



Party finance and expenditure in the United Kingdom: the Government's proposals

The Electoral Commission's response

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Translations and other formats

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Tel: 020 7271 0500

Email: publications@electoralcommission.org.uk

1 Introduction

1.1 The aim and central purpose of the Electoral Commission is to maintain integrity and public confidence in the United Kingdom's democratic process.

1.2 This paper sets out our response to the Government's White Paper *Party finance and expenditure in the United Kingdom*. We have been calling for changes to strengthen our regulatory functions for some time and have been involved in discussions with the Government about proposals for investigation and sanctioning powers.

1.3 Although we have previously published reports on broader issues of policy in relation to party funding, our focus – both in our daily work and in this paper – is on ensuring that we can perform our statutory duties and effectively regulate the arrangements that are in place or proposed for the future.¹ We offer no comment here on the wider debate about the future of the regime for party and election finance overall; our response focuses on the effectiveness of proposed changes to the regulatory framework.

1.4 This response focuses primarily on two topics addressed in Chapter 2 of the White Paper:

- proposals for reform of our regulatory role and investigatory and enforcement powers
- proposals to alter the composition of the Commission, by changing restrictions on appointment of both Commissioners and staff

1.5 We also comment briefly on the transfer of boundary functions.

1.6 The White Paper addresses a number of other topics, and considers them in the wider context of spending limits, donation caps and public funding. We have not commented on those issues in this response. We are of course ready to contribute our experience and views on the effectiveness of possible regulatory changes in these areas as and when the Government brings forward firm proposals.

1.7 In summary, the key points in this response are that:

- we welcome and strongly support the intention to amend our sanctions and investigation powers
- we do not believe the proposals regarding the make up of the Commission are an appropriate and workable way to provide it with greater access to party political experience, and offer an alternative approach which builds on our existing statutory Parliamentary Parties Panel²
- we will need to see more detail of other proposals in the White Paper before we can comment meaningfully

¹ The Electoral Commission, *The funding of political parties* (December 2004); The Electoral Commission, *Public perspectives: the future of party funding in the UK* (October 2006).

² Section 4, Political Parties, Elections and Referendums Act 2000.

2 The Electoral Commission

2.1 Chapter 2 of the White Paper deals with the Electoral Commission.

2.2 The Commission has a unique role in relation to party and election finance. We welcome the Government's acknowledgement of the important role played by effective independent regulation in establishing public trust and confidence in our democratic processes. The White Paper sets out clearly the value of statutory regulation in this area and the centrality of the Commission to that function. It also recognises that we have made significant strides in establishing a more proactive approach to regulatory work, including:

- intervening more rigorously where parties have not observed the rules
- ensuring that statutory rules on permissible donations are followed by adopting a more proactive approach to monitoring campaign spending, including 'on the ground' intelligence gathering
- improving the advice and guidance we offer to parties so that they are in no doubt about what the statutory rules require them to do
- employing individuals with skills in the key areas of audit, investigation and enforcement, and completely restructuring our Party and Election Finance Team

2.3 We are responding to the findings of both the Hampton and Macrory reviews by developing a strategic and risk-based regulatory approach, as far as this is possible within the existing legal framework.³

2.4 We have argued that the regulatory framework needs to be strengthened so we have the tools to do our job. We want a more flexible and workable legislative approach to penalties and enforcement including a broader range of financial and non-financial civil sanctions. We welcome the Government's acknowledgement of the need for reform in this area, something acknowledged in a number of independent and Parliamentary reviews focusing on the role and function of the Commission in recent years. In the longer term, the proposed new arrangements potentially deliver several positive benefits:

- greater clarity about the overall aim of regulation of party and election finance – not only promoting transparency, but also enabling enforcement of the law where necessary
- the creation of a new, more flexible range of penalties to underpin risk-based regulation
- additional powers for the Commission to enforce the law effectively and proportionately
- the opportunity to recruit staff with relevant political experience to enhance our organisational capacity to respond effectively to current and future regulatory challenges

³ Sir Philip Hampton, 'Reducing administrative burdens: effective inspection and enforcement' (2005) and Professor Richard Macrory, 'Improving Compliance among Businesses' (November 2006).

2.5 Our views on the White Paper's specific proposals on the regulatory framework are outlined below.

The Commission's role as a regulator

To clarify the Commission's role as an effective regulator of party funding and campaign expenditure... [2.22i]⁴

2.6 We welcome the Government's intention to clarify the Commission's role as regulator of party and election finance.

2.7 A key challenge for any regulator is to interpret and pursue its statutory objectives. This can be achieved using advice and guidance as well as compliance and enforcement, to deliver effective regulation in the public interest while reflecting the needs of the regulated community.

2.8 We look forward to having a more clearly defined regulatory role, and access to a better integrated suite of powers. This, coupled with updated guidance, will improve the transparency of the regulatory process. It will help regulated bodies and individuals understand what to do and what will happen if they do not comply with regulatory requirements.

Flexible sanctions

To provide the Commission with a widened range of sanctions and investigatory powers to enable it to become a more robust regulator ...to allow it to require the production of information from relevant individuals not currently covered by the PPERA powers where it is appropriate to do so. [2.22ii]

2.9 We welcome these proposals, which respond to our call for change in these areas which we made two years ago in our evidence to the Committee on Standards in Public Life's eleventh enquiry.⁵ Enhanced powers of access to information will enable us to conduct complete and robust investigations in conjunction with the relevant prosecuting authorities. More flexible sanctions will enable us to regulate in a proportionate way, in accordance with the Hampton principles.⁶

⁴ Extracts in boxes are taken from the White Paper.

⁵ Peter Wardle, Electoral Commission Chief Executive, oral evidence provided to the Committee on Standards in Public Life on 14 September 2006 (Paragraphs 324 and 325 of transcript).

⁶ Sir Philip Hampton, 'Reducing administrative burdens: effective inspection and enforcement' (2005).

2.10 We hope that the scheme will take full account of the flexible sanctions model provided for in the Regulatory Enforcement and Sanctions Bill currently before Parliament – including provision for a range of sanctions such as fixed and variable monetary penalties, statutory notices, and enforceable undertakings.

2.11 As part of this reform and to simplify the sanctions regime, we would urge the Government to repeal the current stand-alone forfeiture provisions and to make an amended forfeiture provision available as an option in conjunction with the other proposed penalties.⁷

2.12 It is important that the introduction of a flexible sanctions regime should complement rather than replace the existing criminal penalties regime. Criminal prosecution should remain an option for the most serious cases, including deliberate or repeated non-compliance.

Commissioners and staff with recent party political experience

2.13 The Government has made a number of proposals regarding the make-up of the Commission. We have looked in detail at these proposals and considered them in light of our central role as an effective regulator and in the light of the principles outlined in the *Fifth Report of the Committee on Standards in Public Life* when proposing the establishment of the Electoral Commission:

The Commission should be, and be seen to be, an independent and impartial body. Its members should be chosen on a non-partisan basis and by means of a non-partisan procedure. Its members should nevertheless be acceptable to the leaders of the main political parties.⁸

Commissioners with recent party political experience

...The Government supports the principle of providing for a minority of Commissioners to have recent experience of political life and believes that such a measure would improve the overall effectiveness of the Commission – provided that such appointees bring their political experience to bear in a non-partisan manner and do not act as representatives or delegates of the parties with which they have been associated. [2.21]

The Government supports the principle of providing for a minority of Commissioners to have recent experience of political life. [2.21]

⁷ Section 58 of the Political Parties, Elections and Referendums Act 2000 and Sub-section 65(6) provide for the forfeiture of certain donations.

⁸ *Fifth Report of the Committee on Standards in Public Life* (October 1998) Recommendation 75.

To reduce the current bar which prevents individuals being appointed as Commissioners if they have been engaged in political activity from a period of ten years to five years. [2.22iii]

To disapply the bar on past political activity for four Commissioner posts, to allow the appointment of a minority of Commissioners with recent experience of political life from the three main parties, and one of the smaller parties (with two or more representatives from the House of Commons). [2.22iv]

The recruitment and selection process for all Commissioners would remain a matter for the Speaker's Committee... [2.22iv]

To increase the overall number of Commissioners to ten, and to ensure Commissioners with recent political activity will be in a minority on the Commission. [2.22v]

...the legislation to allow the appointment of Electoral Commissioners with recent political experience would also bar those individuals from involvement in any aspect of the Commission's work concerning electoral boundaries while it retained those responsibilities. [2.25]

2.14 There are two elements of the Government's proposal to introduce Commissioners with political experience. The first is the introduction of a minority group of Commissioners with recent experience of political life; the second is a reduction of the restriction in involvement in political activity from ten years to five years for **all** Commissioners. The first element was a feature of the Committee on Standards in Public Life's proposals; the second was not.⁹ Our comments below apply to both elements of the proposal.

2.15 The Government suggests that the credibility of the Commission in the eyes of the public would improve with the proposal to expand the number of Commissioners and introduce a provision for new Commissioners with more recent experience in party politics.

2.16 Our overriding concern is that public confidence in the Commission's independence, both perceived and actual, must be maintained. Given our experience of the highly controversial nature of the areas in which we regulate, we continue to believe that an independent regulator whose Commissioners are known to be independent of political parties, is more likely to command public support and respect than one that risks being perceived as in part designed to reflect political party representation. We are, therefore, deeply concerned that public confidence in the Commission's independence might decrease rather than increase under the Government's proposals.

2.17 If the Government's aim is to inject more recent practical political experience into the Commission, this can be achieved via the proposed legislative changes to the restriction of employment of staff (on which we

⁹ Committee on Standards in Public Life, *Eleventh Report: Review of the Electoral Commission* (January 2007).

comment further below), together with an enhanced and refocused Parliamentary Parties Panel (PPP). The PPP is a statutory body whose function is to submit representations or information to the Commission ‘...about such matters affecting political parties as *the panel sees fit*’ [our emphasis].¹⁰ Its membership consists of representatives of the political parties (taking up two or more seats) in the UK Parliament. We see no reason why this existing structure could not be enhanced and refocused in order to meet the aims of the Government’s proposals in the White Paper, while ensuring that the Commission’s decision-making remains clearly independent from party politics. The same approach could be taken to the equivalent bodies in Scotland, Wales and Northern Ireland, which are currently non-statutory.

2.18 Our statutory responsibilities extend across the whole of the UK and we take seriously the need to understand and respond to the different political and legislative dynamics across the UK. The Government’s proposal that four new Commissioners should be appointed from the three main parties represented in the House of Commons, plus one from the smaller parties, is not compatible with maintaining the Commission’s legitimacy as a UK-wide body. For example, of the six smaller parties currently in government in Scotland, Wales and Northern Ireland only one would be represented in the Commission under these proposals.

2.19 Recent regulatory decisions made by the Commission have attracted a significant degree of public interest in the background of our current (independent) Commissioners, and the process by which they were appointed. This is demonstrated through Parliamentary questions, Freedom of Information requests and media comment, as well as direct comment from members of the public. This suggests that the appointment of **any** party affiliated Commissioners could undermine the Commission’s reputation as independent and non-partisan. There is an unavoidable risk that appointing a new group of Commissioners whose place on the Commission is partly governed by their party allegiance (in other words, four members of the Commission would be there as a result of their affiliation to particular political parties), will be perceived by the public as reducing the likelihood that the Commission will act independently of the interests of those parties where necessary.

2.20 This concern is made still greater by the Government’s proposal that the restriction in involvement in political activity should be reduced from ten years to five years for the other, independent, Commissioners. A possible outcome could be that of ten Commissioners, six could have been actively involved with political parties just five years earlier, and four could have been involved even more recently. That would be a very significant move away from the principles established when the Commission was set up and would, in our view, seriously damage public confidence in the Commission’s ability to enforce the rules without fear or favour. We do not think that adjustments to the Commission’s internal governance or decision-making arrangements will be sufficient to address this problem.

¹⁰ Section 4, PPERA.

2.21 We do not believe that the Government's proposals in this area can be made to work without compromising public confidence in our independence as a regulator. We have carefully considered the Government's proposals in the areas affecting our governance and staff. We have weighed up the need to ensure that we are continually informed by a greater degree of recent party political experience, against the overriding objective of ensuring the independence of our decision-taking. We believe that our alternative approach – a strengthened Parliamentary Parties Panel – will meet both aims.

Staff with recent political experience

To reduce the current prohibition on the hiring of staff who have held office in a political party, made a reportable donation or been in paid employment in a party within the last ten years. The restriction would be revised to one year for all staff except the Chief Executive, who would be subject to a five year restriction [2.22vi]

2.22 The Commission may well benefit from being able to employ staff with more recent direct experience of the communities it regulates.

2.23 We would however, prefer to see some flexibility for the Commission to extend the five-year rule to posts other than the Chief Executive. It would be near-impossible to define specific posts in legislation because there will inevitably be future restructuring or redefining of posts. Examples, however, might include senior staff such as the Deputy Chief Executive; the head of the Commission's team dealing with enforcing the party and election finance rules; those dealing with the media; or the heads of the Commission's offices in Scotland, Wales and Northern Ireland. The seniority and visibility of these posts and the likelihood that some of these posts might be called upon to deputise for the Chief Executive in his or her absence would merit the same exemption as the Chief Executive.

2.24 In addition, until such time as the boundary functions are removed from the Commission, we believe that staff responsible for managing the boundary review functions should be subject to a prohibition on previous political activity equivalent to that of the Commissioner responsible for chairing the Boundary Committee for England.

2.25 Our concerns would be met if the five-year ban proposed for the Chief Executive could also be applied to certain other members of staff.

Transfer of boundary functions

...the Government accepted the CSPL's recommendation that the current (but unimplemented) provision in PPERA to allow the transfer of boundary-setting functions to the Electoral Commission should be repealed [2.24]

...responsibility for the Boundary Committee for England should be removed from the Electoral Commission...the Government is considering how best to give effect to this...it would be appropriate to review the current legislation in relation to the conduct of parliamentary boundary work.. [2.24]

2.26 We agree with the Government and Committee on Standards in Public Life that it makes more sense to have local and Parliamentary boundaries working together. Given the Commission's strategic focus on other regulatory activity this is probably better placed outside the Commission.

2.27 We therefore welcome the Government's restatement of its intention to repeal the PPERA provisions regarding transfer of boundary functions to the Commission, and to remove responsibility for the work of the Boundary Committee. We look forward to seeing the Government's proposals for the Commission's role in relation to the implementation of the Boundary Committee's recommendations, and would welcome an early indication of the likely timetable.

How to contact us

Head Office

The Electoral Commission
Trevelyan House
Great Peter Street
London SW1P 2HW
Tel: 020 7271 0500
Fax: 020 7271 0505
Textphone: 18001 020 7271 0500
info@electoralcommission.org.uk
www.electoralcommission.org.uk

Devolved offices

The Electoral Commission
Scotland Office
28 Thistle Street
Edinburgh EH2 1EN
Tel: 0131 225 0200
Fax: 0131 225 0205
Textphone: 18001 0131 225 0200
infoscotland@electoralcommission.org.uk

The Electoral Commission
Wales Office
Caradog House
1-6 Saint Andrews Place
Cardiff CF10 3BE
Tel: 029 2034 6800
Fax: 029 2034 6805
Textphone: 18001 029 2034 6800
infowales@electoralcommission.org.uk

The Electoral Commission
Northern Ireland Office
Seatem House
28-32 Alfred Street
Belfast BT2 8EN
Tel: 028 9089 4020
Fax: 028 9089 4026
Textphone: 18001 028 9089 4020
infnorthernireland@electoralcommission.org.uk

English offices

The Electoral Commission
North of England Office
York Science Park
IT Centre
Innovation Way
Heslington
York YO10 5DG
Tel: 01904 567990
Fax: 01904 567719
Textphone: 18001 01904 567990
north@electoralcommission.org.uk

The Electoral Commission
Midlands Office, No 2 The Oaks
Westwood Way, Westwood Business Park
Coventry CV4 8JB
Tel: 02476 820086
Fax: 02476 820001
Textphone: 18001 02476 820086
midlands@electoralcommission.org.uk

The Electoral Commission
South of England Office
Trevelyan House
Great Peter Street
London SW1P 2HW
Tel: 020 7271 0600
Fax: 020 7271 0505
Textphone: 18001 020 7271 0600
south@electoralcommission.org.uk

The Electoral Commission
South West Office
Matford Business Centre
Matford Park Road
Exeter EX2 8ED
Tel: 01392 332877
Fax: 01392 332900
Textphone: 18001 01392 332877
southwest@electoralcommission.org.uk

The Electoral Commission

Trevelyan House
Great Peter Street
London SW1P 2HW

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

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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