

RESEARCH PAPER 98/62

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The Registration of Political Parties Bill

Bill 188 of 1997-98

This relatively short Bill is due for its second reading debate in the Commons on Thursday 4 June.

Despite its title, the Bill deals essentially with the registration of political party names and emblems for a number of specific purposes, primarily to control and eliminate potentially misleading candidate descriptions at elections. As such the Bill does not directly address wider political party or electoral issues such as internal party organisation, party and electoral financing or electoral rules and procedures.

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Summary

The *Registration of Political Parties Bill* seeks to provide a system for the registration of party political names and emblems, primarily to deal with the problems which have been experienced with potentially misleading (whether intentionally or otherwise) descriptions of candidates at elections. It was originally envisaged that there would be a more substantive system of party registration, linked to reforms in the laws relating to the financing of political parties, which would concern itself with party organisation, structure and operation, but this will now await the outcome of the current review of party finance by Lord Neill's Committee on Standards in Public Life.

The registration procedures set out in the Bill appear to be designed to be as simple as possible, consistent with the requirements of electoral law and practice, and the present diversity in party political organisation and structure. It is to be operated by staff responsible for company registration in England and Wales, in practice Companies House in Cardiff (and possibly related regional offices). Registration will be undertaken in stages, which will enable existing parties represented in the House of Commons to be registered initially, and other parties to be registered thereafter. There are no formal appeal or public consultation/objection processes incorporated into the registration procedure by the Bill, but the Registrar can seek advice from a non-parliamentary committee of MPs to be appointed by the Speaker.

Registration is not compulsory, but the Bill provides a number of incentives for parties to register, including protection against electoral opponents using misleading descriptions, and rights to party political broadcasts. Parties must be registered to submit lists for the additional member aspect of elections to the Scottish Parliament, Welsh National Assembly and Assembly for London, or for elections to the European Parliament. Further detail on these electoral systems is given in Research Paper 98/47 *Voting Systems: The Government's Proposals (revised edition)*

The Bill is designed to solve the problem of misleading descriptions of candidates who attempt to stand under party labels easily confused with those of major parties, such as Conservative, Liberal Democrat, or New Labour. There were a number of such candidates at the 1997 general election. It does not deal with the position where candidates change their personal names to cause confusion. In 1968 provisions for registration of party names were brought forward in the *Representation of the People Bill 1968-69* but were dropped following doubts about the practicality of the scheme which would have applied to Parliamentary elections only.

The current Bill bears some similarities with the 1968 scheme, but the registration scheme will apply to local elections and for elections to the Scottish Parliament, National Assembly for Wales, Assembly for London and European Parliament elections following secondary legislation. The Bill will also apply to Northern Ireland, but will not affect the elections for the New Northern Ireland Assembly on 25 June.

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I The Bill

A. Introduction

This Bill was introduced on 13 May and is due for its Commons second reading debate on 4 June. On publication of the Bill, the Home Secretary, Jack Straw, said:¹

A formal register of political parties is essential for the smooth operation of the proposed PR systems for the Scottish Parliament, the National Assembly for Wales and the European Parliament.

The voting process needs to be simple.

This Bill will make improvements on the current system which have long been needed.

Political parties will soon be protected from spoiler candidates who use deliberately confusing descriptions on the ballot paper, like 'New Labour' or 'The Tory Candidate', when they have no connection with an established party. This not only misleads voters but could produce a result not intended by the electorate.

Casting your vote will become even simpler as candidates representing registered parties will also be able to use their party's emblem on the ballot paper.

The Liberal Democrats have welcomed the Bill as far as it goes:²

POLITICAL PARTIES BILL COULD DO MORE FOR GENDER BALANCE

Commenting on the publication today of the Registration of Political Parties Bill, Liberal Democrat Home Affairs spokesman Alan Beith MP said:

"We welcome the Bill as the necessary building block for a fair electoral system, and as a key to the legal recognition of political parties. The provisions of the Bill should prevent abuse of the electoral system from candidates trying to confuse voters by using similar descriptions to established parties.

Legislation on funding of political parties will have to wait for the report of the Neill Commission. Liberal Democrats had hoped to see this in the Bill published today, but we recognise that the Neill Commission must report first.

We are disappointed that the Bill lacks the provision to allow political parties to select equal numbers of men and women for election to the Scottish Parliament, the Welsh Assembly and the European Parliament. This would have allowed representation of women to increase without fear of legal challenge."

The departmental press notice explained the purposes behind, and the benefits which would flow from the Bill:

Registration of political parties is necessary for the new PR electoral systems proposed for the Scottish Parliament, the National Assembly for Wales and the European Parliament. Under the Bill, only parties registered with Companies House would be able to put forward lists of candidates.

¹ *Home Office Press Notice 176/98, 14.5.98*

² PN 14.5.98 (on party web-site, news pages). At the time of writing the Official Opposition had made no public comment on the Bill. *Charter 88*, in a briefing published on 1 June, welcomed the Bill, and hoped that it would provide a base for a party funding Bill next session.

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Voters and political parties would also benefit from measures in the Registration of Political Parties Bill. It would protect registered parties' names from misleading candidates' descriptions on ballot papers, eg 'Literal Democrat'.

A prospective candidate would need a registered party's permission to use its name or any form of words which might lead voters to associate the candidate with that party.

For the first time political parties would also be able to register an emblem to be printed on the ballot paper. This would make it easier for voters to distinguish between candidates and parties.....

Although registration would be voluntary, any serious political party would need to register in order to protect its name. Also, unregistered political parties would not be able to make party political broadcasts.

B. The policy of the Bill

The Bill³ covers two distinct, but inter-related issues:

- the registration of political parties (name, emblem etc.) and the consequences of registration, and
- the elimination of misleading descriptions on nomination and ballot papers at elections.

The inter-relationship between these two strands is central to the policy of the Bill, as the wider reasons for party registration as such, especially party political finance, are not dealt with in it. In effect, the Bill provides for the non-compulsory registration of political party names and emblems, rather than of political parties as organisations. If a wider system for the registration of political parties is required, to cover aspects of party organisation,⁴ structure and finance, possibly following the report of the Neill Committee on party funding later this year, this may or may not be based on the system established by this Bill. The Bill does not define a 'political party' as such, and it could therefore be, for example, that a further registration system could define a political party as one registered under the *Registration of Political Parties Act 1998*.

The only existing comparable example of the use of the expression 'political party' for financial purposes is in relation to the provision for funds for Opposition parties⁵ in the Commons -- 'Short money' -- (and, more recently, in the Lords -- 'Cranborne money'), which does not define a party as such, other than in relation to the qualifying criteria (ie numbers of seats and votes). While the term 'political party' exists on the Statute Book, there appears to be no comprehensive definition of it in legislation. Rather, as in the 'Short money' case, descriptions tend to be provided relevant to the specific purpose of the legislation.

³ Which extends to Northern Ireland (*clause 26*).

⁴ The structures of political parties change relatively frequently, often in quite significant ways, as has been seen very recently with the Conservative Party. See its new constitution published in February 1998.

⁵ See generally Research Paper 98/61, *Parliamentary pay and allowances: current rates*, 18.5.98, chap 15

The *Inheritance Tax Act 1984* adopts, in effect, the Short money qualifying criteria for a 'political party', for the treatment of gifts (s24), and this 'definition' is carried over for the purposes of CGT etc relief for local constituency associations of political parties (*Taxation of Chargeable Gains Act 1992 s264(8)*). The perhaps more well-known provision relating to disclosure of company donations over £200 in the *Companies Act 1985* is in terms of 'political purposes' and there is no definition of 'political party' where it appears in that Act (sch 7 para3-6)⁶. The provision in s33 of the *Sex Discrimination Act 1975* excepting political parties from the anti-discrimination requirements in relation to the provision of goods and services (s29) simply describes a relevant party in relation to its function of promoting parliamentary candidates to the Westminster Parliament.⁷

In the main (perhaps only) case in which rights in the name of a political party were considered by a court, *Kean v McGivan* [1982] FSR 119, an attempt was made by one of the founders of a political party called the Social Democratic Party to prevent the use of the same title by the more famous party formed two years later in 1981. It was claimed that the use by the later party of the name amounted to the tort of 'passing off', but the Court of Appeal decided that there was no property in a name as such, other than established by statute. The court said that "in the absence of misrepresentation or some malicious motive, a man or woman has the right to use not only his own name but to adopt the name of another for himself or his property. This is so despite the fact that this can give annoyance or inconvenience."⁸ As the property which is said to be injured is not the name itself but the goodwill involved in the relevant business or service transaction, the courts do not generally protect non-traders. In this case, "the situation is simply that a non-commercial activity -- a political party -- is seeking to use the same name, the same initials, as a very small other party with, so we are told, somewhat similar values and ideals", which was not a basis for a tort claim.

One example of the inter-relationship is the benefit afforded to registered political parties in relation to descriptions on electoral nomination and ballot papers.⁹ The Registrar is to register a party name unless it, *inter alia*, "would be likely to result in the party's being confused by voters with a party which is already registered" (*clause 3(1)(a)*).¹⁰ At an election, a nomination paper cannot, without the authorisation of a registered party, include a

⁶ Although para 3(2)(b)(ii) does require "the identity of the party" to be contained in the directors' report.

⁷ This was considered by the industrial tribunal in the celebrated case on the Labour Party's 'women-only shortlists' policy (*Jepson and Dyas-Elliott v Labour Party* [1996] IRLR 116).

⁸ at 120 (Ackner LJ)

⁹ If a proposed candidate at an election sought to mislead or confuse, not through her or his description, but through their name, this would not be caught by the provisions of the Bill. Returning officers would have to apply the same tests as they have in the past (eg when faced with more than one 'Roy Jenkins', 'Margaret Thatcher' or, in the 1997 election, 'Sir Nicholas Lyell'). See *Lyell v Hayward (aka Lyell)*, 15.4.98, transcript, Longmore J: voters confronted with two candidates called 'Sir Nicholas Lyell', both described in effect as Conservative candidates will be prevented or impeded from freely exercising their franchise, which could constitute a corrupt practice under s115(2), *RPA 1983*. See further on this, chapters IIIC and D of this Paper. What would happen if such a candidate wished to use a name which could cause confusion not with another candidate's name, but with their party name or description?

¹⁰ Similar provisions apply for the registration of emblems (*clause 5(2)(a)*) and for alterations to a register entry (*clause 6(3)(b)*).

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description “which is likely to lead voters to associate the candidate” with that registered party (*Parliamentary Election Rules* ('*PER*') rule 6A(1),¹¹ as inserted by sch 2 para 2 of the Bill).

The returning officer is required to decide whether a nomination paper description breaks this new rule 6A (*PER*, rule 12(3A)). It remains to be seen whether, in practice, the Registrar and returning officers will be interpreting these two tests in substantively similar terms.¹² In other words, a situation could presumably, in theory, arise under these statutory provisions where a description based on a validly registered name is nevertheless decided by a returning officer to be likely to mislead in terms of rule 6A. Assume, as a purely hypothetical example, that both the *Liberal Democrats* and the *Literal Democrats* were validly registered parties¹³, and both fielded candidates, each using (having been so authorised by a certificate under new Rule 6A(1)) exactly their own registered name as their electoral description. Could the returning officer nevertheless be of the opinion that one (or both?¹⁴) breaks Rule 6A? If a returning officer took the view that valid registration of a name precluded the possibility that the use of that exact name as a candidate's description could be in breach of Rule 6A,¹⁵ could that be challenged as an improper fettering of the returning officer's discretion? In other words, is the returning officer obliged (rather than simply empowered) by the new *PER* provisions contained in the Bill to come to a view about the Rule 6A compatibility of every nomination, whether containing a description that is identical, similar or unlike a registered name?

II Registration

A. The registration process

Registration as a process generally implies that, so long as applicants meet any specified criteria or qualifications, they are entitled to be registered. In this sense, registration differs from other administrative processes which involve greater degrees of discretion, such as licensing, where other factors may be taken into account in determining the success or otherwise of an application. *Clause 3(1)* makes this clear by requiring the registrar to grant a party's application for registration (and confirmation) except in certain specified circumstances.¹⁶

¹¹ In sch 1 of the *Representation of the People Act 1983*

¹² And whether different returning officers will interpret the new rule 6A in identical ways. Presumably there will be some form of formal or informal guidance on the developing 'jurisprudence' through, for example, Home Office circulars and through professional bodies such as the Association of Electoral Administrators.

¹³ In practice, of course, the Registrar would presumably not register two near-identical names as these.

¹⁴ Presumably in such circumstances both nominations are in the same situation of either breaking or not breaking Rule 6A, and, if only one nomination is to be rejected, would that be based on the timing of each candidate's nomination? Once one is so rejected the other cannot, on this ground alone, be in breach of Rule 6A.

¹⁵ Perhaps on the basis that to do otherwise would be tantamount to 'second-guessing' the Registrar.

¹⁶ *Clauses 5(2) and 6(2)* impose similar requirements in relation to the registration of party emblems and to alterations to the register.

The registration process is to be undertaken by and through the existing organisational structure for company registration in England and Wales (*clause 1(2)*),¹⁷ but this does not appear to mean that the administrative procedures for party registration will mirror those for company registration. Further details will no doubt be contained in orders made by the Secretary of State.¹⁸ The Bill's explanatory memorandum states that "registration will be carried out by existing staff at Companies House"¹⁹, and *sch 3 para 2* requires s704(2) of the *Companies Act 1985* to have effect so that the Secretary of State has power on the appointment of sufficient staff to fulfil the purposes of the present Bill (including removal of staff, and making regulations as to their duties). To the extent to which the company registration system will be the model, Members are referred to explanatory material published by Companies House, much of which is on its web-site.

Note that there appears to be no system envisaged in the Bill for direct 'third party' involvement in the registration process.²⁰ There is, for example,

- no requirement that applications are advertised publicly,
- no provision for representations or objections before the Registrar decides on an application, and
- no provision for objections to the amendment, confirmation or removal of a register entry.

It is therefore possible that parties who may wish to claim that a proposed name (or even a registered name) could be confused with its own, will have no formal or official way of knowing that such an application has been made or has been decided upon. In the same way other interested parties will have no institutionalised means of seeking to influence the Registrar's decision-making process. In practice the Registrar may evolve informal procedures (appropriate to the various registration phases established by the Bill) for dialogue with 'interested parties', as part of any necessary research or inquiry before coming to any decision. There appears to be nothing in the Bill which *requires* the Registrar to reveal any information contained in, or related to, an application to any other party for these purposes.

¹⁷ This presumably means that, unlike company registration, where there are separate institutional arrangements for Scottish companies under the *Companies Act 1985*, and for Northern Irish companies under the *Companies (Northern Ireland) Order 1986*, registration for parties in all parts of the UK will be undertaken centrally through Companies House in Cardiff. Companies House has a system of regional offices which could presumably be used for administrative processing of party registration applications.

¹⁸ See *clauses 3(1)(f)* and *3(2)* [prohibited words and expressions]; *clause 6(7)* [prescribed fees for applications for alterations to register entries]; *7(3)(c)* [prescribed fees for confirmation notices]; *11* [regulations on access to the register]; and *25* [commencement], and *sch 1 paras 1(b)* [prescribed fees for registration applications] and *7* [prescribed additional information on application]. Orders and regulations are subject to the negative procedure (*clause 20(2)*).

¹⁹ In the Irish Republic the Clerk of the Dail is the Registrar of Political Parties: *Electoral Act 1992*, Part III

²⁰ Some procedures like this were envisaged in the party registration scheme originally in what became the *Representation of the People Act 1969*, discussed in chapter IIIB of this Paper.

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Neither is there any provision, on the face of the Bill, for any kind of formal appeal by applicants or others against the decisions of the Registrar,²¹ although recourse to judicial review and to the Ombudsman would presumably be available. The avenue of the 'Speaker's Committee' (in *clause 10*) provides a quasi-internal source of 'expert' advice for the Registrar, but is not in any sense an appeal or review body for applicants or anyone else.

The Bill does not appear to provide for the actual making and dating of a register entry, or for making the terms of an entry conclusive evidence for particular purposes. The actual date is important for various provisions of the Bill, such as the relevant date for annual confirmation of registration (*clause 7*), and for the various references to parties 'already registered'. It may also be relevant for the processing and determining of applications close to an election, say by a newly-formed party.²² Will there be a point in time after which the Registrar will or can no longer accept applications which can be operative in time for a particular election?

B. Registered name²³

Under *clause (3)(1)*, a name will be unacceptable for registration if, in the Registrar's opinion ie:

- (a) would be likely to result in the party's being confused by voters with a party which is already registered,
- (b) comprises more than six words,
- (c) is obscene or offensive,
- (d) includes words the publication of which would be likely to amount to the commission of an offence,
- (e) includes any script other than Roman script, or
- (f) includes any word or expression prohibited by order made by the Secretary of State.

The 'prohibition' in *cl. 3(1)(f)* will be mitigated by the provisions of *cl. 3(2)*:

(2) An order under subsection (1)(f) may except the use of a word or expression from the prohibition where it is qualified by some other word or expression prescribed, or of a kind prescribed, by the order.

²¹ Appeals procedures exist in the Irish Republic (*Electoral Act 1992 s25(9)*)

²² New Rule 6A of the *PER*, inserted by sch 2, para 2 of the Bill, simply requires that a party needs to be registered "by the time at which the notice of election is required to be published under Rule 1" ie 'Day 3' of the electoral timetable.

²³ Substantively equivalent provisions on the registration of emblems is set out in *clause 5*, and on changes to a register entry in *clause 6*. See also the grounds for refusal to register a name or emblem under a first or second stage application, set out in *clause 18*.

This is similar to provisions of company registration law, some of which may be relevant in the party registration context. These provisions are set out in Companies House guidance notes,²⁴ in particular in Appendices A-C of Guidance Note 2, and in Guidance Note 3. Some of these restrictions (ie. “sensitive words or expressions” which require the approval of a Secretary of State or other official or regulatory body) are to protect commercial or professional interests, and may not be thought to be relevant to the regulation of political party names. These include:²⁵

(c) Words which imply specific objects or functions: Assurance, Assurer, Benevolent, Chamber of Commerce, Chamber of Commerce Training & Enterprise, Chamber of Industry, Chamber of Trade, Charter, Chartered, Charity, Chemist, Chemistry, Co-operative, Foundation, Friendly Society, Fund, Group, Holding, Industrial & Provident Society, Insurance, Insurer, Patent, Patentee, Post Office, Reassurance, Re-assurer, Register, Registered, Reinsurance, Re-insurer, Sheffield, Stock Exchange, Trade Union, Trust

On the other hand some of these restrictions may be carried over as protection against improper use of names which may imply or suggest a connection with or approval of a particular profession, group or industry. In certain cases use of the power in *cl.3(2)* to avoid unnecessary restriction (eg, “Sheffield”, “Trade Union”) may be appropriate. “Royal” and various derivatives and related terms cannot be use in a company name without permission of the Home/Welsh/Scottish Office, for obvious reasons, but too strict a prohibition could well restrict the registration of genuine political groups wishing to campaign on a pro- or anti-monarchist platform for example. Similarly, ‘single issue groups’ wishing to put up candidates to campaign, say, about University fees, NHS provision or other matters of public policy could be restricted from registering an appropriate name if the company law restrictions on words and terms like “health service”, “police” and “university” were carried over directly into the new party registration regime.²⁶

The ‘prohibition’ in *cl. 3(1)(a)* – probably one of the key provisions in the Bill – is akin to the company law prohibition on the registration of a name which is the “same as” an existing registered name. In view of the recent examples of the adoption of potentially misleading candidate descriptions – ‘Literal Democrat’, ‘Conversative’ etc. – the advice in Companies House Guidance Note 2 on this prohibition may be relevant:

²⁴ Available on its web-site. Similar provisions apply to business names, on which see Guidance Note 11.

²⁵ *Companies House Guidance Note2 AppA (c)*

²⁶ It is also possible that *cl. 3(1)(c)-(d)* (and even, possibly, *cl. 3(1)(e)*) could restrict some potential political groups and candidates wishing to campaign strongly on sensitive issues of social/ethical policy (eg sexual offences reform, capital or corporal punishment, race relations and immigration), just as, for example, descriptions on nomination and ballot papers have to abide by legal (including statutory) restrictions [*Sanders & Younger-Ross v Chichester & Palmer* (11.11.94, transcript, Dyson J): breaches of such laws would render nominations not to be in form 'as required by law' under Rule 12(2) of the *Parliamentary Election Rules*].

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3. WHAT DOES "THE SAME AS" MEAN?

When deciding whether a name is the "same as" another name, punctuation, the company's status and words like "company (or co)", "and (or &) company (or co)" will be ignored for the purposes of comparison. A name which sounds the same as one already on the Index may be accepted provided that the two names are spelt differently.

For example, if the name "Hands Limited" is already on the Index the following would be rejected as the "same as":

- Hands Public Limited Company (or PLC)
- H & S Limited (or Ltd)
- H and S Limited (or Ltd)
- H and S Public Limited Company (or PLC)
- any of the above with the addition of "Company (or Co)" or "and (or &) Company (or Co)"

It is important to note that while a company name may be sufficiently different from a name already on the Index to allow it to be registered, this might not be enough to avoid the names being considered "too like" each other if an objection is received after incorporation. In such cases your company could be directed to change its name. (See part II: Directions to change a company's name, and Appendix D).

It is also important that you should be aware that, regardless of whether there are any grounds for objection under the Companies Act, if you adopt a name which misleads the public into believing that your business is that of another business (eg trading as a department store under the name "Harrods") you may be liable to face a "passing off" action by the person whose business you have affected. Registration of a name is no guarantee that you are safe from such an action.

Further, although registering a name prevents another limited company having an identical name, it does not stop the name being used as a trading or business name.

The provisions of *clause 3* (either through the order-making power or by decision of the Registrar) may be used to prevent the registration of 'generic' words or phrases in a political context. An obvious example would be 'Independent'. If this was registered as a name it could prevent (unauthorised) use of the term by all other genuine 'Independents' in all future relevant elections. Others like 'Residents Association' or even, to use an example from the Bill's own model ballot paper (*sch 2*, Appendix), 'Stop the By-pass', may be refused registration on these grounds, and they may have to adopt more specific registered names (such as 'Strawtown Residents Association' or 'Stop the Strawtown By-Pass'). This form of registration would not, of course, necessarily of itself, prevent the use of the more generic term in any particular ballot paper.

It is not clear whether the Registrar and registration staff will regard it as part of their function to advise applicant parties on the applicability of the election rules to their proposed registered names. For example, the Bill provides, in effect, that a registered name cannot comprise more than six words (*clause 3(1)(b)*), and there is a similar

restriction on the length of a candidate's description on their election papers. Thus a party which registered a name of 5 or 6 words would be restricted in embellishing that name in its election description, eg "The [*registered name*] candidate".

Again, difficulties could arise with 'combined-name' election descriptions, such as "Labour and Co-operative", where presumably both the Labour party and the Co-operative Party may seek to register their own individual names. Parties which use different descriptions in different parts of the country (eg "Scottish Labour Party", "Welsh Conservative") at the same election may also experience difficulties if they can only register one name, and their other election descriptions potentially clash with other parties' registered names.

The two-stage nature of the registration process means that parties which can register in the first stage (ie those with at least one MP) may well have an advantage to the extent that there will be no parties 'already registered' (in terms of *clause 3(1)(a)*, and taking into account the criteria in *clause 18(1)*). On the other hand, parties applying thereafter will be in the position that some parties will presumably already be registered, and against whose registered names their applications will be considered. This means that not only will 'first stage' applicants have what could amount to first refusal on any potential name for registration purposes, but they will also create their own area of surrounding 'name space' where names comprising words which would, in the Registrar's opinion, be likely to lead to voter confusion, would also have been in effect appropriated.

To take a *purely hypothetical situation for illustrative purposes only*, the 'Liberal Democrats' would presumably apply to register in the 'first stage', but the 'Liberal Party' could not. If and when the latter applied to register its name, it could face the proposition that its name could cause voter confusion, as it was the name by which what is now the Liberal Democrats was known for more than a century, and by which the latter is still sometimes, if inaccurately, referred by some commentators, political opponents and others. Thus the true name of a genuine, existing party which has regularly fielded candidates may possibly be rejected for registration because it could cause confusion with the *different* registered name of a party which can claim some sufficiently close connection to the name being applied for.

Parties will only be able to register one name as its 'registered name' for the purposes of the Bill, but this will not affect *per se* how it wishes to describe itself in public, or even, subject to the provisions of sch 2 of the Bill, at elections. The Conservatives may, for example, register as, 'The Conservative and Unionist Party', but their candidates may tend to campaign as, 'Conservative', 'The Conservative Party candidate', 'Your Conservative candidate', 'Scottish Conservative Party', 'Welsh Conservative' and so on.²⁷ More difficulty could arise

²⁷ Article 1 of the February 1998 Conservative Party constitution is as follows: "This is the Constitution of a political party which shall be known as 'The Conservative and Unionist Party' (referred to in this Constitution as 'the Conservative Party' or 'the Party')." The mandatory rules for constituency associations require that an association's name be in the form "..... Conservative Association" (Rule 1.1, in sch 7 of the constitution).

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if, say, some of their candidates described themselves as 'Tories' or, say, a party wished to register as 'The Tory Party'. Would the view be taken that the connection (in historical or *formal* usage terms) between 'Tory' and 'Conservative' is perhaps not as close as that between 'Liberal Democrat' and 'Liberal', or, on the other hand, that 'Tory' is virtually a synonym in current usage for 'Conservative'?

As already noted, 'political party' is not itself defined in the Bill, and therefore presumably if an application is received which meets all the relevant criteria and conditions in the Bill, the applicant can register a name and emblem, and benefit from the various Bill's protections. The only provision which deals, indirectly, with the possibility of what may loosely be described as 'sham applications'²⁸ is that contained in *clause 2(1)(b)*, whereby an party must send to the Registrar "a declaration that the party intends to have one or more candidates at a relevant election."²⁹ This could be a very difficult provision to police as there is no requirement in the Bill for a registered party actually to field candidates at any relevant election within a prescribed time or at all, or any sanction of deregistration for failure to do so. In theory, groups could seek to pre-empt some registered names by making valid and successful applications, in much the same way as it is sometimes suggested that company names and internet addresses are 'claimed' before the more obvious 'claimant' has done so.

Registration could amount, in certain respects, as tacit official recognition of the legal existence of a particular political party, in terms of its registered name, emblem and other registered information. This could cause difficulties in situations of serious party splits, especially where the majority of a party's membership, leadership or elected representatives in Parliament and elsewhere is a separate 'party' from that grouping (especially if the latter included the registered leader and its registered officers) which may well be entitled to retain the party's registration. In the past³⁰ such splits have generally been 'resolved' politically, where, in addition to the policies and personalities concerned, factors such as control of the party organisation, finances, membership lists or headquarters have tended to be relevant. *De facto* 'control' of a party's registration could become, in some circumstances, such a relevant factor in any such intra-party dispute.

It is not clear from the provisions of the Bill how the Registrar would deal with such a situation, say, when the faction which did not contain the previous registered leadership, but did appear to be, in terms of support, the 'continuing' party, sought to 'take over' the existing registration, by sending the Registrar proposed amendments to its entry or otherwise. To use the 1931 Labour Party split as an illustration, had registration been in force then, would what

²⁸ Including, say, multiple applications from genuine parties seeking as wide protection as possible for their names and emblems (eg applications from the same source to 'Conservative Party' and 'Conservative and Unionist Party', or, perhaps, 'Green Party' and 'Ecology Party').

²⁹ In practice, this may simply be done by ticking a box or signing a pre-printed declaration in any application form provided by the Registrar. In the Irish Republic, the Registrar of Political Parties is required to register any party which applies for registration and "which is in his opinion ... a genuine political party" (*Electoral Act 1992, s25(3)(b)*).

³⁰ Eg the Liberals in 1916 and 1931 and Labour in 1931.

history has accepted as the continuing Labour Party (under Arthur Henderson) have been required to register in some new name (eg 'New Labour' or 'Real Labour') if the 'National Labour' rump under Ramsay MacDonald had sought to retain the registered name of the 'Labour Party'?

C. Other registered information

Clause 4 requires that an application, and register entry, must include certain particulars (apart from home addresses) set out on paras 2-7 of *schedule 1*:

- Names* 2. - (1) An application must specify either-
- (a) a name to be the party's registered name, or
 - (b) a name in Welsh and a name in English to be the party's registered names.
- (2) If a name to be registered is in a language other than English or Welsh the application must include an English translation.
- Headquarters* 3. An application must specify-
- (a) the address of the party's headquarters, or
 - (b) if the party has no headquarters, an address to which communications to the party may be sent.
- Registered officers* 4. - (1) An application must give the name and home address of a person to be registered as the party's leader.
- (2) That person must be-
- (a) the overall leader of the party, or
 - (b) where there is no overall leader of the party, a person who is the leader of the party for some purpose specified in the application.
5. - (1) An application must give the name and home address of a person to be registered as the party's nominating officer.
- (2) A party's registered nominating officer must have responsibility for the arrangements for-
- (a) the submission by representatives of the party of lists of candidates for the purpose of elections, and
 - (b) the approval of descriptions and emblems used on nomination and ballot papers at elections.
6. If one person is named in an application both as leader and as nominating officer, the application must also give the name and home address of the holder of some other specified office in the party.
- Additional information* 7. An application must include any other information prescribed by order made by the Secretary of State.

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As some political parties and groups do not have a single 'leader' in the traditional sense, or may have different leader for different parts of the party structure (eg parliamentary party, national organisation), para 4 of *sch 1* provides that the 'registered leader' must be:

- (a) the overall leader of the party, or
- (b) where there is no overall leader of the party, a person who is leader of the party for some purpose specified in the application.

Note that a change of 'registered leader', 'nominating officer' or other relevant officer for registration purposes will require a change to a party's register entry (*clause 6*), an application for which may require the payment of a fee (*cl. 6(7)*). In practice, 'routine' changes of this sort may perhaps be dealt with at the annual confirmation stage (under *clause 7*).

D. Registration: further procedures

A party's registration will have to be confirmed within three months after each anniversary of its inclusion in the register, otherwise its registration will lapse (*clause 7*). Confirmation is triggered by written notification (from one month before, up to three months after the relevant anniversary), accompanied by any prescribed fee, to the Registrar by the registered leader that it is to remain registered. The notice must either (*cl 7 (2)(a)-(b)*):

- (a) state that the particulars in the party's entry remain accurate and include any information prescribed under paragraph 7 of Schedule 1 since the party applied for registration, or
- (b) include an application under section 6 as a result of which the party's entry will become accurate and will include any information prescribed under paragraph 7 of Schedule 1 since the party applied for registration.

A party's entry will be removed from the register either if it lapses (as described above), or the party applies to have its entry removed (*clause 8(1)*). An application for a change to, or removal of, a party's entry must be signed by its responsible officers, defined as (*clause 9(2)*):

- (a) the registered leader;
- (b) the registered nominating officer;
- (c) where the leader and the nominating officer are the same person, the other registered officer.

If one or more of the responsible officers refuse for any reason to sign an application,³¹ it is not entirely clear whether the provisions of *cl 9(3)* could be used by the party to seek changes in its registration:

³¹ Perhaps to register a change in registered officers, after an involuntary removal from the relevant office (eg after a leadership election).

- (3) If any responsible officer is unable to sign an application-
- (a) the holder of some other office in the party may sign in his place, and
 - (b) the application must include a statement of the reason why the responsible officer is unable to sign and a declaration that the holder of the other office is authorised to sign in his place.

The Secretary of State is required to make regulations providing for public access to the register, to inspect it and to make copies of it or any part of it, subject to conditions and payment of fees (*clause 11*). If the Secretary of State so requests the Registrar is required to send a copy of the register to:

- (a) the Secretary of State;
- (b) any person specified in the request.

(clause 12)

This may be the method by which returning officers will be officially aware of registered names and emblems of parties putting forward candidates at elections, so that they can operate the provisions against misleading descriptions contained in schedule 2 of the Bill.

By *clause 19*, it will be an offence, subject to a fine up to level 5 on the standard scale (currently £5,000), for a person “knowingly or recklessly to make a statement to the registrar which –

- (a) is made, or purports to be made, on behalf of a party for any purpose of this Act, and
- (b) is false in any material particular.

E. Transitional provisions

The Bill provides for a two-stage initial registration phase. In the **first stage** (within four weeks of the provisions of *clause 16* coming into force) registration will be open to any party “to which at least one Member of the House of Commons belongs at the time when the application is made” (*cl. 16(3)(b)*).³²

The Registrar cannot make any entry in the register until six weeks have elapsed after the provisions of *clause 16* came into force (*cl. 16(1)*), but shall determine all first stage applications as soon as possible thereafter (*cl. 16(2)*). **Second stage** (within ten weeks of the provisions of *clause 17* coming into force) applications, not being a first stage application, are to be determined by the Registrar as soon as possible after twelve weeks have elapsed after the provisions of *clause 17* have come into force). The Registrar cannot make any register entry other than those based on a first or second stage application until all such applications have been determined (*cl. 17(4)*).

³² This form of words presumably includes parties whose MPs have not taken their seats at the relevant time.

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The grounds for refusal of a first or second stage application are set out in *clause 18*:

18. (1) The registrar shall refuse a first or second stage application by a party if-

(a) it proposes a registered name which in his opinion would be likely to result in the party's being confused by voters with another party, and

(b) the other party is registered or has submitted a first or second stage application which, having considered the history of the two parties, he intends to grant.

(2) The registrar shall refuse a request made in a party's first or second stage application for the registration of an emblem if in his opinion it would be likely to be confused by voters with -

(a) a registered emblem, or

(b) an emblem which it would be appropriate to allow another party to register.

F. Speaker's Committee

One innovation in the Bill is the establishment of a committee of MPs to advise the Registrar on aspects of the registration process,³³ under *clause 10*:

Speaker's Committee

10. - (1) Before the registrar decides any question arising under section 2, 5, 6 or 18 he may seek advice from a committee of Members of the House of Commons appointed by the Speaker for the purpose.

(2) If the registrar disagrees with advice which he receives under subsection (1) he shall report his reasons in writing to the committee.

Though the Committee will be appointed by the Speaker³⁴ and will consist entirely of Members of the House of Commons, it will not be a committee of the House as such. The Bill does not provide for any House involvement in its establishment or composition (although it is probable that the Speaker would consult with 'the usual channels' on these and related matters).³⁵ The Registrar is required to make written reports to the Committee, but neither the Committee nor the Registrar is required by the Bill to publish these reports or to lay them before the House.

The protection of Parliamentary privilege, and the various powers contained in Standing Orders and elsewhere, that Parliamentary committees enjoy will presumably not apply to this Speaker's Committee. This could mean, for example, that in any legal proceedings (such as a judicial review of a Registrar's actions or decisions) parties may seek disclosure of papers and

³³ But not, apparently, in relation to *clause 7* conformation matters.

³⁴ There appears to be no statutory requirement as such on the Speaker to appoint such a committee, nor on anyone else to ensure that such a committee is in fact appointed.

³⁵ Could the courts intervene in, say, the political composition and balance of the Committee, if challenged, especially as what is at issue is the registration of political parties themselves?

other material of the Speaker's Committee, and otherwise seek to question the activities of the Committee and its members, such as its advice to the Registrar or its internal deliberations.

Various other committees have been created by statute consisting wholly or partly of Members of one or both Houses, such as the House of Commons Commission,³⁶ the Ecclesiastical Committee, and the Intelligence and Security Committee.³⁷ However these do not appear to be exact precedents in terms of the structure and functions of the committee contemplated by this Bill. It may be that this advisory role could become one of the functions of any form of 'Electoral Commission' which may emerge in the future.³⁸

G. Registration and New Electoral Systems

Although the Bill does not make specific reference to local elections it is intended that regulations will be made later to apply the provisions to both local and European Parliament elections. Regulations will also be necessary for the Scottish Parliament, Welsh Assembly, New Northern Ireland Assembly and Assembly for London elections. Clause 2(2) of the Bill specifies that the registration provisions will apply for these elections (assuming the Assembly for London is counted as a local election) but due to the timescale the Northern Ireland elections due on 25 June will not be covered. Registration of parties is necessary for the new forms of proportional representation to be used - Additional Member System(AMS) in Scotland, Wales and London and regional list for the European Parliament elections Registration is not necessary for the Single Transferable Vote (STV),to be used in Northern Ireland, as voters choose between individual candidates but presumably there was a policy decision to include Northern Ireland within the framework of UK law. Registration of political parties will be a reserved matter in terms of Scottish Welsh and presumably Northern Irish devolution legislation. For both AMS and regional lists voters place a vote for a party (rather than an individual candidate)³⁹ and so the *European Parliamentary Elections Bill*, the *Scotland Bill*, and the *Government of Wales Bill* all refer to 'registered political parties' submitting lists of candidates. Independents may also be candidates, but they cannot be treated as a registered party. Unregistered parties will not be able to submit lists. Full details are given in Research Paper 98/47 *Voting Systems - The Government's Proposals (revised edition)*.The *Northern Ireland Elections Act 1998* makes no reference to registered parties for the forthcoming elections to the New Northern Ireland Assembly on 25 June.

³⁶ s1, *House of Commons (Administration) Act 1978*

³⁷ s10, *Intelligence Services Act 1994*

³⁸ On which see chapter III E of this Paper.

³⁹ In AMS there are two votes, one for a constituency candidate and one for a party ; the party supplies a list of candidates.

H. The Additional Member System and Sham Parties

The Conservative Party has expressed concern that parties might try to manipulate the new AMS proposed for the Scottish Parliament and Welsh Assembly.⁴⁰ Their concern is that a party which won most of the available constituency seats – and on the share of the vote would not be eligible for any additional list seats in an electoral region, might wish to establish a sham or sister party to stand in the list element of the election so that its supporters could use their list vote for that party which might have no genuine separate existence. Michael Dyer from Aberdeen University has argued that the Labour Party would benefit substantially in the Scottish Parliament elections were it to enter into a pact with another party and deliver Labour list votes to its partner, through appeals to its electorate.⁴¹ Under the systems of AMS proposed for Scotland, Wales and London voters are free to select a different party when they vote for an additional member from a party list. Parties do not have to stand in the constituency element of the election as well as the regional list element.

In a debate on Lords committee stage of the *Government of Wales Bill* Lord Williams of Mostyn, for the Government, gave assurances that the Labour party would not attempt to enter into collusive arrangements in order to deceive the electorate.⁴² However there are no proposals to prevent 'split ticket voting', as voters may wish to register separate preferences, preferring to balance representation of political parties. The Bill itself will not set any tests which require parties to be 'genuine' before the registration process occurs, beyond the declaration that the party intends to have one or more candidates at a relevant election.⁴³

III Candidates' Descriptions on the Ballot Paper

A. Background

The ability to add some words of description on the nomination paper and ballot paper after a candidate's name was offered by the *Ballot Act 1872*, Rule 6, but candidates did not generally attach a party label to the description, which was framed more in terms of occupation and address. The *Ballot Act* stated 'The ballot of each voter shall consist of a paper showing the names and description of the candidate' (s.2). The form of the ballot paper was set out in Schedule 2.

⁴⁰ For background on this issue, and explanations of the operation of the Additional Member system see Research Paper 98/47 *Voting systems; the Government's Proposals* (revised edition)

⁴¹ *Representation* Spring 1998 "Why should Labour contest the List Seats in Elections to the Scottish Parliament?"

⁴² HL Deb vol 589 11 May 1998 c878

⁴³ clause 2(1)(b). See further, p.14 of this Paper

In December 1947 the *Final Report of the Committee on Electoral law reform*⁴⁴ recommended that the *Ballot Act* Rule 6 should be changed so as not to allow a party label to be used to describe a candidate, following a recent election where a candidate used the term Labour Candidate. The committee noted (para 12):

At a recent election there was a question whether the words "Labour Candidate" were a proper description. We understand that that the organisations representing the chief political parties are not in favour of the use of party labels on nomination papers. We concur in this opinion. A man's claim to membership of a party might sometimes provoke embarrassing controversy. In any event we think the nomination paper should describe the candidate and not the cause.

The *Representation of the People Act* 1948 therefore included in Schedule 3 para 2(3) a prohibition "the description shall not refer to the candidate's political activities..". Some kind of description was therefore required:

(2) The nomination paper shall state the full names, place of residence and description of the candidate and the surname shall be placed first in the list of his names.

(3) The description shall not refer to the candidate's political activities, and need not refer to his rank, profession or calling so long as, with the other particulars of the candidate, it is sufficient to identify him.

(4) If the description is unduly long, the returning officer after consultation (if possible) with the candidate or his election agent, proposer or seconder, may shorten it or substitute another.

In May 1965 a Speaker's Conference was announced on Electoral Law. The final report was published in February 1968.⁴⁵ Among the matters considered was the possibility of attaching party labels to ballot papers, but the Conference decided not to recommend any change. This had also been the conclusion reached by an Electoral Advisory Conference convened by the Home Office. However the Government response, *Conclusions on Review of the Law Relating to Parliamentary Elections*,⁴⁶ considered that there was a strong case in principle for party labels to be used on nomination and ballot papers "provided any necessary administrative machinery can be worked out". (p 4).

⁴⁴ Cmnd 7286. This committee was set up in 1944, following a Speaker's Conference to review a wide range of electoral issues in preparation for post-war legislation to consolidate electoral law provisions

⁴⁵ Cmnd 3550 *Conference on Electoral Law: Final Report* Annex B para 25

⁴⁶ Cmnd 3717

B. *The Representation of the People Bill 1968-69- Registration of Party Names*

There was a general debate on the government's proposals on 14 October 1968⁴⁷ where James Callaghan, the Home Secretary, said "there is now a very strong case on constitutional grounds against denying the voter information about the party to which a candidate belongs" (c48). He announced plans for a system of central registration of political description and controlling their use. "The object of registration would be to prevent the adoption of identical descriptions or of descriptions so nearly resembling descriptions already registered as to be likely to deceive or mislead electors". (c49). Consultations had already begun with the Conservatives and Liberals as to the form of the scheme. (c1530).

In November 1968 a wide-ranging *Representation of the People Bill* was introduced to the Commons. On Second Reading of the Bill the Home Secretary James Callaghan said that the ban on references to political activities had existed only for 20 years, and that the scheme would do no more than to reflect a change in the social and political climate.⁴⁸ This original version of the Bill⁴⁹ proposed a system of registration of political descriptions to be maintained by the Chief Registrar of Friendly Societies and published twice a year. No other description apart from a party label or independent or non party would have been permitted. A party candidate would have had to obtain written authority for the use of his label from a party representative registered for that purpose. The Registrar would have had power to refuse an application to register a description if it was considered to be calculated to mislead, not made in good faith, was "seditious obscene or offensive" or its use objected to by a person with "sufficient grounds for his objection" (Clause 12(9)) The provisions did not apply to local elections although many argued the problem was greater in multi member wards where there might be candidates from different parties with the same surnames.⁵⁰ Mr Callaghan said that there were difficulties in applying the scheme to local elections where the range of parties was much greater and the party organisations were more varied in character, and last minute interventions in elections were more common. (c923).

However, at Committee stage of the Bill in December 1968, the Conservative spokesman, Richard Sharples, protested that the scheme could not be applied to the existing structures of the Conservative party as each Conservative association was separate and autonomous and each association would have to register itself, since there was no central endorsement of candidates. Moreover it would derogate from the responsibility of a Member to all his constituents and a system which applied to Parliamentary elections only would be unworkable (c246-7). There was also concern that the scheme would inhibit flexibility, since party labels would need to be registered some months in advance. Mr Callaghan defended the registration plans, noting that it

⁴⁷ HC Deb vol 770 cc32-163

⁴⁸ HC Deb vol 773 18.11.68 c922

⁴⁹ Bill 9 of 1968-9 Clause 12 and Schedule 1

⁵⁰ See a speech by Mr Coe (who had introduced private Members' bills on the subject) at Committee stage of the Bill in which he instanced two Pritchard candidates, one Labour, one Liberal, in a GLC election in 1967 in Wandsworth (c253)

would be open to local Conservative associations to register themselves (c271), but had no answer to the criticism that it should apply to all types of election. He said that he would consider the position further. (c271-277).

At Report stage Mr Callaghan brought forward amendments to the Bill⁵¹ which simply omitted the prohibition of 1948 on political descriptions but substituted a requirement that the description should not exceed six words in length. Mr Callaghan said:

I promised in Committee to give careful thought to what had been said about the question of inserting on the ballot paper any political description that a candidate himself wished to insert. It is fair to say that, as a result of its debates, the Committee was ready to agree that it would be an advantage if a candidate were able to describe himself politically if he so wished, and, certainly, there is no doubt that the public are anxious that this should be done as an additional aid to voters.

The Government therefore see no reason to move from their original view that there is a strong case for giving the voter information about the cause for which a candidate stands, and nothing said in Committee has removed that conclusion. The argument therefore settled around how it was to be achieved and there were various proposals. As I acknowledged when I put my original proposal, there were two deficiencies in it: first, it was complex and, secondly, it applied only to Parliamentary and not local government elections.

I have, therefore, approached this subject with an open mind, although I had a slight sense of grievance when one of our great national dailies said that I had been forced to retreat in face of a wave of opposition in Committee, whereas right hon. and hon. Members will agree that I declared at the beginning that, if we could find a way to do this, we would do it. That was the spirit of our approach.

I also paid attention to what the right hon. and learned Member for St. Marylebone said to me about the difficulties that the proposal would entail for the Conservative Party, which is, of course, something I should bear in mind in bringing forward a scheme of this sort.

The Clauses and Amendments I have put down, particularly new Clause 2, move a long way from the original provisions, and go a great deal of the way towards meeting the objections. The scheme is simple-one describes oneself in any way one thinks appropriate. It also includes local government elections, which is what most people wanted. The two basic objections raised by myself and others have been met. A candidate at both Parliamentary and local government elections should be able to include, in future, on the nomination paper a political or personal description of himself. He may also include, if he wishes, the word "independent " or " non-party ", or he need include no description whatever.

In his speech Mr Callaghan discounted the likelihood that candidates would use misleading descriptions; although he accepted that an element of risk was involved.⁵²

The only requirement is that the description should not exceed six words in length. If it does contain more than six words, the returning officer would have to decide that the nomination paper was invalid until the candidate reduced it to the required length. It will not be the function of the returning officer to determine whether the descriptions included in the

⁵¹ New Clause 2 HC Deb vol 775 c.1401

⁵² HC Deb Vol 775, 18.12.68 c.1401-7

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ballot paper are those which a candidate can properly claim to use. The reason for this is the desire and practice of all parties to avoid involving returning officers in questions which are essentially political....

I would hope that most people who stand for election would have a proper sense of responsibility. I agree that one cannot wholly rely on that. I do not think that there is much in the argument that any political party will find a series of £150 deposits to put up so that they can nominate mischievous candidates on the other side. That is not the way we normally conduct our affairs, but it is risk that we will have to take in adopting a procedure of this sort.

The greatest difficulty is likely to come when one has a candidate who is slightly off-centre from his party and wants to claim the right to call himself by that party name. I would answer that by saying that he can do that at the moment on everything but the ballot paper. He can do it in his address to the electors, in his window bills, in any election literature including his "election specials" that he cares to send round. So we are not removed from that danger at all, although obviously we are increasing it marginally by allowing such a misleading description, if it is misleading, to be included in the ballot paper.

Every case put forward has some difficulties and objections. The objection to this is clear. It is the prospect that some candidates might use descriptions to mislead electors. This is something that we shall have to take into account. In considering it I have had regard to past history and future prospects. If I may put it on the most pompous plane, it would show a lack of proper respect for our Parliamentary procedures if we proceeded on the view that candidates who were advancing themselves for selection by their fellow citizens for elevation to this House or to local government were likely to so misuse the procedure as to endeavour to deceive the electors about themselves.

C. Descriptions on Ballot Paper: the Current Position

Proposals for a registration scheme were therefore dropped from the Bill, and the new requirements on descriptions were applied to both parliamentary and local government elections in the *Representation of the People Act 1969* and now set out in the *Representation of the People Act 1983*.⁵³ Rule 6 and 19. Rule 6(2) sets out the procedure:

- (2) The nomination paper shall state the candidate's –
 - (a) full names,
 - (b) home address in full, and
 - (c) if desired, description,and the same surname shall be placed first in the list of names.

- (3) The description, if any, shall not exceed 6 words in length, and need not refer to his rank, profession or calling so long as, with the candidate's other particulars, it is sufficient to identify him.

Thus the description became optional on the nomination and ballot paper.

Rule 19(2)(a) requires the ballot paper to contain the names and other particulars of the candidate as shown in the statement of persons nominated.

⁵³ The rules also apply for elections to the European Parliament

At present a returning officer⁵⁴ does not have an adjudicating role in respect of nominations and has no duty or power to investigate the accuracy of the particulars given.⁵⁵ It is the other candidates who may contest the particulars given in a nomination paper. (Rule 11). Under Rule 12 a nomination paper may be rejected by a Returning Officer only if the particulars of the candidate or his supporters are 'not as required by law', that it has not been subscribed as so required or that the candidate is disqualified by the *Representation of the People Act 1981* (convicted prisoner serving sentence of more than one year) This phrase was considered in *Sanders v Chichester*⁵⁶ and the court said that 'candidates who give descriptions that are obscene, racist, or an incitement to crime deliver particulars that are "not as required by law" because they contravene the law and/or will inevitably involve the returning officer in a breach of the law' The term therefore goes wider than the requirements of electoral law.

The Returning Officer is required to give his decision on any objection to a nomination paper as soon as practicable after it is made. His decision that a nomination paper is valid is final, although the validity of a nomination can be questioned on an election petition. The text of Rule 12 is as follows:

- 12** (1) Where a nomination paper and the candidate's consent to it are delivered and a deposit is made in accordance with these rules, the candidate shall be deemed to stand nominated unless and until-
- (a) the returning officer decides that the nomination paper is invalid; or
 - (b) proof is given to the returning officer's satisfaction of the candidate's death; or
 - (c) the candidate withdraws.
- (2) The returning officer is entitled to hold a nomination paper invalid only on one of the following grounds-
- (a) that the particulars of the candidate or the persons subscribing the paper are no as required by law;
 - (b) that the paper is not subscribed as so required; and
 - (c) that the candidate is disqualified by the *Representation of the People Act 1981*.
- (3) The returning officer shall give his decision on any objection to a nomination paper as soon as practicable after it is made.
- (4) Where he decides that a nomination paper is invalid, he shall endorse and sign on the paper the fact and the reasons for his decision.
- (5) The returning officer's decision that a nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever.
- (6) Subject to paragraph (5) above nothing in this rule prevents the validity of a nomination being questioned on an election petition.

Occasionally candidates have attempted impersonation of real political figures. In the Glasgow Hillhead by-election of November 1982 a prominent candidate was Roy Jenkins (now Lord Jenkins) for the SDP. A second 'Roy Jenkins' entered the contest, claiming that he had founded a Social Democratic party months before the SDP broke away from Labour. This Jenkins had attempted to fight the Warrington by-election in 1981, but the Returning Officer had ruled his nomination invalid. In Hillhead the Returning Officer allowed him to stand however, concluding

⁵⁴ In practice in England and Wales the duties of the returning officer are carried out by the acting returning officer

⁵⁵ See *Greenway-Stanley v Paterson* [1977] 2 All ER 663,670d

⁵⁶ 11 November 1994 QBD DC

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that the name Jenkins had been used for some nine months and no objection was received in time from the real Roy Jenkins.

In the 1983 general election a man changed his name by deed poll to Margaret Thatcher and declared the address of his flat to be henceforth Downing Street Mansions. An associate also changed his name to Ronald Regan in order to act as his agent. They presented nomination papers in the Finchley constituency claiming to represent the Conservationist Party. The Returning Officer declared the paper invalid on the grounds that it was an abuse of the right of nomination as an obvious unreality. 'Thatcher' sought judicial review of the decision but it failed both at first instance and on appeal, although the Court of Appeal accepted that an application for judicial review was an appropriate proceeding. It nevertheless dismissed the appeal on the grounds that the appellant's motives were malign and intended simply to confuse the electorate of Finchley.⁵⁷ As structured at present, the *Registration of Political Parties Bill* does not contain mechanisms which would prevent the abuse of candidates' personal names, as opposed to descriptions.

The issue of misleading descriptions came to public attention in 1994 when Richard Huggett stood as the Liberal Democrat candidate in the European Parliament elections in the constituency of Devon and East Plymouth. An application for judicial review was rejected on the basis that the jurisdiction of the court was ousted by Rule 12(5). The Liberal Democrat candidate, Adrian Sanders, was defeated by 700 votes; Richard Huggett polled 10,203 votes. Mr Sanders brought an election petition. The election court found that there was no power for a returning officer to reject a nomination paper other than under Rule 12, unless the nomination paper was manifestly a sham.⁵⁸

The judgment stated:

The true construction of Rule 6(3)

We make the following comments:

(1) The effect of Rule 6(2) and (3) is that the full names and home address are treated as being sufficient to identify the candidate. Only they are mandatory. This is fundamental. Mr Beloff makes the common sense point that voters in large constituencies in a modern democracy cannot be expected to vote for a name and address with which they are unfamiliar and that very few candidates are known to the electorate by name, still less by their address. The fact is, however, that the only minimum requirements for identification of a candidate on the nomination paper and thus on the ballot paper are his or her full names and home address. The description is optional. It follows that Parliament decided that the ballot paper is not the necessary medium for communicating to the electorate information about the attributes of the candidate, for example his age, political and other experience, political allegiance and so on.

⁵⁷ *R v Barnett and Finchley Returning Officer ex p Bennett* 3 June 1983 (unreported). See *Law and the Electoral Process* (1988) by H.F. Rawlings for a full discussion of this case; he suggests that the judgement mistakenly took account of the 1872 legislation which gave the Returning Officer greater discretion

⁵⁸ *Sanders v Chichester* 11 November 1994 1994 QBD, DC

Parliament clearly thought that such information could and would be made available by other means during the election campaigns. The Rules do, however, prescribe that the description, if given, must with the candidate's other particulars (i.e. his full names and home address) be sufficient to identify him. The requirement that the optional description, when read with the candidate's full names and home address, shall be sufficient to identify him, implies that the full name and home address alone will always be regarded as sufficient to identify the candidate for the purposes of the Rules. This has been so since the passing of the Representation of the People Act 1969 (the "1969 Act"). Rule 7(2) and (3) of the Second Schedule of the 1969 Act is in substantially the same terms as Rule 6(2) and (3) of the 1983 Rules. It was not, however, always so. The Parliamentary and Municipal Elections Act 1872 (by Rule 6 of the 1st Schedule), the Representation of the People Act 1948 (by paragraph 2(2) of the Third Schedule) and the Representation of the People Act 1949 (by paragraph 7(2) of the Second Schedule) all required a candidate to give a description which went beyond giving his full names and address. Mr Beloff submits that it is "unreal" that Parliament should in 1969 for the first time have enacted that it was unnecessary to include a description in order to identify a candidate. It may be surprising to some that Parliament should have taken this step, but that it did so is in our opinion incontestable.

Since the 1969 Act, therefore, Parliament has not been troubled by matters such as the possibility (fanciful, no doubt) that there may be more than one candidate with the same full name living at the same address. It might be assumed that in such an event, one or more of the candidates would give a description which, with his full names and address, would be sufficient to identify him.

(2) The requirement in Rule 6(3) that the description, with the candidate's other particulars, shall be sufficient to identify him recognises the possibility that the description could remove what would otherwise be the sufficiency of the identification given by those other particulars. There are only two requirements of a description. First, it must not exceed six words in length. Secondly, it must together with the candidate's other particulars be sufficient to identify him. There is no requirement that the description be true, fair or not confusing, so long as with the other particulars, it is sufficient to identify the candidate.

(3) If it appears to the returning officer *inter alia* that the description, with the candidate's other particulars, is not sufficient to identify him, the returning officer is entitled, and indeed bound to hold a nomination paper invalid under Rule 12(2)(a), on the grounds that the particulars are not "as required by law". The returning officer is given no express power to investigate the validity of the description. Mr Beloff submits that there must be an ancillary power given to the returning officer, and a corresponding duty imposed upon him to examine the nomination paper in question and compare it with any other relevant information; and if necessary, in a case where a rival candidate asserts the same or similar description, to make enquiries of the candidates and their election agents to decide which candidate has the better claim to such a description where the returning officer has judged it to be confusing and insufficient to distinguish one candidate from another. We shall return to this argument later in this judgment. At this stage, we merely point out that if these powers exist under Rules, they must be implied.

It concluded:

Our task has been to analyse the statutory provisions governing the conduct of elections. For the reasons that we have set out at some length, it is clear to us that contrary to what might be thought to be the popular view, Parliament has focused on certain minimum criteria for identifying candidates which do not include references to political parties, it being assumed that voters will learn all they need to know about the candidates during the election campaigns. It is also clear that the Rules do not prohibit candidates, (whether out of spite or a wicked sense of fun), from describing themselves in a confusing way or indulging in spoiling tactics. As we have seen, Parliament considered these very matters at length and in detail during the debates on the Representation of the People Bill in December 1968. Parliament was so anxious to avoid

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returning officers becoming involved in what might be called "political controversy" that, as the Home Secretary said, it was prepared to take a risk that occasionally there would be misleading and confusing descriptions. It is not for us to say whether that political judgment of Parliament was wise. In other jurisdictions, such as New Zealand, the Commonwealth of Australia, the State of Queensland and the Republic of South Africa, a wholly different course has been adopted involving Electoral Commissions, a system of registration of political parties and a statutory provision limiting the ability of candidates to use the name of a political party. It may be in the light of the present case that Parliament will wish to consider again whether a similar regime should be adopted for the conduct of elections in the United Kingdom.

D. The 1997 Elections - Misleading Descriptions

During the 1997 election there were several candidates who stood under what could be described as misleading labels. Some attempts were defeated through the use of S.115(2)(b) of the *Representation of the People Act 1983* which states that a person is guilty of undue influence and therefore a corrupt practice" if by any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector..." Legal representatives of political parties applied for injunctions to prevent candidatures on the basis that they were a fraudulent device.

The former MP Rod Richards obtained an injunction against a candidate who stood as Rod Richards and the Conservatory party in the Clwyd West constituency, but the candidate still stood for the Conservatory party under his real name. Sir Nicholas Lyell obtained an injunction against Peter Rubery-Hayward who attempted to stand as Sir Nicholas Lyell in N.E. Bedfordshire. Mr Rubery Hayward had changed his name by deed poll in 1994. Anthony Leyshun attempted to stand as a New Labour candidate at Gravesham but an injunction was awarded to remove the description New Labour. A similar attempt to use an injunction against William Johnson Smith who stood as New Labour in Hammersmith and Fulham, failed as the statement of persons nominated had already been published. In Halifax Alice Mahon faced another male candidate who had changed his name to Alice Mahon, but an injunction was obtained to prevent this. Richard Huggett attempted to stand as an official Conservative in the Brighton Pavilion constituency of the then Solicitor General, Sir Derek Spencer. An injunction was granted to prevent his candidature as the official Conservative party but he stood as a Conservative party candidate. Mr Huggett also stood as the Liberal Democrat Top Choice for Parliament candidate at Winchester, gaining 600 votes, where the Liberal Democrat candidate won by just two votes. The Liberal Democrats had brought an unsuccessful injunction application against Huggett; the result at Winchester was later annulled by an election court, on grounds unconnected with the Huggett candidature. Legal representatives of the political parties considered the position very unsatisfactory as so little time was available to attempt legal action and injunctions were not always granted. It is important to note that, although often interrelated, there are two separate issues - confusions over names and over political descriptions.

There were also problems at local level; Labour has alleged that it lost control of Bracknell council in the May 1997 elections due to the intervention of four candidates under a New Labour label, despite no history of connection with the Labour party.

Following the election the question of candidates with misleading descriptions was raised in the Commons on a number of occasions. The election was also remarkable for the number of candidates who stood - a record at 3724. On 21 May 1997 Brian Sedgemore introduced a debate on the conduct of elections, referring to difficulties he had faced at the general elections with another candidate standing under the label New Labour. In response George Howarth, junior Home Office minister, set out possible solutions as follows:⁵⁹

Hon. Members will recognise that the problem of attempted misdirection of the electorate has been with us for a long time. Descriptions were introduced specifically to address that problem. Many hon Members will recall the days when there was no description on the ballot paper; I remember that being the case within my political lifetime. Descriptions were introduced to try to address the problem, but they clearly have not been as effective as we would have wished.

There are a number of options that do not require party registration, an issue to which I shall return in a moment, and which have been looked at by Home Office officials. The various options include the use of party logos on ballot papers, the strengthening of the 1983 Act to provide a specific offence of using a description intended to mislead, and the introduction of a challenge process to be heard before a High Court judge. I know that the Liberal Democrats, in various submissions, have supported that.

There are difficulties with all three proposals, which need to be scrutinised in much greater detail. At this stage, I would not like to make a commitment to any of them. However, now that the election is over, discussion of the issues between the political parties will go ahead. I hope that we can examine them again to see whether there is any prospect of moving ahead, although I must add the qualification that there are problems with all three proposals that I have mentioned.

I should like to say a few words on political party registration, which offers us better prospects for dealing with the problems. The principal problem with the use of party names as candidate descriptions is that political parties are not recognised in electoral law. The lack of any means by which a political party can register its name for electoral purposes is the starting point for the difficulties that my hon. Friend has described.

From that stems the problem of a candidate being able to describe himself as new Labour when he has nothing to do with the Labour party or as a Liberal Democrat when he has nothing to do with the Liberal Democrats, or, as has happened in my constituency, simply to use the confusing title "Labour" spelled properly. We have never been able to challenge that.

If she were free to do so, my hon. Friend the Member for Liverpool, Wavertree (Jane Kennedy) could wax lyrical for at least 15 minutes on the confusion that often exists at elections in Liverpool, where various candidates use all kinds of different descriptions, trying to pretend that they are Labour party candidates when they are not.

We have to make progress on this. The lack of statutory registration of political parties has consequences for party funding. My right hon. Friend the Leader of the House mentioned our commitment to look into that. The registration of political parties would have to be part of any mechanism for bringing party funding under control. If we have any kind of proportional system-an issue that will be considered, and should be the subject of a referendum, during this Parliament-we shall have to consider party registration.

⁵⁹ HC Deb vol 294 c674-5

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My hon. Friend is aware of our manifesto commitment to examine ways of regulating and reforming the funding of political parties - a commitment that we take seriously. We also have a clear manifesto commitment to put to the Scottish and Welsh people proposals for the devolution of powers to representative bodies elected by proportional representation.

The Government are considering how best to take forward those commitments. The answer will, without doubt, involve a measure for the registration of political parties, although it is too early to be able to say yet what that may involve. Any measures to register political parties would provide an opportunity for action on the statutory recognition of political party names. We shall certainly have to examine that issue.

Peter Snape initiated a debate on the conduct of elections on 25 June 1997.⁶⁰ Mike O'Brien, junior Home Office minister, responded as follows:⁶¹

Another option is to introduce scope for nominations to be challenged in different ways. The approach is superficially attractive, but it would almost certainly require an increase in the statutory election timetable that determines the period between the issue of the writ and polling day. The advice of the Court Service, which would need to service any challenges, is that a period of at least five days might be required. The period would be greater if an appeal procedure were to be included, or if a judge determined that additional time should be allowed for the preparation of a defence or to introduce disputed evidence. A consequence of a flexible timetable could be that polls in some constituencies at a general election might not be held on the agreed polling day. That is something that we would, I think, view with concern.

Registering the names of political parties as types of trademark is another possibility. I understand that some of the major parties have already obtained trademark registration. The difficulty with this approach is that the Trade Marks Act 1994 provides protection only in the course of trade, and we are advised that political activity does not fall within the definition of an activity in the course of trade. Similar constraints limit the ability of passing off proposals and providing for parties to become companies guaranteed by law.

If we are to change current legislation, we might as well tackle the issue itself rather than try to mess about with trademark law or something else. Let us address the issue itself.

None of these options seems especially attractive or effective. That has led the Government to conclude, as the Under-Secretary of State for the Home Department, my hon. Friend the Member for Knowsley, North and Sefton, East, said when responding to the debate on the issue last month, that the answer probably lies, in a system of registration of political parties, as the hon. Member for Caithness, Sutherland and Easter Ross said.

The principal problem with the use of party names as candidate descriptions is that the political parties are not recognised in electoral law. That means that there is no procedure by which a political party can register its name for electoral purposes, or prevent anyone from using its name, or a similar name, to confuse the electorate. A system of registration could help to overcome that by giving statutory recognition to political party names. It might then be possible to prevent attempts to pass off a person as a candidate of a recognised political party by using a description intended to deceive.

⁶⁰ HC Deb vol 296 c761-780

⁶¹ HC Deb vol 296 c779-80

Mark Oaten, the Liberal Democrat MP for Winchester, spoke on the Christmas adjournment on the difficulty of candidates with misleading labels, drawing attention to his experiences with a Top Choice Liberal Democrat candidate.⁶²

E. Electoral Commission⁶³

The Home Affairs Select Committee is beginning an enquiry into electoral law and administration which will take evidence on a range of topics including names and descriptions of candidates on ballot papers, but not on the registration of parties. A Home Office working party chaired by the junior minister, George Howarth is also looking at a range of electoral administration matters. There is increasing pressure for an independent Electoral Commission to be set up, which could oversee the conduct of elections⁶⁴. Such commissions are common in many European and Commonwealth countries and where a system of registration of parties exist an electoral commission commonly administers it. The Neill Committee on Standards in Public Life is due to report on party funding and election expenditure later this year and may well recommend an electoral commission to administer any scheme of expenditure limits or registration of donations to political parties. If such recommendations are made and accepted there is a possibility that at some future date the responsibilities of registration allocated to Companies House in this Bill would be transferred to an electoral commission.

F. The Ballot Paper and Emblems

The form of the ballot paper at any election is prescribed under the Appendix to the relevant set of elections rules. The ballot paper is also to be printed in accordance with directions in the Appendix. The candidates' names appear on the paper in the order as in the statement of persons nominated and that is in alphabetical order of the candidates' surnames.⁶⁵ The form and typeface of the ballot paper has been criticised on the grounds of legibility, particularly for people of restricted sight. In the view of the Home Office, the ballot paper for Parliamentary elections may only be printed in English or Welsh⁶⁶ and in black and white only. As currently prescribed, for example, the candidate's names on the ballot paper are to be printed in capitals, but the descriptions must be in lower case. The size of the type face is not prescribed. A Home Office Working Party report following the 1992 election considered that there was a case for moving away from prescribing forms in certain areas, since primary legislation is necessary for changes to the forms. No legislation has followed in this area.

⁶² HC Deb vol 303 17.12.98 c262-4

⁶³ Not to be confused with the Independent Commission on the Voting System chaired by Lord Jenkins described in Research Paper 98/47 *Voting Systems: the Government's Proposals (revised edition)*

⁶⁴ *The Case for an Electoral Commission: Keeping Election Law up to Date* King-Hall Paper no 5 Hansard Society David Butler

⁶⁵ Rule 14(3) of the *Parliamentary Elections Rules, Schedule 1 of Representation of the People Act 1983*

⁶⁶ See *Guidance for Acting Returning Officers* Home Office 1997 paras 5.15-5.17 which concluded that if one or more of the nominations were printed in a non-Roman script it might fail to comply with the requirement that the ballot paper be printed in ordinary type

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Logos on ballot papers in other countries have become increasingly common, as a simple means of differentiating parties for the electorate; South Africa uses both photographs of party leaders and logos on the ballot paper for its elections which are by party lists.⁶⁷ India, a state which uses first past the post for its elections, also uses logos and its ballot papers are printed in three types of script. Ballot papers have also been printed in colour. New Zealand introduced the Mixed Member Proportional electoral system in 1996 - a version of Additional Member System to be used in elections to the Scottish Parliament, Welsh National Assembly and the Assembly for London-⁶⁸ and its new ballot paper was printed in colour with party logos, and instructions on the difference between the two boxes to be ticked, for a constituency member and a list member.

G. Schedule 2 - Amendments of the Parliamentary Elections Rules

The Bill inserts a new Rule 6A after Rule 6 as follows:

2. After rule 6 (nomination of candidates) insert-

Nomination papers: name of registered political party

6A.-(1) A nomination paper may not include a description of a candidate which is likely to lead voters to associate the candidate with a registered political party unless the description is authorised by a certificate-

- (a) issued by or on behalf of the registered nominating officer of the party, and
- (b) received by the returning officer at some time during the period for delivery of nomination papers set out in the Table in rule 1.

(2) A person shall be guilty of a corrupt practice if he fraudulently purports to be authorised to issue a certificate under paragraph (1) on behalf of a registered political party's nominating officer.

(3) In the application of this rule in relation to an election "registered political party" means a party which was registered under the Registration of Political Parties Act 1998 at the time by which the notice of election is required to be published by virtue of rule 1".

The six word limit on descriptions will continue to apply but descriptions which are likely to lead the voter to associate the candidate with a registered political party against that party's wishes will be disallowed. There is no need to prove intent to mislead so that even candidates who might have a genuine grievance against an established party might find their description circumscribed. However there is nothing to prevent such candidates from using more informative descriptions or slogans in campaign literature, since only the nomination papers and ballot papers are covered by the Bill. Indeed 'misleading candidates' could continue to use confusing descriptions on their general election literature. There is no requirement for the

⁶⁷ For background on party lists see Research paper 97/26 *Voting Systems - The Alternatives*

⁶⁸ Full background on AMS is given in Research paper 98/47 *Voting Systems - The Government's Proposals (revised edition)*

certificate by a political party to be attached to the nomination paper, so the Returning Officer may be kept waiting for the certificate before he accepts the nomination. If the certificate were not to arrive in time it is not clear whether the nomination would become invalid or be allowed to stand without the party label.

Rule 12 is also amended to insert a new discretion for the returning officer to decide whether a nomination paper breaks Rule 6A . The Association of Electoral Administrators (AEA) have commented that the wording of Rule 3A appears to prevent a returning officer from issuing a decision until after the close of the time for delivering nomination papers, thus preventing candidates from having the opportunity of submitting revised nomination papers, which does not appear consistent with the present provisions of Rule 12. The returning officer is to give his decision 'as soon as practicable after the close of the period for delivery of nomination papers' The AEA also consider that that the wording does not explicitly state that a decision by the returning officer that the nomination paper is in breach of Rule 6A automatically leads to the nomination being declared invalid, although this is the presumable intention behind the Bill.

The Bill does not give the returning officer new powers to investigate the accuracy of names of the candidate, as opposed to the name of the party, so it is possible that future candidates will face more challenges from 'Alice Mahons' or 'Sir Nicholas Lyells' as at the 1997 elections.⁶⁹ There are no provisions to extend the electoral timetable and the publication of the statement of persons nominated is published immediately at 5pm on the last day for delivery of nomination papers which must be delivered by 4pm on Day 6 (11th Day before Polling day at Parliamentary elections) or as soon as possible after any objections are disposed of. The Returning Officer has therefore very little time to make a decision, particularly if a questionable nomination form is delivered at the last moment. For example, at the Winchester constituency in April 1997, Richard Huggett did not submit his nomination paper as 'Liberal Democrat Top Choice for Parliament' until the morning of the last day for the delivery of nomination papers, and the Liberal Democrat nomination was withdrawn that day with a new description substituted - 'Liberal Democrat- Leader Paddy Ashdown'⁷⁰ The Acting Returning Officer published the Statement of Persons Nominated at 5.15pm that day, despite continuing objections from the Liberal Democrats.

The length of the Parliamentary electoral timetable was last adjusted in the *Representation of the People Act 1985*⁷¹ when an extra day was added between the last day for delivery of nomination papers and polling day.⁷²

⁶⁹ Although such 'misleading candidates' would not benefit from the official emblem

⁷⁰ For a full account see 'Three counts and a wedding'- the Winchester election saga' in *Arena Association of Electoral Administrators* Spring 1998

⁷¹ Schedule 4, para 73

⁷² Research Paper 97/40 *Parliamentary Election Timetables (3rd ed revised)* gives details of the electoral timetable






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The Returning Officer will presumably be guided by precedents connected with the decision of the registrar to register parties under Clause 3 (1) (a), but he is not necessarily bound by those decisions as he is required to reach his own opinion as to whether Rule 6A is breached. Presumably guidance will be offered by the Home Office, but the AEA is concerned that without clear advice there will be inconsistencies in decisions reached by returning officers.⁷³ Under regulations yet to be made the returning officer will have received a current list of registered parties from Companies House to assist with decisions, as shown overleaf, if this is still the case but it is not clear how registrations immediately before an election will be communicated ; only parties which have registered before the date of the notice of elections (by Day 3 of the Parliamentary electoral timetable) can benefit. Last minute applications may be disadvantaged if a candidate wishes to stand for a new party as opposed to being an independent. Arguably a candidate might consider himself disadvantaged if he is not able to use a logo on the ballot paper, and/or the description on the ballot paper was circumscribed by the need to avoid associations with registered parties

Rule 19 is amended to allow the candidates to make a request to the Returning Officer for the use of the party emblem; the application must be received by the end of the period for the delivery of nomination papers. Finally the directions on the printing of ballot papers set out in the Appendix to the Rules are amended so that a new form of ballot paper is substituted, which includes emblems for registered parties, which must not be more than 2 centimetres square: The registrar is required to decide on the registration of emblems under the criteria set out in Clause 3, which includes the requirement that they be in black and white only. The AEA has asked for the emblems to be available in camera ready artwork for the printing of ballot papers, and have questioned whether they will be large enough for the partially sighted. The emblems will be protected for the purpose of the nomination paper and ballot paper only, and the Bill will not cover their use in general party literature. The Bill prescribes the form of the ballot paper as follows:

⁷³ Charter 88, in its briefing, emphasised the need for standard criteria across the country

VOTE FOR ONE CANDIDATE ONLY

1	<p>BASWRA Paresh Baswra 20 Kincade Road, Small Heath, Birmingham B10 9JG Liberal Democrat</p>	
2	<p>CRANLEY Alana Cranley 4 Kennil Road, Edgware, Middx. HA8 5JJ Green Party</p>	
3	<p>EDGBASTON Richard Edgbaston 6 Tagwood Lane, Small Heath, Birmingham B10 0BH The Stop the By-Pass Candidate</p>	
4	<p>GUNNIL-WALKER Roger Gunnil-Walker 33 Horsemeadow Lane, Sheldon, Birmingham B25 3GD The Labour Party Candidate</p>	
5	<p>SMITH CATHERINE ANGELINA Smith 21 Terminal Grove, Selly Oak, Birmingham B32 5JP Independent</p>	
6	<p>SMITH KEITH JAMES Smith The Links, 3 Kingsdown Road, Birmingham B44 4JN The Conservative Party Candidate</p>	

There are no other provisions to alter the form or typeface of the ballot.

IV Party Election Broadcasts

The allocation of time between the parties in respect of party election broadcasts (PEBs) is made by the broadcasters. The Producers' Guidelines apply in respect of the BBC, and the ITC is required to determine the rules under S.36 of the *Broadcasting Act 1990*. Allocation has been related both to the level of support at previous elections and to the number of candidates nominated. A party which has 50 candidates for a Parliamentary election is entitled to one broadcast, and in 1996 the proven electoral support test was dropped for minor parties. The Broadcasters' Liaison Group was formed in June 1997 to receive representations directly from the various political parties. This replaced the Committee on Political Broadcasting which operated through the secretary to the Chief Whip. The ITC and BBC, together with S4C and the Radio Authority produced a consultation paper in January 1998 proposing reforms of the party political broadcasting system⁷⁴. It sought views on a variety of issues, including a higher threshold of one sixth of all seats contested for minor parties; at the 1997 election eight parties not currently represented in Parliament qualified for a PEB under the 50 seat rule, and of these no party got more than 2.6 per cent of the total vote - seven got less than 0.3 per cent. The consultation period has now closed but no final decisions on the proposals have been taken.

Clause 14 and Schedule 3 of the Bill prohibits broadcasters from including PEBs from an unregistered party, but makes no other changes to the system of PEBs. The fact of registration will not in itself give an entitlement to a broadcast. The requirement to register to qualify for a PEB is presumably an inducement to parties to apply for registration.

V Security at party conferences⁷⁵

Proposals to make funds available to assist with the provision of security at party conferences were first announced on 25 July 1986, in a written answer from the then Prime Minister, Margaret Thatcher.⁷⁶ She said:

I am aware that since the bomb at the Grand Hotel, Brighton, in 1984, a number of heavy security costs, especially to do with searching, are now incurred by political parties in connection with their conferences. In the view of the Government, the continuation of party conferences is essential to the public interest and the costs of these exceptional precautions, which will not be necessary in every case, should

⁷⁴ *Consultation paper on the Reform of Party Political Broadcasting*

⁷⁵ Supplied by Mary Baber, Home Affairs Section

⁷⁶ HC Deb Vol 102 c614W 25 July 1986

not be borne entirely by the parties themselves. Following discussions through the usual channels, therefore, the Government propose that a contribution towards these expenses should be made from public funds

Under the Government's proposals the parties that would qualify for assistance would be those eligible under the scheme for financial assistance to opposition parties in their parliamentary work (the "short money" scheme) together with the Government parties, but the scheme would not apply to conferences in Northern Ireland, where the arrangements for security are somewhat different.

It is proposed that payments from public funds should be made retrospectively against expenses incurred on specific measures, on the basis of certification provided by the chief officer of police whose force had been responsible for assessing the level of threat and the security measures required in consequence.

In a written answer on 23 November 1992 the then Prime Minister, John Major, said that in the three years from 1989 to 1991 claims under this scheme had been made by the Conservative Party for £274,500, £270,500 and £330,000 respectively. Over the same period the Labour Party had made claims for £70,500, £76,900 and £90,500 respectively⁷⁷.

In a written answer of 14 July 1997 the Home Office minister, Alun Michael said the Government was also making funds available to individual police authorities to alleviate the cost burden of extra policing during party conferences⁷⁸. He said Sussex police authority had been offered an additional £750,000 to help meet the costs of safeguarding national security at the Labour Party conference in Brighton in October 1997. Lancashire police authority had been offered a similar amount towards the cost of policing the Conservative party conference in Blackpool. He added that no applications for additional funds had been received from police authorities in England and Wales in whose areas the conferences of other parties were to be held.

Section 170 of the *Criminal Justice and Public Order Act 1994* provided statutory authority for the making of payments from public funds to cover security costs at party conferences. It permits the Home Secretary, or the Secretary of State for Scotland, with the consent of the Treasury, to pay grants from central funds towards expenditure incurred by a "qualifying political party", or by a person acting for such a party, on measures taken for the protection of persons or property in connection with a conference held in Great Britain for the purposes of the party. The measures must be certified by a chief officer of police as having been appropriate. A political party is a "qualifying political party" if, at the last general election before the expenditure was incurred:

⁷⁷ HC Deb Vol 214 c456W 23 November 1992

⁷⁸ HC Deb Vol 298 c31W 14 July 1997

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- a) at least two members of the party were elected to the House of Commons, or
- b) one member of the party was elected to the House of Commons and not less than 150,000 votes were given to candidates who were members of the party⁷⁹

Clause 15 of the *Registration of Political Parties Bill* seeks to amend section 170 of the 1994 Act by requiring that qualifying political parties should also be registered under the provisions of the Bill in order to qualify for central funds to cover security costs at party conferences.

⁷⁹ s170(3) *Criminal Justice and Public Order Act 1994*