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The Election Publications Bill [HL]

HL Bill 41 of 2000-2001

This Bill is intended to amend the law relating to the requirement to include an imprint on election material giving details of the printer, promoter and person on behalf of whom the material was being published. The law was most recently amended in the *Political Parties, Elections and Referendum Act 2000* and was brought into force by a commencement order on 16 February 2001. Its second reading and all stages are expected in the Commons on 2 April. At the time of writing the Bill has not yet completed all its Lords stages.

It appears that the three UK major political parties did not take full account of the change in the law and some election material has been printed which did not conform with the new requirements. The Bill would undo the commencement order with immediate effect from royal assent, and allow a commencement order at a later date. Material which was printed in conformity with the post 16 February legislation would however continue to be valid. The Bill extends to the whole of the United Kingdom apart from local government elections in Scotland, the administration of which is a devolved matter.

Oonagh Gay

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Summary of main points

The Bill is intended to postpone the introduction of new statutory provisions governing imprints on election publications. It would take immediate effect from royal assent.

Section 110 of the *Representation of the People Act 1983* required the name and address of the printer and publisher to appear on election publications intended to promote or procure the election of a particular candidate. A new version was substituted by para 14 of Schedule 18 of the *Political Parties, Elections and Referendums Act 2000* (PPER) which now requires the imprint to give the printer, promoter and any other person on behalf of whom the material is published.

Section 143 of the PPER Act also introduced new rules for national election material. It requires that advertisements and other election material designed to promote or procure the electoral success of a registered party or candidates who hold particular opinions must include certain specified information, namely the name and address of the printer, the promoter, and any other person on behalf of whom the material is published.

The three UK main political parties (Conservative, Labour and Liberal Democrats) have made representations to the Government that none was in a position to comply fully with the new provisions and that considerable amounts of material already printed or commissioned would have to be pulped.

The Bill would therefore undo the effect of the commencement order for these provisions in the PPER Act. The old s110 will continue in effect, but election literature which has already been printed which takes account of the new s110 will continue to be valid. National election literature already printed which took account of the requirements of s143 is unaffected, since no previous electoral statute governed the imprint.

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I Introduction

A. New provisions in the *Political Parties, Elections and Referendums Act 2000*

Section 110 of the *Representation of the People Act 1983* required political parties and others to ensure that election publications carried the name and address of the printer and publisher. Any candidate or election agent who failed to comply was guilty of an illegal practice under electoral law and liable to a fine not exceeding level 5 (currently £5000). The section referred to the printing of bills, placards and posters and other printed documents distributed for the purpose of promoting or procuring the election of a candidate, and stated that any process for multiplying copies of a document, other than by hand, was deemed to be 'printing'. There was no equivalent provision for national election publications which did not refer to specific candidates, although the *Newspapers, Printers and Reading Rooms Repeal Act 1869* requires 'any paper or book' published to have the name and address of the printer imprinted on the front or on the first or last page.

The *Political Parties, Elections and Referendums Act 2000* makes some important changes in this area. Section 143 of the 2000 Act requires 'election material' to carry the name and address of the printer of the document, the name and address of the promoter of the material and the name and address of the person on whose behalf the material is being published (normally the registered party). . Section 110 of the 1983 Act is amended by para 14 of Schedule 18 of the 2000 Act to update it in line with the changes in s85(3) and s143 of the 2000 Act. Election literature produced in conformity with the new s110 would be expected to carry the name and address of printer, promoter and person on whose behalf the material is being printed (normally the candidate). Both new sections are reproduced in the Appendix to this Paper.

Section 143 is designed to cover national election material and s110 to cover material produced on behalf of an individual candidate. It is important to note that 'third parties' (such as pressure groups and trades unions) fall within the scope of both sections. These sections apply at all times; in other words, they do not apply only in election periods. They apply both to local and parliamentary elections. Therefore all 'election material' is required to comply with the provisions of these sections.

The definitions of printer and promoter are of importance. The *Explanatory Notes* to s143 of the 2000 Act state that the 'promoter' of the material is intended to cover the 'agent of the registered party or third party who caused the material to be published'. The *Notes* also state that the person referred to in s143(2)(c) as required to be displayed is the registered party or third party itself.

Election material is defined in s85(3) as follows:

- (3) "Election material" is material which can reasonably be regarded as intended to-
- (a) promote or procure electoral success at any relevant election for-

- (i) one or more particular registered parties,
 - (ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or
 - (iii) candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates, or
- (b) otherwise enhance the standing-
- (i) of any such party or parties, or
 - (ii) of any such candidates,
- with the electorate in connection with future relevant elections (whether imminent or otherwise);
- and any such material is election material even though it can reasonably be regarded as intended to achieve any other purpose as well.

Section 85 in general covers election expenditure incurred by ‘third parties’ (pressure groups, trades unions etc). For registered political parties, ‘advertising of any nature (whatever the medium used)’ comes within the definition of campaign expenditure which is now subject to national limits.¹

There are separate provisions in s126 of the 2000 Act in respect of the information to appear on referendum publications. These are unaffected by the Bill’s provisions.

Subsections (6) and (7) of s143 and subsection (7) of new s110 will enable the requirements in respect of publications other than printed documents to be prescribed by regulations, subject to the negative resolution procedure. The junior Government minister, Lord Bach, when introducing this provision to the Bill, said that if new forms of communication, such as emails and website advertising, were not included, existing legislation would quickly become out of date.²

No regulations have yet been made and it is not expected that they will be made before May 2001. Therefore it appears that websites and other internet type media will not at present need to carry names of printers and promoters.³ However there may be some legal uncertainty if material is downloaded from a website, copied, and distributed manually. Such material may well be considered as ‘published’ and therefore ought to make reference to printers and promoters. Such terms do not fit well with website terminology. A circular issued by the Home Office in December 1996 stated that it was the opinion of the Home Office legal adviser that s110 had no application to messages sent by the internet.⁴ However, any expenses incurred as a result of using the internet to promote a candidate’s election might well be considered within the terms of legislation governing election expenses.

¹ Schedule 8, para 1(2) of the 2000 Act

² HL Deb 18 October 2000 c1143

³ Information from Home Office official

⁴ RPA 410 10 December 1996

During the Lords second reading of the *Election Publications Bill [HL]* the Opposition spokesman, Lord Cope of Berkeley, reminded the Government that he had asked in October 2000 for clear guidance on the question of imprints for websites in time for local elections and a possible general election. In response, Lord Davies of Oldham, for the Government, confirmed that there would be no regulations governing non-print publications ‘this side of the May elections.’⁵

Section 143 and s85(3) and the amendments to s110 were added to the *Political Parties, Elections and Referendums Act* at Lords committee stage.⁶ The changes were not opposed by the official Opposition, but their spokesman, Lord Cope of Berkeley, complained of the large amount of important amendments made to Home Office bills at late stages.⁷

The changes to s110 of the 1983 Act and the commencement of s85 and s143 of the 2000 Act came into force on 16 February 2001.⁸ Advance notice was given in a parliamentary answer on 30 January 2001.⁹

B. The status of current election literature

The *Guardian* reported on 19 March 2001¹⁰ that millions of leaflets printed by the Conservatives and Liberal Democrats might have to be pulped due to a failure to take into account changes in election law [s110] which required the name of the candidate to appear on the literature. There was also a brief reference at business questions in the Commons on 22 March.¹¹ The new independent Electoral Commission has apparently given the main parties advice about the implications of s143, although this advice has not been made public.

If election material were to be pulped in significant quantities, this might have an effect on the sums parties and candidates have available to spend on election expenditure. Posters currently on display may not be in line with the requirements in s143.¹² Previously national poster campaigns were not subject to electoral law requirements.

The *Explanatory Notes* to the Bill state:

⁵ HL Deb 28 March 2000 c400-402

⁶ HL Deb 18 October 2000 c1143

⁷ HL Deb 18 October 2000 c1144

⁸ *Political Parties, Elections and Referendums Act 2001 (Commencement no 1 and Transitional Provisions) Order 2001 SI no 222*

⁹ HC Deb 30 January 2001 c159w-164w

¹⁰ ‘Election leaflets could be pulped’

¹¹ HC Deb 22 March 2001 c495

5. These provisions of the PPER Act were brought into force on 16th February 2001 by means of the Political Parties, Elections and Referendums Act 2000 (Commencement No.1 and Transitional Provisions) Order 2001 (SI. 2001/222). The Government subsequently received representations from the three main political parties that none of them were in a position to comply fully with the new requirements. In particular, doing so would require considerable quantities of election material already printed or commissioned to be abandoned

During the second reading of the *Election Publication [HL] Bill* in the Lords, Lord Davies of Oldham, for the Government, said:¹³

In December last year, we consulted the main political parties and the Electoral Commission on the commencement timetable for the Act and, in particular, on those provisions amending the Representation of the People Act 1983. The view was then taken that a number of the amendments to the 1983 Act should be deferred until 1st July so as to allow the parties sufficient time to familiarise both themselves and their prospective candidates with the various changes. But we felt that some of the other provisions, including the Section 110, should be brought into force as soon as possible as part of the package needed for applying the new expenditure control provisions. None of those consulted raised any difficulty in that regard. A commencement order was duly made on 29th January. Among other things the order brought the new Section 110 of the Representation of the People Act and Section 143 of the Political Parties, Elections and Referendums Act, together with a number of other provisions, into force on 16th February.

Now I come to why we are bringing forward this short Bill. With the benefit of hindsight, the commencement of these two provisions--Section 143 of the Act and the revised Section 110 of the 1983 Act--was premature. By 16th February, parties and prospective candidates were already gearing themselves up for the county council elections on 3rd May and, no doubt, a possible early general election. Many candidates and local parties were either unpacking old campaign literature from their constituency party cellars or sending off to the printers new material for use during the forthcoming campaign or campaigns. Much, if not all, of this material would have had the old "printer and publisher" imprint on it rather than the details now required by the new Section 110. The same story applied to national material which, until February, only had to bear the name and address of the printer, in accordance with an 1869 statute.

As a result, we are faced with the prospect of going into the forthcoming elections with all the main parties, together with thousands of candidates up and down the country, having large stocks of election publications which do not comply with the new imprint requirements. In theory, it would be open for the parties and their candidates to pulp all this material and start again. But I do not believe--and it is clear that the political parties do not believe--that that is a realistic or practical option. The only alternative is primary legislation, and hence this Bill.

¹² In particular, not all national posters have names and addresses of promoters; a website address is not likely to be sufficient to meet the requirements of s143

¹³ HL Deb 29 March 2001 c398

In response, Lord Cope of Berkeley, for the Opposition, said:¹⁴

When the Political Parties, Elections and Referendums Bill was going through this House, the Government moved 665 amendments. One of them, as the Minister said, altered the familiar imprint which all of us whose lives have depended upon elections know so well.

The Home Office never consulted the political parties about this particular change and did not advise the parties of its view of the change until 1st March, some time after the commencement order made it law. The amendment to the Bill which brought in this provision was never discussed at all in the other place because of the operation of the guillotine.

The Home Office guidance of 1st March¹⁵, a couple of weeks after the provision became law, differed slightly from the advice that my party had received. We can all live with that, but we should have been told it before the provisions were brought into force by the commencement order.

As the Minister said, we are in a situation where all the main parties are now in breach of the law and stand to waste millions of pounds on scrapping the tons of pre-printed material stacked up for the council elections and for the general election--which, I think we can assume from the way in which this measure is being handled and the Motion that we passed earlier today, will definitely be on 3rd May, although I am not asking the Minister to comment on that.

If we pass this measure, I suppose that a small forest of trees will be saved from being turned directly into waste paper. So, in that sense, it is an environmental measure--although I do not think that even this Government would have the cheek to claim it as such.

We can all understand how it happened, but we should recognise that we, the political activists, are the only people who can pass our own "excuse me" Act and secure our own collective immunity from ignorance of the law. Small business struggling under the burden of regulations will view us with envy.

C. National campaign expenses

For general elections, there are new national limits on the amount which registered parties and recognised third parties can spend in election campaigning. These limits apply for 365 days before polling day. However transitional arrangements have been made to apply lower limits should a general election be held within 365 days of the commencement of this part of the 2000 Act on February 16 2001. Registered political parties and recognised third parties are therefore currently subject to campaign expenditure limits if the assumption is made that there will be a general election within one year from February 2001.¹⁶ If no election is held until the May 2002, then at present no national campaign limits apply. There are no national campaign expenditure limits for local elections.

¹⁴ HL Deb 28 March 2001 c399-400

¹⁵ This appears to be a reference to the issue of the *Explanatory Notes* to the 2000 Act

¹⁶ HC Deb 30 January 2001 c163w

Further information is available in a separate briefing document from the Library.¹⁷

D. Election Expenses for individual candidates

Under current electoral law, contained in s118 of the *Representation of the People Act 1983*, the definition of election expenses 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. There are similar problems with the current definition of a candidate in s76(1) of the 1983 Act. Section 135 of the *Political Parties, Elections and Referendums Act 2000* amends s118 of the 1983 Act so that the definition of candidate for a parliamentary general election is that ‘a person becomes a candidate at a parliamentary election on the date of the dissolution of Parliament.’ However s134 also amends the definition of election expenses in the 1983 Act, inserting four new sections 90A-D. The effect of s134 appears to be to preserve the possibility of election expenses being incurred before the formal adoption of the candidate.

Sections 134 and s135 are not however in force at present, and the official implementation date is 1 July 2001.¹⁸ The new wording will not therefore be applicable if a general election takes place before that date and the local elections due on 3 May will also be unaffected. The expenditure limits currently in force are as follows:¹⁹

- (2) That maximum amount is -
 - (a) for a candidate at a **[parliamentary general election, being an election]**-
 - (i) in a county constituency, [£5,483] together with an additional [6.2p] for every entry in the register of electors to be used at the election (as first published); and
 - (ii) in a borough constituency, [£5,483] together with an additional [4.6p] for every entry in the register of electors to be used at the election (as first published);
 - [(aa) for a candidate at a **parliamentary by-election**, £100,000²⁰
 - (b) for a candidate at a local government election -

¹⁷ Parliament and Constitution Centre *National Expenditure Limits* 26 March 2001, available on the PDVN at <http://hcl1.hclibrary.parliament.uk/notes/pcc/NationalExpenditureLimits.pdf>

¹⁸ HC Deb 30 January 2001 c 161w

¹⁹ s76A of the *Representation of the People Act 1983* as amended by the *Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 2001* SI no 535

²⁰ As inserted by s132(5) of the *Political Parties, Elections and Referendums Act 2000*. This section comes into force on 16 February 2001

at any other local government election, [£242] together with an additional [4.7p] for every entry in the register of electors to be used at the election (as first published).

Separate limits apply for ‘third parties’ campaigning in constituency elections, set out in s75 (1ZA) of the *Representation of the People Act 1983*:²¹

(1ZA) For the purposes of subsection (1)(ii) above, "the permitted sum" means-

(a) in respect of a candidate at a parliamentary election, £500;

(b) in respect of a candidate at a local government election, £50 together with an additional 0.5p for every entry in the register of local government electors for the electoral area in question as it has effect on the last day for publication of notice of the election;

Further information on election expenditure limits is available in a separate briefing document from the Library.²²

E. ‘Retrospective’ Legislation

Legislation to validate activities which have no statutory basis, or to correct practices which have been found to be illegal, is uncommon, but not unknown. Recent examples include the:

- *Statutory Instruments (Production and Sale) Act 1996* which amended the *Statutory Instruments Act 1946* to validate retrospectively and authorise prospectively the printing of statutory instruments by contractors working for HMSO.
- *Caravans (Standard Community Charge and Rating) Act 1991* which amongst other provisions excluded caravans from the definition of ‘domestic subjects’ in the *Abolition of Domestic Rates Etc (Scotland) Act 1987* and deemed the amendment to have had effect since 1 April 1990.

Both Acts are examples of ‘ex post facto’ legislation which relate to a time before their commencement, as acts of oblivion or pardon. Retrospective legislation is generally defined as legislation which ‘takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past’.²³ In this respect, the *War Crimes Act 1991* has been criticised as retrospective.²⁴

²¹ As inserted by s131(3) of the *Political Parties, Elections and Referendums Act 2000*

²² Parliament and Constitution Centre *Constituency Expense Limits* 7 March 2001 available on the PDVN at <http://hcl1.hclibrary.parliament.uk/notes/pcc/ConstituencyExpenseLimits.pdf>

²³ *Craies on Statute Law* (7th ed)p387

²⁴ *Statute Law Review* ‘The Constitutionality of the War Crimes Act 1991’

The *Election Publications Bill [HL]* is fairly unusual in that it ensures that both the pre-16 February and the post 16 February provisions of s110 are in effect in force at the same time. It is also unusual because it does not result from a court case or new legal advice where the interpretation of the law has been brought into question, but simply by the inability of certain political parties to conform fully with new legislation.

II *The Election Publications Bill [HL]*

The Bill had its first reading in the Lords on 27 March and is expected to have its second reading in the Commons on April 2. It is expected to have an expedited passage in both Houses. It is a short bill which enables in effect both the pre-16 February and post 16 February legislation governing election literature to be in force at the same time.

Clause One undoes the commencement of s143 and the amendment of s110 and restores s110, as it applied prior to 16 February 2001.

The *Explanatory Notes* state:

10. As a result of the postponement of the commencement of section 143 of the PPER Act no specific imprint requirements will apply to national election material. However, the provisions of the *Newspapers, Printers, and Reading Rooms Repeal Act 1869* continue to operate. Under the 1869 Act "any paper or book whatsoever which shall be meant to be published or dispersed" is required to have the name and address of the printer imprinted on the front (if it is a single sided document) or on either the first or last page (in any other case

Clause 2 will allow the Secretary of State to re-commence s143 by order and to amend s110 as set out in paragraph 14 of Schedule 18. The provisions may be brought into force on the same or different days.

Clause 3 allows that any material which has been printed which does comply with the amended s110 as in force since 16 February is nevertheless valid. The *Explanatory Notes* state:

People who have succeeded in making arrangements to comply with the PPER Act provisions will not, therefore, have to change back again.

Any posters etc which had been printed to conform with s143 will not be affected by the delay in commencing this section, as there was no previous statutory requirement (apart from the 1869 Act) which applied for national advertising.

The Bill extends throughout the United Kingdom apart from the application of s110 in relation to local government elections in Scotland. The administration of local elections

is a devolved matter under the *Scotland Act 1998*. S110 was not amended in Scotland by the 2000 Act.

The *Explanatory Notes* state that no Regulatory Impact Assessment is required, and that the Bill is, in the view of the Government, compatible with the European Convention on Human Rights.

The Bill is due to come into force on royal assent.

Appendix *Political Parties, Elections and Referendum Act 2000- Relevant Extracts*

The text of s110 (as amended by the PPER Act) and s143 of the PPER Act²⁵

110. - (1) This section applies to any material which can reasonably be regarded as intended to promote or procure the election of a candidate at an election (whether or not it can be so regarded as intended to achieve any other purpose as well).

(2) No material to which this section applies shall be published unless-

(a) in the case of material which is, or is contained in, such a document as is mentioned in subsection (4), (5) or (6) below, the requirements of that subsection are complied with; or

(b) in the case of any other material, any requirements falling to be complied with in relation to the material by virtue of regulations under subsection (7) below are complied with.

(3) For the purposes of subsections (4) to (6) below the following details are "the relevant details" in the case of any material falling within subsection (2)(a) above, namely-

(a) the name and address of the printer of the document;

(b) the name and address of the promoter of the material; and

(c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(4) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(5) Where the material is a printed document other than one to which subsection (4) above applies, the relevant details must appear either on the first or the last page of the document.

(6) Where the material is an advertisement contained in a newspaper or periodical-

(a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page; and

(b) the relevant details specified in subsection (3)(b) and (c) above must be included in the advertisement.

(7) The Secretary of State may, after consulting the Electoral Commission, by regulations make provision for and in connection with the imposition of requirements as to the inclusion in material falling within subsection (2)(b) above of the following details, namely-

(a) the name and address of the promoter of the material; and

(b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(8) Regulations under subsection (7) above may in particular specify-

²⁵ The text of the pre February 16 s110 is given in the *Explanatory Notes* to the Bill at <http://www.publications.parliament.uk/pa/ld200001/ldbills/041/en/01041x--.htm>

(a) the manner and form in which such details must be included in any such material for the purpose of complying with any such requirement;

(b) circumstances in which-

(i) any such requirement does not have to be complied with by a person of any description specified in the regulations, or

(ii) a breach of any such requirement by a person of any description so specified is not to result in the commission of an offence under this section by that person or by a person of any other such description;

(c) circumstances in which material is, or is not, to be taken for the purposes of the regulations to be published or (as the case may be) published by a person of any description so specified.

(9) Where any material falling within subsection (2)(a) above is published in contravention of subsection (2), then (subject to subsections (11) and (12) below)-

(a) the promoter of the material,

(b) any other person by whom the material is so published, and

(c) the printer of the document,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Where any material falling within subsection (2)(b) above is published in contravention of subsection (2), then (subject to regulations made by virtue of subsection (8)(b) above and to subsections (11) and (12) below)-

(a) the promoter of the material, and

(b) any other person by whom the material is so published,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) It shall be a defence for a person charged with an offence under this section to prove-

(a) that the contravention of subsection (2) above arose from circumstances beyond his control; and

(b) that he took all reasonable steps, and exercised all due diligence, to ensure that that contravention would not arise.

(12) Where a candidate or his election agent would (apart from this subsection) be guilty of an offence under subsection (9) or (10) above, he shall instead be guilty of an illegal practice.

(13) In this section-

"print" means print by whatever means, and "printer" shall be construed accordingly;

"the promoter", in relation to any material to which this section applies, means the person causing the material to be published;

"publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means.

(14) For the purpose of determining whether any material is material such as is mentioned in subsection (1) above, it is immaterial that it does not expressly mention the name of any candidate.

143. - (1) No election material shall be published unless-

(a) in the case of material which is, or is contained in, such a printed document as is mentioned in subsection (3), (4) or (5), the requirements of that subsection are complied with; or

(b) in the case of any other material, any requirements falling to be complied with in relation to the material by virtue of regulations under subsection (6) are complied with.

(2) For the purposes of subsections (3) to (5) the following details are "the relevant details" in the case of any material falling within subsection (1)(a), namely-

(a) the name and address of the printer of the document;

(b) the name and address of the promoter of the material; and

(c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(3) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(4) Where the material is a printed document other than one to which subsection (3) applies, the relevant details must appear either on the first or the last page of the document.

(5) Where the material is an advertisement contained in a newspaper or periodical-

(a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page; and

(b) the relevant details specified in subsection (2)(b) and (c) must be included in the advertisement.

(6) The Secretary of State may, after consulting the Commission, by regulations make provision for and in connection with the imposition of requirements as to the inclusion in material falling within subsection (1)(b) of the following details, namely-

(a) the name and address of the promoter of the material; and

(b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(7) Regulations under subsection (6) may in particular specify-

(a) the manner and form in which such details must be included in any such material for the purpose of complying with any such requirement;

(b) circumstances in which-

(i) any such requirement does not have to be complied with by a person of any description specified in the regulations, or

(ii) a breach of any such requirement by a person of any description so specified is not to result in the commission of an offence under this section by that person or by a person of any other such description;

(c) circumstances in which material is, or is not, to be taken for the purposes of the regulations to be published or (as the case may be) published by a person of any description so specified.

(8) Where any material falling within subsection (1)(a) is published in contravention of subsection (1), then (subject to subsection (10))-

(a) the promoter of the material,

(b) any other person by whom the material is so published, and

(c) the printer of the document,

shall be guilty of an offence.

(9) Where any material falling within subsection (1)(b) is published in contravention of subsection (1), then (subject to regulations made by virtue of subsection (7)(b) and to subsection (10))-

(a) the promoter of the material, and

(b) any other person by whom the material is so published,
shall be guilty of an offence.

(10) It shall be a defence for a person charged with an offence under this section to prove-

(a) that the contravention of subsection (1) arose from circumstances beyond his control; and

(b) that he took all reasonable steps, and exercised all due diligence, to ensure that that contravention would not arise.

(11) In this section-

"election material" has the meaning given by section 85(3);

"print" means print by whatever means, and "printer" shall be construed accordingly;

"the promoter", in relation to any election material, means the person causing the material to be published;

"publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means.

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