



RESEARCH PAPER 00/1  
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# ***The Political Parties, Elections and Referendums Bill – Electoral aspects***

**Bill 34 of 1999-2000**

This Paper covers Parts I and II of the Bill which deal with the creation of an Electoral Commission, and the registration of political parties. It also examines Parts V and VI which provide for the regulation of campaign and electoral expenditure by both political parties and pressure groups (known as third parties). Finally it looks at provisions in Part VIII to amend the controls on expenditure by individual candidates. Companion Papers deal with control of donations to political parties, individual candidates and third parties (Research Paper 00/2 *The Political Parties, Elections and Referendums Bill- Donations*) and with provisions regulating referendums and broadcasting (Research Paper 00/3 *The Political Parties, Elections and Referendums Bill- Referendums and Broadcasting*). The Bill is expected to be debated on second reading on 10 January 2000. The electoral provisions in the Bill are intended to extend to the whole of the United Kingdom, but the agreement of the Scottish Executive is required for certain aspects as it has devolved responsibility for the conduct of local elections.

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# Summary of main points

## **Background**

The issue of limiting the amounts spent in election campaigns was brought to the political agenda by the recommendations of the Committee on Standards in Public Life (Neill Committee) which reported in October 1998. The Government issued a response and draft bill in July 1999, which forms the basis for the provisions in this bill, expected to have a second reading in the Commons on 10 January. Electoral aspects of the bill are covered in this paper. The aspects are summarised as follows:

## **Part I Election Commission**

A Commission will have several functions, including overseeing the conduct of elections and referendums. It will have a particular role in regulating donations to political parties and in establishing national expenditure limits. It will not however have an inquisitorial role in relation to individual malpractice.

## **Part II Registration of Parties**

The *Registration of Political Parties Act 1998* is replaced by Part II which makes registration compulsory before a party can field candidates in all types of election. Independents may stand, but may only use the description 'independent' on the ballot paper. There are new organisational requirements for parties to meet before they are registered. The registration process will be transferred from Companies House to the Electoral Commission.

## **Part V Control of Campaign Expenditure**

Expenditure by parties campaigning on a national basis is to be regulated for the first time. Definitions of campaign expenditure include donations in kind and expenditure has to be undertaken by authorised officers of political parties. Limits on expenditure for each party depend on both the time period and the number of election(s) underway, as well as the number of candidates fielded. Time limits for general elections begin 365 days before the date of the election, and the spending limit for each party is put at £19,770m for UK general elections. Returns of expenditure are required from treasurers of registered parties.

## **Part VI Controls on Campaign Expenditure by Third Parties**

Expenditure by pressure groups, trades unions and other bodies wishing to campaign in elections (known as third parties) will also be regulated in the same manner as for parties. Lower expenditure limits apply, based on five per cent of that available to a party fielding a maximum number of candidates. Third parties must register with the Electoral Commission if they intend to incur expenditure over £10,000 in England or £5,000 in Scotland, Wales and

Northern Ireland. Controls on donations to third parties are also regulated in the same way as for registered parties.

### **Part VIII Election Campaigns by Candidates**

Amendments are made to the *Representation of the People Act 1983* in respect of expenditure by individual candidates, to bring definitions into line with those used for national campaign expenditure. The maximum expenditure per candidate in a by election is increased to £100,000, and a new form of election expense return will be drawn by the Election Commission.

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## I Introduction

This Paper examines electoral aspects contained in the Bill. The accompanying Research Papers, 00/2 and 00/3, should be consulted for details on the provisions controlling donations to registered political parties, third parties and organisations planning to campaign in referendums.

The Bill was first published as a draft bill in July 1999, in the white paper *The Funding of Political Parties in the United Kingdom*.<sup>1</sup> Responses to the consultation paper were requested by 15 October. There were no plans for a select committee to report on this draft bill. Responses were placed in the Commons Library, but have not been published on the Home Office website. There were comparatively few responses, 36 in total.<sup>2</sup> Most responses were broadly in favour of the bill, although there were concerns about the definition of election expenses, expenditure limits for referendums and onerous reporting requirements on political parties. The Neill Committee issued a response, available on its website.<sup>3</sup>

## II The Bill – A summary of Election and Referendum Provisions

This section sets out the form and scope of the Bill. Later parts of the Paper examine key elements of the Bill's provisions. The *Representation of the People Act 1983* is subject to amendment by a number of clauses and is hereinafter referred to as the RPA 1983.

### A. The Electoral Commission

**Clause 1** creates an electoral commission, of between five and nine commissioners. **Clause 2** creates a Speaker's Committee to oversee the Commission's work. **Schedules 2 and 3** cover the status and financing of the Commission and Speaker's Commission respectively. The *Explanatory Notes* state that the model is the Public Accounts Commission. **Clause 3** governs the appointment of the Commissioners by an address from the Commons. The Commissioners will be appointed for up to ten years, with the possibility of reappointment. **Clause 4** requires the Commission to publish reports on parliamentary elections and elections to devolved assemblies and on referendums held. Under **clause 5** the Commission will have power to keep under review the conduct of

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<sup>1</sup> Cm 4413

<sup>2</sup> Dep 99/1866

<sup>3</sup> *The Funding of Political Parties: The Government's Proposals for Legislation* from website [www.public-standards.gov.uk](http://www.public-standards.gov.uk)

elections and the funding of political parties, among other matters and is given a formal role in **clause 6** in consultations over changes to electoral law. **Clause 7** gives the Commission the duty of giving directions on electoral registration and on expense limits for the Greater London Authority elections and elections to the Scottish Parliament and the National Assembly for Wales. **Clause 8** enables the Commission to offer advice and assistance on electoral and party funding matters. It is empowered to offer guidance on party political broadcasts under **clause 9** and to grant the 'policy development grants' recommended by Neill to registered political parties under **clause 10**.<sup>4</sup> The Commission has a duty to promote awareness of electoral and democratic systems in **clause 11** and is enabled to offer grants to bodies to carry out such programmes. There are provisions to ensure that the Commission's role does not extend to the conduct of local elections in Scotland, a devolved matter.

The Commission is required to establish four Boundary Committees for England, Scotland, Wales and Northern Ireland, and to appoint Deputy Electoral Commissioners under **clauses 12 and 13** and the functions of the existing parliamentary boundary commissions are transferred under **clauses 14 and 15**. The *Explanatory Notes* states that the transfer of functions is not expected to take place until 2005, after each commission has completed the next periodic review. The Secretary of State may transfer the one or more of the functions of the Local Government Commission under **clause 16**, and the National Assembly for Wales the transfer of the Local Government Boundary Commission for Wales' functions under **clause 17**.

## **B. Registration of Political Parties**

**Part II** of the Bill deals with the registration of political parties and makes registration compulsory for parties wishing to contest seats in relevant elections, including local elections and elections to devolved assemblies. It replaces the existing requirements in the *Registration of Political Parties Act 1998*. **Clause 19** requires candidates for all types of elections to be either representing registered political parties, or to be an Independent. Responsibility for the register of political parties is transferred from Companies House to the Electoral Commission under **clause 20** and **clause 21** requires parties to register certain office holders. **Clauses 22 and 23** deal with the financial structure of registered parties. Trades unions and friendly societies are not to be considered constituent or affiliated members of a party. **Clauses 24-26** set out the registration process, the registration of emblems and changes in registration. **Clauses 27 and 28** deal with confirmation of registered details, and removal from the register. **Clause 29** makes the register publicly available, and **clause 30** sets out transitional arrangements for parties already registered. **Clause 31** allows the Commission to provide assistance for existing

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<sup>4</sup> See Research Paper 00/2 *The Political Parties, Elections and Referendums Bill- Donations* for further details on policy development grants

parties to help them meet the expenses to be incurred in complying with the new procedures.<sup>5</sup> **Clause 32** prohibits party political broadcasts from unregistered parties, and **clause 33** makes consequential amendments to the Parliamentary Election Rules. **Clause 34** creates a new offence of making false statements to the Commission and **clause 35** deals with the interpretation and application of Part II.

### C. Campaign Expenditure

Part V deals with campaign expenditure, that is, expenditure relating to national campaigning by political parties. These clauses replicate, with some modifications the provisions in the RPA 1983 relating to constituency election expenses.

**Clause 65** defines campaign expenditure in broad terms, but expenditure relating to individual candidates is excluded from the definition. **Clause 66** introduces the concept of ‘notional campaign expenditure’ to cover goods or services provided free or at a discount. **Clause 67** allows the treasurer of registered parties to appoint deputies with responsibility for campaign expenditure. **Clauses 68 and 69** prohibit campaign expenditure and payments in respect of campaign expenditure unless incurred with the authority of the treasurer, deputy treasurer or authorised person of a registered party. A new offence is created if payments are made in contravention of the clause. **Clause 70** ensures that claims for payment of campaign expenses are not to be met, unless the claim is made to the treasurer, deputy treasurer or authorised person of the relevant registered party. **Clause 71** deals with disputed claims for payment.

**Clause 72 and Schedule 8** set out the limits on campaign expenditure for elections and provide that an offence is committed if the treasurer or deputy treasurer authorising payments knew or ought reasonably to have known that the expenses would exceed the limit.

**The limits** apply for 365 days before a general election and for four months before elections to the devolved assemblies. The scheme applies for apportionment of expenditure between England, Scotland, Wales and Northern Ireland. The maximum amounts which a party may spend are governed by the number of constituencies/regions contested in the relevant election. The limits are aggregated where the relevant periods overlap. The maximum amount per party in a general election is £19.77m, where no other elections are taking place in the same period. Part IV of Schedule 8 provides that campaign expenditure outside the time limits is deemed to have been incurred in the limited period where it has been incurred with a view to procuring the use of any property, services or facility in the campaign period. **Schedule 7** defines the term ‘campaign expenditure’ to include such matters as party political broadcasts, telephone

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<sup>5</sup> See Research Paper 00/2 for further details on these grants

polling of voting intentions, office and staff expenditure. It also enables the Commission to issue codes of practice on items which should fall in or outside the definition.

**Clause 71** requires the return of election expenditure from the treasurer of a registered party, which if it exceeds £250,000, has to be audited under **clause 72**. **Clauses 73-74** deal with the submission of returns to the Commission, including a declaration from the treasurer. **Clause 75** requires the Commission to allow the public inspection of returns, and **clause 76** creates an offence of evading restrictions on campaign expenditure.

#### **D. Controls on third party expenditure in national campaigns**

Part VI of the Bill establishes a new regime of regulating expenditure of third parties, that is organisations other than political parties who campaign at election times. **Clause 78** introduces the term ‘controlled expenditure’ as expenses incurred in the production of material ‘designed to promote or procure’ the election of candidates. The definition includes material which ‘can reasonably be regarded as intended to enhance’ the electoral prospects of those candidates. **Clause 79** defines notional controlled expenditure. **Clause 80** exempts certain items, such as personal expenses, from controlled expenditure. Third parties are required to notify the Commission if they expect to spend over and above £10,000 in England or £5,000 in Scotland, Wales or Northern Ireland. **Clause 81** requires the Commission to maintain a register of such notifications. A system of expenditure is created in **Clauses 82-83** by responsible persons modelled on party agents. **Clauses 85-86** deal with payments and disputed claims. **Clauses 87 and Schedule 9** set out the spending limits, modelled on the limits in Schedule 8 for political parties. The same relevant time periods apply, as well as the apportionment and aggregation principles. The spending limit is 5 per cent of that available to a political party fielding the maximum amount of candidates.

**Clause 88 and Schedule 10** apply controls on donations to recognised third parties modelled on those applicable to political parties in Part IV. Donations over £5,000 must be described and donations may only be received from permissible donors. **Clauses 89-93** deal with returns to be made, accompanied by invoices and declarations as to accuracy. **Clause 94** is modelled on s110 of the RPA 1983 and requires that documents published on behalf of third parties carry the name and address of printer and publisher and the person on behalf of whom they have been published.

#### **E. Election campaigns by candidates**

Part VIII of the Bill makes amendments to the RPA 1983 in respect of expenditure on individual candidates. **Clause 121 and Schedule 15** insert new s71A and Schedule 2A in the RPA 1983 which provides for controls on donations to candidates used for the purpose of meeting election expenses. Part I of new Schedule 2A defines donations to candidates in provisions modelled on donations to registered parties, and Part II restricts the acceptance of donations in similar terms to those applicable to registered parties.

Donations of £50 or more must be recorded in the return of election expenses. **Clause 122** inserts a new s76(1) in the RPA 1983 to align the provision with the new definition of election expenses in s90A-C. This new definition is inserted by **Clause 123** and provides for benefits in kind to be treated as election expenses. The new sections are modelled on the definitions for campaign expenditure in Part V of the bill.

**Clause 122** also amends s76(2) of the RPA to increase the maximum expenditure per candidate in a parliamentary by-election to £100,000 and recasts the criminal offence of exceeding election expenses so that it is in alignment with similar provisions on exceeding campaign expenditure.

The new meaning of election expenses is set out as ‘any expenses incurred for the acquisition or use of property or for the provision of services or facilities which is or are used for the purposes of the candidate’s election.’ ‘Notional expenses’ are included within the definition, but a number of items, such as personal expenses, payment of deposits are exempted. There are provisions which apply to apportionment of costs between non election expenditure and election expenditure, and for goods and services supplied free or at a discount.

**Clause 124** amends the meaning of candidate in s118 of the RPA 1983 and ensures that expenditure on goods etc purchased in advance but meant for use during an election period are treated as election expenses. A new s173 is inserted into RPA 1983, to preclude persons convicted of illegal practice from sitting in the Commons as well as those convicted of corrupt practices, by **Clause 125**. This also clarifies the law in respect of the vacation of a seat following conviction, following the uncertainty in the Fiona Jones case in April 1999.

**Clause 126 and Schedule 16** amend provisions in the RPA 1983 in respect of election petitions without making major changes to the procedure. **Clause 127 and Schedule 17** make various changes to Parts II and III of the RPA 1983 in respect of obsolete provisions and the return of election expenses set out in Schedule 3 of the 1983 Act. The form of the new return will be set out by the Electoral Commission in regulations. Returning officers will be required to forward returns of election expenses to the Commission for parliamentary and London Mayor elections and local elections upon request.

## **F. Miscellaneous and Overseas Voters**

Part X sets out general matters relating to the powers and functions of the Electoral Commission and miscellaneous changes. **Clause 130** reduces the qualifying period for overseas voters from 20 to 10 years by amending the RPA 1985. See Research Paper 00/2 for further details on overseas voters.

**Clauses 131-135** deal with the functions of the Commission, penalties and offences for failure to deliver documents or evasion of requirement in the Bill, and public access to

the various registers kept by the Commission. **Clauses 136-40** set out the penalties for offences under the Bill. **Clauses 141-147** deal with supplementary powers and minor amendments and repeals set out in **Schedules 20 and 21**. Among the matters dealt with are amendments to s13 of the *Local Government Act 1992* enabling the Secretary of State to direct the Local Government Commission to carry out either structural, boundary or electoral reviews, rather than all three types as the Commission is bound at present. The obligation on the LGC to carry out periodic electoral reviews at 10 to 15 year intervals is also removed in favour of a decision by the LGC as to timing.

A ‘Short Money’ scheme is set out for the National Assembly for Wales through an addition to the *Government of Wales Act 1998* of s34A. Payments may be made to all parties, not just opposition parties. Similar provision already exists for the Scottish Parliament under s97 of the *Scotland Act 1998*. See Research Paper 00/2 for details. The *Northern Ireland Act 1998* is also amended by Schedule 20 to ensure that the whole subject matter of this Bill is an excepted matter, and not devolved.

**Clauses 146 and 147** deal with interpretation and financial provisions. **Clause 148** establishes the Electoral Commission and Speaker's Committee on Royal Assent, and provides that the Bill extends to the whole of the United Kingdom, apart from Part IV (political donations by companies) and paras 2 and 3 of Schedule 119 (referendum addresses to proxies) which do not apply to Northern Ireland.

### III Electoral Commission

#### A. Background

See Appendix 1 of Research Paper 99/94 *The Representation of the People Bill* for full background on the arguments for an electoral commission. Companion Research Paper 00/3 looks at the role of the Commission in relation to the conduct of referendums. Proposals for an independent electoral commission, were made in both the Neill<sup>6</sup> and the Jenkins<sup>7</sup> reports and were considered in detail by the Government in its draft bill published in the consultation paper *The Funding of Political Parties in the United Kingdom*.<sup>8</sup> Many issues needed further clarification, such as its territorial scope, its relationship with the existing boundary commissions and the extent of its regulatory function.

The Neill Committee recommended the creation of a ‘totally independent and authoritative Election Commission with widespread executive and investigative powers

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<sup>6</sup> *Funding of Political Parties in the United Kingdom* Cm 4057 October 1998

<sup>7</sup> *Report of the Independent Commission on the Voting System* Cm 4090 October 1998

<sup>8</sup> Cm 4413 July 1999

and the right to bring cases before an election court for judgement.’ It also envisaged that the commission would be responsible for administrative work connected with the regulation of election expenditure and exercise broad oversight of the conduct of elections, as well as take over the registration of political parties from Companies House. It decided against separate electoral commissions for Scotland Wales and Northern Ireland, but considered that there should be Commission offices maintained in each constituent part of the UK. No specific reference was made to the position of the Northern Ireland Chief Electoral Officer, already an independent official responsible for supervising elections there.

In effect, Neill took the existing idea of an election commission and transformed it into a much more extensive concept. Commentators have expressed fears that the regulation of electoral expenditure may deflect a new body from other urgent tasks, such as the introduction of a system of rolling registration for electors, and divert attention away from a civic education role in promoting parliamentary democracy.

The Jenkins Commission<sup>9</sup> also recommended the creation of an electoral commission in order to undertake an educative role for a new electoral system and to monitor its practical effects, as well as remedying more traditional concerns about the outdated and complicated nature of electoral administration legislation. The Commission did not offer any detail however on the form or scope of a commission. Neill had suggested a number of functions as follows:

**71.** The Commission should publish a report on the conduct and administration of each major election or referendum within 6 months of its taking place. (p 148)

**72.** The Commission should have the duty to advise the Government on the modernisation and revision of electoral law. The Government should consult the Commission before making or proposing any changes relating to electoral law and administration. (p 148)

**73.** The Commission should have the executive and investigatory powers detailed in our other recommendations [relating to election expenditure and income and expenditure of political parties and third party pressure groups]. (p 148)

**74.** The Commission should not be a court or have any substantial judicial power. (p 149)

The membership of the Commission would be non-party political and independent, with substantial security of tenure. The Commissioner for Public Appointments, who supervises appointments to Non Departmental Public Bodies (NDPBs) might have a role

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<sup>9</sup> Cm 4090 October 1998

in overseeing appointments, but individual members would need to be acceptable to party leaders.<sup>10</sup> Five part-time members were proposed, with the bulk of the work carried out by a chief executive and small complement of staff. Each commission member might have responsibility for electoral arrangements in the separate parts of the UK. Neill considered it essential to secure a source of funding which protected the independence of the commission -perhaps building on the funding arrangements for the National Audit Office which are approved by the House of Commons Public Accounts Commission. A close relationship was envisaged with local Acting Returning Officers, in order to supervise more closely the return of electoral expenses for each constituency and even initiating investigations of suspected evasion of the rules.

Finally, Neill recommended that the Commission should assume the role of registrar of political parties, but considered that it might overload the Commission to also take on the work of the parliamentary boundary commissions. Here, the Jenkins report offered a contrasting approach. Jenkins recommended that the work of the four separate boundary commissions be more closely coordinated and absorbed into the responsibilities of an electoral commission. In order to implement the report's recommendation for Top-up seats a full scale redistribution of parliamentary seats would be necessary, and the procedures for redistributing seats are widely considered to be in urgent need of overhaul<sup>11</sup>. The *Scotland Act 1998* requires the Scottish boundary commission to disregard the existing statutory minimum number of seats in Scotland (72) in the next boundary review, with the effect of reducing the number of seats below that figure. Thorough reform of the rules<sup>12</sup> would be likely and appropriate in the next few years, even if the Jenkins proposals were not implemented.

## **B. The Draft Bill**

### **1. Functions of the Electoral Commission**

The July 1999 white paper set out in Chapter 2 the role envisaged for an independent electoral commission. The functions in relation to regulating election expenditure and party funding were given prominence:

#### **The functions of the Electoral Commission**

##### ***Regulation of controls on donations to political parties and of limits on campaign expenditure***

2.4 The bedrock functions of the Electoral Commission, as recommended by the Neill Committee, will be those relating to the new regulatory framework for the

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<sup>10</sup> Rather like the role in supervising appointments to the Appointments Commission proposed in the white paper on House of Lords reform. See Research Paper 99/5 *The House of Lords Bill: 'Stage One' Issues* for further details

<sup>11</sup> For a full discussion see Butler and McLean *Fixing the boundaries*

<sup>12</sup> Currently contained in Schedule 2 of the Boundary Commissions Act 1986

reporting of donations to political parties, the ban on foreign donations and the controls on campaign expenditure at parliamentary and other elections.

2.5 In particular, the Electoral Commission will:

receive and make available for public inspection information concerning disclosable donations reported to the Commission by registered political parties; investigate the financial affairs of political parties to ensure compliance with the rules on disclosure;

perform a similar function in relation to the prohibition on foreign funding;

receive and make available for public inspection the annual accounts of registered political parties;

receive, scrutinise and, as necessary, investigate accounts of general election expenditure by registered political parties and third parties;

receive returns, via returning officers, of individual candidates' election expenses and investigate possible breaches of the spending limits.

These functions are described in further detail in [Chapters 3, 4 and 7](#).

2.6 As envisaged by the Neill Committee (R13), the Electoral Commission will have wide powers to call for financial information from political parties, registered third parties and referendum campaign organisations, and to enter their premises to inspect and take copies of financial documents or records. Appropriate provisions are contained in clause 92 of the draft Bill.

#### ***Registration of political parties***

2.7 The Neill Committee recommended that the Electoral Commission should assume the role of Registrar of Political Parties (R82). The Registration of Political Parties Act 1998, which created the office of Registrar, conferred it on the Registrar of Companies. With the establishment of the Electoral Commission, the Government agrees that it would be appropriate to bring this function within the Commission's remit. The transfer is provided for in clause 20.

#### ***Review of electoral law and practice***

2.8 The draft Bill confers two statutory functions on the Electoral Commission which underpin its remit to modernise electoral law and practice. First, the Commission will be required to publish a report on the administration of each major election (R71 and clause 4(1)(a)). A 'major' election for these purposes will be: a Westminster Parliamentary general election; a European Parliamentary general election; a Scottish Parliamentary general election; an ordinary election of the National Assembly for Wales; and a Northern Ireland Assembly election. The intention is that the reports should bring to light any features of electoral law and practice, including the operation of the new reporting requirements, which seem to deserve further attention. The Commission would be expected to publish its report as soon as reasonably practical after each election (months not years), but the Government does not consider it necessary to place it under a statutory duty to do so within any specific time scale. The Commission will have a similar duty to report after each major referendum (see [Chapter 8](#)).

2.9 The second statutory function of the Electoral Commission in this area will be to keep under review in a more general way the law and practice relating to party funding, elections and referendums, and to make reports with recommendations (R72 and clause 5(1)). From time to time there may be particular aspects of electoral law which Ministers wish to see examined as a matter of priority. In such circumstances, clause 5(2) would allow the Home Secretary, or other Secretary of State, to direct the Commission to review a specified matter within a specified time-frame and to report.

2.10 Under these arrangements Ministers would remain responsible for the law on party funding and the conduct of elections and referendums but, as recommended by the Neill Committee, there would be an expectation that they would consult the Electoral Commission before proposing any changes.

2.11 In the case of secondary legislation, this expectation is given statutory effect by requiring Ministers to consult the Commission before making certain regulations or other instruments under the Representation of the People Acts 1983 and 1985 and the European Parliamentary Elections Act 1978 (clause 6(2)(a) to (e)). There is a similar requirement to consult the Commission before the delegated powers in relation to the conduct of elections are exercised under the Scotland Act 1998, Government of Wales Act 1998 and the Northern Ireland Act 1998 (clause 6(2)(f) to (h)).

2.12 Furthermore, certain delegated powers, in particular those that provide for the variations of expenditure limits at elections, will be exercisable only on a recommendation from the Commission (clauses 7 and 98<sup>2</sup>). The Government has separately announced proposals for pilot schemes to test innovative voting arrangements<sup>3</sup>. The Government is considering what role the Electoral Commission might play in relation to pilot schemes of this kind and in the subsequent roll-out of successfully piloted voting arrangements across the country as a whole.

The white paper therefore accepted the view of the Neill Committee that the Commission should not be given investigatory or inquisitorial powers over individual malpractices.

The white paper considered that if an Electoral Commission were to be set up from scratch it would seem a natural model for it to deal with voter registration and the actual administration of elections. However the current arrangements whereby registration and the conduct of elections are in the hands of registration/returning officers 'command public confidence'.<sup>13</sup> A changeover would be a large administrative and legislative project which could not given priority. The paper also decided against a direct supervisory role for the Commission, which would instead be the focal point for guidance and promoting best practice (paras 2.15-2.16).

A new duty would be to promote public awareness of and participation in the political process, with links to Department of Education and Employment proposals for citizenship education.<sup>14</sup> It is envisaged that the Commission would take over national advertising campaigns on registration and absent votes from the Home Office and Scottish Offices.

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<sup>13</sup> Para 2.14 Although these officers also hold senior local government posts, they are not answerable to their parent authorities for the performance of electoral duties

<sup>14</sup> See *The Review of the National Curriculum in England – The Secretary of State's Proposals* consultation paper

## 2. Parliamentary Boundary Commissions

Although the white paper and the bill provide for the eventual absorption of the four Parliamentary Boundary Commissions within the Electoral Commission, the Government plans to delay this until after the next review of parliamentary seats. The white paper stated:

2.23 In order to undertake its boundary review functions, the Electoral Commission will be required to establish four statutory Committees, one for each constituent part of the United Kingdom (clause 12). These four Committees will exercise the functions of the four Parliamentary Boundary Commissions under the Parliamentary Constituencies Act 1986. The statutory Committee for England will additionally take on the functions of the Local Government Commission for England under Part II of the Local Government Act 1992. The proposed composition of the four statutory Committees is described in [paragraphs 2.28](#) and [2.31](#) below.

A target date for transfer was given as 2005 after the completion of the review. However the bill contains the powers to make the transfer. There has been no mention of the need to reform the *Rules for the Redistribution of Seats* contained in the *Parliamentary Constituencies Act 1986* which have been heavily criticised for internal inconsistency.<sup>15</sup> The white paper also proposed the transfer of the functions of the Local Government Commission for England to the Electoral Commission in or around 2005. Although responsibility for local authority boundaries is a devolved subject, there was provision in the draft bill for the Election Commission to take on this function subject to the agreement of the relevant legislature.

In its response to the draft bill the Parliamentary Boundary Commission for England expressed some concern that the creation of the Boundary Committees would not have any real effect on the work of the Boundary Commissions; the draft Bill did not attempt to rectify the deficiencies in the *Rules for the Redistribution of Seats* which resulted in the growth in the number of parliamentary constituencies. However the Commission agreed that it was not appropriate to amend the rules at present, close to the start of a general periodic review. The Commission also wished to ensure that the Committees would report directly to the Secretary of State, without amendment by the Electoral Commission. It also expressed concern about the potential transfer of all the functions of the Local Government Commission (LGC) to the Electoral Commission, since it considered that the LGC's role in structural reviews should be carried out by a separate body, so as not to damage the public perception of neutrality and independence of the Electoral Commission.<sup>16</sup>

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<sup>15</sup> See Research Paper 95/74 *The Parliamentary Boundary Review for England and Fixing the Boundaries* by David Butler and Iain McLean for details

<sup>16</sup> Dep 99/1866 PBCE response

The LGC response<sup>17</sup> also expressed concern as to the timing of a merger, arguing that the possible benefits of dovetailing its electoral reviews with the general review of parliamentary constituencies would be lost if the merger did not take place until 2005. It also highlighted changes to the internal management of local authorities, and the possible introduction of proportional representation to local elections, which would require a prompt review of local electoral arrangements, which the LGC was best placed to carry out. Its response queried the desirability of bringing boundary work into the Electoral Commission at all. However, the response from the Local Government Association did favour the integration of the LGC within the Electoral Commission, while expressing the need for local government experience to be represented within the Commission.<sup>18</sup>

### **3. Other Functions**

A variety of other duties was proposed for the Commission in the white paper, including

- Assistance to overseas governments and international organisations on electoral matters
- Assistance to the devolved administrations in respect of electoral functions
- Disbursement of policy development grants to political parties
- Conduct of referendums
- Overseeing the conduct of party political broadcasts

These functions are given to the Commission in the Bill. See Research Paper 00/3 for further details on the functions relating to referendums and party political broadcasts, and Research Paper 00/2 for details about policy development grants.

### **4. The Constitution of the Commission**

The white paper proposed that there would be five members of the Commission initially, which would increase to nine once the boundary commissions had been absorbed. These extra members would chair the four statutory Committees of the Commission (see above). A series of arrangements were to buttress the independence of the Commission:

2.29 Electoral Commissioners will be appointed by Her Majesty The Queen. Recommendations to The Queen to appoint Commissioners will be subject to the approval of the House of Commons. The procedure will involve the House of Commons agreeing an Address to the Sovereign on a motion presented by the Prime Minister, acting with the agreement of the Chairman of the Speaker's Committee, established by clause 2 of the draft Bill. Before moving such an address, the Prime Minister will be required to consult the leaders of those political parties to which two or more sitting Members of the House of Commons belong at that time (clause 3(2)).

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<sup>17</sup> Dep 99/1866 LGC response

<sup>18</sup> Dep 99/1866 LGA response

2.30 To meet the point about security of tenure, it is proposed that members of the Electoral Commission should be able to be appointed for a period of up to ten years and should be removable within their periods of office only on certain specified grounds, and then only with the agreement of the House of Commons (R76 and clause 3(3) and paragraph 2 of Schedule 1). The appointments will be renewable, but the expectation will be, in line with the Commissioner for Public Appointments' guidance on appointments to public bodies, that no-one will serve for longer than ten years.

2.31 Deputy Electoral Commissioners will be appointed by the Electoral Commission to serve on the four statutory Committees responsible for discharging the Commission's functions in respect of the review of electoral boundaries. The draft Bill (clause 12) requires that there be at least three members are appointed to each Committee including the chairman, who must be an Electoral Commissioner, and two other members, who must either be Electoral Commissioners or Deputy Commissioners; the precise number of Deputy Commissioners would be subject to agreement with the Speaker's Committee. The remit of the Deputy Commissioners will be limited to the functions of the Committee to which they are appointed.

2.32 The independence of the Electoral Commission will be further buttressed by the arrangements for setting its budget, which will not be controlled by a Departmental Minister. The Commission's budget will be examined by the Speaker's Committee which will then lay the budget, with any modifications it thinks fit, before the House of Commons (R78 and paragraph 13 of Schedule 1). The Speaker's Committee will also approve, by the same process, a five-year corporate plan drawn up by the Electoral Commission.

2.33 The functions of the Speaker's Committee will closely mirror those of the Public Accounts Commission in relation to the National Audit Office. The Committee will consist of nine Members of Parliament. Three of the members will be ex-officio appointments, that is the Chairman of the Home Affairs Select Committee, the Home Secretary and a Minister responsible for local government in England. To allow for the fact that there may be more than one Minister with responsibilities for local government, the draft Bill (clause 2(3)) provides for this appointment to be made by the Prime Minister. The other six members will be Members of the House of Commons appointed by the Speaker, none of whom will be a Minister (clause 2(4)).

There were reassurances in the white paper that expenditure would be contained, by requiring the Speaker's Committee to have regard to advice from the Treasury. The Election Commission's remit would extend to the whole of the UK, and therefore it was expected that it would establish 'a permanent presence' in Scotland, Wales and Northern Ireland (paras 2.34-5).

The Speaker's Committee also appears to have as a model the Committee established under the *Registration of Political Parties Act 1998*<sup>19</sup> to arbitrate over competing claims

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<sup>19</sup> See Research Paper 98/62 *The Registration of Political Parties Bill* for background

to the registration of party names. This Committee does not have parliamentary privilege, and does not publish minutes of its meetings.

The future role of the Chief Electoral Officer for Northern Ireland was not made entirely clear. There is no suggestion that the post should be abolished, but there is presumably a possibility that some of the functions might transfer to the new Commission if a presence were to be established in Northern Ireland.

## 5. Future Workload of the Commission

The Electoral Commission would appear to have a heavy workload in order to prepare for the next general election, due by 2002. Systems will need to be established to monitor national expenditure of political parties and of 'third party' pressure groups and others, to regulate the disclosure of donations over £5000, and to supervise the work of Acting Returning Officers in receiving local returns of election expenses. Potentially difficult territorial issues may well arise with the Scottish, Welsh and Northern Ireland administrations, although parliamentary electoral law remains reserved to Westminster under the devolution settlements.<sup>20</sup> The immediate priorities will therefore lie elsewhere than in formulating best practice for electoral procedures and rules for the conduct of referendums. This may be a factor in delaying government plans for referendums on both electoral reform and the single European currency. The Commission's regulatory activities may postpone development of a civic education role, despite concern about the relatively low standing of parliamentary democracy and poor turnout in local elections.

## C. The Role of the Commission as set out in the current Bill

Part I of the Bill remains largely as drafted in the white paper. However, **Clause 5** has been redrafted to give the Commission a wider role in carrying out reviews on such matters as redistribution of seats, and registration of parties. **Clause 11** now enables the Commission to offer grants to persons or bodies to carry out programmes of education, including public awareness of the institutions of the European Union. There is also clarification that the Commission's role in reviews will not extend to referendums held under powers in the *Scotland Act 1998* or *Northern Ireland Act 1998* or local Welsh referendums. Where reviews relate to Northern Ireland the Commission is required to consult with the Chief Electoral Officer there. There is no change in the provisions to merge the parliamentary boundary commissions, the Local Government Commission and the Local Government Boundary Commission for Wales.

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<sup>20</sup> For example, the Scottish Parliament is likely to review the possibility of a new electoral system for local authorities in Scotland, and this may prompt requests for an overhaul of parliamentary electoral law

There are no statutory powers for the Commission to collect and collate electoral statistics, and this was not an area explored in the white paper. This is a function commonly given to Electoral Commissions abroad. The *Explanatory Notes* expect a staff of 50 (not including staff working on electoral boundaries)<sup>21</sup> with annual running costs of £2.6m. The potential workload for the Commission is however daunting. The Commission is to be established on royal assent, and its first priority is likely to be the codes of practice on election expenses and on donations. It is unclear at present whether the Commission will be fully staffed and functioning before the next general election.

## IV Party Registration

### A. Background

The *Registration of Political Parties Act 1998* introduced a voluntary system of registration for political parties. Research Paper 98/62 offers a full background to the legislation. The current register is available online at [www.party-register.gov.uk](http://www.party-register.gov.uk). The website summarises the advantages of registering as follows:

The main benefits are:

A registered party will be able to protect its name from use by unauthorised candidates on ballot papers at elections.

Only a registered party will be able to put forward lists of candidates for election to the Scottish Parliament, the Assembly for Wales and, in Great Britain, the regional list system of election to the European Parliament.

Parties will be able to register up to three emblems and only a registered party will be able to have an emblem printed alongside the candidate's name on the ballot papers.

Only a registered party will be eligible to be offered an election broadcast, (although registration does not in itself confer the right to have an election broadcast).

Local and Parliamentary elections throughout the UK are all relevant elections for the purpose of the legislation. Some form of registration was necessary in order for parties to field candidates in elections where party lists formed part of the electoral system used elections to the Scottish Parliament, the National Assembly for Wales and the European Parliament fall into this category.<sup>22</sup>

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<sup>21</sup> Para 282

<sup>22</sup> For further information on electoral systems see Research Paper 98/113 *Voting Systems: The Government's Proposals*

## B. The Bill

Part II of the *Political Parties, Elections and Referendums Bill* reenacts large parts of the 1998 Act. Further revision is necessary because of

- The creation of an independent electoral commission
- The new requirement on political parties to regulate receipt of donations and expenditure on elections

The current bill bears marked similarities with the draft bill. There are more detailed requirements for transitional arrangements for existing parties, which will have to submit draft schemes, and which will lose registration if they do not comply with the arrangements in **clause 30**. There is a new power to offer grants to parties to assist with compliance with Part II and III (accounting requirements) in **clause 31**. **Schedule 3** deals with applications for registration.

Under the 1998 Act the Registrar of Companies was given the responsibility for registering political parties. This responsibility will now pass to the Electoral Commission under **clause 20**, and the Commission will take over the existing register.

The requirement to register will become compulsory for parties to field candidates in any election, not just elections held under proportional representation systems. All types of local elections, including elections to parish councils and community councils, will be covered.

Independents will continue to be able to stand, defined as ‘a person who does not purport to represent any party’ (clause 19(1)(b)). Independents will only be able to describe themselves as ‘Independent’ on the ballot paper and no other description will be allowed (clause 19(2)(b)).<sup>23</sup> Presumably the drafting is intended to prevent an unregistered party from fielding a series of candidates with the same description. If this were allowable unregistered parties would avoid the requirements to disclose and regulate donations. There may well be concerns about the potential restriction on freedom of expression, as many independent candidates make use of the current power<sup>24</sup> to submit a description of up to six words.

In Canada, only candidates endorsed by a registered party may have their party affiliation recorded on the ballot paper, and, in order to be registered, a party had to field 50 candidates at a federal general election. Candidates from parties which are de-registered at present are not allowed any descriptive term or the word Independent on the ballot paper.

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<sup>23</sup> See also clause 33 which amends the parliamentary elections rules accordingly

<sup>24</sup> Rule 6 of the Parliamentary Election Rules contained in Schedule One of the *Representation of the People Act 1983*

However a recent case<sup>25</sup> found that it was an infringement of the right to freedom of expression contained in section 2(b) of the Canadian Charter of Rights and Freedoms and of the right to vote under section 3 to permit some but not all candidates to have their party affiliation printed on the ballot paper. The federal Government is currently appealing against the judgement. Under a proposed new *Canada Elections Act* the existing rules are maintained, but with clarifications. All other candidates are indicated as Independent, if they so request, or the ballot is left blank.

The *Registration of Political Parties Act 1998* was in effect a scheme to register the *name* of a political party, rather than to impose any particular registration requirements on parties. The only condition was the need to establish a leader and a nominating officer for each registered party.<sup>26</sup> This Bill reenacts these offices and also requires a registered treasurer ‘to have overall responsibility for the financial affairs of the party and for ensuring compliance with the provisions of Parts IV to VI (control of donations, campaign expenditure and referendums)’ (clause 21(5)).

**Clause 22** requires registered parties to adopt a scheme to set out the arrangements for regulating the financial affairs of the party. The scheme will need approval from the Electoral Commission. The party is required to state whether it is to be treated as a single organisation or a federal organisation with constituent parts.

The Commission is required to grant an application for registration,<sup>27</sup> unless, as under the 1998 Act, it considers that the name of the party is likely to result in confusion with another registered party (clause 24). Transitional arrangements for parties already registered allow such parties six weeks to supply the Commission with details of their schemes under clause 22. There is provision for grants from the Commission to assist parties with the new accounting and donation requirements (clause 31).<sup>28</sup> Provisions governing the registration of emblems are carried over from the 1998 Act, as well as provisions limiting party political broadcasts to registered political parties. See Research Paper 00/3 for further details on broadcasts.

## V National Campaign and Constituency Expenses

### A. Background

The system of expense limits on constituency spending is long-standing and effectively dates from the *Corrupt and Illegal Practices Prevention Act 1883*. Although earlier Acts had

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<sup>25</sup> *Figuera v Canada (Attorney General)* [1999] 170 DLR 4<sup>th</sup> 647

<sup>26</sup> Schedule 1, paras 4 and 5

<sup>27</sup> As long as the requirements in Schedule 3 are complied with

<sup>28</sup> See Research Paper 00/2 for further details

attempted to prevent corruption, there had previously been no concept of limits on expenditure at elections. The 1883 legislation assumed that the primary campaigner was the individual candidate rather than the party, and that campaigning law should be concerned with the regulation of expenditure at constituency, not national level. These assumptions have been carried through in successive legislation into Part II of the current *Representation of the People Act 1983*. These assumptions are now considered to be outdated, given the dominance of national political parties.

Candidates' election expenses are expenses incurred before, during or after an election on account of or in respect of the conduct or the management of an election. There is no statutory definition of the start of the election campaign for the purposes of calculating expenses, and prospective candidates need to take care not to trigger their election expenses inadvertently. Early court decisions held that costs associated with the selection of a candidate would not count towards the overall limit.<sup>29</sup> Nursing a constituency is not generally considered an election expense where activities are confined to meetings, travelling etc, but where the prospective candidate holds meetings to advance his candidature or directly canvasses for votes he is likely to be held liable for incurring expenses.<sup>30</sup>

The election expenses limit for each constituency is governed by s76 of the *Representation of the People Act 1983*. The maximum amounts are updated by a Statutory Instrument, most recently in 1997.<sup>31</sup> For county constituencies the maximum is £4,965 plus 5.6p for every entry on the electoral register to be used at the election, for borough constituencies it is £4,965, plus 4.2p for every entry. The difference between borough and county is longstanding and is meant to reflect the extra travelling involved in rural (county) constituencies. The limits for by elections are much higher, reflecting the greater national interest in modern times.<sup>32</sup> At present, they are £19,863 plus 22.2p for county constituencies and 16.9p for borough constituencies. After each election a return is made of election expenses incurred by all candidates and is published as a House of Commons paper. Details are available to be inspected locally.

Candidates are prohibited from making certain expenses, for example from paying people to canvass, or to display election addresses, or to hire transport to take electors to the poll. There is concern that more modern forms of expenditure, such as telephone canvassing from outside the constituency is not necessarily caught by the existing rules. There are also long-established techniques, such as stocking up on office supplies well before an election campaign and the use of support from national parties in the form of staff or equipment.<sup>33</sup>

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<sup>29</sup> *Norwich 4 OM and H86, Bodmin Division Case* [1906] 5 OM and H 225

<sup>30</sup> See Halsbury's Laws vol 15 para 630-635 and Parker's *Law and Conduct of Parliamentary Elections* Chapter 8

<sup>31</sup> *Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 1997*

<sup>32</sup> The special limits for by-elections were introduced in the *Representation of the People Act 1989*

<sup>33</sup> See *Times* 5.4.97 "How parties cook the books on poll expenses" and *Case Western Reserve Journal of International Law* Volume 31 no 1 Winter 1999 'On the brink of reform: political party funding in

Expenses have to be channelled through the candidate's agent to ensure that money spent can be counted within the maximum permissible limits. This is to prevent candidates' friends spending money on the candidate's behalf and so evading the controls. s75 of the RPA 1983 prohibits expenses 'with a view to promoting or procuring the election of a candidate at an election' incurred by persons unauthorised by the candidate or the agent.<sup>34</sup>

After the 1992 general election, Phyllis Bowman was acquitted on a charge under s75 on a technicality (The summons had not been issued within the mandatory one year period). She had distributed leaflets in Halifax setting out the views of the various candidates on abortion. She brought a case against the UK government on behalf of the Society for the Protection of Unborn Children to the European Court of Human Rights under Article 10 (freedom of expression) of the European Convention of Human Rights. The European Commission of Human Rights made a preliminary ruling against the UK by 28 members to one, finding that it was "not persuaded therefore that the communication of information concerning candidates' position on single issues, such as abortion, can be considered as unbalancing the position of equality of candidates in a particular constituency".<sup>35</sup> The case was heard by the Court in August 1997 and its judgement confirmed the general tenor of the preliminary ruling.<sup>36</sup>

The judgement does not appear to exclude the principle of limits on expenditure by third parties but expects those limits to be higher than the current limit of £5 under S 75(1)(c) (ii). The court found that s75 operated as a total barrier to the publication of information about the stance of candidates on abortion and that the limitation of expenditure to £5 was not necessary to achieve the legitimate aim of securing equality between candidates, in view of the fact that no restrictions operated on the national or regional press or on advertisements. It concluded that the restriction was disproportionate to the aim pursued and that there had been a violation of Article 10. The current Bill does not yet have provisions to implement the Bowman judgement, but amendments are expected following consultations with the Scottish Executive which has devolved responsibility for the conduct of local government elections in Scotland. The draft bill proposed a ceiling of £500.<sup>37</sup>

At present, financial expenditure is only limited if it relates specifically to a particular constituency or particular constituency candidates. S118 of the RPA 1983 defines 'election expenses' as 'expenses incurred, whether before, during or after the election on account of or in respect of the conduct and management of the election'. Personal expenses incurred by

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Britain' for a fuller treatment of the subject. See also evidence of Michael Crick to the Neill committee 30 April 1998

<sup>34</sup> *D.P.P. v Luft* [1977] A.C. 962 established that expenditure disparaging a candidate is also caught by S.75

<sup>35</sup> Para 46, Application no. 24839/94, *Phyllis Bowman against the United Kingdom* ; *Report of the Commission Adopted on 12 September 1996*

<sup>36</sup> *Bowman v the United Kingdom* (141/1996/762/959) The text of the judgement is available via the ECHR website

<sup>37</sup> Cm 4413 para 7.36

the candidate are exempt.<sup>38</sup> Candidates also benefit from free delivery of election addresses and free use of school rooms for meetings.

The question of the definition of election expenditure was highlighted in the recent case involving Fiona Jones MP in April 1999. Initially, she was found guilty of making a false declaration of election expenses,<sup>39</sup> but subsequently the Court of Appeal ruled in her favour<sup>40</sup> and she was reinstated as an MP.<sup>41</sup> It is possible to apply to the court for relief, where candidates or election agents acknowledge an illegal practice due to inadvertent error. Election expenses can be challenged either through an election petition to a specially constituted election courts, or through a criminal prosecution. Election petitions are costly, and represent a high risk for dissatisfied candidates; the last successful petition against the submission of a false election return for a parliamentary election was in December 1923.<sup>42</sup>

## B. National Campaigns

If election expenditure is made on publicity for or against political parties or party leaders, without reference to an individual constituency, then no financial restrictions apply. There is a similar lack of control over expenditure by interest groups or commercial companies, established in a major case in 1952 *R v Tronoh Mines Ltd*<sup>43</sup> where the court held that the prohibition in what is now S.75(1)(b) against issuing advertisements applied only to those adverts encouraging voters to vote for a particular candidate in a particular constituency. The company had taken out an advert in the *Times* condemning the Labour government's policies. As a response to the judgement, political parties began 'national election' advertisement strategies<sup>44</sup> and unregulated national election spending developed. Appendix 1 gives details of spending on general elections in 1992 and 1997.

The Committee on Standards in Public Life (the Neill Committee)<sup>45</sup> considered the arguments in favour of regulation as follows:<sup>46</sup>

- Local campaign expenditure is restricted, but the bulk of expenditure is now concentrated nationally and is unregulated

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<sup>38</sup> S74 and s118 RPA 1983

<sup>39</sup> The main items of expenditure at issue were the rental cost of an office and a voter database constructed from telephone polling

<sup>40</sup> *R v Jones* CA 22 April 1999

<sup>41</sup> The Speaker asked the High Court for an interpretation of the RPA 1983, in order to determine whether she was entitled to resume her seat in the Commons. *HM Attorney General (on behalf of the Speaker and Authorities of the House of Commons) v Fiona Jones* 1999 149 NLJ 720

<sup>42</sup> *British Political Facts 1900-1994* David Butler and Gareth Butler p243

<sup>43</sup> 1952:1 AER 697 However see *DPP v Luft* [1977] AC 962 where the House of Lords held that activities need not be directed at securing the election of one particular candidate

<sup>44</sup> See *The Funding of Political Parties in Britain* 1987 by Keith Ewing for background

<sup>45</sup> Cm 4057 October 1998

<sup>46</sup> Cm 4057 paras 10.24-6

- Unlimited national expenditure creates an unlimited demand for funds to pay for the expenditure
- Extravagant spending by political parties brings democracies into disrepute,
- There should be a level playing field so that wealthier parties are not advantaged in the electoral contest.

The arguments against were summarised:

- Limits on expenditure are an unwarranted restriction on freedom of speech and freedom of choice
- National limits are unnecessary, as lavish expenditure does not affect the outcome of elections
- Very high levels of expenditure are unlikely in the future, as large individual donations fall away
- National limits are susceptible to evasion, as experience in other countries has demonstrated
- Setting an appropriate limit is fraught with difficulties- too high and parties will increase spending – too low and freedom of expression is affected.

The Neill Committee did not conclude that regulation was essential for the outcome of elections to be considered ‘fair’, but considered that ‘campaign expenditure by the Conservative and Labour parties has accelerated, particularly in 1997, bringing with it the need to raise even larger funds to pay for the spending. Even if disclosure leads to a temporary fall in donations, the pressure to raise even greater sums will remain if there is no limit on spending’ (para 10.28).

The majority of the Committee were not persuaded that the problem of enforcement would prove as intractable as some of the witnesses suggested, placing faith in the integrity of British political parties, and the political penalties of evasion, if discovered (para 10.30).

A system of national expense limits requires registration of parties. The *Registration of Political Parties Act 1998* introduced a system of voluntary registration of political parties, necessary for the Additional Member System used for the elections to the Scottish Parliament and the National Assembly for Wales.<sup>47</sup> This is replaced by provisions in Part II of the Bill (see above).

Such systems are relatively common abroad, but problems can remain with the enforcement of national limits. Canada found initially that its *Charter of Rights and Freedoms* made it difficult to enforce national limits, because of the conflict with the right to freedom of expression. Professor Ewing has argued that ideologically the courts are far more committed to liberty than equality, creating a tension which might also affect the enforcement of

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<sup>47</sup> See Research Paper 98/62 *The Registration of Political Parties Bill*

national limits.<sup>48</sup> The United States Supreme Court has found spending limits on elections to be unconstitutional on the grounds that they violate the constitutional right of free speech.<sup>49</sup> National spending limits are not common in other European states, which have tended to offer public funding to parties as a means of regulation. The Bowman case illustrates however that the ECHR will not necessarily bar expenditure limits, since the court accepted that some restraint of expenditure on third parties was acceptable.

### **C. Committee on Standards in Public Life recommendations**

A majority of the Neill Committee considered the arguments for regulating national expenditure and concluded that these were stronger than the counter arguments (discussed above).<sup>50</sup> The report recommended:

- A limit of £20 million on national campaign expenditure by each political party contesting at least 600 seats (including benefits in kind) in addition to the maintenance of local limits;
- A lower proportional limit for the seats contested for elections to devolved assemblies: £1.5 million was proposed for Scotland, £600,000 for Wales and £300,000 for Northern Ireland. Local limits were recommended for constituency members;
- A national limit on expenditure on elections to the European Parliament of £3.5 million, with no separate limits on candidates or regional lists;
- Limits on spending by third party groups, such as pressure groups, which would have to register if they wished to incur expenditure on elections or referendums;
- Revision of the *Representation of the People Act 1983* to contain a full and up-to-date list of expenditure items;
- An independent electoral commission which would scrutinise expenditure by political parties, among other duties;
- New expenditure limit of £100,000 per candidate for by-elections.<sup>51</sup>

These proposals received a broad welcome from the main political parties. The Government accepted the Neill recommendations and there was a debate on 9 November 1998.<sup>52</sup>

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<sup>48</sup> See *Money Politics and Law* (1992) by K D Ewing and *Money and Votes* (1994) by Martin Linton *Money and Votes*(1994)

<sup>49</sup> *Buckley v Valeo* 424 U.S. 1 (1976) see *Case Western Reserve Journal of International Law* Winter 1999 'On the brink of reform: Political party funding in Britain'

<sup>50</sup> John MacGregor disagreed with these recommendations. See para 10.32 for his reasons

<sup>51</sup> The Neill Committee also recommended the regulation of donations to political parties, increased allocations of Short money, and the provision of policy development funds to political parties, as well as tax relief on donations

<sup>52</sup> HC Deb 9 November 1998 vol 319 c 49-116

## D. Recent Developments in Regulation

An Election Commission was created on an all-party initiative in Scotland for the 1999 elections, which implemented the Neill recommendations on party donations and expenditure, but lacked statutory enforcement powers. It gave guidance to political parties on items of election-related expenditure. In the event, the Government issued an order under s12(2)(c) of the *Scotland Act 1998* to limit election expenses on an all-Scotland basis, using the Neill recommendations as the guideline for the limits.<sup>53</sup> Similar provisions were made for Wales in the *National Assembly for Wales (Representation of the People) Order 1999*.<sup>54</sup>

The Scottish Electoral Commission issued a final report in June 1999 which commented on potential issues for a UK Electoral Commission. It reported particular difficulties in assessing expenditure by third parties, and considered that the expenditure threshold for third parties be lowered to £10,000 in relation to Scotland and Wales. It also argued strongly for an effective Scottish dimension to a UK Commission.<sup>55</sup>

A system of election expense limits which operated on a national level was used for the European Parliament elections of June 1999. There were also limits on expenditure by third party groups.<sup>56</sup> Schedule 3 of the *Greater London Authority Act 1999* adapts the *Representation of the People Acts*' provisions on expenses to the new Additional Member System for the Assembly and the Supplementary Vote system to be used for the London mayor election.<sup>57</sup> There are London wide limits for both the election of the Mayor and the election of list candidates, but constituency limits for the constituency candidates. Details of the limits will be set out in secondary legislation.

In December 1999 Keith Hill, junior minister at the DETR set out the Government proposals on election expense limits in letters to London political parties.<sup>58</sup> He proposed campaign expenditure limits of:

- £990,000 per Mayoral candidate
- £35,000 per candidate for Assembly constituency
- £495,000 per party or independent candidate contesting the London wide list for the Assembly.

He also proposed third party expenditure limits of around

- £25,000 for each third party supporting or opposing Mayoral candidates

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<sup>53</sup> *Scottish Parliament (Elections) Order 1999* SI 1999/1214

<sup>54</sup> SI 1999/450

<sup>55</sup> *Scottish Election Commission: Final Report* June 1999

<sup>56</sup> *European Parliamentary Elections Regulations 1999* A party contesting all eleven regions was subject to a limit of £3.78m. Parties contesting more than one regions could apply their expenditure nationally and were not subject to requirements to restrict expenditure to particular regions

<sup>57</sup> HL Deb 12 October 1999 c 261

<sup>58</sup> This was reported in *Times* 23 December 1999 'Mayoral race finance 'opens way to rigging'

- £25,000 for each third party supporting or opposing a party list or independent candidate standing as a London member
- £1,800 for each third party supporting or opposing an assembly constituency candidate.

The minister justified the limits as appropriate to the large size of the electorate and the unique nature of the London-wide constituency. The limits would apply for the four months before the first GLA elections. The limits will be introduced by secondary legislation, expected in early 2000.

He also proposed that there would be no free post for party leaflets, since this provision did not extend to campaigning in local elections and would otherwise cost the taxpayer £750,000.

### **E. The draft Bill provisions**

In July 1999 the Government published a draft bill on the Neill recommendations.<sup>59</sup> It accepted the recommendations on national election expenditure but made some ‘technical’ changes to the Neill conclusions on the level of national limits. The consultation paper issued with the draft bill had two proposals which differed from Neill:

- Limits would be set not by reference to particular elections, but by reference to particular periods of time in which elections are to be held. Where there is more than one election in the period, that would be reflected in a higher aggregate limit.<sup>60</sup>
- Limits in constituent parts of the UK would be calculated not only in terms of whether the spending takes place in England, Scotland, Wales or Northern Ireland, but also on terms of how many seats are contested within each of those areas.<sup>61</sup>

The draft bill differentiated between national expenditure limits and constituency (or ward) based limits, which would continue to be regulated under the RPA 1983.

The proposed maximum expenditure limits were set out as follows:

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<sup>59</sup> *The Funding of Political Parties in the United Kingdom* Cm 4413

<sup>60</sup> Paras 7.9-7.11

<sup>61</sup> Paras 7.14-7.17

### Election Expenditure Limits for Political Parties

	1	2	3	4	5	6	7
	Maximum limit for Westminster elections	Maximum limit for European elections	Maximum limit for Westminster and European poll in same period	Maximum limit for polls for devolved legislature	Maximum limit for Westminster and devolved polls in same period	Maximum limit for Westminster, European and devolved polls in same period	Maximum limit for devolved and European polls in same period
	A	B	C	D	E	F	G
	£m	£m	£m	£m	£m	£m	£m
EXPENDITURE IN ENGLAND	15.87	3.195	19.065	-	-	-	-
EXPENDITURE IN SCOTLAND	2.16	0.36	2.52	1.516	3.676	4.036	1.876
EXPENDITURE IN WALES	1.2	0.225	1.425	0.6	1.8	2.025	0.825
EXPENDITURE IN NORTHERN IRELAND	0.54	0.135	0.675	0.306	0.846	0.981	0.441
UK TOTAL	19.77	3.915	23.685	-	-	-	-

A. The limit for Parliamentary elections is calculated on the basis of £30,000 per Parliamentary constituency contested. The limit applies to the period of 365 days before polling day and all campaign expenditure incurred by a party in that period, including on local government elections. If, as in 1974, two general elections are held within 365 days of each other, the limit for the second election will apply from the day after the date of the first election.

B. This limit applies to the four months before the date of a European election. It has been calculated on the basis of £45,000 per MEP to be returned.

C. Where a Westminster and European Parliamentary general election occur in the same 365-day period - as in 1979 - the limits in columns 1 and 2 are aggregated. The limit in column 2 would continue to apply in the four months before the European election unless this period overlapped with the formal campaign period which immediately precedes a Westminster general election (namely the period beginning with the date on which the election is announced).

D. These limits apply to the four months before an ordinary general election. Where an extraordinary general election takes place in either Scotland or Northern Ireland (there is no provision for such an election in Wales) the limits will apply to the period beginning with the date on which the date of the poll is announced and ending with the date of the poll. The limits have been calculated on the following basis: Scotland - £12,000 per constituency plus £80,000 per region; Wales - £10,000 per constituency plus £40,000 per region; Northern Ireland - £17,000 per constituency.

E. Where a Westminster general election and an election to a devolved legislature occur in the same 365-day period, the limits in columns 1 and 4 are aggregated. The limit in column 4 would continue to apply in the four months before the election to the devolved legislature takes place, unless this period overlapped with the formal campaign period that follows the announcement of a Westminster general election.

F. Where a Westminster and European general election and an election to a devolved legislature occur in the same 365-day period the limits in columns 1, 2 and 4 are aggregated.

G. Where a European election and an election to a devolved legislature occur in the same 365-day period - as in 1999 - the limits in columns 2 and 4 are aggregated. This aggregate limit will apply from the period beginning four months before the first poll and ending with the date of the second poll.

The white paper noted:

7.18 This has to be a detailed scheme. But the situation with which it is intended to deal is itself a complex one, particularly in the light of the fact that there will often be overlapping elections for different purposes. The scheme is designed to produce clear results which take proper account of the extent to which different parties are contesting an election but which will also avoid the need to allocate expenditure artificially to particular elections.

The time period is complicated due to the fact that general elections do not take place at fixed intervals. Therefore election expense limits will apply retrospectively for a year before the date of poll. The 1992 Labour manifesto stated:

This general election was called only after months of on-again, off-again dithering which damaged our economy and weakened our democracy. No government with a majority should be allowed to put the interests of party above government, as the Conservatives have done. Although an early election will sometimes be necessary, we will introduce as a general rule a fixed parliamentary term.<sup>62</sup>

This commitment did not appear in the 1997 election manifesto, and the Government has no plans to introduce fixed term Parliaments.

## **F. Campaign Expenditure**

The definition of expenditure which can be defined as campaign expenditure was given in Clause 64 of the draft bill. The definition was intended to apply to non-constituency related expenditure. The white paper set out the proposals as follows:

7.19 The draft Bill (clause 64) defines 'campaign expenditure' as expenses incurred by or on behalf of a party with a view to promoting or procuring the election of candidates standing in the name of the party or of the party itself (in the case of the list-based elections to the European and Scottish Parliaments and to the Welsh Assembly). In addition, expenses incurred generally enhancing the electoral prospects of candidates standing in the name of a party, or the party itself, are also caught. As recommended by the Neill Committee (R52), campaign expenditure includes benefits in kind as well as cash expenditure (clause 64(3)).

7.20 In their recommendation 53, the Neill Committee propose that legislation should include a schedule setting out a comprehensive list of items of relevant expenditure which should be declared by political parties at parliamentary elections, with the contents of the schedule being kept under review by the Electoral Commission. Clause 71(6) of the draft Bill as it stands enables the Electoral Commission to prescribe a form of the return. Before the legislation is introduced into Parliament, however, the Government will consult the political

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<sup>62</sup> *Time to get Britain working again* Labour Party 1992. The Plant Report also recommended fixed term parliaments in 1993 ( Report of the Working Party on Electoral Systems 1993 Labour Party)

parties with a view to identifying a list of items to go into the legislation itself, together with a power for the Electoral Commission to trigger subsequent amendments by statutory instrument.

The definition is important not only for political parties, but also for pressure groups. The Labour Party response to the draft bill described the issue as of ‘profound importance.’ Martin Linton’s response highlighted difficulties experienced in Canada in establishing which items counted for campaign expenditure, such as opinion polls commissioned by political parties.<sup>63</sup> He argued for integrated limits for national and local campaign spending to prevent parties from concentrating their spending on marginal seats. After a party had spent up to its limit in marginal constituencies, other money spent locally would have to be applied to other seats.

## G. Definition of Campaign Expenditure in the Bill

The *Explanatory Notes* summarise the provisions as follows:

### **Clause 65 and Schedule 7 : Campaign expenditure**

123. *Clause 65* defines the terms "campaign expenditure", "election campaign" and "for election purposes" for the purposes of the controls on registered political parties' election expenditure as provided for in this Part of the Bill. *Subsection (2)* defines "campaign expenditure" by reference to lists of qualifying expenses set out in *Schedule 7. Part I* of *Schedule 7* lists direct expenses incurred for election purposes. Any expenditure on a matter set out in this list during the relevant period for an election (as defined in *Schedule 8*) will need to be accounted for as campaign expenditure. Thus, for example, the full production costs of all party political broadcasts screened in the 365 days before a parliamentary general election would count as campaign expenditure. *Part II* of *Schedule 7* provides for the apportionment of a party's normal running costs during the relevant period for an election between costs incurred for election purposes and costs incurred for other purposes. To assist parties with such apportionments and more generally in identifying what does or does not constitute campaign expenditure, *paragraph 6* of *Schedule 7* provides for the Electoral Commission to prepare a code of practice giving guidance on such matters. Before a code of practice comes into effect it must be approved by the Secretary of State (in this case, the Home Secretary) and laid before Parliament. Although the code of practice is not made by statutory instrument, an equivalent of the negative resolution procedure applies so that either House of Parliament may resolve not to approve the draft code.

124. *Paragraph 7* of *Schedule 7* empowers the Secretary of State to amend *Parts I or II* of the *Schedule* by order. An order made under this provision may either give effect to a recommendation of the Commission or be made after consultation with the Commission.

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<sup>63</sup> Dep 99/1866 Labour party response, response by Martin Linton MP

125. The definition of the term "for election purposes" is cast in broad terms so as to capture all expenditure by a party that is incurred in order to enhance its electoral prospects. However, excluded from the definition is any expenditure incurred with a view to enhancing the prospects of a particular candidate. Such expenditure is already subject to separate controls under the provisions of enactments relating to elections.

Expenses incurred in list based elections to the European and Scottish Parliament and the National Assembly for Wales for the benefit of one or more candidates are to be treated as campaign expenditure. However expenditure for the list based elections to the London Assembly will continue to be treated as individual expenses under s81 of the RPA 1983 presumably because they are to be dealt with as local rather than parliamentary elections.<sup>64</sup> This might be considered surprising, given that the electorate for London wide elections is at least as great as for Scotland, and twice as great as for Wales.

Schedule 7 contains a lengthy series of items which will be caught by the definition. The list is reproduced in an Appendix. Part I of the Schedule covers such matters as:

- party political broadcasts,
- advertising,
- leafleting
- market research on polling intentions,
- press conferences,
- employment of staff and associated costs,
- use of offices,
- public meetings.

Exclusions from the definition in Part I include expenses on:

- party newsletters which report on activities of representatives or prospective candidates
- unsolicited material addressed to party members
- expenses in respect of property services and facilities in so far as the expenses are to be paid out of public funds
- pay etc for permanent staff of political parties
- reasonable personal expenses

Part II of the Schedule deals with overheads, such as employment of staff, offices, telephones and office accommodation, and provides that such costs are to be apportioned to election expenses to the extent used in an election campaign. Part III of the Schedule gives the Electoral Commission power to issue a code of practice on kinds of expenses falling within the Schedule. A draft is to be submitted for approval to the Secretary of

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<sup>64</sup> Clause 65(8). See *Explanatory Notes* para 125 for details

State, who has the power to make modifications. The draft code is then subject to the affirmative resolution procedure. Amendments to the Schedule may be made by the Secretary of State after consultation with the Commission.

A new **clause 66** introduces the concept of ‘notional campaign expenditure’ to cover benefits in kind. The Neill Committee had recommended that such benefits should also be caught by the national expenditure limits. The *Explanatory Notes* state:

Subsection (1) therefore provides that campaign expenditure not only includes direct expenditure by a registered party but also benefits in kind (ie. property, services or facilities provided free of charge or at a discount of more than 10% of their market value) conferred on a party by a third person. Subsection (4) requires that any such benefits in kind must be accounted for by means of a declaration, which will be included in the return of election expenditure required under clause 73, as to the value of the benefit (except where its market value, or the difference between what the party pays and its value, is less than £100).

**Clause 67** allows the treasurer of registered parties to appoint deputies with responsibility for campaign expenditure. **Clauses 68 and 69** prohibit campaign expenditure and payments in respect of campaign expenditure unless incurred with the authority of the treasurer, deputy treasurer or authorised person of a registered party. A new offence is created if payments are made in contravention of the clause. **Clause 70** ensures that claims for payment of campaign expenses are not to be met, unless the claim is made to the treasurer, deputy treasurer or authorised person of the relevant registered party. **Clause 71** deals with disputed claims for payment. These clauses replicate, with some modifications, the provisions in the RPA relating to constituency election expenses.

One area which appears to remain unregulated is expenditure concerning the adoption of a candidate for a particular party, where significant sums of money can be spent. Significant queries can be expected on the proper definition of various kinds of ‘overheads’ by political parties. The Commission’s code of practice will need to cover such areas in some detail in order to be effective.

## **H. Limits on Campaign Expenditure in the Bill**

**Clause 72 and Schedule 8** set out the financial limits applicable for elections and provide that an offence is committed if the treasurer or deputy treasurer authorising payments if he knew or ought reasonably to have known that the expenses would exceed the limit.

**The limits** apply for 365 days before a general election and for four months before elections to the devolved assemblies. The scheme applies for apportionment of expenditure between England, Scotland, Wales and Northern Ireland. The maximum amounts which a party may spend is governed by the number of constituencies/regions contested in the relevant election. The limits are aggregated where the relevant periods

overlap. Part IV of Schedule 8 provides that where the benefits of campaign expenditure are received during the period when restrictions apply, the expenditure is deemed to have been incurred in that period. The *Explanatory Notes* state that no limits are to be set on campaign expenditure in respect of local elections, although any such expenditure would be counted during the campaign period for another type of election.

## 1. Parliamentary General Elections

Further detail is given in the *Explanatory Notes*:

### Parliamentary general elections

131. The limits for parliamentary general elections are set out in paragraph 3 of Schedule 8. The maximum amount a party may spend is determined by the number of constituencies contested. A party receives an allowance of £30,000 for each constituency contested, subject to a minimum threshold. The maximum amount of campaign expenditure a party could incur if it contested all the parliamentary constituencies in each part of the United Kingdom is set out in the table:

	No of parliamentary seats	Maximum expenditure limit £'000
England	529	15,870
Scotland	72	2,160
Wales	40	1,200
TOTAL Great Britain	641	19,230
Northern Ireland	18	540
TOTAL United Kingdom	659	19,770

132. The minimum expenditure limit is set at 5 per cent of the maximum limit rounded up to the nearest multiple of £30,000 (paragraph 3(3)). This minimum expenditure limit will ensure that a party which campaigns primarily in local government elections, but also puts up a handful of candidates in a parliamentary general election, does not inadvertently breach the expenditure limits for that election. For example, a party that spent £200,000 campaigning in advance of local elections in May, but subsequently put up only three candidates at a parliamentary general election the following October would, but for the minimum expenditure limit, have committed the offence in clause 72(4).

133. The campaign expenditure limits for parliamentary general elections ordinarily apply to the 'relevant period' of 365 days ending with the date of the election (paragraph 3(5)(a)). Where one general election follows within a year of another, however, the relevant period for the second of these elections begins the day after the first general election and ends with the date of the second election. To take the example of 1974, the 'relevant period' for the October general election

would have been the 224 days from 1 March 1974 (the day after the first general election in that year) to 10 October 1974 (the date of the second election).

The main change from the draft bill proposals is the new minimum expenditure limit to protect small registered parties campaigning primarily in local elections, as explained in the *Notes* above.

## 2. The European Parliamentary Elections

The limits for European Parliament elections are set out below in extracts from the *Explanatory Notes*:

134. *Paragraph 4* of Schedule 8 sets out the campaign expenditure limits for general elections to the European Parliament. As for the June 1999 elections in Great Britain, the expenditure limits are calculated by reference to the number of regions contested by a party multiplied by the total number of MEPs to be returned for those regions. A party receives an allowance of £45,000 for each MEP to be returned in each of the regions it contests. The maximum amount of campaign expenditure a party could incur if it stood for election in all the English regions and in Scotland and Wales and put up candidates in Northern Ireland is set out in the table:

	No of MEPs	Maximum expenditure limit £'000
East Midlands	6	270
Eastern	8	360
London	10	450
North East	4	180
North West	10	450
South East	11	495
South West	7	315
West Midlands	8	360
Yorkshire and The Humber	7	315
TOTAL England	71	3,195
Scotland	8	360
Wales	5	225
TOTAL Great Britain	84	3,780
Northern Ireland	3	135
TOTAL United Kingdom	87	3,915

These limits will replace those currently in force under regulation 15 of the *European Parliamentary Elections Regulations 1999*.<sup>65</sup> The relevant period is four months ending

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<sup>65</sup> SI 1999/1214

with the date of the poll, which take place at a fixed term of five years. The next period will start on 11 February 2004.

Paras 4 and 5 of Schedule 8 ensure that campaign expenditure in respect of constituent parts of the United Kingdom is treated as expenditure in that part if its 'effects' are 'wholly or substantially confined' to a particular part of the UK.

### **3. The Scottish Parliament Elections**

The limits are set out as follows:

137. *Paragraph 5* of Schedule 8 sets out the campaign expenditure limits for ordinary and extraordinary general elections to the Scottish Parliament. The expenditure limits are calculated by reference to the number of constituencies and/or regions contested by a party. A party receives an allowance of £12,000 for each constituency contested and of £80,000 for each region contested. Under the provisions of paragraphs 1 and 2 of Schedule 1 to the Scotland Act 1998 there are 73 constituencies each returning one MSP and eight regions each returning seven regional MSPs. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies and regions is £1,516,000.

These new limits will replace those contained in Article 42 of the *Scottish Parliament (Elections etc) Order 1999*.<sup>66</sup> The relevant period will be four months before the date of the poll (2 January 2003), or a minimum of 22 days (excluding weekends and bank holidays) for an extraordinary poll.

### **4. Welsh Assembly Elections**

The *Explanatory Notes* set out the limits as follows:

141. *Paragraph 6* of Schedule 8 sets out the campaign expenditure limits for ordinary elections to the Welsh Assembly (the Government of Wales Act 1998 makes no provision for extraordinary elections). The expenditure limits are calculated by reference to the number of constituencies and/or regions contested by a party. A party receives an allowance of £10,000 for each constituency contested and of £40,000 for each region contested. Under the provisions of paragraphs 1 and 2 of Schedule 1 to the Government of Wales Act there are 40 Assembly constituencies each returning one AM and five Assembly electoral regions each returning four regional AMs. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies and regions is £600,000.

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<sup>66</sup> SI 1999/787

These limits will replace those in Article 47 of the *National Assembly for Wales (Representation of the People Acts) Order 1999*.<sup>67</sup> The relevant period is four months before the poll and will start on 2 January 2003. There are no extraordinary elections to the Assembly.

## 5. The Northern Ireland Assembly

The *Explanatory Notes* state:

144. *Paragraph 7* of Schedule 8 sets out the campaign expenditure limits for ordinary and extraordinary elections to the Northern Ireland Assembly. The expenditure limits are calculated by reference to the number of constituencies contested for a party. A party receives an allowance of £17,000 for each constituency contested. Under the provisions of section 33 of the Northern Ireland Act 1998 there are 18 constituencies each returning six members of the Assembly. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies is £306,000.

No national expenditure limits applied for the last elections, held in June 1998. The relevant period will be four months before the date of the poll and will begin on 2 January 2003. There are provisions for extraordinary elections under s32 of the *Northern Ireland Act 1998* but no timetable for these have yet been set out under secondary legislation.

## 6. Combinations of elections

Part III of the Schedule provides for alternative campaign expenditure limits to apply when the relevant periods for different elections overlap. In general, limits are aggregated and applied to a new relevant period which is the aggregate of the relevant periods for the two or more overlapping elections. The provisions are necessarily complex and the relevant parts of the *Explanatory Notes* should be examined in detail.

## 7. Other Provisions

**Paragraph 12 of Schedule 7** is intended to ensure that any relevant expenditure made before the relevant period begins will count towards the limit if the benefit of the expenditure is felt in the relevant period. Thus adverts paid for in advance will not be outside the scope of the limits.

In contrast to the draft bill, there are provisions in **Clause 72** to allow registered parties to submit a defence that the items were covered under the code of practice, or that the limit would not have been exceeded on the basis of the items and amounts entered.

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<sup>67</sup> SI 1999/450

## 8. Commencement

Part V is to come into force when the Secretary of State appoints. Under the bill, campaign expenditure is regulated for 365 days before the date of a general election. But if less than a year has elapsed between commencement and the next general election, then a shorter period may have to be used for regulating expenditure, and there is provision for this course of action in clause 147(5). The next general election is due by May 2002.

## VI Third Party Expenditure Limits

### A. Background

The Neill Committee noted that spending by and donations to third party organisations would also need to be regulated for its recommendations for political parties to be effective. It considered however, that third parties were the most difficult problem associated with national limits, since there was no generic definition of third parties and there was uncertainty as to whether such campaigns should be classified as campaign expenditure.<sup>68</sup>

The Scottish Election Commission also noted in its final report that it had no way of knowing whether all the third parties participating in the Scottish campaign had abided by the voluntary recommendations; the Commission considered that proposed UK Commission would find the task of identifying and monitoring third parties an essential aspect of its work.<sup>69</sup>

The Government accepted the Neill Committee recommendation that limits should also apply to expenditure by individuals or groups, described as third party expenditure. The period for which controls would apply was set out:

7.26 The Government proposes that the expenditure controls should apply during the same period in advance of an election as the controls on political parties. In the case of a Westminster general election, therefore, the controls would apply in the 365 days before the date of the poll. In the case of ordinary elections to the Scottish Parliament and the Northern Ireland Assembly, and for elections to the European Parliament and Welsh Assembly, the expenditure controls will apply in the four months before polling day.

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<sup>68</sup> Cm 4057 paras 10.72-10.80

<sup>69</sup> *Scottish Election Commission Final Report* June 1999 para 9.9

In the case of extraordinary elections to the Scottish Parliament or the Northern Ireland Assembly the limits would apply from the date on which the polling day was announced.<sup>70</sup>

Therefore once the date of the general election is announced, expenditure by third parties over almost all of the previous year will be caught,<sup>71</sup> if it falls within the definition of campaign expenditure. Pressure groups will therefore need to monitor expenditure on a continuous basis to ensure that either it does not fall within the definition of campaign expenditure, or that the group complies with the registration requirement. Third party groups who wish to spend more than £10,000 on campaign expenditure will be required to register with the Electoral Commission. The Neill Committee recommended a threshold of £25,000, but the white paper considered that the lower figure was more appropriate ‘particularly in the context of third party expenditure in Scotland, Wales and Northern Ireland, where expenditure of even £10,000 could have an impact’.<sup>72</sup> The Bill now lowers this limit to £5,000 for Scotland, Wales and Northern Ireland.

In its response to the draft bill<sup>73</sup> the Charity Commission summarised the legal restrictions on political activities by charities; its guidelines for charities stated that a charity ‘must not seek to persuade members of the public to vote for or against a candidate or for or against a political party’. It expressed concern about the Neill Committee recommendation that election expenses include not only expenditure clearly intended to promote or disparage a political party but also has the ‘foreseeable effect of promoting’ a political party. It considered that:

A charity could spend money in a way which complied with our guidelines and at the same time represented an expense that would be subject to the third party controls (being an expense falling within the ‘foreseeable effect’ part of the Neill definition of ‘election expenses’

There will be difficult judgements to be made as to:

Whether a specific campaign or publicity effort falls within the “‘foreseeable effect’ criterion; and, if it does,

Exactly what items of spending have to be accounted for as costs relating to that campaign or publicity effort.

We believe that to avoid uncertainty and confusion there will have to be clear official guidance on these points.

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<sup>70</sup> See footnote to para 7.26

<sup>71</sup> Under the statutory timetable for Westminster elections there must be a period of 17 days between dissolution and election, not counting weekends and bank holidays. In practice there is normally about one month’s notice of a general election. For further details see Research Paper 97/40 *Parliamentary Election Timetables*

<sup>72</sup> Para 7.27, fn 5 see comments of Scottish Election Commission, reported above

<sup>73</sup> Dep 99/1966 Response of Charity Commission

The bill does not explicitly repeat the Neill phrase ‘foreseeable effect’, but the definition given in clause 78 is broad. It includes expenses incurred which reasonably be regarded as intended to enhance the electoral prospects of candidates standing in the name of a party or the party itself.

Notification would need to be made *before* the £10,000 limit is exceeded to avoid a criminal offence being committed (para 7.27). The overall expenditure limits for third-parties would be set as follows:

The Neill Committee recommended that the national limit on election spending by third parties should be set at 5 per cent of the maximum limit for any political party (R58). The Government accepts this recommendation. In the case of a Westminster general election, the Bill as introduced will accordingly set the limits at £793,500 in England, £108,000 in Scotland, £60,000 in Wales and £27,000 in Northern Ireland. The third party limits at other elections will similarly be set at 5 per cent of the maximum limit for any political parties.

There have been difficulties in Canada with the regulation of third party advertisements. There were successful court challenges to previous attempts to impose restrictions, with courts finding that they constituted an unwarranted infringement of freedom of expression and other rights under the Canadian Charter of Rights and Freedoms. However, in a 1998 ruling on Quebec’s referendum legislation, the Supreme Court found that restrictions on third party spending could be constitutionally justified.<sup>74</sup> The current Canada Elections Bill introduces provisions to require third parties to register and to respect maximum limits on expenditure. The most relevant case under the European Convention on Human Rights is the Bowman case<sup>75</sup> discussed above, which held that restrictions on third parties could be legitimate if expenditure limits were sufficiently large.

## **B. Third Parties – Provisions in the Bill**

Part VI of this bill did not exist in the draft bill. This Part is designed to control expenditure by third parties by applying to national campaigns the controls on expenditure by third parties in s 75 of RPA 1983.

The definition of controlled expenditure is given in an extract from the *Explanatory Notes*:

*Clause 78(2) specifies the expenditure which is to be subject to the controls set out in this Part. "Controlled expenditure" is that incurred in connection with the production and publication of material which is addressed to the public at large, or any section of the public, and which is designed to promote or procure the*

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<sup>74</sup> *Libman v. Quebec (Attorney General)*(1997), 151 D.L.R. (4th) 385 (S.C.C.)

<sup>75</sup> *Bowman v United Kingdom* (1998) 26 EHRR 1

election of a particular registered party or a particular category of candidates, whether they be those standing in the name of a particular registered party or a group of candidates who, irrespective of party, share particular views.

165. *Clause 78(3)* specifies that "controlled expenditure" includes expenses in relation to material designed to achieve its purpose by reducing support for other candidates or another party. It does not matter whether the material names the candidates or party which it is intended to benefit or disparage. The test is whether the material can reasonably be regarded as intended to benefit a particular party's electoral prospects. The cost of a poster campaign advocating a particular policy without explicitly supporting or attacking a named political party might nevertheless fall to be regarded as "controlled expenditure" if the policy in question was closely identified with a particular political party or group of candidates.

The new controls will not apply to local elections but do cover expenditure in kind. **Clause 80** exempts certain expenditure, and responsible persons only are allowed to incur expenditure once the Electoral Commission have been notified of the intention to incur controlled expenditure.

Notification is necessary where controlled expenditure is contemplated of at least over £10,000 in England or £5,000 in Scotland, Wales or Northern Ireland during a regulated election period. These periods are the same as those applicable to political parties under Part V of the Bill. Notifications lapses unless renewed annually. The lower limits for constituent parts of the UK other than England are a change from the draft bill proposals. The Neill Committee proposed limits of £25,000 for each part of the UK.

The limits on expenditure are set out in **Schedule 9** in the *Explanatory Notes* as follows:

171. The scheme set out in Schedule 9 is similar to that in respect of national campaign expenditure by political parties as set out in Schedule 8. The periods to which the financial limits set out in Part II of Schedule 9 apply are the same as those which apply to expenditure by registered parties under Schedule 8. Part III of Schedule 9 makes equivalent provision for any overlapping of the relevant regulated periods and, where appropriate, the aggregation of the financial limits which apply. Part I of Schedule 9 also makes equivalent provision for third party expenditure to be apportioned between England, Scotland, Wales and Northern Ireland and Part IV makes equivalent provision for expenditure notionally incurred during the period when the limits apply.

172. The financial limits on controlled expenditure on the part of third parties which have given a notification to the Commission under clause 81 (ie. a "recognised third party") represent 5% of the limit which would apply to a registered party if it contested all the seats in the election in question. The limits are set out in the table below:

	Parliamentary general election	Election to the European Parliament	Election to the Scottish Parliament	Election to the Welsh Assembly	Election to the Northern Ireland Assembly
England	£793,500	£159,750	-	-	-
Scotland	£108,000	£18,000	£75,800	-	-
Wales	£60,000	£11,259	-	£30,000	-
Northern Ireland	£27,000	£6,750	-	-	£15,300
UK	£ 988,500	£ 195,759	-	-	-
TOTAL					

Donations to recognised third parties are controlled in a similar manner to donations to registered parties in **Schedule 10**. There are provisions governing the return of controlled expenditure expenses, accompanied by invoices and declarations as to accuracy. Where the expenditure is over £250,000 it must be independently audited and returned within six months. Other returns are to be made within three months (Clauses 89-93). Publications by third parties are subject to requirements to carry the name and address of printers and publishers and the body on whose behalf it is issued (Clause 94).

### C. Election Returns

The registered treasurer of a political party will be required to submit a return to the Electoral Commission covering spending in the relevant period. Where expenses are less than £250,000 the return would need to be made within three months, where over £250,000, returns of audited accounts would need to be made within six months. Copies would be made available for public inspection. The white paper stated (paras 7.21-23):

7.24 The Electoral Commission will scrutinise parties' returns and undertake any necessary investigations. The Commission itself will not be a prosecuting authority, but where it finds prima facie evidence of a breach of the expenditure limits, it will report its findings to the police in the normal way. It would be possible for both a party's treasurer and the party itself to be prosecuted for exceeding the expenditure limits. A political party found by the courts to have contravened the expenditure limits will be liable to an unlimited fine (clause 70(3) and Schedule 8).

Third parties would also need to make a return which would identify the income and expenditure of the third party in connection with the elections:

7.29 Where a third party has given a notification to the Electoral Commission in respect of a particular election, they will be required to make a return to the Commission after the election in question. Such returns will need to identify the income and expenditure of the third party in connection with the election. In most cases, the election expenses incurred will have been self-funded by the individual, company, trade union or other organisation concerned. In these circumstances, the Government sees no advantage in requiring the third party to establish a separate election fund (R57). Where a third party does receive outside

donations to help it fund its election expenditure, however, the Bill as introduced will require the return to specify the total amount of such donations and identify the source and amount of any individual donation or £5,000 or more. It would be unlawful for a third party to accept any such outside donations which were not from a permissible source.

The question arises as to the resources available to the Election Commission to monitor such returns effectively. According to the *Explanatory Notes* the staff of the Commission provision has been made for a staff of 50, before the electoral boundary functions are transferred. The Commission will have a range of functions beyond monitoring, and the regulation of third party donations and expenditure may prove particularly taxing.

**Clauses 73-77** are concerned with the submission of returns by political parties, and **Clauses 89-93** deal with returns from third parties. Separate election expense returns for individual candidates will continue to be made, although the requirements will be updated (paragraph 3 of Schedule 17. See below for details).

## **VII Constituency Expenditure Limits for Individual Candidates**

The white paper made a series of recommendations on the existing system of constituency expense limits:

7.32 The Government is separately giving consideration to whether there is also a case for introducing a single expenditure limit for all constituencies at general elections. A single limit would make for simplicity and transparency. It is recognised, however, that given the lower limits at general elections<sup>7</sup>, the variation between constituencies based on the number of electors has more relevance than in a by-election.

7.33 The Neill Committee commented on the fact that the form of return as to candidates' election expenses (as contained in Schedule 3 to the Representation of the People Act 1983) is almost comically out of date, referring as it does to the cost of sending telegrams. The Committee recommended (R46) that Schedule 3 should be revised and subsequently kept under review by the Electoral Commission. In order that the form of return keeps pace with changing campaigning methods, the Government proposes to repeal that part of Schedule 3 to the 1983 Act which contains the form of return and instead to confer a power on the Commission to set out a form of return in regulations. The necessary amendments to the 1983 Act will be added to the Bill prior to introduction.

7.34 At present candidates' returns are not subject to any official scrutiny but are simply delivered to returning officers and made available by them for inspection. As recommended by the Neill Committee (R80 and R81), returning officers will be required to send copies of candidates' returns to the Electoral Commission which will be able to investigate whether the returns have been properly made, both on its own initiative or in response to complaints.

7.35 The Government is also giving consideration to whether the law on election expenses needs to be clarified in the light of the Court of Appeal's judgement quashing the conviction of Fiona Jones, the Member of Parliament for the

Newark constituency (and that of her election agent) for making a false declaration as to her election expenses.

7.36 As indicated in [paragraph 7.2](#) above, the existing limit of £5 on what a third party may spend in support of, or in opposition to, a candidate has been held to be contrary to the European Convention on Human Rights. As recommended by the Neill Committee (R54), the Government proposes to increase the limit to £500 (clause 90 of the draft Bill).

Both the Labour and Conservative responses to the draft bill expressed opposition to the proposal to have a single limit for borough and county constituencies. The responses argued that separate limits were still relevant. As a result, the proposals for change have now been dropped from the current bill.

## **A. Candidate's Election Expenses- The Bill's Provisions**

The Bill creates a system of controlling donations to individual candidates in **Clause 121**, similar to that applicable for donations to registered parties

The definition of election expenses is redrafted in **clause 123**. The current definition in s118 of the RPA is 'expenses incurred, whether before, during or after the election on account of or in respect of the conduct or management of the election'. This broad interpretation has led to difficulties in assessing when election expenses begin. (see above). The new definition is summarised in the *Explanatory Notes*

209. New *section 90A* of the 1983 Act defines "election expenses" as any expenses incurred for the acquisition or use of property or for the provision of services or facilities which is or are used for the purposes of the candidate's election. *Subsection (2)* provides for a number of exemptions from the definition of "election expenses", including the payment of the candidate's deposit, material relating to the election published in a newspaper or periodical or included in a broadcast service (other than advertisements), facilities made available to candidates under the 1983 Act (for example, free mailing facilities), reasonable costs incurred by the candidate or any other person to meet travel, accommodation and other personal needs, and the provision of services by a person free of charge and in his own time.

210. New *section 90B* is concerned with the calculation of election expenses incurred for the purposes of new section 90A. *Subsection (1)* deals with the valuation of property, goods, services or facilities acquired direct by the candidate or his agent. *Subsection (2)* is concerned with the apportionment of the cost of property, goods, services or facilities which is or not used exclusively for the purposes of the candidate's election. Such apportionment may be appropriate, for example, where parliamentary and local government elections are held on the same day and a party's candidates for such elections jointly acquire premises to act as their campaign headquarters in respect of both elections.

211. New *section 90C* makes provision for treating as election expenses the value of any property, goods, services or facilities provided for the use of a candidate either free of charge or at a discount.

New section 90A restricts the definition of election expenses to expenses on items to be used for the purpose of a candidate's election '*after the date when he becomes a candidate at the election*'. The definition of candidate is altered in **clause 124**, so that it covers only candidacies declared after a writ for the parliamentary election has been issued or after the last day for the publication of the notice of election for local government elections (25 days before the poll).<sup>76</sup> However, expenditure incurred before the date of adoption will come within the definition, if it is applied to items to be used for the election. Therefore, stocking up on stationery etc would seem to be affected. The final judgement in the Fiona Jones case illustrated the commonly accepted definition of election expenses as beginning with the adoption of a candidate after the announcement of an election; the earlier decision, set aside by the Court of Appeal, however stemmed from the ambiguities of the current legislation.

Although the broad interpretation of election expenses in s76 of the RPA has been amended through changes introduced in **clause 122**, s75 appears to have been unamended; this prohibits expenses 'with a view to promoting or procuring the election of a candidate at an election' being undertaken by other than the candidate or his agent. S75 is likely to be subject to further amendment during the passage of the Bill as the new limit of £500 for third party expenditure in candidate elections has not yet been introduced. This new limit is required to implement the ECHR judgement in the Bowman case (see above). Consultations are necessary with the Scottish Executive which has devolved powers over the conduct of local government elections in Scotland as to the form of the amendment required.

However the Bill does not make any fundamental changes to the election petition system, so challenges to expenses returns by this route may well remain rare, since parties are reluctant to risk the high cost of bringing petitions against successful candidates. The Electoral Commission will see the election returns from parliamentary elections, but not local election returns, unless it specifically requests one. One of the general functions of the Commission in **clause 131** is to monitor compliance with the provisions of the Bill, but it is not given inquisitorial powers over the accuracy of returns. Presumably it would refer concerns to the prosecuting authorities, who would take action using provisions in the RPA 1983 allowing prosecutions for corrupt or illegal practices. The time limit of one year after the offence for bringing proceedings in s176 of the 1983 is not amended by the Bill. The new role of the Commission may improve the accuracy of returns, since they will be submitted to a new central authority with general monitoring powers.

Miscellaneous amendments are made to the RPA 1983 in **Schedule 17**, including the omission of s101-105 on conveyance of electors to the poll and s108 on hiring of committee rooms. A new s173 is inserted into RPA 1983 by **clause 125** to preclude persons convicted of illegal practice from sitting in the Commons as well as those convicted of corrupt practices, by Clause 125. The new section also clarifies the law in

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<sup>76</sup> The main change is to the definition of a local government candidate. See *Explanatory Notes* para 212

respect of vacation of a seat following conviction, following the uncertainty in the Fiona Jones case in April 1999. The Speaker referred the question as to whether she was entitled to resume her seat to the High Court to make a ruling as to the proper construction of the RPA 1983. The Court held that she was so entitled.<sup>77</sup> The revised section will give statutory force to the decision.<sup>78</sup>

The Government accepted the Neill committee recommendation of a new limit of £100,000 for individual candidates in by-elections, and decided against having separate limits for borough or county constituencies for by-elections. The Bill makes the change; **clause 122(5)** inserts a new subsection 2(aa) in s76 of the RPA 1983.

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<sup>77</sup> *HM Attorney General v Fiona Jones* QBD 30 April 1999

<sup>78</sup> See *Explanatory Notes* para 213 for further detail

## Appendix 1 General election spending by major parties

The following table shows information on campaign spending reported by the three main parties to the Neill Committee.<sup>79</sup> The figures are not strictly comparable between parties as different time periods are covered. It should also be remembered that local expenditure and other spending — for example by pressure groups and trade unions — are not included.

Central campaign costs of the three main parties totalled about £45 million in 1997, roughly twice the level of 1992. The main item of separately identifiable central expenditure was advertising, and within that, some 80% of Labour and Conservative expenditure was on outdoor advertising (posters).

### Central campaign spending £m

Party	1992	1993	1994	1995	1996	1997
Labour	8.4	0.3	1.9	3.5	10.8	14.9
Conservative *	11.2	na	na	na	na	28.3
Liberal Dem	1.5	0.2	0.5	0.6	1.2	2.3

\* April 1991/2; April 1996-May1997

### Analysis of 1996/1997 data £m

	Labour	Conservative	Lib Dem
Newspaper advertising	0.9	3.2	-
Outdoor advertising	4.8	11.1	0.1
Other advertising	0.1	0.1	-
Publications	1.5	1.0	0.5
Direct mail	1.8	2.2	0.2
Telemarketing	0.5	-	0.3
Party political broadcasts and videos	0.6	0.5	0.3
Other areas of spending #	15.5	10.2	2.0
Total	25.7	28.3	3.5

# includes the cost of events, rallies, personnel, polling etc.

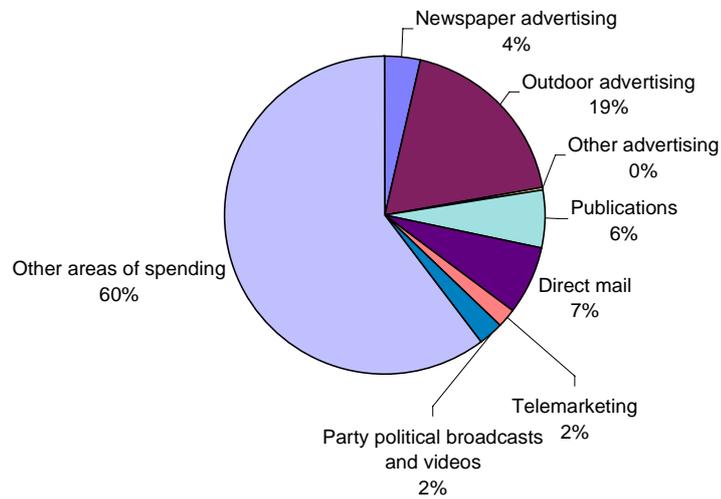
Data for Labour and Lib Dems is for the whole of 1996 and 1997; Data for Conservatives is for April 1996 to May 1997 only

Conventional advertising dominated Conservative spending in 1997 to a greater extent than Labour. While poster advertising represented around one-fifth of Labour's 1997 campaign spending, the Conservatives spent around twice this ratio.

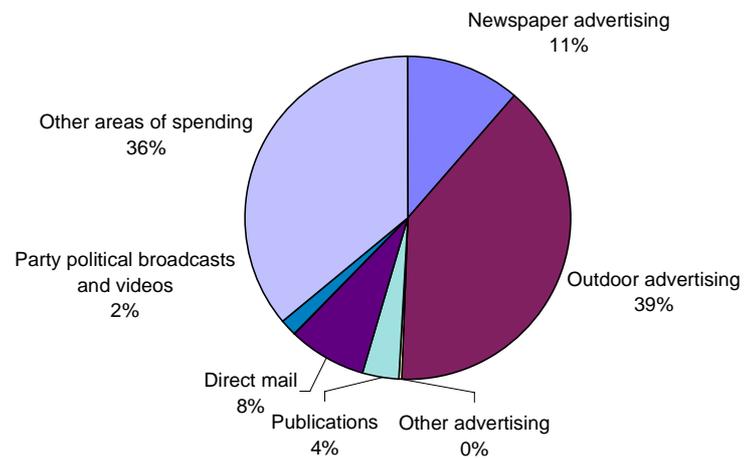
<sup>79</sup> Fifth Report of the Committee on Standards in Public Life Vol 1 Cm 4057 pp36-38

## 1997 General election campaign spending

**Labour - 1996/1997**  
**£25.7 million**

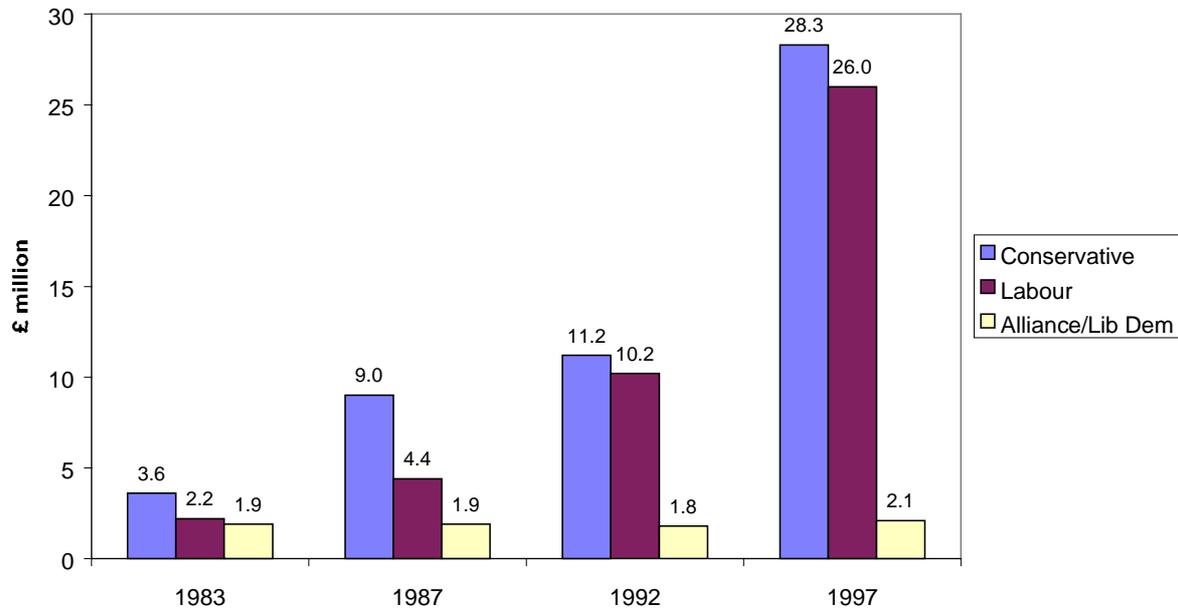


**Conservatives April 1996 - May 1997**  
**£28.3 million**



The Neill Committee concluded that the discrepancy in spending between Labour and the Conservatives (Labour around £26 million; Conservatives £28 million) was not as great as it had been in some previous elections (see Chart below) and spending by these two parties was “broadly comparable”.

**General Election Expenditure by party, 1983 - 1997**



Data in this chart was given in the Neill Report (Cm 4057 p43) from a variety of sources.

## Appendix 2 Campaign Expenditure

### SCHEDULE 7

#### CAMPAIGN EXPENDITURE: QUALIFYING EXPENSES

##### PART I

##### DIRECT EXPENSES

###### *Expenses qualifying where incurred for election purposes*

For the purposes of section 65(2)(a) the expenses falling within this Part of this Schedule are expenses incurred in respect of any of the matters set out in the following list.

List of matters

- (1) Party political party broadcasts.

Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing or producing such broadcasts.

- (2) Advertising of any nature (whatever the medium used).

Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.

- (3) Unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area or areas).

Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).

- (4) Any manifesto or other document setting out the party's policies.

Expenses in respect of such a document include design costs and other costs in connection with preparing or producing or distributing or otherwise disseminating any such document.

- (5) Market research or canvassing conducted for the purpose of ascertaining polling intentions.

- (6) The provision of any services or facilities in connection with press conferences or other dealings with the media.

- (7) Office accommodation acquired specifically for the purpose of being used in connection with a relevant election or any anticipated such election.

Expenses in respect of such accommodation include rent, rates, water, gas and electricity charges.

(8) The employment of staff specifically in connection with a relevant election or any anticipated such election.

Expenses in respect of the employment of such staff include the remuneration and any allowances payable to them.

(9) The engagement of staff provided by employment agencies.

(10) Legal or other professional services provided otherwise than by members of party's staff.

(11) Transport of persons participating (on a permanent basis or otherwise) in the conduct of an election campaign on a national or other basis involving travelling from place to place.

Expenses in respect of the transport of such persons include the costs of hiring a particular vehicle for the whole or part of the period during which the campaign is so conducted and the costs of any form of transport by air.

(12) Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to attract national publicity or for other purposes connected with an election campaign.

Expenses in respect of such events include costs incurred in connection with the attendance of prominent persons at such events or the provision of goods, services or facilities at them.

(13) Payment of expenses incurred by staff (whether permanent or otherwise) for election purposes and not falling within any of the preceding sub-paragraphs.

(14) Postage, stationery and printing costs not falling within any of the preceding sub-paragraphs.

#### *Exclusions*

Nothing in paragraph 1 shall be taken as extending to-

- (a) any expenses in respect of newsletters or similar publications issued by or on behalf of the party with a view to giving electors in a particular electoral area information about the opinions or activities of, or other personal information relating to, their elected representatives or existing or prospective candidates;
- (b) any expenses incurred in respect of unsolicited material addressed to party members;
- (c) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;

- (d) any expenses incurred in respect of the remuneration or allowances payable to any member of the permanent staff of the party; or
- (e) any reasonable expenses incurred in respect of an individual by way of travelling expenses (by any means of transport) or in providing for his accommodation or other personal needs.

## **PART II**

### **OVERHEADS**

#### *Expenses in respect of overheads*

For the purposes of section 65(2)(b) the expenses falling within this Part of this Schedule are expenses incurred in respect of any of the matters set out in the following list.

#### List of matters

- (1) The employment of permanent staff.

Expenses in respect of the employment of such staff include the remuneration and any allowances payable to them.

- (2) Office accommodation (other than office accommodation falling within Part I of this Schedule).

Expenses in respect of such accommodation include any notional ownership expenses or rent and any rates, water, gas and electricity charges.

- (3) Use of telephones.

Expenses in respect of the use of telephones include both call charges and notional ownership expenses or expenses in respect of the rental or other arrangements for the use of telephones.

- (4) Use of other office equipment (including printing or reprographic equipment).

Expenses in respect of the use of such equipment include both user charges and notional ownership expenses or expenses in respect of the rental or other arrangements for the use of the equipment.

#### *Notional ownership expenses*

In this Part of this Schedule "notional ownership expenses" means-

- (a) in relation to office accommodation owned by a registered party, such amount, determined by reference to commercial rates for the occupation of premises of the kind in question, as reasonably reflects the rent that would be payable by the party for occupying the accommodation; and
- (a) in relation to any office equipment owned by a registered party, such amount, determined by reference to commercial rates for the user of equipment of the kind in question, as reasonably reflects the rental charge that would be payable by the party for using the equipment.

*Attribution of expenses to election purposes*

For the purposes of section 65(2)(b) the amount of any expenses falling within this Part of this Schedule which is to be treated as incurred for election purposes is such proportion of those expenses as is reasonably attributable-

- (a) in the case of permanent staff, to the services provided by them in connection with an election campaign or otherwise for election purposes; or
- (b) in the case of any accommodation, telephones or other office equipment, to the use made of it or them in connection with any such campaign or otherwise for such purposes.

**PART III****SUPPLEMENTAL***Guidance by Commission*

- (1) The Commission may prepare, and from time to time revise, a code of practice giving guidance-

(a) as to the kinds of expenses which do, or do not, fall within Part I or II of this Schedule; and

(b) as to the manner in which amounts falling to be determined under paragraph 4 or 5 above are to be determined, including the matters which are to be taken into account and the basis on which amounts are to be calculated or estimated.

(2) Once the Commission have prepared a draft code under this paragraph, they shall submit it to the Secretary of State for his approval.

(3) The Secretary of State may approve a draft code either without modification or with such modifications as he may determine.

(4) Once the Secretary of State has approved a draft code he shall lay a copy of the draft, whether-

(a) in its original form, or

(b) in a form which incorporates any modifications determined under subparagraph (3),

before each House of Parliament.

(5) If the draft incorporates any such modifications, the Secretary of State shall at the same time lay before each House a statement of his reasons for making them.

(6) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the draft code.

(7) If no such resolution is made within the 40-day period-

(a) the Secretary of State shall issue the code in the form of the draft laid before Parliament, and

(b) the code shall come into force on such date as the Secretary of State may by order appoint;  
and the Commission shall arrange for it to be published in such manner as they consider appropriate.

(8) Sub-paragraph (6) does not prevent a new draft code from being laid before Parliament.

(9) In this paragraph "40-day period", in relation to a draft code, means-

(a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,  
no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(10) In this paragraph references to a draft code include a draft revised code.

*Power to amend Parts I and II*

- (1) The Secretary of State may by order make such amendments of Part I or II of this Schedule as he considers appropriate.

(2) The Secretary of State may make such an order either-

(a) where the order gives effect to a recommendation of the Commission; or  
(b) after consultation with the Commission.

