliamentary Secretary (Minister for the Constitution)
Cabinet Office
70 Whitehall
London
SW1A 2AS

27 October 2016

Dear Minister

Response to Lord Hodgson's Review of Third Party Campaigning

I am writing with our full response to Lord Hodgson's Report of *Third Party Election Campaigning – Getting the Balance Right – Review of the operation of the third party campaigning rules at the 2015 General Election (March 2016)*.

The Electoral Commission welcomed this important report and supports the majority of the recommendations it contains – we were particularly pleased to see Lord Hodgson's support for the reforms to electoral law being led by the UK's Law Commissions.

It is important that the framework for third party campaigning is cohesive and clear and that the rules are transparent and workable in practice. A balance has to be struck between encouraging democratic participation and ensuring appropriate regulation. In considering our response we have looked at the recommendations as a package and included learning from the 2015 UK Parliamentary general election and the polls in 2016 held after the report was published.

I have attached our full response as an annex. The report does include some areas where we have concerns about the recommendations and urge that further consideration is required. We are very supportive of most of the recommendations and hope they are taken forward by the government when opportunity for this permits.

The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ

Tel: 020 7271 0500
Fax: 020 7271 0505
info@electoralcommission.org.uk
www.electoralcommission.org.uk

The Electoral Commission

We will be publishing our attached response (along with this letter) on our website today, and look forward to working with government as it considers the next steps it may want to take. If you require any more information your office can contact Suzanne King in our Public Affairs team on 020 7271 0671 or sking@electoralcommission.org.uk

Yours sincerely

Jenny Watson
Chair
Approved by the Chair and electronically signed in her absence.

cc: Lord Hodgson

The Electoral Commission

Annex

Third Party Campaigning Review Report - Lord Hodgson

Electoral Commission Response

Recommendation Number

Reporting requirements

1 Part one – Is any regulation of third parties necessary?

Restrictions on third party expenditure at elections are necessary. However, the rules governing this should be amended, as recommended in the following chapters.

1.1 We believe that restrictions and rules on third party expenditure at elections should exist. These should work towards ensuring that voters are not unduly influenced during regulated periods by making sources of funding clear and promoting transparency for voters. This enables voters to have confidence in being able to determine who is trying to influence them during regulated periods.

2 How are third parties defined?

There should be no change to the current definitions of third parties in section 85(8) PPERA and of recognised third parties in section 88 PPERA.

2.1 We think the approach of defining permitted third parties by reference to an individual's or organisation's connection with the UK continues to be appropriate and therefore we agree with this recommendation.

2.2 We believe that the different types of third party campaigners should continue to be treated equally as the regulatory system is based upon regulating how much money is spent and whether the money is being spent on influencing electoral outcomes rather than the size and nature of the organisations themselves. Since the list of third party campaigners that could register with the Commission was amended by the 2014 Act, it is unlikely that any body or organisation would find themselves being unable to register as a third party campaigner unless Parliament has specifically intended for them to not be able to register. This is consistent with the recommendation in the Neill Report 1998 that only 'those who live, work and carry on business in the United Kingdom should be the persons exclusively entitled to support

financially the operation of the political process here' and we believe that this continues to be appropriate.

2.3 However, it is worth highlighting that PPERA does not provide us with any powers to regulate spending on campaigning activity that is made available in the UK (such as billboards, advertisements etc.) but paid for by individuals or companies based outside the UK. For example, during the EU referendum we used our influence to engage with foreign based institutions and organisations to seek, and reinforce, commitments from them that they would act within the spirit of the legislation. We would seek to adopt the same approach in relation to potential third party spending aimed at UK elections from abroad.

3 What activities can trigger regulation?

The statutory definition of 'procuring electoral success' should be narrowed so as to capture only electoral campaigning – that is activity which is clearly intended to influence voters' choices as between candidates or parties.

3.1 We agree that campaigning activity undertaken by third party campaigners may fall under one of the different campaigning types identified by the review, which are 'electoral campaigning', 'political campaigning' and/or 'advocacy'. However, even when activity is described by a third party campaigner as solely being 'advocacy' or 'political campaigning', if such activity is carried out during a regulated period or in the run up to an election and aimed at influencing the views of voters, then it could also be 'electoral campaigning' if it is intended or reasonably regarded as intended to promote or procure electoral success.

3.2 It is possible for these types of campaigning activity to overlap and have more than one intended outcome at the same time. Narrowing the definition of 'procuring electoral success' to capture only electoral campaigning could mean that material which could reasonably be seen as likely to procure electoral success would not be regulated. This would create an inconsistency in the regulatory framework where some types of campaign activity are regulated and others not, despite them both having the potential to effect electoral outcomes. Additionally, we believe that the proposal for changing the definition of 'procuring electoral success' for third party campaigners would subject them to a narrower test than the ones that apply to political parties and candidates. We believe that this would result in an inconsistency between the different campaigner types and we do not believe that this would be desirable.

3.3 Determining whether an organisation's spending on campaign activities during a regulated period (whether it is advocacy, political campaigning or electoral campaigning) should be regulated under PPERA should be considered by the tone, timing, context and 'call to action' of a campaign. The reasonably regarded test in PPERA allows an (informed) independent observer to make the judgement as to whether such material is intended to influence voters and procure electoral success rather than it being solely defined by the campaigner. These factors should be considered as a whole rather than individually before an assessment is made as to whether the campaign activity is intended to effect electoral outcomes and whether that spending should be regulated.

4 To what 'purpose' can activities/expenditure be directed?

The test for whether campaign activity should be regulated should be one of actual intention, using a definition along the lines of that contained in section 75 of the RPA 1983 and with an anti-avoidance provision along the lines of section 75(8) RPA 1983 and section 94(8) of PPERA.

4.1 We believe the current 'reasonably regarded' test as set out in PPERA works well in identifying the purpose behind a third party's campaign activity and whether it is intended to procure electoral success and therefore determining whether that campaign activity should be regulated. We are also confident that our guidance is clear in explaining this to campaigners.

4.2 Amending the legislation to make the test one of 'actual intention' similar to that used in s75 RPA 83 would be difficult to regulate and enforce given that the test would move towards being a subjective assessment by the campaigner of their own intentions rather than the current wording which allows an objective assessment and which is more effective in being able to determine whether campaign activity may be reasonably regarded as intended to procure electoral success. The proposed change may lead some campaigners to incorrectly believe that they are no longer covered by the rules and that their activity is not regulated as most campaigners would not claim their activity is intending to affect electoral outcomes, even when that activity could be seen as intended to procure electoral success. This is why an objective assessment of the facts is essential in determining the effect of such activity.

4.3 Additionally, an 'actual intent test' would make it difficult to regulate activity where a third party campaigner's 'call to action' to voters was implicit rather than explicit. The Neill report 1998 recognised that implicit campaigning has potential to influence voters as much as explicit campaigning and the current 'reasonably regarded' test

makes provision for this. This could affect perceptions of whether the law and the Commission's approach are fit for purpose.

4.4 It is also important to recognise the different contexts for different types of campaigning and the relative legislative tests. The 'actual intention test' in S75 RPA 83 is appropriate for candidate spending and referendum campaigning since in these cases it is usually obvious that the candidate or campaigner has the intention, and that intention is usually their primary one. However, the case of third party campaigners regulated by PPERA is different, since their campaigning intention may be issue-based and broader than simply advocating a candidate or a referendum outcome on a ballot paper. In addition, their main work will often be for some other non-electoral purpose as well as relating to an upcoming election. The 'reasonably regarded' test is therefore a good way of acknowledging the multiple purposes of a non-party campaigner's actions.

5 Who are the public and what is a member?

The development of social media means that a change to the Electoral Commission's concept of what constitutes "the public" is required. The exclusion from regulated costs of a third party of communication with its members should be maintained but the exclusion for 'committed supporters' is no longer tenable

5.1 We believe that the current definition of 'the public' has worked well and is easy to explain to campaigners but we can understand the reasoning behind the recommendation.

5.2 PPERA regulates spending on activities aimed at 'the public' but doesn't provide a definition of who 'the public' is. Our guidance has sought to develop this and we refer to 'members' and 'committed supporters' of a third party as generally not falling under the definition of 'the public'. When we developed our definition of 'committed supporter' before the 2010 UK general election, we made it clear that simply being a 'follower' on Facebook or Twitter or other social media would not be enough to be counted as a 'committed supporter' and fall under the exclusion from 'the public'; in essence, our definition has not created exclusions from 'the public' for users of social media.

5.3 Regulated spending by third party campaigners on social media advertising would be subject to existing spending limits and reportable after the election. Campaigners can potentially engage in informal social media activity which falls

outside of the regulatory controls and which does not incur any significant costs. In other instances, campaigners can pay to advertise on social media such as Facebook and YouTube, or place adverts in relation to the election on websites. Such advertising can be targeted at specific types of users, based on information about people's interests and voting intentions. The expenses will typically be greater than informal campaigning and could include staff or specialist technology costs.

5.4 We agree that it would be useful for the concept of 'the public' to be reviewed by Parliament, together with the proposed concept of 'constitutional members' (and any other groups considered exempt from being regarded as 'the public'), and if appropriate, for this to be set out in legislation. Further, any changes to who constitutes 'the public' would need to be considered alongside how the 'purpose test' is defined and whether specific items of campaign material are qualifying expenses in each particular case.

5.5 Narrowing the test to exclude 'committed supporters' from the exclusion should be considered fully, so that any changes to the current rules/test will not cause confusion and consequently discourage third parties from campaigning. We agree that changes in campaigning and the increasing use of technology, including social media, make it difficult to draw clear distinctions between an organisation's members and the general public and we agree with Lord Hodgson that this should be kept under review.

5.6 Of the options Lord Hodgson recommends between 'affiliated supporters' and 'constitutional members', we believe that applying the exclusion from 'the public' to 'constitutional members' would still be compatible with our view that members are a part of, or internal to, the organisation, and are therefore not 'the public'. Additionally, we understand that the review recommends that there will need to be a specific exclusion for staff of a third party that are involved in the governance/compliance processes of the organisation. This definition would also provide some clarity and enable us to adapt our guidance accordingly.

5.7 We expect to be able to look at how this recommendation will work in practice more fully from 2017 onwards, and will give it full consideration before the 2020 UKPGE. We will build upon our experiences of the 2015 and 2016 elections to get a clearer idea of how the change to what constitutes 'the public' would work in practice. Should the change to the test go ahead, we will need sufficient time before the next electoral events to test and adopt any new definitions and to determine whether the change should be based in legislation or our guidance. Additionally, the proposed

change would result in more campaigners' spending falling under the regulatory regime. We would need time to communicate the changes to reduce the risk of non-compliance with the rules through lack of awareness of the change, rather than deliberate avoidance.

Regulated period

6. The regulated period for third parties should be set as four months before the General Election, in line with that for elections to devolved legislatures and to the European Parliament.

6.1 Provided that appropriate anti-avoidance measures are developed and legislated for, we agree that the regulated period for third parties before a UK Parliamentary general election could be set at 4 months instead of 12 months. The proposed change to make all election regulated periods for third parties cover the same length of time would provide greater clarity for these campaigners and reduce the regulatory burden of monitoring spending prior to a UK general election. Whilst the reduced regulated period would result in a loss of transparency of any spending that was undertaken before a 4 month regulated period began, this loss should be minimal if, as the Hodgson report states, most third party campaigners undertake electoral campaigning in the months immediately preceding an election. If the Government wishes to take this recommendation forward and develop suitable anti-avoidance measures, we would assess the proposal further at that point. If Government wants to take this proposal forward, we would consider it further after potential anti-avoidance measures and additional Commission powers have been scoped out

7. There should be an anti-avoidance provision to prevent political parties improperly channelling expenditure during their longer controlled period through third parties to avoid the expenditure controls upon them.

7.1 As noted above, we agree with this recommendation. If the regulated period for third parties is shortened, an anti-avoidance provision to prevent political parties channelling expenditure through to third parties to avoid the expenditure controls and circumnavigate expenditure limits would be essential. It would be importance to set out clearly what would be considered to be anti-avoidance and the Commission's powers for dealing with such avoidance.

7.2 The regulated periods for parties and third parties are closely interconnected in the PPERA system. This dates back to when the legislation was originally passed in

2000 to create the system of regulating election spending. Historically, the length of the regulated period for third party campaigners has been the same as the one for political parties: 12 months at UK Parliamentary General elections; and 4 months at devolved and European Parliament elections. The controls are partly intended to prevent political parties breaching spending limits with explicit or concealed assistance from third party campaigners. Under the proposal in the Hodgson report, it would appear that the regulated period for third parties would be reduced to 4 months, but the controls would continue to apply to political party spending for 12 months before a UK general election. Because of this difference, it will be important to consider appropriate anti-avoidance measures for the 8 month period of time when political party spending would be regulated but third party spending would not be. It would also be worth considering whether and how the concept behind the 'targeted spending' controls covering third party spending intended to support one party could maintained to cover the full 12 month period.

8 Legislative structure

It would be helpful if the regulatory position in the event of an "unexpected" General Election could be clarified, in legislation if necessary, as the current provisions in Schedule 10 are excessively complicated. (Paragraphs 4.72 – 4.90)

8.1 We agree with this recommendation. In the event of an unexpected UK general election, campaigners and political parties would be quickly expected to understand and accurately follow the relevant spending limits and regulated periods and the limits on controlled expenditure in Schedule 10 of PPERA. The Commission would have to be in a position to quickly explain these to rules to campaigners and produce accurate guidance. If the legislation for unexpected general elections is complex to understand, this increases the risk of campaigners and parties failing to comply with the rules if insufficient time is provided for them to prepare properly.

8.2 This should also be considered alongside the Fixed Term Parliaments Act (passed in 2011) which sets the dates of all UK general elections at 5 year intervals, with only limited mechanisms to provide for earlier elections.

9 Part three – What activity counts

Types of electoral campaigning

There should be no change to the current list of matters the costs of which are included in regulated spending.

9.1 We agree with this recommendation. The range of activities that are covered by the rules on regulated spending under Part 6 PPERA was expanded by the changes to Part 2 of the 2014 Act to include spending on public events, media events and canvassing or market research (prior to this change, these rules only covered spending on 'election material', such as leaflets, adverts and websites). In our 2015 UKPGE report we highlighted the spending that campaigners reported on these activities as a result of the change[1]. We noted that third party campaigner spending was more transparent than it otherwise would have been prior to 2014.

10 Staff Costs

Staff costs should continue to be included in regulated activities for third parties. However, there needs to be clarity about the exclusion of incidental staff costs or those below a de minimis threshold. Given the rapidly changing nature of campaigning, this clarity is probably best provided in Electoral Commission guidance.

10.1 We agree that staff costs should continue to be included in regulated activities for third parties and recommended the same in our 2015 UKPGE Spending Report[2] and 2013 Regulatory Review[3]. We would draw attention to the fact that staff costs are included in regulated spending for third party campaigners but not for political parties (for whom it does not count as regulated expenditure, except in specific circumstances, such as staff seconded to parties by other organisations and agency staff). We believe the regulatory controls around staff costs should apply equally to third party campaigners and political parties as we see such costs as relevant expenditure for both campaigner types as they form a significant part of overall expenditure for both. As the regulatory controls in PPERA and RPA are intended to limit the amount of money that campaigners can spend on election campaigns and provide transparency about that spending then, in principle, staff costs associated

---

[1] Page 35 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/197907/UKPGE-Spending-Report-2015.pdf
[2] Recommendation 4 page 8 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/197907/UKPGE-Spending-Report-2015.pdf
[3] Page 48 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf

with regulated campaign spending should be included within the regulatory controls for all types of campaigners: candidates, political parties and third party campaigners. In our 2013 Regulatory Review we offered a solution for addressing this anomaly and recommended that the Government should take it forward.

10.2 We provide guidance on how third parties can report a reasonable assessment of their staff costs, and make clear that there is no obligation to give itemised reports or undertake time recording. We are intending to develop further guidance, building on lessons learned from the elections in 2015 and 2016.

11 Part 4 – Levels of spending - National spending limits

There should be no change to the current national spending limits.

11.1 It is for Parliament to decide upon the level of the spending limits. We do not have any comments on the limits at this time apart from at point 15 about the rationale for differing limits at different elections.

12 Constituency limits - There should be no change to the level of the constituency limits.

12.1 We do not have enough information available at this stage to determine whether the current constituency limits are appropriate or whether they should be increased or reduced. We did not learn anything from the spending returns from the most recent UKPGE in 2015 about this aspect of the rules. Non-party campaigners were not permitted to spend more than £9,750 in a UK constituency, and were required to submit itemised reports if this spending was over £7,800.

12.2 No registered campaigners reported itemised constituency spending over the reporting threshold of £7,800 per constituency, so we are not able provide an informed opinion.

Part three – What activity counts

13 Constituency limits

The Government should consider whether, with the amendments suggested to the PPERA system and the interim recommendations of the Law Commission, it would be advantageous for the provisions in PPERA and the RPA 1983 regarding third party expenditure at General Elections to be aligned to avoid the problems of two systems with different regulatory provisions and enforcement procedures.

13.1 The Commission would support this recommendation.

There are overlaps and differences between the two regulatory frameworks that contribute to several challenges:

(1) determining which regulatory framework applies to a campaigner's spending depends on the facts of the situation.

(2) the available penalties for breaches of campaign spending rules for local and national campaigns are different

(3) investigations of alleged breaches are generally conducted by different bodies: we have responsibility for ensuring compliance and powers to investigate spending on campaigns regulated under PPERA. The police are responsible for campaigns regulated under the RPA.

13.2 We previously recommended in our Regulatory Review published in 2013 that we should be given new investigative and sanctioning powers for dealing with breaches of the candidate spending and donation rules set out in the RPA. We think this would help ensure compliance with the regulatory controls at national elections and strengthen voters' trust in the regulatory system.

13.3 If the Government does consider extending our powers to cover the candidate spending and donation regulatory controls, it would also make sense to review the current arrangements for regulation of local third party campaigners, where current responsibility also currently rests with the police. Consideration would also need to be given to the additional resources that would be required to enable us to fulfil this function.

Elections to the European Parliament and devolved legislatures

14. The Government should review the expenditure limits at the European Parliamentary elections in Scotland, Wales and in particular Northern Ireland possibly mirroring the existing top-up provisions (of £20,000) in PPERA for the UK General Election.

14.1 We agree that spending limits for UK registered non-party campaigners at European Parliament would need to be reviewed if elections were held in the UK. Following the result of the referendum on 23 June, for the UK to leave the European Union, we have not considered this recommendation in any detail.

15 Elections to the devolved legislatures

The Electoral Commission

Ministers, including those in the Scottish Government and the Welsh Government, may wish to review the experience of third parties in the light of the experience gained in the 2016 elections to the devolved legislatures. Any changes made need to avoid the administrative burden created for third party campaigners if very different regulatory structures were to emerge in the different parts of the United Kingdom.

15.1 We would welcome early conversations about Ministers' observations from the 2016 elections or their views about changes to the third party campaigning rules at devolved elections so that these can be given full consideration in time for the next round of devolved legislative elections. We note that there is the possibility for different regulatory regimes to emerge in the different parts of the UK following the transfer of election powers to the National Assembly/ Scottish Parliament and we agree that any potential differences would need to be managed carefully by policy makers, legislators, the Commission and campaigners.

15.2 We also suggest that there could be greater consistency between the spending limits for third party campaigners at the different devolved elections and UK parliamentary elections. As the table below shows, there are varying differences between the spending limits set in the legislation and the rationale is not clear.

15.3 Depending on the type of electoral event they campaign during, third party campaigners are currently permitted to spend different amounts on campaigning in the same parts of the UK. For example, the spending limit for non-party campaigners in Scotland at the Scottish Parliament election in 2016 was £75,800 for a four month regulated period but £55,400 at the 2015 UKPGE for campaigning during a 12 month regulated period in Scotland. We believe that there could be greater consistency between the spending limits for non-party campaigners at elections.

Non-party campaigner spending limits:	UK Parliamentary Election	Scottish Parliament election	National Assembly for Wales election	Northern Ireland Assembly election
Length of regulated period	12 months	4 months	4 months	4 months
England	£ 319,800			
Scotland	£ 55,400	£ 75,800		
Wales	£ 44,000		£ 30,000	
Northern	£ 30,800			£ 15,300

Ireland				

16 Targeted spending

There should be no change to the targeted spending provisions. However, political parties should have to distinguish what was spent by third parties as targeted spending on their behalf.

16.1 We would support the introduction of a requirement for political parties to distinguish what was spent as authorised targeted spending in their spending returns in order to aid transparency. We made this recommendation ourselves in our 2015 UKPGE spending Report.

17 Joint campaigning

The current legislation governing joint campaigning needs to be reviewed in the light of the stated aims of what it seeks to achieve. The legislation should focus on preventing avoidance of the spending limits with as much clarity and simplicity as possible based on the proposals above.

17.1 We would support the principle behind this recommendation in order to ensure that spending limits are not evaded and to ensure greater transparency over campaign finance. It is also important to ensure that any changes to the current rules are clear and proportionate for campaigners to follow and do not deter them from entering into legitimate joint campaigns.

17.2 We made similar recommendations in our 2015 UKPGE Spending report[4].

18 Increase transparency pre-election

To improve transparency when third parties register they should be required to submit information regarding their planned activities related to electoral campaigning. As long as they state what they reasonably expect to do, then there should be no sanctions if their behaviour or spending subsequently changes provided the appropriate updating changes were made to their entry. There should though be sanctions in cases of deliberately misleading or fraudulent behaviour.

[4] Page 9 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/197907/UKPGE-Spending-Report-2015.pdf

The Electoral Commission

18.1 The Commission was established by Parliament under PPERA to regulate campaign finance. Requiring third party campaigners to provide us with details of their planned campaign activities and giving us sanctioning powers for campaigners who deviate from their reported plans would not be consistent with our intended purpose and potentially could adversely affect confidence in the independence of the Commission.

18.2 The review has suggested that campaigners should provide the information included in the case study provided at paragraph 7.14 of the report. The case study proposes that third party campaigners should provide a one line summary of the purpose of their campaign. They should also state the geographical location of the campaign and whether it is part of a joint campaign, as well as provide a website address. We agree that this level of information would appear to be useful and proportionate. We do not think that additional information about the nature of the campaign plans should be required to be disclosed.

18.3 We question the proposal for campaigners to be required to publicly declare their estimated spending intention. Candidates and parties do not have to do this. The current system is intended to focus on ensuring transparency of campaign finance, and Parliament has set clear limits for regulated spending. PPERA and the RPA do not require campaigners to provide details of their planned spending or activity in advance, nor is the Commission required to make such details publicly available.

18.4 There are other practical reasons for only requiring a limited amount of information to be declared in advance of campaigning. For example, a campaigner may spend less than anticipated during a regulated period and carry out activities that are different from what they planned, but fail to change their entry on the register to reflect this. In this situation, we would potentially have to sanction a campaigner for carrying out activity which was not part of their reported plans, even if they had spent less than what they had informed us about.

18.5 The proposed requirement may also impinge upon a campaigner's freedom to campaign and be reactive to events during a regulated period, especially if the regulated period is shortened to four months (as proposed in recommendation six). There may not be sufficient time for a campaigner to inform the Commission of a change in their planned activities if they change their plans to react to events in the weeks or days leading up to an electoral event. This may mean that they do not carry out legitimate campaign activity out of fear of not being able to update their entry on

the register in time. This may lead to a chilling effect if campaigners feel they do not have the ability to freely alter their campaign plans or activities during a regulated period without the threat of potential sanctions. Although that would not be the intention of this recommendation, it could be an unintended consequence.

18.6 We also believe it would not be practical to investigate or apply sanctions for campaigners that may provide deliberately misleading information. In instances where the public or opponents allege that a campaigner is undertaking different activity or spending more money than what they said they would do, there could be difficulties in trying to determine whether a campaigner had actually provided misleading information or changed their plans to react to events.

18.7 We believe this proposal should be considered further, together with consideration of a campaigner's right to campaign, the public interest of greater transparency and the desire not to overburden third party campaigners with unnecessary requirements. It would also be necessary to more fully assess the potential regulatory burden and resource implications for the Commission, police and courts in regulating the additional information, and considering imposing sanctions for misinformation.

19. The Electoral Commission should review how the register of third parties is presented. While there may be merits to having a running register with third parties on the register for 15 months as a minimum there should also be a specific register for each election. This register should be 'frozen' post-election and remain published online so that it can be seen who was active at that election. Individual third parties would be required to re-register in respect of every regulated period. There may need to be changes to the legislation to enable this.

19.1. We believe that the law would need to be amended to allow a specific register for each election event. We also believe that this change would have some value in terms of greater transparency by providing a more definitive record of which third parties have chosen to campaign and register for which electoral event.

20 Imprints

The Government should consider requiring imprints on electronic material, as well as on printed material, for third parties.

The Electoral Commission

20.1 We would support this recommendation for the potential benefits it may bring, provided full consideration is given to the challenges of extending the regulatory controls on imprints to cover website or social media campaign materials.

20.2 There is also the consideration that if this requirement applies to one campaigner type (third parties) then it should apply equally to all campaigner types (political parties, candidates etc).

20.3 Currently, it is an offence under both PPERA and RPA to distribute printed election material without an imprint containing details of the promoter of the material. We do receive a number of complaints around imprints on printed campaign material during regulated periods. Additionally, there is some confusion as to the application of PPERA to non-party campaigners, particularly in regards to the legal obligations for imprints on non-party campaigner campaign material. We give advice and provide guidance as required when trying to resolve queries relating to imprints.

20.4 As social media raises new questions about the issues of transparency over who is responsible for the production and distribution of campaign material, requiring imprints on electronic material would go some way to addressing this.

20.5 Introducing a requirement for imprints on electronic material would need to be considered alongside the challenges of regulating online content (such as determining which jurisdiction a website would fall under and identifying who is responsible for online content) with the current powers that we have.

20.6 It is worth noting that the Law Commission has recently also recommended requiring third party campaigners to insert imprints on to digital campaign material that may reasonably be regarded as intending to procure or promote any particular result (subject to a reasonable practicability defence).

20.7 In practice, the Law Commission's recommendation could be interpreted to require an imprint on any online comments, including on social media, expressing views supporting or opposing candidates (or parties). This is because such views could, in certain circumstances, be argued as being reasonably regarded as intended to procure or promote any particular electoral result; irrespective of whether any regulated spending has been incurred. In our view, using the "reasonably regarded" test in this context would do little to limit the application of the proposed imprint provision. We note that the third party campaigner controls in PPERA use a legal test framed around 'reasonably regarded as intended to', but there is a minimum spending threshold of £10k before the spending is regulated.

20.8 It is therefore important that the workability and scope of online imprint controls are considered carefully before being introduced so that the online activities of the general public expressing personal views, rather than 'campaigning', are not unintentionally captured.

Third parties should state on relevant material and their internet and social media homepages, wherever reasonably possible, that they are registered with the Electoral Commission as a third party under Part 6 of PPERA.

21.1 We believe such a requirement would be a good way to increase public recognition of regulation of UK election spending and of the Commission's role. It would enable voters to have confidence that the campaign material they see during a regulated period is subject to the relevant legislation/regulatory controls.

21.2 However, consideration would need to be given to the practicalities of ensuring that only those campaigners who have actually registered with the Commission carry an identifiable Commission logo of registration on their material. Additionally, there would need to be public awareness around the requirements for registration with the Commission so that the public would be aware that only campaigners that anticipate spending over the statutory threshold for registration would need to carry a logo on their campaign material.

21.3 Consideration would also need to be given to the exact nature and appearance of any logo so that voters are aware that the Commission only regulates spending undertaken by registered third party campaigners on specific activity during regulated periods and does not have a role in regulating the accuracy of information included in that campaign activity.

21.4 Although achievable, monitoring such material and checking that those who say they are registered actually are would have practical considerations in terms of resources.

22 Registration with the Electoral Commission

The threshold should be maintained at £20,000 in England, and £10,000 in Scotland, Wales and Northern Ireland.

22.1 We agree with this recommendation.

22.2 In our response to the Call for Evidence, we said that we do not have any evidence that the current thresholds for registration deterred any third party

campaigners from undertaking campaigning activities. We also said that any changes to the threshold figures would result in either a reduction or increase of third party campaigners registering during a regulated period.

22.3 Lowering the threshold limits may increase transparency for voters in determining how elections are financed but may also deter some individuals or third party campaigners from taking part in campaigning as they may be reluctant to engage with what they may perceive to a regulatory burden. Increasing the limits would mean less transparency for voters as to who is funding political activity because third party campaigners would be able to spend more on campaigning before needing to register with us.

22.4 Any changes to the limits will also need to be considered alongside other recommendations. Any changes that may affect how the public and an organisation's members are defined and their subsequent impact on the registration thresholds would need to consider whether the limits would need to be increased or reduced to reflect this.

23 A constituency threshold for registration should be introduced. Third parties should be required to register when they spend more than £5,000 in any one constituency.

23.1 The Commission would support this recommendation so long as the definition of what constitutes constituency spending is improved so that third party campaigners can determine more adequately whether spending on some activities is reportable or not, and whether it could trigger a requirement to register. Such a change would increase transparency in constituency spending but this would need to be considered along with how it interacts with local RPA campaign rules and reporting thresholds.

23.2 The current PPERA third party constituency rules apply in areas where the spending wholly or mainly has effect in a particular constituency but we think it would be easier to apply and enforce the rules if they covered activities aimed at electors in particular constituencies. This is a position we highlighted in our 2015 UKPGE report.

23.3 Our guidance advises campaigners to consider whether their spending is intended to affect the election outcome in a particular constituency or constituencies.

24. There should be no change to the reporting requirements and the time limits for reporting.

24.1 We agree with this positon but we also feel that it would benefit from being kept under review. It would be useful to monitor whether 3 and 6 months continues to be a suitable length for reporting periods for third party campaigners. Campaigners can set up for a short time for particular electoral events but they may no longer exist once these have taken place therefore 6 months after an election or referendum is possibly too long to wait for the reports for such short lived campaigners.

25 Government may wish to consider whether third parties that had registered before the election but spent less than the threshold for registration should be required to submit a nil return to the Electoral Commission.

25.1 Third party campaigners are only required to register with the Commission if they are planning on spending more than £20,000 in England and £10,000 in Wales, Scotland and Northern Ireland on regulated campaign activity. We believe that those campaigners that do register with the Commission but do not spend over the regulated threshold should still be required to submit a nil return but that this notification could take the form of an email declaration for simplicity. This would ensure that there is transparency over their actual spending after the electoral event has occurred, so that there are no doubts about the cost of the campaigning - if any - that they undertook. This would also ensure consistency between the different campaigner types.

26 Donations

There should be no change to the current rules on donations but they should be kept under review.

26.1 We agree that the provisions relating to donation controls should be kept under review.

27 Role of the regulator - Guidance

The Electoral Commission needs to improve its guidance, ensure that a consistent message is given and should take further steps to create purposeful working relationships with regulated third parties.

27.1 We are confident that the guidance we published in advance of the UKPGE both accurately reflected the legal framework and was consistent in its approach. We welcome feedback on our guidance and are always seeking ways to improve it and to explain the rules to those we regulate.

27.2 The Electoral Commission also worked extensively with third party campaigner groups in the run up to the 2015 UKPGE and we continue to do so for all elections. We continue to engage proactively with third party campaigners through our advice work, communications, meetings and speaking at events.

28 Code of Practice and Guidance

Parliament gave the Electoral Commission the power to issue a code of practice under paragraph 3 of Schedule 8A to PPERA. This should now be widened so that the Electoral Commission has the power to issue codes of practice on key aspects of third party campaigning more generally.

28.1 We can see the benefits of introducing a Code of Practice for third party campaigners. We are currently considering possible use of codes of practice to supplement our guidance in other areas where we have powers to do so and would welcome this recommendation to extend this option for third party campaigners.

28.2 However, when introducing a Code of Practice for key aspects of third party campaigning, consideration should also be given for the time it would take for the Commission to draft such a Code and for Parliament to scrutinise it and pass it through the legislative process. If any of the Hodgson review's proposals are taken forward, the legislation to implement them would need to be passed sufficiently in advance of the next elections to allow time for a Code of Practice to subsequently be drafted and passed through Parliament.

29 Compliance and Enforcement

The regulatory system for third parties requires those regulated to have trust in the capabilities of the Electoral Commission. It should therefore put more emphasis on intelligent, smart, risk-based, informed regulation.

29.1 The Commission has a dedicated monitoring team, which uses risk based planning to identify campaigner activity during electoral events. It was introduced for the Scottish Independence Referendum in 2014 and used during the 2015 UKPGE and at the 2016 elections and EU Referendum. The monitoring data is fed through to our guidance and compliance teams both to enable interventions where appropriate, and to inform our supervisory work. We are also introducing an enhanced audit strategy that will involve proactively inspecting compliance systems and processes.

29.2 We believe we currently work effectively with stakeholders and those we regulate to encourage trust in the regulatory system. Our aim is to ensure that the

PPERA rules on party and election finance are complied with, and that people throughout the UK are confident in the integrity and transparency of party and election finance. We aim to regulate in a way that is effective, proportionate and fair, always taking the facts of each situation into account. We seek wherever possible to prevent non-compliance occurring. We publish online guidance and provide a bespoke advice service to give those we regulate a clear understanding of their regulatory requirements.

29.3 In April 2016 we published our revised Enforcement Policy, to ensure it reflects our risk-based and proportionate approach to enforcement for all regulated bodies, including third parties.