

# **POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: The Electoral Commission**

##### ***Sections 1 to 4 and Schedules 1 and 2 : Establishment of Electoral Commission and bodies with related functions***

35. Sections 1 to 4, together with Schedules 1 and 2, make provision for the establishment and constitution of the Electoral Commission, the Speaker's Committee and the Parliamentary Parties Panel. The Electoral Commission will be a body corporate independent of any government department and will report directly to Parliament. The National Audit Office (established under section 3 of the National Audit Act 1983) is an example of a body which has a similar relationship to government and Parliament. The arrangements for the appointment of Commissioners are modelled upon those for the appointment of the Comptroller and Auditor General under section 1 of the 1983 Act.
36. Electoral Commissioners are to be appointed by Her Majesty on the presentation of an Address from the House of Commons. The procedure for their appointment also requires consultation with the leaders of each registered political party with two or more sitting Members of the House of Commons. The number of Commissioners is to be from five to nine. It is envisaged that the Commission's membership will rise to nine when the functions of the Parliamentary and Local Government Boundary Commissions are transferred to the Commission under sections 16 and 18 to 20 of the Act. The Commissioners will enjoy substantial security of tenure. Under *subsection (3) of section 3* appointments will be for up to ten years with, under *subsection (5)*, the possibility of re-appointment. An Electoral Commissioner may only be removed from office on an Address of the House of Commons to that effect and such an Address may only be moved if the Speaker's Committee has presented a report stating that the Committee is satisfied that one or more of the grounds for removal, specified in *paragraph 3(5) of Schedule 1*, has or have been made out.
37. To ensure the independence of the Electoral Commission from political parties *subsection (4) of section 3* provides that no person may be appointed as an Electoral Commissioner if he is a member of a registered party or, in the last ten years, has been an officer or employee of a party, or held a relevant elective office, or been named as a donor in a register of donations maintained by the Commission. A Commissioner will cease to hold office if he is nominated as a candidate at a relevant election; takes up any office or employment with a registered party, recognised third party or permitted participant; is named as a donor to one of the aforementioned organisations; or becomes a member of a registered party (*paragraph 3(3) of Schedule 1*).
38. *Section 2* establishes the Speaker's Committee which will have general oversight of the exercise of the Commission's functions and, in particular, responsibility for approving its budget and five-year corporate plan. Its role will be similar to that of the Public

Accounts Commission (established by section 2 of the National Audit Act 1983) in relation to the National Audit Office. The Committee will be chaired by the Speaker of the House of Commons. There will be eight other members, namely, the Home Secretary, a Minister for Local Government, the Chairman of the Home Affairs Select Committee and five Members of the House of Commons appointed by the Speaker.

39. The Act's provisions in relation to the funding and financial accountability of the Electoral Commission are intended to balance the need to ensure the Commission's financial independence from the government of the day with appropriate safeguards for ensuring proper financial control. Under *paragraphs 14 and 15 of Schedule 1* the Commission will be required to produce both an annual estimate of its income and expenditure and, each year, a five-year plan covering its aims, objectives and resource requirements over that period. Both will be subject to the approval of the Speaker's Committee which, in examining the estimate and five-year plan, will have regard to whether they are consistent with the economical, efficient and effective discharge by the Commission of its functions. The Committee may make modifications to the estimate or plan insofar as they are appropriate in achieving those objectives.
40. In examining the Commission's annual estimate and five-year plan, the Speaker's Committee will be required both to consult and to have regard to the advice of the Treasury and also to have regard to reports on examinations which the Comptroller and Auditor General will be required to undertake annually (under *paragraph 16 of Schedule 1*). It is intended that it should be possible for the Comptroller and Auditor General in any particular year to examine only selected aspects of the Commission's work, for example its voter education functions.
41. Both the estimate and the five-year plan will be laid before Parliament. The Electoral Commission will also be required to prepare annual accounts in accordance with Treasury directions. These accounts will be examined and certified by the Comptroller and Auditor General before being laid before Parliament.
42. Parliament's scrutiny of the work of the Commission will also be facilitated by the requirement that the Commission must lay before Parliament an annual report on the performance of its functions (*paragraph 20 of Schedule 1*). The Speaker's Committee, too, will be under an obligation to report at least annually to the House of Commons on the exercise of its functions (*paragraph 1 of Schedule 2*). Such reports will include the Committee's reasons for making any modifications to the annual estimates or five-year plan submitted by the Commission.
43. *Section 4* establishes the Parliamentary Parties Panel. The panel will be composed of a representative from each of those political parties with two or more sitting MPs (in the current Parliament there are eight such parties: Labour, Conservative, Liberal Democrat, Ulster Unionist, Scottish National Party, Plaid Cymru, Social Democratic and Labour Party and Democratic Unionist Party). *Subsection (2)* specifies that the function of the panel shall be to submit representations or information to the Electoral Commission about such matters affecting political parties as the panel think fit. The Commission is required to consider any representations or information they receive from the Panel but is not obliged to act on them (*subsection (3)*).

### **Commission's general functions**

44. Sections 5 to 13 provide the Electoral Commission with a broad range of functions primarily in relation to the oversight of electoral matters in the United Kingdom.

### ***Section 5 : Reports on elections and referendums***

45. *Section 5* requires the Commission to prepare and publish reports on the administration of elections to the United Kingdom, European and Scottish Parliaments and to the Welsh and Northern Ireland Assemblies and of referendums to which Part VII of the Act applies (that is, a referendum held throughout the United Kingdom or one or more of its

constituent parts, or in one or more of the nine English regions specified in Schedule 1 to the Regional Development Agencies Act 1998). *Subsection (3)* additionally provides for the Commission, if requested to do so by the National Assembly for Wales, to report on referendums held under section 36 of the Government of Wales Act 1998. (Section 36 of the 1998 Act empowers the National Assembly for Wales to hold a poll for the purpose of ascertaining the views of the public about whether or how any of the Assembly's functions should be exercised.)

### ***Section 6 : Reviews of electoral and political matters***

46. While legislation on electoral matters will remain the responsibility of the government, *section 6* provides for the Commission to keep under review and report on matters relating to elections and referendums, the redistribution of parliamentary and local government boundaries, the regulation and funding of political parties, political advertising and the law relating to all such matters. While the Commission will be expected to exercise its own initiative in reviewing electoral law, there may also be particular issues which the government of the day considers should be examined as a matter of priority. *Subsection (2)* therefore provides the Secretary of State with a power to require the Electoral Commission to review and report upon any such matter within a prescribed timescale.

### ***Section 7 : Commission to be consulted on changes to electoral law***

47. *Section 7* identifies a number of instrument-making powers under existing electoral law which are now to be exercised by the Secretary of State only after consulting the Electoral Commission. These powers are generally concerned with the administration of elections – for example, powers to designate returning officers for elections and to specify arrangements for the conduct of local government elections and elections to the devolved legislatures. The extant instruments made under the statutory provisions listed in *subsection (2)* are:

- a) The European Parliamentary Elections Regulations 1999 ([SI 1999/1214](#));
- b) The European Parliamentary Elections (Returning Officers) Order 1999 ([SI 1999/948](#));
- c) The Returning Officers (Parliamentary Constituencies) (England) Order 1995 ([SI 1995/2061](#), as amended), the Returning Officers (Parliamentary Constituencies) (Wales) Order 1996 ([SI 1996/897](#)) and the Returning Officers (Parliamentary Constituencies) (Scotland) (No.2) Order 1996;
- d) The Local Elections (Principal Areas) Rules 1986 ([SI 1986/2214](#), as amended); the Local Elections (Parishes and Communities) Rules 1986 ([SI 1986/2215](#), as amended); and the Parish and Community Meetings (Polls) Rules 1987 ([SI 1987/1](#), as amended);
- e) The Representation of the People Regulations 1986 ([SI 1986/1081](#), as amended), the Representation of the People (Scotland) Regulations 1986 ([SI 1986/1111](#), as amended) and the Representation of the People (Northern Ireland) Regulations 1986 ([SI 1986/1091](#), as amended);
- f) The National Assembly for Wales (Representation of the People) Order 1999 ([SI 1999/450](#)). No order has yet been made under section 36(4) or (5) of the Government of Wales Act 1998;
- g) The Scottish Parliament (Elections etc.) Order 1999 ([SI 1999/787](#));
- h) No order has yet been made under section 34 of the Northern Ireland Act 1998.
- i) No order has yet been made under section 17A(3) of the Greater London Authority Act 1999.

***Section 8 : Powers with respect to elections exercisable only on Commission's recommendation***

48. *Section 8* specifies a number of functions of the Secretary of State which will be exercisable only upon the recommendation of the Commission. *Subsection (1)* provides that one such function is that of giving directions to registration officers under section 52(1) of the Representation of the People Act; hitherto this power has not been exercised. *Subsection (3)* identifies a number of instrument-making powers to set limitations on expenses by candidates and parties at elections. The Secretary of State is empowered, by *subsection (2)*, to vary the monetary limits to take account of inflation, but any more substantial variation can only be made on a recommendation of the Commission.
49. The extant instruments made under the statutory provisions listed in subsection (3) are:
- a) Article 3 of the Greater London Authority Election (Expenses) Order 2000 (SI 2000/789) sets limits on election expenses by candidates at elections to the Greater London Authority;
  - b) Articles 41 and 42 of the Scottish Parliament (Elections etc.) Order 1999 (SI 1999/787) and Articles 46 to 48 of the National Assembly for Wales (Representation of the People) Order 1999 (SI 1999/450) set limits on expenses by candidates and registered parties at elections to the Scottish Parliament and Welsh Assembly respectively;
  - c) Regulation 15 of the European Parliamentary Elections Regulation 1999 (SI 1999/1214) sets limits on election expenses by registered parties at elections to the European Parliament. Section 76 of the Representation of the People Act 1983 as applied, with modifications, by Schedule 1 to the European Parliamentary Elections Regulations 1999 sets limits on election expenses by individual candidates.

***Section 9 : Involvement of Commission in changes in electoral procedures***

50. *Section 9* provides for the involvement of the Electoral Commission in pilot schemes to test new electoral procedures conducted under section 10 of the Representation of the People Act 2000. Section 10 of the 2000 Act enables local authorities to conduct pilot schemes, with the approval of the Secretary of State, to test alternative procedures as to when, where or how voting at local government elections is to take place, or how the votes cast at such elections are to be counted. Section 9 enables the Commission to co-sponsor particular pilot schemes in conjunction with a local authority. The section also confers on the Commission the functions in relation to pilot schemes and the roll-out of successfully piloted electoral innovations which are set out in sections 10 and 11 of the 2000 Act, as amended by paragraphs 16 and 17 of Schedule 21 to the Act.

***Section 10 : Giving of advice and assistance***

51. *Section 10* empowers the Commission to provide advice and assistance to local authorities, the devolved administrations and international bodies. Under this provision the Commission could, for example, provide assistance to the National Assembly for Wales with the conduct of a poll under section 36 of the Government of Wales Act 1998, to the Scottish Executive with a review of aspects of the law in respect of local elections in Scotland and to the United Nations or the Commonwealth with the organisation or monitoring of elections in another member state.
52. *Subsection (3)* also enables the Commission to provide advice and assistance to registration and returning officers, registered political parties, recognised third parties (within the meaning of section 88), permitted participants in a referendum campaign (within the meaning of section 105), and others. The Commission is expected to take over from the Home Office the functions of promoting best practice in the way in which

registration and returning officers discharge their functions under the Representation of the People Acts and other enactments relating to elections.

### ***Section 11 : Broadcasters to have regard to Commission's views on party political broadcasts***

53. *Section 11* provides that the Commission's broad oversight of the way elections are conducted should extend to providing guidance on party political broadcasts. At present, sections 36 and 107 of the Broadcasting Act 1990 provide for the Independent Television Commission and the Radio Authority to draw up conditions requiring a licence holder both to include party political broadcasts in its services and to observe any rules in relation to party political broadcasts which the Commission or Authority may determine. The Independent Television Commission and the Radio Authority may determine the political parties on whose behalf party political broadcasts may be made and the length and frequency of such broadcasts. The British Broadcasting Corporation and Sianel Pedwar Cymru are not subject to any similar statutory requirement, but nonetheless provide air time for party political broadcasts as part of their role as public service broadcasters.
54. The Neill Committee suggested that, while it should not be for the government to direct that broadcasters provide party political broadcasts, there could be a role for the Electoral Commission in putting forward non-binding views in relation to, for example, the scheduling of broadcasts. Section 11 requires the Independent Television Commission and the Radio Authority, in determining the rules provided for under sections 36 and 107 of the Broadcasting Act 1990, to have regard to the views of the Electoral Commission. *Subsection (3)* would place the British Broadcasting Corporation and Sianel Pedwar Cymru, in determining their policy with respect to party political broadcasts, under a similar duty. It is not intended that these provisions should give the Commission a prescriptive role in relation to editorial and broadcasting decisions, which are properly a matter for the broadcasters themselves, nor is it intended that broadcasters should be required to seek the views of the Commission before deciding whether to transmit each and every party political broadcast.

### ***Section 12 : Policy development grants***

55. *Section 12* provides for the Commission to develop and, once it is approved by the Secretary of State, administer a scheme for the payment of policy development grants to registered political parties. It will be for the Commission to propose, and the Secretary of State to approve, the formula or criteria by which such grants are allocated to eligible political parties. *Subsection (1)* restricts the making of such grants to parties which are represented by at least two sitting Members of the House of Commons (in the current Parliament there are eight such parties: Labour, Conservative, Liberal Democrat, Ulster Unionists, Scottish National Party, Plaid Cymru, Social Democratic and Labour Party and Democratic Unionist Party). The purpose of such grants will be restricted to the development of policies which are to form part of individual parties' political platforms; it is not intended that they be used for the development of parties' internal policies or in respect of their organisation and administration or of campaigning. *Subsection (8)* limits the total amount of disbursements under such a scheme to £2 million in any financial year.

### ***Section 13 : Education about electoral and democratic systems***

56. *Section 13* of the Act provides for the Commission to have a role to play in encouraging voters' participation in the democratic process by enabling it both to carry out programmes of education or information and to provide financial assistance to other bodies carrying out such programmes. The scope of this section is intended to be such that voter education is not restricted to addressing the mechanics of exercising the vote but is also able to address, through attention to the role of government and other elected bodies both at local, national and European level, the purpose and importance

of exercising the vote. Any programmes conducted by the Commission under this section may only explain any current or pending electoral systems or systems of local and national government. *Subsection (2)* defines a ‘pending’ system as a system that has been enacted by Parliament but is not yet in force. The Commission will not be empowered to put the case for alternative electoral systems which have not been enacted by Parliament.

## **Commission’s electoral boundary functions**

### ***Section 14 : Boundary Committees***

57. *Section 14* requires the Electoral Commission to establish four Boundary Committees, one for each part of the United Kingdom. These Boundary Committees will take on the functions of the Parliamentary and Local Government Boundary Commissions transferred to them under the provisions of sections 16 and 18 to 20. Each Boundary Committee will be chaired by an Electoral Commissioner and include at least two other members who must be either Electoral Commissioners or Deputy Electoral Commissioners (appointed under the provisions of *section 15*). The minimum membership of three for each Boundary Committee reflects the size of the Parliamentary Boundary Commissions (paragraph 2 of Schedule 1 to the Parliamentary Constituencies Act 1986 provides for the appointment of four Commissioners, but the Chairman in each case, the Speaker of the House of Commons, does not take part in the Commissions’ deliberations). Where the functions of a Local Government Boundary Commission are transferred to a Boundary Committee, the minimum membership of that committee will be increased to five (the Local Government Commission for England currently has a membership of seven). *Subsection (6)* provides for the appointment of assessors to the Boundary Commissions who will provide expert advice on population changes and on mapping. The subsection mirrors the equivalent provision in respect of the Parliamentary Boundary Commission contained in paragraph 5 of Schedule 1 to the Parliamentary Constituencies Act 1986 (Schedule 22 to the Act provides for the repeal of this provision).

### ***Section 16 : Transfer of functions of Boundary Commissions***

58. *Section 16* provides for the transfer of the functions of the four existing Parliamentary Boundary Commissions to the Electoral Commission. Although originally established by the House of Commons (Redistribution of Seats) Act 1949, the Parliamentary Boundary Commissions are currently established under section 2(1) of the Parliamentary Constituencies Act 1986. Section 3 of that Act requires each of the Boundary Commissions for England, Scotland, Wales and Northern Ireland to “keep under review the representation in the House of Commons of the part of the United Kingdom with which they are concerned”. In addition to their functions under the Parliamentary Constituencies Act, the Boundary Commissions are also responsible under the devolution legislation for the review of regional boundaries for elections to the devolved legislatures in Scotland and Wales.
59. *Subsections (1) and (2)* of section 16 give effect to Schedule 3. *Part I of Schedule 3* amends the Parliamentary Constituencies Act 1986 so as to set out the respective roles and functions of the Electoral Commission and the Boundary Committees in relation to the review of parliamentary constituency boundaries. *Paragraph 2 of Schedule 3* amends section 3 of the 1986 Act so as to vest the function of keeping parliamentary constituencies under review and submitting reports to the Secretary of State in the Electoral Commission itself. *Paragraph 3 of Schedule 3* inserts a new section 3A into the 1986 Act which specifies that, where the Commission intends to prepare and submit a report, the Boundary Committees will carry out a review of their respective areas and submit proposals for recommendations for inclusion in the report. New section 3A(4) requires the Boundary Committees to comply with any directions given to them by the Commission, although any such directions would need to be consistent with the rules for the redistribution of seats in Schedule 2 to the 1986 Act.

60. On receipt of a Committee's report new section 3A(3) of the 1986 Act sets out five possible courses of action open to the Electoral Commission. It could:
- accept the proposed recommendations;
  - accept the proposed recommendations subject to modifications agreed with the Committee;
  - reject the proposed recommendations and require the Committee to reconsider its proposals;
  - reject the proposed recommendations and require the Committee to undertake another complete or part review; or
  - in the case of a review into part only of the area for which the Committee is responsible, take no further action.
61. *Paragraph 4 of Schedule 3* amends section 4 of the 1986 Act so as to remove the power of the Secretary of State to modify the recommendations of the Electoral Commission proposing changes to parliamentary constituency boundaries. However, it would remain open to the Secretary of State to modify the Commission's recommendations if the initial order seeking to give effect to them was rejected by either House of Parliament.
62. *Paragraphs 5 to 7 of Schedule 3* make consequential changes to sections 5 and 6 of and Schedule 2 to the 1986 Act. It will be for the Electoral Commission itself to give notice of the start of a review but for the relevant Boundary Committee to publicise the effects of the proposed recommendations. Where the Commission intends to modify or reject a Boundary Committee's recommendations it will be under a duty to have regard to any representations which follow publication of a Committee's recommendations.
63. *Part II of Schedule 3* make equivalent amendments to Schedule 1 to the Government of Wales Act 1998 and Schedule 1 to the Scotland Act 1998 (which make provision in respect of the review of boundaries in relation to elections to the National Assembly for Wales and the Scottish Parliament).

### ***Section 18 : Transfer of functions of Local Government Commission for England***

64. *Subsection (1)* empowers the Secretary of State (in this case the Secretary of State for the Environment, Transport and the Regions) to transfer the functions of the Local Government Commission for England to the Electoral Commission or to the Boundary Committee for England.
65. The Local Government Commission for England was established by section 12 of the Local Government Act 1992 to carry out the functions given to it by Part II of that Act. The principal functions of the Commission under the 1992 Act are to review local government areas in England and make recommendations to the Secretary of State on whether or not changes to local authority structure, boundaries and electoral arrangements would be desirable. The Commission also has functions in connection with the review of parishes under sections 13 and 19 of the Local Government and Rating Act 1997. Finally, the Commission has functions in relation to the electoral arrangements for the Greater London Authority under Schedule 1 to the Greater London Authority Act 1999.
66. *Subsection (2)* provides that a transfer of functions order may make provision for, amongst other things, transferring to the Commission any relevant functions of the Secretary of State, terminating or modifying any such functions, and preventing the Secretary of State from exercising any relevant function unless he has obtained the advice of the Electoral Commission. It is proposed to exercise the order-making power in such a way as to transfer to the Electoral Commission full responsibility for reviewing electoral arrangements (that is, in respect of wards and county divisions)

and implementing any changes. In order that the Commission may implement changes to electoral boundaries it will be necessary to confer a power on the Commission to make statutory instruments (as provided for in *subsection (4)*). Responsibility for making changes to local authority administrative boundaries or to the structure of local government would continue to rest with the Secretary of State although any such changes could only be made with the advice of the Electoral Commission. The existing powers of the Secretary of State to direct the Local Government Commission for England to conduct a review of the structure and administrative boundaries of local authorities in a given area will be replaced by a power to request the Electoral Commission to undertake such a review. The cost of any structure or boundary review will be met by the Secretary of State (*subsection (9)*). *Subsection (5)* provides that in allocating transferred functions between the Electoral Commission and the Boundary Committee for England the provisions of an order made under *subsection (1)* must broadly correspond to the arrangements made for the allocation of functions between those bodies in respect of the review of parliamentary boundaries by the Parliamentary Constituencies Act 1986 (as amended by Part I of Schedule 3).

### ***Section 19 : Transfer of functions of Local Government Boundary Commission for Scotland***

67. *Subsection (1)* empowers Scottish Ministers to transfer to the Electoral Commission, or the Boundary Committee for Scotland, any of the functions of the Local Government Boundary Commission for Scotland (“the Scottish Commission”). The Scottish Commission was established by section 12 of the Local Government (Scotland) Act 1973. The principal functions of the Scottish Commission are to review local government and electoral arrangements in Scotland, with a view to considering whether or not to make proposals to Scottish Ministers for effecting changes which appear to the Commission to be desirable in the interests of effective and convenient local government. The scope of the order-making power is broadly similar to the one contained in section 18.

### ***Section 20 : Transfer of functions of Local Government Boundary Commission for Wales***

68. *Subsection (1)* empowers the National Assembly for Wales to transfer to the Electoral Commission, or the Boundary Committee for Wales, the functions of the Local Government Boundary Commission for Wales (“the Welsh Commission”). The Welsh Commission was established by section 53 of the Local Government Act 1972 to carry out the functions given to it by Part IV of that Act, as amended by the Local Government (Wales) Act 1994. The principal functions of the Welsh Commission are to review local government areas and electoral arrangements in Wales, with a view to considering whether or not to make proposals to the National Assembly for Wales for effecting changes which appear to the Commission to be desirable in the interests of effective and convenient local government. The scope of the order-making power is broadly similar to the one contained in section 18.

## **Part II: Registration of political parties**

69. The purpose of Part II of the Act is to put in place arrangements for bringing political parties within the scheme of control set out in Parts III to V for regulating their income and expenditure. These arrangements take the form of a scheme of registration, building upon the existing registration arrangements established under the Registration of Political Parties Act 1998. This Act repeals much of the 1998 Act (see Schedule 22), and this Part of the Act re-enacts its provisions but with significant modifications.

### ***Section 22 : Parties to be registered in order to field candidates at elections***

70. The registration scheme established by the Registration of Political Parties Act 1998 is voluntary in nature. If the controls on income and expenditure set out in this Act are



to be effective, however, then the means by which parties are brought within the ambit of those controls must, to all intents and purposes, be binding upon those parties which it is intended should be subject to those controls. The intention is that the controls on political parties' income and expenditure should apply to any organisation that has a candidate at a relevant election. The purpose of *section 22* is to provide the mechanism by which such organisations are brought within the registration scheme. Its effect is to require that an organisation wishing to put up candidates at a relevant election, as defined in *subsection (5)*, must be registered as a political party with the Electoral Commission. It does so by providing that a person may only stand as a candidate at a relevant election if his nomination paper is accompanied by a certificate authorising his candidature issued by, or on behalf of, the nominating officer of a registered party or if his nomination paper either gives the description "Independent" or gives no description whatsoever. Special provision is, however, made for the Speaker of the House of Commons who may continue to seek re-election using the description "The Speaker seeking re-election". In the case of elections to the Scottish Parliament, the National Assembly for Wales or the Greater London Assembly under the additional member system, a party will only be able to be nominated to stand if it is a registered party; this rule also applies to elections to the European Parliament in Great Britain under the regional list system of election (see *subsection (1)(c)*). The restrictions on candidates' descriptions do not apply to parish council elections in England or community council elections in Wales (*subsection (4)*).

### ***Section 23 : The new registers***

71. Responsibility for the registration of political parties will transfer from the Registrar of Companies (as currently provided for under section 1 of the Registration of Political Parties Act 1998) to the Electoral Commission. The existing single register of political parties will be replaced by two new registers: the Great Britain register and the Northern Ireland register (*subsection (2)*). A separate register of Northern Ireland parties is required in order to identify those political parties which would attract the special provisions in respect of the control of donations as provided for in any order made under section 70 of the Act.
72. A party registered in the Great Britain register will either be registered throughout the whole of Great Britain or alternatively have its registration confined to one or two parts. The register will also signify whether a party is a minor party, that is a party that intends to contest only parish or community council elections (*subsection (3)*).
73. A party may be registered in both the Great Britain register and the Northern Ireland register, but in such a case is treated as two separate registered parties (*subsection (4)*) and must organise its financial affairs in such a way that the affairs of the Great Britain registered party are conducted separately from the Northern Ireland registered party (*subsection (5)*).

### ***Section 24 : Office-holders to be registered***

74. *Subsection (1)* requires each registered party to have three registered office-holders, namely a registered leader, registered nominating officer and registered treasurer. The same person may be registered as the holder of two or three of these offices. *Subsections (2) and (3)*, which relate to the registered leader and registered nominating officer respectively, reproduce the provisions in paragraphs 4(2) and 5(2) of Schedule 1 to the Registration of Political Parties Act 1998. The requirement for registered parties to have a registered treasurer is new. *Subsection (4)* provides that the registered treasurer is to be responsible for compliance with the accounting requirements in Part III and the controls on donations in Part IV and, unless a person is registered as the party's campaigns officer, with the controls on election and referendum expenditure in Parts V to VII. It is made an offence to register as the treasurer of a party a person who, within the past five years, has been convicted of an offence under the provisions of the Act or in connection with a relevant election.

**Section 25 : Parties with campaigns officers**

75. Under *section 25* a registered party may elect to register a campaigns officer who would be responsible (in place of the registered treasurer) for compliance on the part of the party with the controls on election and referendum expenditure in Parts V to VII. Relevant provisions of the Act, particularly those in Parts V to VII, are modified so that references to a party's registered treasurer are to be read as references to a party's campaigns officer.

**Section 26 : Financial structure of registered parties : adoption of scheme**

76. It is intended that the registration process should serve to identify exactly what constitutes a particular registered party for the purposes of these controls. Parties in the United Kingdom are constituted in different ways. Some have a federal structure while others are more centralised. Party structures may also feature relationships between a central organisation and affiliated or associated bodies which may also have a separate and independent existence of their own and which may not necessarily be wholly comprised of members of the party in question. In some instances it may be more appropriate to regard such affiliates or associated bodies, for the purposes of the controls on party funding, as donors to the party rather than as a constituent part of the party apparatus.

77. *Section 26* is, therefore, intended to enable the Electoral Commission to pin down those constituent parts of a registered party's organisation which are to be required to comply, whether separately or through the party's central organisation, with the controls set out in Parts III to VII of the Act. Each party applying for registration must propose a scheme setting out the arrangements for regulating the financial affairs of the party and the scheme must be approved by the Electoral Commission before the application is granted. Where the Commission is not satisfied that the proposed scheme properly reflects the organisation of the party it may request that the proposed scheme be modified. The arrangements for the adoption of schemes in relation to those parties which are already registered under the Registration of Political Parties Act 1998 are set out in Part I of Schedule 23.

78. Under *subsection (8)*, certain organisations (namely, trade unions, friendly societies, industrial and provident societies and other bodies which may be specified by order) are not to be regarded as forming a constituent part of a party for the purposes of a scheme adopted under this section. As a result, money donated to such an organisation which is affiliated to a registered party would not be treated as a donation to that party. But a donation from such an organisation to the registered party (including an affiliation fee) would have to be treated as a donation to the party and not simply as an internal party transaction. The Registered Parties (Non-constituent and Non-affiliated Organisations) Order 2000 (SI 2000/3183) adds to the list of organisations which are not to be treated as part of a party for the purposes of this section.

*79Subsection (2)* provides for a distinction to be drawn between parties which are to be regarded for the purposes of the Act as a single unitary organisation and parties which are to be regarded as consisting both of a central organisation and of other units or organisations (for example constituency associations, local branches and women and youth organisations) which will have separate responsibility for their accounts. These subsidiary units or organisations are described as "accounting units". If a party scheme falls into the latter category the party will be required to adopt a scheme clearly identifying which parts of its organisation constitute its central organisation and which constitute its accounting units (*subsection (3)*).

80. *Subsection (7)* provides for the adoption of a replacement scheme, for example following changes to a party's structure. A replacement scheme cannot take effect until approved by the Electoral Commission.

**Section 27 : Financial structure of registered party : accounting units**

81. This section provides that where a party is a party with accounting units, the party is required to register a person as the treasurer of each separate accounting unit. A second officer of each accounting unit must also be registered; it will fall to that officer to take over the responsibilities of the treasurer of the accounting unit in the event of a vacancy arising in the post of treasurer.

**Section 28 to 33 : Registration**

82. *Sections 28 to 33* re-enact, with modifications, sections 2, 3, 4, 5 and 6(1) to (4) of the Registration of Political Parties Act 1998. Together with Parts I and II of Schedule 4, they set out the procedure for applying for the registration of parties and of their emblems and for making changes to the register. *Section 28* deals with the registration of parties. An application for registration will need to include a declaration which identifies that the party is seeking registration:

- (a) in both the Great Britain register and Northern Ireland register;
- (b) in the Great Britain register only;
- (c) in the Northern Ireland register only; or
- (d) in the Great Britain register only as a minor party.

A declaration within paragraphs (a), (b) or (d) must specify the part or parts of Great Britain in respect of which the party is seeking to be registered.

83. *Subsection (4)* of *section 28* sets out the grounds on which the Commission may refuse an application for registration. The first such ground (*section 28(4)(a)*) is that the applicant party's proposed registered name is, in the opinion of the Commission, either the same as that of a party which is already registered in the relevant register or likely to result in electors confusing that party with a party which is already registered in respect of the relevant part of the United Kingdom. If, for example, the Progressive Party was already registered in the Great Britain register but with its registration confined to England, the Commission would be obliged to refuse an application from another party seeking to be registered under the same name in any part of the Great Britain register, but could accept an application from a party applying to register in respect of Scotland alone as the 'Scottish Progressive Party'.
84. *Section 28(4)(f)* provides for an application to be refused if the applicant party proposes a name which includes any word or expression prohibited by an order made by the Secretary of State (see the Registration of Political Parties (Prohibited Words and Expressions) Order 2001 (SI 2001/82)).
85. *Sections 32(5) and 34(6), paragraph 1(2) and 8(2) of Schedule 4 and paragraph 11(2)(b) of Schedule 23* provide for the payment of fees in respect of an application for registration, an application to have a party's registered entry altered or an annual confirmation by a party of its registered particulars. The level of fees is prescribed by the Registration of Political Parties (Fees) Order 2001 (SI 2001/83).
86. A party's entry in the Great Britain or Northern Ireland register will now contain the following information:
- i) the registered name of the party;
  - ii) the address of the party's headquarters;
  - iii) the name of the party's registered leader, registered nominating officer registered treasurer and, if applicable, registered campaigns officer. If one person holds all three (or, as the case may be, four) offices, the party must name the holder of some other specified office in the party.

*These notes refer to the Political Parties, Elections and Referendums Act 2000 (c.41) which received Royal Assent on 30th November 2000*

- iv) where a party is a party with accounting units, the name and headquarters address of each accounting unit and the name of the treasurer and one other officer of each such unit;
- v) the registered emblems of the party;
- vi) the name and office address of up to twelve deputy treasurers (or deputy campaigns officers) (see section 74);
- vii) the date of registration;
- viii) any other information prescribed by the Electoral Commission in accordance with paragraph 6 of Schedule 4.

In the case of the Great Britain register the register will also show whether the party is a minor party and the part or parts of Great Britain in respect of which the party is registered.

87. *Section 31* requires the registered treasurer to notify the Commission of changes to the name or address of any of the party's registered officers, the address of the party's headquarters, the name of either of the registered officers of any accounting unit and the name and address of any accounting unit. Any change in the registered officers of the party must be notified within 14 days of the termination of the appointment (by death or otherwise) of the incumbent. All other changes must be notified to the Commission within 28 days of the change occurring. A party may apply for the other registered particulars of the party to be altered in accordance with the provisions of *section 30*.
88. *Section 32* requires the registered treasurer of a party to provide the Electoral Commission with an annual notification that the particulars of a party's entry in the register remain accurate and complete. The annual notification must also provide details of any changes to the party's constitution. This must be provided with the annual statement of accounts (see section 45).
89. It is possible, under the provisions of *section 33*, for a party to apply to be removed from the register. But removal is conditional upon the party declaring that it does not intend to have any candidates at any relevant election, as defined by section 22(5), and there is the additional safeguard that a party (other than a minor party) which is removed from the register in accordance with this section will nevertheless remain subject to the requirements of Parts III and IV of the Act in relation to its accounts and donations until the end of the financial year following the removal of the party's entry in the register.

#### ***Section 34 : Registration of minor parties***

90. *Section 34* makes provision for the registration of minor parties, that is parties which have made a declaration to the effect that they intend only to contest parish or community council elections. *Subsection (2)* disappplies in respect of a minor party those provisions in Part II relating to the registration of a treasurer or campaigns officer, together with sections 26, 27 and 36. The provisions of Parts III, IV and V are separately disappplied in the case of minor parties by sections 41(9), 50(9) and 72(10) respectively.

#### ***Section 35 : Request by Secretary of State***

91. *Section 35* re-enacts section 12 of the Registration of Political Parties Act 1998. Under section 12 of the 1998 Act the Registrar of Companies has been requested to send a copy of the register to returning officers at the time of a relevant election so that they can verify the names of registered parties.

#### ***Section 36 : Assistance by Commission for existing registered parties***

92. *Section 36* enables the Commission to provide financial and other assistance to existing registered parties to help them meet the initial costs involved in complying with the

provisions of Parts III and IV. Up to £700,000, in aggregate, may be allocated to existing registered parties whether in grants or benefits in kind (for example, a computer software programme for recording donations). The method of apportioning this sum to parties will be determined by the Commission in accordance with a scheme prepared by them.

### **Clauses 37 to 40 : Supplemental**

93. *Sections 37 and 39* re-enact sections 14 and 19 of the Registration of Political Parties Act 1998 respectively. They prevent broadcasters from transmitting a party political broadcast on behalf of a party which is not a registered party, and make it a criminal offence for any person knowingly or recklessly to provide the Electoral Commission with a false statement for the purpose of this Part of the Act. *Section 38* makes consequential amendments to the parliamentary elections rules set out in Schedule 1 to the Representation of the People Act 1983. *Section 39* defines terms used in Part II. The section re-enacts, with modifications, the interpretation section (section 22) of the Registration of Political Parties Act 1998.

### **Part III: Accounting requirements**

94. In paragraph 4.42 of their report, the Neill Committee recommended that the public should be entitled to have access to the annual accounts of income and expenditure of every political party and that this should be put on a statutory basis. Part III of the Act establishes a statutory scheme for this purpose. Many political parties already prepare, and some of them publish, annual accounts. A statutory scheme has, however, to start from scratch and quite detailed provisions are therefore required. Elements of the scheme are drawn from provisions of Part VI of the Charities Act 1993, which in turn are partly modelled on the Companies Act 1985.

#### ***Section 41 : Duty to keep accounting records***

95. *Section 41* requires the treasurer of a registered party to keep proper accounting records, as a basis for the preparation of an annual statement of accounts. The records must cover both the transactions which the party enters into and its assets and liabilities. They must be preserved for at least six years from the end of the financial year in which they are made (*subsection (4)*), or until the Electoral Commission has consented to their disposal following de-registration of the party (*subsection (5)*).
96. Political parties in the United Kingdom do not at present share a common accounting year. The Neill Committee recommended (recommendation 4) that the Commission should be able to prescribe a common accounting period. *Subsections (6)* and *(7)* confers the necessary power on the Electoral Commission to specify a common financial year, but it may also specify different financial years for different parties, which might be done so as to enable parties to retain their existing financial year.

#### ***Section 42 : Annual statement of accounts***

97. *Section 42* establishes a requirement to prepare an annual statement of accounts. *Subsection (2)* empowers the Electoral Commission to make regulations specifying the form and contents of a statement of accounts. The intention is that, over time, the Commission should be able to require best practice to be followed and ensure that the parties' accounts can be fairly compared with each other. The regulation-making power may be used, in particular, to specify information which is to be provided by way of notes to the accounts. The Commission could exercise this power to require, for example, that the notes to the accounts list all disclosable donations to the party in the period covered by the accounts.
98. The Commission may prescribe different requirements according to whether the income or expenditure of a party falls into one of three bands (up to £5,000; between £5,000 and £250,000; over £250,000). The intention is that, where a party has only a small turnover,

the Electoral Commission should be able to apply a 'light touch' regime requiring only a simple annual statement.

### ***Section 43 : Annual audits***

99. *Section 43* requires a party which has an annual income or expenditure exceeding £250,000 in any financial year (this threshold parallels that which applies to charities) must have its accounts audited within six months of the end of the financial year. The Electoral Commission may also require the accounts of any other party to be similarly audited within three months of it so directing. If a party fails to comply with an auditing requirement, the Commission may appoint a qualified auditor to audit the party's accounts and the cost will be recoverable by the Commission from the party concerned. *Subsection (6)* enables the Electoral Commission to make regulations about the appointment and removal of auditors and specifying the duties of auditors carrying out an audit in accordance with this section.

### ***Section 44 : Supplementary provisions about auditors***

100. *Section 44* provides for an auditor to have access to the party's records and to be entitled to require the party's treasurer or other party officers to provide necessary information and explanations. If access or information is denied, the Electoral Commission may give written directions requiring a person to provide an auditor with access or information and, if those directions are not complied with, the Commission can in the last resort apply to the High Court for the offending person to be dealt with as if he were in contempt of court.

### ***Section 45 : Submission of statements of accounts etc. to Commission***

101. *Section 45* requires the treasurer of a registered party to submit its statement of accounts (and, in appropriate cases, the auditor's report) to the Electoral Commission. Statements of accounts must be submitted within three months of the end of a party's financial year or, where the party's accounts are required to be audited, within six months and seven days of the end of the financial year. *Subsection (3)* allows the Commission to extend the period for submission of these documents in particular cases for any special reason. A party's registered treasurer must submit with the annual statement of accounts the notification (required under section 32(1)) detailing any changes which are needed to the party's entry in the relevant register of political parties.

### ***Section 46 : Public inspection of parties' statements of accounts***

102. *Section 46* requires the Electoral Commission to make parties' statements of accounts available for public inspection as soon as practicable following their receipt.

### ***Section 47 : Criminal penalty for failure to submit proper statements of accounts***

103. *Section 47* creates criminal offences for failure to comply with the provisions of Part III. The offences are intended to catch a failure to duly prepare, as well as a failure to duly deliver, a statement of accounts. *Subsections (2) and (3)* contain defences.

### ***Section 48 : Revision of defective statement of accounts***

104. *Section 48* makes provision for the revision of statements of accounts which do not comply with the Commission's regulations. The section is based on like provisions as to companies' accounts in sections 245 to 245B of the Companies Act 1985, as substituted by the Companies Act 1989.

***Section 49 and Schedule 5 : Division of responsibilities in case of party with accounting units***

105. *Section 49* has the result that where a party is a party with accounting units (as defined in section 26), the central organisation of the party and each of the party's accounting units are independently responsible for complying with the accounting requirements as set out in Part III. This means that, in the case of a national party with a network of constituency associations and ward-level branches, each association and branch will maintain their own accounting records and produce their own annual statements of accounts, thereby absolving the central organisation from having to produce omnibus accounts for the whole party. The provisions of sections 41 to 48 are applied, with adaptations, to accounting units by *Schedule 5*. Under *paragraph 6(1) of Schedule 5* the requirement to submit an annual statement of accounts to the Electoral Commission will only apply automatically to accounting units which have an income or expenditure exceeding £25,000. However, *paragraph 6(2)* enables the Electoral Commission to require any other accounting unit to send to the Commission its statement of accounts and any auditor's report. Only those statements of accounts submitted to the Commission are open for public inspection under the Act.

**Part IV: Control of donations to registered parties and their members etc.**

***Chapter I (Sections 50 to 53) : Donations to registered parties***

106. These sections, as a preliminary to the restrictions on the receipt of donations imposed under Chapter II and the reporting requirements imposed by Chapter III, define what does and does not constitute a "donation".

***Section 50 : Donations for the purposes of Part IV***

107. "Donation" is defined in *subsection (2)* as gifts of money and property (including money or property transferred to a party for consideration which is less than its value); the provision of any sponsorship in relation to the party; subscriptions and affiliation fees; money spent (other than by or on behalf of the party) to meet expenses incurred by the party; and loans, property, services and other facilities provided to the party on other than commercial terms. Anything given or transferred to an officer, agent, trustee or member of the party in that capacity will be regarded as having been given or transferred to the party, unless it is given solely for his own use or benefit (*subsection (6)*). A donation to a member or officer of a party for use otherwise than on the business of the party as such - for example, in assisting him or her in standing for an internal election - is subject to the separate controls in section 71 and Schedule 7. The definition of a "donation" applies to anything given or transferred to the party either directly or indirectly through a third person (*section 50(8)(a)*).

***Section 51 : Sponsorship***

108. *Section 51* defines what constitutes sponsorship for the purpose of Part IV. The definition covers any money or other property transferred to a party for the purpose of helping the party with meeting any defined expenses. *Subsection (2)* defines "defined expenses" as expenses incurred in connection with:
- (a) any conference, meeting or other event organised by or on behalf of the party;
  - (b) the preparation, production or dissemination of any publication; or
  - (c) any study or research.
109. However, by virtue of *subsection (3)*, the payment of an admission charge to any conference, meeting or other event, or the purchase price of any publication, does not constitute sponsorship. *Subsection (4)* confers power to amend by order the definition

of “defined expenses” in *subsection (2)* or the list of exempted items in *subsection (3)*. Such an order may only be made on the recommendation of the Electoral Commission.

### ***Section 52 : Payments, services etc. not to be regarded as donations***

110. *Section 52* specifies those payments or services to a party which are not to be regarded as a “donation”. Any donation whose value is £200 or less is to be disregarded (*subsection (2)(b)*). Also to be disregarded are policy development grants made to parties (under the provisions of section 12) and grants for security costs at party conferences. In addition, the definition of “donation” excludes the notional benefit to parties of air time for political party broadcasts, the use of public rooms at elections and the distribution of election addresses to electors, all of which facilities are provided free of charge. The definition also excludes the provision by an individual of his own services provided these are provided freely and in his own time (*subsection (1)(g)*). It is not intended that, for example, a voluntary officer of the party should be regarded as making a donation if, in their own time, they contribute professional services (such as accountancy) within their personal sphere of expertise. However, services provided free of charge by an individual who was nevertheless paid by his employer while providing those services will fall within section 50(2)(f) and thus count as a donation by the employer.
111. *Subsection (2)(a)* also excludes donations made for the purpose of meeting a candidate’s election expenses (which will continue to be the subject of a separate statutory return under the relevant provisions of the Representation of the People Act 1983, as augmented by section 130 and Schedule 16, and other enactments relating to elections).

### ***Section 53: Value of donations***

112. *Section 53* deals with the valuation of donations. Gifts of property are required to be valued at their market value, that is at the price they would fetch on their sale in the open market (see section 160(1)). Where money or property is transferred to a party for a consideration less than the market value of the property, the value of the donation is the difference between the value of the money or the market value of the property and the consideration provided by the party (*subsection (2)*). Similarly, where loans, property, services and other facilities are provided on other than commercial terms, their value will be taken to be the difference between their actual cost to the party and the cost which the party would have incurred if they had been provided on commercial terms (*subsection (4)*). In the case of any sponsorship, the value of the donation is to be taken to be the value of the money or property transferred to the party; the value of any benefit conferred on the sponsor is to be disregarded (*subsection (3)*).

## ***Chapter II (Sections 54 to 61) : Restrictions on donations to registered parties***

### ***Section 54 : Permissible donors***

113. This section introduces the concept of a “permissible donor”, as a means of prohibiting the foreign funding of political parties. *Subsection (1)* provides that a party may accept a donation only from a permissible donor and where the identity of the donor is known. The latter requirement is intended to cover not only cases where a donation is made anonymously but also where an identity has been given but is clearly fictional (and it is therefore impossible to establish that the donor is a permissible donor).
114. *Subsection (2)* specifies those sources of funding which are to be regarded as permissible. They include individuals registered in an electoral register; a company registered in the United Kingdom and incorporated in a member state of the European Union and which carries on business in the United Kingdom; a registered political party; a trade union; a building society; a limited liability partnership; a friendly society or industrial and provident society and any other unincorporated association which is carrying on business or other activities, and has its main office, in the United Kingdom.



Where a donation is in the form of a bequest it is sufficient that the deceased was on the electoral register at any time in the last five years prior to his death (*subsection (3)*).

115. *Subsections (4) and (5)* provide that where a person (“the principal donor”) makes a donation on behalf of two or more other persons the individual contribution of each will be treated as a separate donation for the purposes of controls on donations under this Part. The recipient party will therefore need to establish the identity of each separate donor (and to this end the principal donor will be under a duty to provide such information) and whether each constitutes a permissible source.

***Section 55 : Payments etc. which are (or are not) to be treated as donations by permissible donors.***

116. *Section 55* makes special provision in respect of donations from certain specified sources. By virtue of *subsection (2)* any payment to a party out of public funds (other than one of the payments listed in section 52(1)(a) and (b), which do not constitute donations) is to be regarded as a donation from a permissible donor. Such payments will include the financial assistance paid to opposition parties in the House of Commons (‘Short money’) and House of Lords (‘Cranborne money’). *Subsections (3) and (4)* provides that where a party receives a donation to meet the reasonable travel and subsistence expenses of a member or officer of the party for the purpose of undertaking an overseas visit, such a donation is to be regarded as being from a permissible donor, irrespective of whether the donor is one of those listed in section 54(2). By virtue of *subsection (5)* an “exempt trust donation” is to be regarded as a donation from a permissible source; the term is defined in section 162. *Subsection (6)* provides that a donation by a trustee, acting in his capacity as such, is to be regarded as a donation from an impermissible source unless the donation satisfies one of the criteria set out in the subsection. The inclusion of the reference to an unincorporated association, in subsection (6)(b)(ii), reflects the fact that such an association cannot hold property in its own right, so its assets are commonly held in and disbursed from a trust.

***Sections 56 and 57: Acceptance or return of donations***

117. Upon receipt of a donation it will be incumbent upon the party to take all reasonable steps to identify the donor and determine whether the donor constitutes a permissible source (*section 56(1)*). This may require that the party makes some enquiries and it is perfectly possible that a donation will remain in a party’s account while those enquiries are carried out. The Act therefore distinguishes between the receipt and the acceptance of a donation and makes provision for a period of 30 days during which the status of the donation may be determined and appropriate action taken before the party is to be regarded as having accepted the donation. *Sections 56(2) and 57(1)* provide for the return of a donation to its source where that source is an impermissible donor or where it proves impossible to ascertain the donor’s identity. In the latter instance, if it is not possible to return the donation to its source, it is to be surrendered to the Electoral Commission for payment into the Consolidated Fund.

***Sections 58 to 60 : Forfeiture of certain donations***

118. *Sections 58 to 60* apply sanctions to the acceptance of donations from an impermissible source, or where the identity of the donor is not known. These provisions should be read in conjunction with section 66 which requires the treasurer of a party to declare (and makes it an offence falsely to declare) that the party has not accepted any donations from an impermissible source.
119. *Section 58* enables the Electoral Commission to apply to a court to order the forfeiture of a donation which a party has accepted from a source which is either impermissible or not known. *Section 59* provides for appeals against such an order. *Section 60* enables rules of court to be made in respect of applications or appeals under sections 58 and 59. It also provides that any sums forfeited under these provisions shall be paid into

the Consolidated Fund. *Subsection (5) of section 60* specifies that, where a registered party is not a body corporate, forfeiture proceedings will be brought against the party in its own name and not in that of any of its members and that any sums forfeited will be paid out of the funds of the party.

### ***Section 61 : Offences concerned with evasion of restrictions on donations***

120. In addition to a party's civil liability under section 58, *section 61* makes it a criminal offence for any person knowingly to participate in an arrangement or to withhold information, or supply false information, so as to evade the restrictions on the sources of donations. The bringing of criminal proceedings does not preclude the Commission from also applying for forfeiture of the donation in question (see *section 58(4)*).

### ***Chapter III (Sections 62 to 69) : Reporting of donations to registered parties***

121. These sections set out the scheme for reporting large donations to the Electoral Commission and for publishing details of them.

### ***Section 62 and Schedule 6 : Quarterly donation reports***

122. *Section 62* requires a party to prepare a donations report in respect of each quarter of a calendar year. A quarterly donations report will record any donation of more than £5,000 (or more than £1,000 in the case of a donation made to an accounting unit of a registered party) accepted during that quarter or any donation which, when added to other donations from the same source during that calendar year, brings the amount up to more than £5,000 (£1,000 in the case of donations to accounting units). It must also record any further donations of more than £1,000 from a source which, during the same calendar year, has already been recorded in a donation report. Parties must also report donations from the same source made to any of their accounting units which in aggregate exceed £5,000 (*subsection (12)*). To comply with these requirements political parties will need to keep records of all donations received and accepted above the *de minimis* level of £200 (as set out in *section 52(2)(b)*).
123. A quarterly donations report will also record all donations received by the party from an impermissible or anonymous source during that period.
124. Where a party has received no donations which fall to be recorded, it will be required to report to that effect.
125. *Subsection (13)* gives effect to *Schedule 6* which makes additional provision as to the information to be included in a quarterly donation report. In particular, the treasurer is required to record, in respect of each recordable donation, the identity of the donor (including their name and address), the value of the donation and the circumstances in which the donation was made.

### ***Section 63 : Weekly donation reports during general election periods***

126. During a parliamentary general election period, *section 63* requires donation reports to be sent to the Electoral Commission in respect of each seven-day period (and any final period of less than seven days). Weekly donations reports differ from the quarterly donations reports in that they will include disclosable donations received whether or not they are eventually accepted. Only donations of more than £5,000 made to a party or, in the case of a party with accounting units, to the central organisation of a party need to be recorded in the weekly reports. The general election period is defined for the purpose of this section as the period commencing with the date of the announcement of Her Majesty's intention to dissolve Parliament and ending with the date of the poll. In the fifteen general elections since the Second World War the length of this period has, on average, been thirty-three days.

***Section 64 : Exemptions from section 63***

127. *Section 64* enables any registered party which does not intend to field candidates at a particular general election to be exempted from the requirement to submit weekly donations reports.

***Section 65 : Submission of donation reports to Commission***

128. *Section 65* requires the submission of quarterly donation reports within thirty days and of weekly donation reports within seven days of the end of the period to which they relate, and makes it an offence for the treasurer to fail to submit donation reports or to submit reports which do not comply with the requirements.

***Section 66 : Declaration by treasurer in donation report***

129. *Section 66* requires donation reports to be accompanied by a declaration made by the treasurer. The terms of the declaration in respect of quarterly reports are set out in *subsection (2) or (3)* (the latter subsection applies where the treasurer makes a 'nil' return), while those for weekly reports are set out in *subsection (4)*. It is an offence knowingly to make a false declaration (*subsection (5)*).

***Section 67 : Weekly donation reports in connection with elections other than general elections***

130. *Section 67* enables the requirement to submit weekly donation reports to be applied (with modifications) by order to elections to the European Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

***Section 68 : Reporting of multiple small donations***

131. *Section 68* is a counter-evasion provision. Under section 52(2)(b) a donation of £200 or less is disregarded for the purposes of Part IV. This *de minimis* limit is intended to alleviate the administrative burden on political parties arising from the controls on donations. In particular, a party will not need to verify the source of any sum below the *de minimis* limit and will not have to record the name and address of the donor. Whilst the £200 threshold reduces the administrative workload on parties, however, it opens up the prospect of evasion of the disclosure requirement by the device of multiple small donations each of which is below the *de minimis* limit. Section 68 accordingly places a duty on a donor who makes a number of donations to a party in a year, each of which is £200 or less but which in aggregate exceed £5,000, to report the donations to the Electoral Commission. Reports must be delivered to the Commission by the end of January following the year in which the donations were made. The requirement to report to the Electoral Commission is placed on the donor, rather than the registered party concerned, because the latter may not have kept records of the receipt of the individual donations and could not, therefore, verify any information provided by the donor.

***Section 69 : Register of recordable donations***

132. The Electoral Commission is required by *subsection (1)* to maintain a register of all reported donations. To protect the privacy and safety of individual donors, the published register will not include their home addresses. In addition, information supplied by a registered treasurer under paragraph 7(b) of Schedule 6 (details of any element of deception or concealment employed by a donor) will not be published.

***Chapter IV (Section 70) : Power to make special provision***

***Section 70: Special provision for Northern Ireland parties***

133. *Section 70* enables the Secretary of State by order to extend in relation to a Northern Ireland party the categories of permissible donor specified in *section 54(2)* or to exempt

Northern Ireland parties from the scope of any or all of the provisions of Part IV of the Act. A Northern Ireland party is defined as a party registered in the Northern Ireland register (*subsection (6)*). The intention is to allow suitable arrangements to be made, along the lines recommended in the Neill Committee report, in recognition of the special circumstances which apply in Northern Ireland. Any order made under this section may remain in force for no longer than four years, but this is without prejudice to a further order being made (*subsection (4)*). To prevent a Northern Ireland party acting as a conduit for foreign donations to a party in the Great Britain register, *subsection (5)* provides that when an order is in force under this section a party registered in the Great Britain register may not accept a donation from a Northern Ireland party.

***Chapter V (Section 71) : Control of donations to individuals and members associations***

***Section 71 and Schedule 7 : Control of donations to individuals and members associations***

134. *Section 71* gives effect to *Schedule 7* which applies, with appropriate modifications, the provisions of Chapters I to IV to donations made to individuals and members associations for their own use or benefit in connection with their political activities. (Donations made to individual party members or officers for the benefit of a party would be regarded as donations to the party for the purposes of Part IV (see section 50(6)).)
135. The controls set out in *Schedule 7* apply to donations made to individual members of a registered party, members associations and holders of relevant elective offices. *Paragraph 1(6)* defines a ‘members association’ as an organisation which is comprised wholly or mainly of members of the party. These are groups which lie outside the formal structure of the party for the purposes of controls on funding and which, therefore, will not have been included in the scheme proposed and adopted in accordance with section 26. They would, for example, include groups which are formed within parties to champion particular policies or ideas (such as the Tribune Group or the Tory Reform Group). *Paragraph 1(8)* identifies the relevant elective offices, the holders of which are subject to the controls, namely that of Member of the House of Commons, Member of the European Parliament elected in the UK, member of a devolved legislature, member of a local authority (other than a parish or community council), member of the Greater London Assembly and Mayor of London or any other elected mayor within the meaning of Part II of the Local Government Act 2000.
136. A donation made to an individual party member or members association is subject to the controls set out in *Schedule 7* if it is either offered to or retained by the individual or association for their own use or benefit in connection with political activities within the party. Such activities include the conduct of internal elections to positions within the party (for example, that of party leader or positions on the party’s management committee) and the conduct of “primaries” for the selection of a party candidate for an elective office (for example, that of Mayor of London). A controlled donation to a holder of a relevant elective office is a donation offered to or accepted by him in connection with any political activities of his. Such activities might include campaigning for re-election or the running of his office. Donations made to individuals or associations for their private use or for purely social purposes would not be subject to control unless, despite the intention of the donor, the donation was used in connection with political activities within the party.
137. *Paragraph 2 of Schedule 7* defines “donation” for these purposes in terms equivalent to those in relation to donations to a party (see section 50(2)). *Paragraph 3* defines sponsorship for the purpose of the Schedule. *Paragraph 4* defines those payments and services which are not to be regarded as a donation. These include any remuneration or allowances paid to the holder of a relevant elective office in that capacity.

138. *Paragraphs 6 to 9 of Schedule 7* impose restrictions, including those on permissible sources, on the acceptance of donations by individuals and members associations equivalent to those applying to registered political parties under sections 54 to 61.
139. *Paragraphs 10 and 11 of Schedule 7* require the disclosure to the Electoral Commission by an individual or members association of the source and amount of any donation or donations amounting to more than £1,000 in the case of an individual or more than £5,000 in the case of a members association. Reports must be sent to the Commission within thirty days of the acceptance of any disclosable donation. Donations received from an impermissible or unidentifiable source must similarly be reported. *Paragraph 12* creates offences in relation to failure to deliver a required report and the delivery of an incomplete report, as well as providing for the forfeiture of a donation where failure to comply with the requirements of Schedule 7 is due to an intention to conceal the existence or the true amount of the donation in question. *Paragraph 13* makes provision, equivalent to that under section 66, for any report as to a disclosable donation to be accompanied by a declaration attesting that the donation has been received from a permissible source. In this case, however, there is no requirement for ‘nil returns’.
140. *Paragraph 14* makes equivalent provision to section 67 to counter evasion by a donor of the disclosure requirements by making multiple donations under the *de minimis* threshold of £200. *Paragraph 15* provides for the inclusion of donations disclosed in accordance with Schedule 7 in a register of disclosable donations.
141. One effect of these provisions is to require that donations made to a holder of an elective office, which are disclosed in a register of members’ interests, will also be subject to the reporting requirements set out in Schedule 7. This will mean some overlapping of registers of members’ interests and the Electoral Commission’s register of disclosable donations. But the controls on donations to MPs and others will not in any way circumscribe the ability of the House of Commons or the devolved legislatures to regulate the interests and conduct of their members.

## **Part V: Control of campaign expenditure**

### ***Section 72 and Schedule 8 : Campaign expenditure***

142. *Section 72* defines the terms “campaign expenditure”, “election campaign” and “for election purposes” for the purposes of the controls on registered political parties’ election expenditure as provided for in this Part of the Act. *Subsection (2)* defines “campaign expenditure” by reference to the list of qualifying expenses set out in Part I of *Schedule 8*. Any expenditure on a matter set out in this list during the relevant period for an election (as defined in Schedule 9) will need to be accounted for as campaign expenditure. Thus, for example, the full production costs of all party political broadcasts screened in the 365 days before a parliamentary general election would count as campaign expenditure. To assist parties with identifying what does or does not constitute campaign expenditure, *paragraph 3* of Schedule 8 provides for the Electoral Commission to prepare a code of practice giving guidance on such matters. Before a code of practice comes into effect it must be approved by the Secretary of State (in this case, the Home Secretary) and laid before Parliament. Although the code of practice is not made by statutory instrument, an equivalent of the negative resolution procedure applies so that either House of Parliament may resolve not to approve the draft code.
143. *Paragraph 4* of Schedule 8 empowers the Secretary of State to amend Part I of the Schedule by order. An order made under this provision must either give effect to a recommendation of the Commission or be made after consultation with the Commission.
144. The definition of the term “for election purposes” is cast in broad terms so as to capture all expenditure by a party that is incurred in order to promote its electoral success or more generally enhance the standing of the party or any of its candidates. However, excluded from the definition is any expenditure incurred with a view to

enhancing the prospects of a particular candidate. Such expenditure is already subject to separate controls under the provisions of enactments relating to elections. The relevant enactments are:

- a) in the case of parliamentary and local government elections (including elections to the Greater London Authority), the Representation of the People Act 1983;
- b) in the case of Scottish Parliamentary elections, the Scottish Parliament (Elections etc.) Order 1999 (SI 1999/787);
- c) in the case of elections to the National Assembly for Wales, the National Assembly for Wales (Representation of the People) Order 1999 (SI 1999/450);
- d) in the case of elections to the Northern Ireland Assembly, an order made under section 34 of the Northern Ireland Act 1998;
- e) in the case of elections to the European Parliament, the European Parliamentary Regulations 1999 (SI 1999/1214).

### **Section 73 : Notional campaign expenditure**

145. The Neill Committee's report recommended that national expenditure limits should cover benefits in kind as well as cash expenditure and that the nature and value of such benefits in kind should be itemised separately in parties' accounts of expenditure. *Subsection (1)* therefore provides that campaign expenditure includes (in addition to direct expenditure by a registered party) benefits in kind (ie. property, services or facilities provided free of charge or at a discount of more than 10% of their market value) conferred on a party by a third person. *Subsection (6)* requires that any such benefits in kind must be accounted for by means of a declaration, which will be included in the return of election expenditure required under section 80, as to the value of the benefit (except where its market value, or the difference between what the party pays and its value, is £200 or less).

### **Section 74 : Officers of registered party with responsibility for campaign expenditure**

146. The registered treasurer of a party is responsible for accounting for the party's campaign expenditure, and he therefore performs a function similar to that of a candidate's election agent under the Representation of the People Act 1983. In the same way as an election agent may, in a county constituency, delegate his functions to a deputy election agent, *section 74* provides for the appointment of up to twelve deputy treasurers. Such number would enable a Great Britain-wide party to appoint a deputy to cover each of Scotland, Wales, and the nine English regions, although whether the remit of the deputy is confined to a particular geographical area is a matter for the registered treasurer. A treasurer must notify the Commission when a deputy treasurer dies or his appointment is otherwise terminated or when there is a change of address (*subsections (6) and (7)*). The names of any deputy treasurers and the addresses of their offices are to be included in a party's entry in the register of political parties (*subsection (8)*).

### **Sections 75 to 78 : General restrictions relating to election expenditure**

147. In order to ensure proper observance of the limits on campaign expenditure by parties, *sections 75 and 76* require that all such expenditure, and any payment in respect of such expenditure, must be authorised or made by the registered treasurer, a deputy treasurer or a person authorised in writing by either the treasurer or a deputy treasurer. But *section 75(3)* provides that where campaign expenditure is incurred without the necessary authorisation, the expenses shall not count towards the party's expenditure limit and do not have to be included in the party's return under *section 80*. *Section 77* requires that any claim for payment in respect of campaign expenditure must be sent to the treasurer or a deputy treasurer or other authorised person. These provisions (and

section 78, which provides for disputed claims) are broadly similar to the provisions in Part II of the Representation of the People Act 1983 concerning election expenditure by candidates and their agents.

### **Section 79 and Schedule 9: Limits on campaign expenditure**

148. *Section 79 and Schedule 9* set out the financial limits on campaign expenditure. The limits apply to the following elections: a parliamentary general election; a European Parliamentary general election; a Scottish Parliamentary general election; an ordinary election to the National Assembly for Wales; and a general election to the Northern Ireland Assembly. No limits are, as such, imposed on campaign expenditure by political parties in connection with local government elections, although any such expenditure which is incurred during the relevant campaign period for one of the above elections would count towards the expenditure limit for the election in question.
149. The scheme provides for expenditure to be apportioned between England, Scotland, Wales and Northern Ireland. The reason for apportioning campaign expenditure to each part of the United Kingdom is that the campaign periods for parliamentary or European Parliamentary general elections and elections to the devolved legislatures may overlap and, without provisions for apportioning expenditure, an expenditure limit for elections to the devolved legislatures could, in such circumstances, be avoided.
150. *Subsections (4) and (5) of section 79* are intended to avoid parties circumventing the expenditure limits by incurring campaign expenditure in advance of the period during which restrictions apply. Any expenditure on property, services or facilities (for example billboard advertisements) purchased in advance of a relevant period, but for use during that period, will nonetheless count towards the limit on campaign expenditure for that period. If the use made of any property, services or facilities is over a period of time which straddles the start of a relevant period an appropriate proportion of its cost counts as campaign expenditure.

### **Parliamentary general elections**

151. The limits for parliamentary general elections are set out in *paragraph 3* of Schedule 9. The maximum amount a party may spend is determined by the number of constituencies contested. A party receives an allowance of £30,000 for each constituency contested, subject to a minimum threshold. The maximum amount of campaign expenditure a party could incur if it contested all the parliamentary constituencies in each part of the United Kingdom is set out in the table below:

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

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

following October would, but for the minimum expenditure limit (of £810,000), have committed the offence in *section 79(2)* of incurring campaign expenditure in excess of the limit in paragraph 3 of Schedule 9.

153. Where a candidate in a constituency stands in the name of more than one registered party, the £30,000 allowance per constituency is divided equally between the parties concerned (*paragraph 3(5) and (6)*).
154. The campaign expenditure limits for parliamentary general elections ordinarily apply to the ‘relevant period’ of 365 days ending with the date of the election (*paragraph 3(7) (a)*). When one general election follows within a year of another, however, the relevant period for the second of these elections begins the day after the first general election and ends with the date of the second election. To take the example of 1974, the ‘relevant period’ for the October general election would have been the 224 days from 1 March 1974 (the day after the first general election in that year) to 10 October 1974 (the date of the second election).

### **General elections to European Parliament**

155. *Paragraph 4* of Schedule 9 sets out the campaign expenditure limits for general elections to the European Parliament. As for the June 1999 elections in Great Britain, the expenditure limits are calculated by reference to the number of regions contested by a party multiplied by the total number of MEPs to be returned for those regions. A party receives an allowance of £45,000 for each MEP to be returned in each of the regions it contests. The maximum amount of campaign expenditure a party could incur if it stood for election in all the English regions and in Scotland and Wales and put up candidates in Northern Ireland is set out in the table below:

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

156. These limits on campaign expenditure by parties in European Parliamentary elections will replace those contained in regulation 15 of the European Parliamentary Elections Regulations 1999 (*SI 1999/1214*). The Regulations apply only to the elections in Great



Britain; the equivalent regulations for Northern Ireland impose expenditure limits on candidates and not on parties (these limits will be retained).

157. *Paragraph 4(5)* provides that the relevant period during which the campaign expenditure limits will apply is the period of four months ending with the date of the poll. The dates of elections to the European Parliament are by and large fixed. The date is governed by Article 10(2) of the Community Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to the decision of the Council of the European Communities dated 20 September 1976. Under that Article, elections take place every five years in the period corresponding to the first elections to the Parliament in 1979 unless the Council of Ministers acting unanimously determine otherwise; they have not done so. Article 9 of the Community Act provides that the elections to the European Parliament must for all Member States fall within the same period starting on a Thursday morning and ending on the following Sunday. The precise date of the poll is set by the Secretary of State by order under section 3D of the European Parliamentary Elections Act 1978 (as substituted by section 1 of the European Parliamentary Elections Act 1999). Subject to any determination by the Council of Ministers under Article 10(2), the next European Parliamentary Election will therefore be held within the period Thursday 10 to Sunday 13 June 2004. If, as previously has been the case, the election is held on the Thursday, the relevant period for the election will be four months commencing on 11 February 2004 and ending on 10 June 2004.

### **General elections to Scottish Parliament**

158. *Paragraph 5* of Schedule 9 sets out the campaign expenditure limits for ordinary and extraordinary general elections to the Scottish Parliament. The expenditure limits are calculated by reference to the number of constituencies and/or regions contested by a party. A party receives an allowance of £12,000 for each constituency contested and of £80,000 for each region contested. Under the provisions of paragraphs 1 and 2 of Schedule 1 to the Scotland Act 1998 there are 73 constituencies each returning one MSP and eight regions each returning seven regional MSPs. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies and regions is £1,516,000.
159. These limits on campaign expenditure by parties in Scottish Parliamentary elections will replace those contained in Article 42 of the Scottish Parliament (Elections etc.) Order 1999 (SI 1999/787).
160. *Paragraph 5(3)* provides that the relevant period during which the campaign expenditure limits will normally apply is, in the case of an ordinary general election, the four-month period before the date of the poll. Section 2(2) of the Scotland Act 1998 provides (subject to subsection (5) of section 2) that ordinary general elections are held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held. Section 2(5) of the Scotland Act makes provision for the date of the poll to be brought forward or moved back by no more than one month. Subject to the exercise of the power in section 2(5), the next ordinary general election to the Scottish Parliament will therefore be held on Thursday 1 May 2003 and the relevant period for that election will commence on 2 January 2003.
161. *Paragraph 5(5)* provides that the relevant period in the case of an extraordinary general election is the period beginning with the date when the Presiding Officer of the Scottish Parliament proposes a date for the poll for the election (in accordance with section 3(1) of the Scotland Act) and ending with the date of the poll for the election. By virtue of the timetable for Scottish Parliamentary elections laid down by Rule 1 of the Scottish Parliamentary Election Rules (contained in Schedule 2 to the Scottish Parliament (Elections etc.) Order 1999), the relevant period for an extraordinary election must be a minimum of 22 working days (that is excluding weekends and bank holidays), although in practice it is likely to be longer.

### **Ordinary elections to Welsh Assembly**

162. *Paragraph 6* of Schedule 9 sets out the campaign expenditure limits for ordinary elections to the Welsh Assembly (the Government of Wales Act 1998 makes no provision for extraordinary elections). The expenditure limits are calculated by reference to the number of constituencies and/or regions contested by a party. A party receives an allowance of £10,000 for each constituency contested and of £40,000 for each region contested. Under the provisions of paragraphs 1 and 2 of Schedule 1 to the Government of Wales Act there are 40 Assembly constituencies each returning one AM and five Assembly electoral regions each returning four regional AMs. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies and regions is £600,000.
163. These limits on campaign expenditure by parties in ordinary elections to the Welsh Assembly will replace those contained in Article 47 of the National Assembly for Wales (Representation of the People) Order 1999 (SI 1999/450).
164. *Paragraph 6(3)* provides that the relevant period during which the campaign expenditure limits will normally apply is the four-month period before the date of the poll. Section 3(2) of the Government of Wales Act provides (subject to section 3(3)) that ordinary elections are held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary election was held. Section 3(3) of the 1998 Act makes provision for the date of the poll to be brought forward or moved back by no more than one month. Subject to the exercise of the power in section 3(3), the next ordinary election to the National Assembly will therefore be held on Thursday 1 May 2003 and the relevant period for that election will commence on 2 January 2003.

### **General elections to the Northern Ireland Assembly**

165. *Paragraph 7* of Schedule 9 sets out the campaign expenditure limits for ordinary and extraordinary elections to the Northern Ireland Assembly. The expenditure limits are calculated by reference to the number of constituencies contested for a party. A party receives an allowance of £17,000 for each constituency contested. Under the provisions of section 33 of the Northern Ireland Act 1998 there are 18 constituencies each returning six members of the Assembly. Accordingly, the maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies is £306,000.
166. *Paragraph 7(3)* provides that the relevant period during which the campaign expenditure will normally apply is the four-month period before the date of the poll. Section 31(2) of the Northern Ireland Act 1998 provides that (subject to section 31(3)) the date of the next ordinary election will be Thursday 1 May 2003. Section 31(1) of that Act provides (again subject to section 31(3)) that subsequent ordinary elections are to be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary election was held. Section 31(3) of the 1998 Act makes provision for the date of the poll to be brought forward or moved back by no more than two months. Subject to the exercise of the power in section 31(3), the relevant period for the next ordinary election will be the period 2 January 2003 to 1 May 2003.
167. *Paragraph 7(5)* provides that the relevant period in the case of an extraordinary general election is the period beginning with the date when the Secretary of State proposes a date for the poll for the election under section 32 of the 1998 Act and ending with the date of the poll. As no provision about Assembly elections has yet been made under section 34(4) of the 1998 Act, there is at present no other constraint as to the length of the relevant period.

### **Limits applying in special circumstances**

168. The definition of campaign expenditure in *section 72* is such that campaign expenditure incurred with one particular election in mind cannot be readily delineated

from campaign expenditure incurred with a second election in mind. Indeed, an advertisement placed in a newspaper promoting a registered party in general terms may be intended by that party to enhance their electoral prospects at all elections in the coming weeks or months. In recognition of this, Part III of Schedule 9 provides for alternative campaign expenditure limits to apply when the relevant periods for different elections overlap. In most cases, the limits for individual elections are aggregated and applied to a new relevant period which is the aggregate of the relevant periods for the two or more overlapping elections.

### **Combination of elections to European Parliament and to devolved legislature**

169. *Paragraph 8* of Schedule 9 determines the campaign expenditure limits in circumstances where the relevant period for a European Parliamentary election overlaps with the relevant period for an election to the Scottish Parliament, Welsh Assembly or Northern Ireland Assembly. If the elections to the European Parliament and the devolved legislature are held according to the fixed timetables provided for in the relevant statutes, such overlapping of relevant periods will happen only once every twenty years. The next occurrence will be in 2019 when the elections to the three devolved legislatures would be held on Thursday 2 May followed, five weeks later, with the elections to the European Parliament on Thursday 6 June.
170. *Paragraph 8(3)* provides that where the relevant period (as defined in paragraphs 4 to 7) for these elections overlap the limits that would have applied to the European election and to the election to a devolved legislature are to be aggregated. Where a party contested all the constituencies and/or regions in both elections, the maximum amount of campaign expenditure that could be incurred would be as set out in the table below:

		<i>Maximum amount in respect of European election £'000</i>	<i>Maximum amount in respect of election to devolved legislature £'000</i>	<i>Aggregate limit applying to both elections £'000</i>
Expenditure in Scotland	in	360	1,516	1,876
Expenditure in Wales	in	225	600	825
Expenditure in Northern Ireland	in	135	306	441

171. *Paragraph 8(4)* defines the relevant period in respect of which the aggregate campaign expenditure limits are to apply. Were the European Parliamentary elections and the elections to the devolved legislatures to overlap, as scheduled, in 2019 the relevant period in that instance would begin on 3 January 2019 (four months before the date of the ordinary elections to the devolved legislatures) and end on 9 June 2019 (the date of the election to the European Parliament).

#### **Combined limits where parliamentary election pending**

172. *Paragraph 9* of Schedule 9 determines the campaign expenditure limits that apply when the period during which a parliamentary general election is pending overlaps with the relevant period for a European Parliamentary election and/or an election to a devolved legislature. *Paragraph 1(3)* of Schedule 9 defines the period during which a parliamentary general election is pending as the period beginning with the date on which Her Majesty's intention to dissolve Parliament is announced and ending with the date of the election. Where such an overlap occurs, and a party is contesting each of the elections, the expenditure limits that would apply to that party in respect of each election (by virtue of paragraphs 3 to 8, as the case may be) are aggregated. A party that contested all constituencies and/or regions in each of the elections would be able to incur campaign expenditure up to the limits set out in the following table:

		<i>Maximum limit for overlapping parliamentary and European Parliamentary polls £'000</i>	<i>Maximum limit for overlapping parliamentary and devolved polls £'000</i>	<i>Maximum limit for overlapping parliamentary, European and devolved polls £'000</i>
Expenditure in England	19,065			
Expenditure in Scotland	2,520	3,676	4,036	
Expenditure in Wales	1,425	1,800	2,025	
Expenditure in Northern Ireland	675	846	981	

173. *Paragraph 9(4)* defines the relevant period during which the aggregate expenditure limits would apply. The limits of the relevant period are dependent on whether the parliamentary election takes place either, on the one hand, on the same day as or later than the other election(s) or, on the other hand, earlier than the other election(s). Two examples will illustrate this. First, if a Scottish Parliamentary election was held on 5 May 2011 and was followed by a parliamentary general election on 2 June 2011 (having been announced prior to 5 May), the relevant period would run from 3 June 2010 to 2 June 2011. Second, if a parliamentary general election was held on 31 March 2011 and was followed by a Scottish Parliamentary election on 5 May 2011, the relevant period would run from 1 April 2010 to 5 May 2011.

174. *Paragraph 9(5)* determines the campaign expenditure limits to apply when two parliamentary general elections are pending during different parts of the relevant period (as defined in paragraph 4 to 8) for a European Parliamentary election or an election to a devolved legislature or a combination of the two. For this provision to operate, two parliamentary general elections would need to be held within some four months of each other (the two 1974 elections were held seven months and ten days apart). A possible scenario would be:

10 February 2009	Four-month period preceding a European Parliamentary election begins.
24 February 2009	Parliamentary general election takes place (having been called in January).
26 May 2009	Her Majesty announces her intention to dissolve Parliament.
9 June 2009	European Parliamentary election takes place.
7 July 2009	Second parliamentary election takes place.

175. In such a scenario, paragraph 9(5) determines the campaign expenditure limits to apply in “the first relevant period” (as defined in *paragraph 9(6)*) and “the second relevant period” (as defined in *paragraph 9(7)*). The first relevant period would, in this example, be the period beginning 26 February 2009 (that is, 365 days before the date of the first parliamentary general election) and ending on 26 May 2009 (the date on which Her Majesty announced her intention to dissolve Parliament in connection with the second parliamentary general election). The limit on campaign expenditure that a party could incur during the first relevant period would be the aggregate of the limits that would apply to the first parliamentary election and the European election by virtue of paragraphs 3 and 4 respectively.

176. In the same example, the second relevant period would run from 27 May 2009 (the day after Her Majesty announced her intention to dissolve Parliament in connection with the second parliamentary general election) to 7 July 2009 (the date of the second parliamentary general election). The limit on campaign expenditure that a party could incur during the second relevant period would be the limit that would apply to the second parliamentary election by virtue of paragraph 3.

### **Combination of limit under paragraph 9 and other limits**

177. *Paragraph 10* of Schedule 9 determines the campaign expenditure limits in circumstances where a combination of elections that would fall within the ambit of paragraph 9 is in turn combined with one or more other elections to the European Parliament or to a devolved legislature that would fall within the ambit of any of paragraphs 4 to 8. An example of such a combination would be:

9 June 2009	European Parliamentary election takes place.
14 September 2009	Her Majesty's intention to dissolve Parliament is announced.
5 October 2009	The Presiding Officer of the Scottish Parliament sets a date for an extraordinary general election.
12 November 2009	The parliamentary general election takes place and, at the same time, the extraordinary general election to the Scottish Parliament.

178. In such a scenario, *paragraph 10(3)* provides that a party contesting all three elections would attract an expenditure limit in Scotland which is the aggregate of the limits that would apply for each of the three elections. The limits to apply in England, Wales and Northern Ireland would be the aggregate of the limits that would apply to the parliamentary and European Parliamentary elections.
179. The combined period (as defined in *paragraph 10(4)*) in the case of the above example would begin on 13 November 2008 (that is, 365 days before the date of the parliamentary general election) and end on 12 November 2009 (the date of the combined poll). By virtue of *paragraph 10(5)* the limits on campaign expenditure for the European Parliamentary election on 9 June 2009, as determined in accordance with paragraph 4 of Schedule 9, would continue to apply to the relevant period for that election (10 February 2009 to 9 June 2009).

### **Combination of parliamentary general election and other election, or elections, falling within paragraphs 4 to 8**

180. *Paragraph 11* of Schedule 8 determines the limit on campaign expenditure when the relevant period for a parliamentary general election (as defined in paragraph 3) overlaps with the relevant period for another election, or elections (as defined in any of paragraphs 4 to 8) and paragraph 9 does not apply. An example would be:

4 January 2007	Four month period before Scottish ordinary election begins.
3 May 2007	Scottish ordinary election.
3 September 2007	Presiding Officer sets date for an extraordinary election to the Scottish Parliament.
11 October 2007	Scottish extraordinary election.
3 March 2008	Her Majesty announces her intention to dissolve Parliament.
10 April 2008	Parliamentary election.

181. Under this example the limit applying to a party which contested all three elections in Scotland would be the aggregate of the limits provided for in paragraphs 3 and 5 in respect of each election. The aggregate would apply for “the combined period” (as defined in [paragraph 11\(5\)](#)), namely the period beginning on 4 January 2007 (that is, four months before the Scottish ordinary election) and ending on 10 April 2008 (the date of the parliamentary election).
182. By virtue of [paragraph 11\(6\)](#), the limits provided for in paragraph 5 would continue to apply to the relevant periods for the two Scottish Parliamentary elections (namely, the periods 4 January to 3 May 2007 and 3 September to 11 October 2007).

### ***Sections 80 to 84 : Returns***

183. [Sections 80 to 84](#) are concerned with the preparation, auditing and submission of returns as to campaign expenditure. The registered treasurer of a party is required to prepare a return after each relevant campaign period and it is made an offence for the treasurer to fail to submit a return or to knowingly or recklessly submit a false return. The return must be accompanied by a declaration by the treasurer as to its accuracy. A party must submit its return to the Electoral Commission within three months of the end of the relevant campaign period to which the return relates, unless the party’s expenditure exceeds £250,000, in which case the return must be independently examined by a qualified auditor and submitted within six months. All returns received by the Electoral Commission are to be open to public inspection.

## **Part VI : Controls relating to third party national election campaigns**

### ***Sections 85 to 87 : Controlled expenditure by third parties***

184. The purpose of this Part is to apply restrictions upon election expenditure by third parties. Section 75 of the Representation of the People Act 1983 regulates the expenses which third parties may incur in promoting or procuring the election of a candidate in a particular constituency contest. This Part makes comparable provision in relation to national third party expenditure which is intended to generally promote or procure the election of a registered party and its candidates. [Section 85\(2\)](#) specifies the expenditure which is to be subject to the controls set out in this Part. “Controlled expenditure” is that incurred in connection with the production or publication of material which is made available to the public at large, or any section of the public, and which is designed to promote or procure the election of a particular registered party or a particular category of candidates, whether they be those standing in the name of a particular registered party or a group of candidates who, irrespective of party, share particular views.
185. [Section 85\(4\)](#) specifies that “controlled expenditure” includes expenses in relation to material designed to achieve its purpose by reducing support for other candidates or another party. It does not matter whether the material names the candidates or party which it is intended to benefit or disparage. In essence the test is whether the material can reasonably be regarded as intended to benefit a particular party’s electoral prospects. The cost of a poster campaign advocating a particular policy without explicitly supporting or attacking a named political party might nevertheless fall to be regarded as “controlled expenditure” if the policy in question was closely identified with a particular political party or group of candidates.
186. The controls set out in this Part apply to material affecting the electoral prospects of a political party or candidates in elections to the House of Commons, the European Parliament and the devolved legislatures. No limits are, as such, imposed on controlled expenditure by third parties in connection with local government elections, although any such expenditure incurred during the relevant campaign period for one of the above elections would count towards the expenditure limit for the election in question.
187. The expenditure controls would apply, under [section 86\(1\)](#), to expenditure in kind (that is to property, services or facilities provided for the use or benefit of the third party

either free of charge or at a rate which is more than 10 per cent below their market value), where the market value of property etc. provided free of charge, or the difference between the rate charged and their true market value, is more than £200. When a third party incurs expenditure within the meaning of *section 86(1)*, it will be required, under *section 86(6)*, to make a declaration as to the value of the benefit for inclusion in a return as to controlled expenditure under *section 96*. *Section 87* details certain types of expenditure which may be incurred by or on behalf of a third party, but which are not to be treated as controlled expenditure for the purposes of Part VI.

### ***Sections 88 and 89 : Recognised third parties***

188. *Section 94(3) to (5)* makes it an offence for a third party to incur controlled expenditure in excess of £10,000 in England or £5,000 in Scotland, Wales or Northern Ireland during a regulated period for an election, unless it is a recognised third party. The procedure whereby a third party can become a recognised third party is set out in *section 88*. The procedure involves submitting a notification to the Electoral Commission. By virtue of *section 88(2)* only the following may give a notification: an individual resident in the United Kingdom or registered as an overseas elector; a registered party; or a permissible donor falling within *section 54(2)(b) or (d) to (h)*. The notification given by a third party must specify the name and address of the third party and, in the case of a company, trade union, building society, limited liability partnership, friendly or industrial and provident society or unincorporated association, the person who will be responsible for ensuring compliance with the accounting and disclosure provisions of this Part. (The 'responsible person' in the case of a third party that is a registered party will be the treasurer of the party and in the case of an individual, that individual.) Such a notification may be made at any time. A notification under *section 88* will normally lapse unless renewed on an annual basis. Under *section 88(5)* a notification which would have lapsed during a regulated period continues in force until the end of that period. *Section 89* requires the Commission to maintain a register of notifications.

### ***Sections 90 to 93 : General restrictions relating to controlled expenditure by recognised third parties***

189. In order to ensure proper observance of the limits on controlled expenditure by third parties, *sections 90 and 91* require that all such expenditure, and any payment in respect of such expenditure, must be authorised or made by the responsible person or a person authorised in writing by him. Similarly, *section 92* requires that any claim for payment in respect of campaign expenditure must be sent to the responsible person or other authorised person. These provisions (and *section 93*, which provides for disputed claims) are similar to the provisions in Part II of the Representation of the People Act 1983 concerning election expenditure by candidates and their agents.

### ***Section 94 and Schedule 10 : Limits on controlled expenditure by third parties***

190. *Section 94(1)* gives effect to Schedule 10 sets out financial limits on controlled expenditure by recognised third parties, and the periods to which those limits apply, in respect of elections to the House of Commons, the European Parliament and the devolved legislatures. *Section 94* also ensures that non-recognised third parties which incur significant levels of controlled expenditure are brought within the regulatory remit of the Electoral Commission.
191. The scheme set out in Schedule 10 is similar to that in respect of national campaign expenditure by political parties as set out in Schedule 9. The periods to which the financial limits set out in Part II of Schedule 10 apply are the same as those which apply to expenditure by registered parties under Schedule 9. Part III of Schedule 10 makes equivalent provision for any overlapping of the relevant regulated periods and, where appropriate, the aggregation of the financial limits which apply. Part I of Schedule 10 also makes equivalent provision for third party expenditure to be apportioned between England, Scotland, Wales and Northern Ireland.

192. The financial limits on controlled expenditure on the part of recognised third parties represent 5% of the limit which would apply to a registered party if it contested all the seats in the election in question. The limits are set out in the table below:

	<i>Parliamentary general election</i>	<i>Election to the European Parliament</i>	<i>Election to the Scottish Parliament</i>	<i>Election to the Welsh Assembly</i>	<i>Election to the Northern Ireland Assembly</i>
England	£793,500	£159,750			
Scotland	£108,000	£18,000	£75,800		
Wales	£60,000	£11,259		£30,000	
Northern Ireland	£27,000	£6,750			£15,300
<b>Uk Total</b>	<b>£ 988,500</b>	<b>£ 195,759</b>			

### ***Section 95 and Schedule 11 : Control of donations to recognised third parties***

193. *Section 95* gives effect to *Schedule 11* which provides for controls on donations to recognised third parties for the purpose of meeting controlled expenditure. Part I of *Schedule 11* defines donations to recognised third parties in terms equivalent to those in sections 50 to 53 in respect of donations to registered parties. Part II of *Schedule 11* applies restrictions on the acceptance of donations equivalent to those in sections 54 to 61. Part III of *Schedule 11* requires that the return as to controlled expenditure, required under section 96, must include a statement giving details of the source and amount of donations of more than £5,000 (including aggregate sums). The statement must also detail donations received, but rejected, from impermissible or unidentifiable donors. The requirements of this section and *Schedule 11* do not apply to registered parties (other than a minor party) given that they will be subject to the ongoing controls on donations set out in Part IV.

### ***Sections 96 to 100: Returns***

194. When a recognised third party incurs controlled expenditure during a regulated period, it will, at the end of that period, be required to submit a return specifying the election or elections taking place within the regulated period in question and containing a statement of all payments made in respect of controlled expenditure incurred during that period. This return must be accompanied by all related invoices or receipts and all declarations made, under *section 86(6)*, in respect of property, services and facilities provided free of charge or at a substantial discount for the use or benefit of the third party. This requirement does not apply to any controlled expenditure incurred during a regulated period but before the time the third party became a recognised third party. It must also be accompanied by a declaration signed by the responsible person attesting to the accuracy of the return. It is made a criminal offence either to make a false declaration or to omit to provide such a declaration. When the controlled expenditure exceeds £250,000, the return must be independently examined by a qualified auditor and submitted to the Electoral Commission within six months. Returns not subject to the audit requirement must be submitted within three months. All returns received by the Commission are to be open to public inspection (although, under *section 100 (2)* the address of any individual donor to a recognised third party will be omitted from the copy of a return available for inspection).

### **Part VII : Referendums**

195. The purpose of this Part is to make generic provision for the conduct of major referendums held in the United Kingdom. There does not presently exist any standing



*These notes refer to the Political Parties, Elections and Referendums Act 2000 (c.41) which received Royal Assent on 30th November 2000*

statutory authority, other than under Schedule 1 of the Northern Ireland Act 1998, enabling referendums to be held in the United Kingdom (nor is it the purpose of this legislation to make such provision). Consequently, dedicated primary legislation will normally continue to be required in order to provide for the holding of any particular major referendum.

**Section 101 : Referendums to which this Part applies**

196. Section 101 provides that the controls on the conduct of referendums set out in Part VII apply to any referendum held throughout the United Kingdom, one or more of England, Scotland, Wales or Northern Ireland, or any English region. The provisions do not apply to referendums held under section 36 of the Government of Wales Act 1998 (subsection (3)). There have been eight referendums to which the provisions of Part VII would have applied had they been in force at the time. The statutory authority for these referendums, the questions asked and the dates of the polls are set out in the table below:

UNITED KINGDOM REFERENDUMS 1973 – 1998

<i>Statutory authority</i>	<i>Question</i>	<i>Date of poll</i>
Northern Ireland (Border Poll) Act 1972	(i) Do you want NI to remain part of the UK? or (ii) Do you want NI to be joined with the Republic of Ireland, outside of the UK?	8 March 1973
Referendum Act 1975	Do you think that the UK should stay in the European Community (The Common Market)?	5 June 1975
Scotland Act 1978 (Section 85 and Schedule 17)	Do you want the provisions of the Scotland Act to be put into effect?	1 March 1979
Wales Act 1978 (Section 80 and Schedule 12)	Do you want the provisions of the Wales Act 1978 to be put into effect?	1 March 1979
Referendums (Scotland and Wales) Act 1997	(i) I agree that there should be a Scottish Parliament; or (ii) I do not agree that there should be a Scottish Parliament	11 September 1997
	(i) I agree that a Scottish Parliament should have tax-varying powers; or (ii) I do not agree that a Scottish Parliament should have tax-varying powers.	
Referendums (Scotland and Wales) Act 1997	(i) I agree that there should be a Welsh Assembly; or (ii) I do not agree that there should be a Welsh Assembly	18 September 1997
Greater London Authority (Referendum) Act 1998	Are you in favour of the Government's proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?	7 May 1998

<i>Statutory authority</i>	<i>Question</i>	<i>Date of poll</i>
Northern Ireland Negotiations (Referendum) Order 1998 (SI 1998/1126) (made under section 4(1) of the Northern Ireland (Entry to Negotiations, etc) Act 1996).	Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?	22 May 1998

197. *Subsection (2)* defines a referendum as a referendum or poll held by or under an Act of Parliament on one or more specified questions. *Subsection (4)* provides that the Secretary of State may, by order, apply the arrangements for the conduct of referendums contained in this Part from the date of introduction of a Bill providing for a particular referendum.

### **Section 102: Referendum period**

198. *Section 102* defines the referendum period for any referendum to which Part VII applies. The period is relevant, in particular, to the restrictions on incurring expenses as provided for in sections 117 and 118 and Schedule 14. It is expected that the relevant period for any particular referendum will normally begin on the day the Bill providing for the referendum is introduced in Parliament, and end with the date of the poll. Under these provisions, the referendum period for the 1997 devolution referendum in Scotland would have commenced on 15 May 1997 (the date the Scotland and Wales (Referendum) Bill was introduced) and would have ended on 11 September 1997 (the date of the poll) - a total of 119 days.

### **Section 103 : Date of poll**

199. This section provides that, where the date of a referendum poll is determined under any provision made by or under the Act providing for the referendum to be held (ie. when a Minister fixes the date), there must be a period of at least 28 days from the date by which the Electoral Commission must designate campaign organisations to the date of the poll. This minimum period is intended to ensure that a designated campaign organisation is afforded sufficient opportunity to mount an effective campaign and to make full use of the benefits afforded to it under section 110. This section does not apply to a referendum where the date of the poll is specified on the face of the Act providing for the referendum to be held. Nonetheless, the expectation in such cases will similarly be that there will be at least 28 days for campaigning following the designation of campaign organisations. By virtue of this section, together with the timetable for designation of umbrella campaign organisations under section 109, the minimum referendum period for any particular referendum would normally be ten weeks.

### **Section 104 : Referendum questions**

200. *Section 104* affords the Electoral Commission a role in setting a referendum question. *Subsections (1) and (2)* are concerned with the case where the wording of a referendum question is specified on the face of a Bill providing for a particular referendum to be held. In such a case the Commission is placed under a duty to consider the wording of the referendum question and to publish a statement setting out its views, if any, on the intelligibility of the question. The Commission is required to publish such a statement as soon as practicable after the introduction of the Bill in order that Parliament may take into account the Commission's views during the passage of the Bill. *Subsections (3) to (5)* are concerned with the case where the wording of a referendum question is specified

in subordinate legislation. In such a case the relevant Secretary of State is required to consult the Commission on the intelligibility of the referendum question before the draft statutory instrument is laid (if it is an affirmative instrument) or before the instrument is made (if it is a negative instrument). For the purpose of this section references to a referendum question include any preamble (*subsection (6)*).

### ***Section 105 : Permitted participants***

201. *Subsection (1)* defines a “permitted participant” in a particular referendum campaign. A permitted participant may be:

- a) a registered party which has made a declaration to the Commission under *section 106*; or
- b) any of the following which has given a notification to the Commission under *section 106*:
  - an individual resident in the United Kingdom or registered as an overseas elector;
  - anybody falling within *section 54(2)(b)* or (d) to (h), that is to say a registered company incorporated in a member state of the European Union and which carries on business in the United Kingdom; a trade union; a building society; a limited liability partnership; a friendly or industrial and provident society; or an unincorporated association which carries on business or other activities wholly or mainly in the United Kingdom and whose main office is there.

202. *Subsection (2)* defines a “responsible person” in relation to a permitted participant. The responsible person will discharge responsibilities in respect of the financial affairs of a permitted participant similar to those of the registered treasurer in respect of a political party.

### ***Section 106 : Declarations and notifications for purposes of section 105***

203. *Section 106* sets out the requirements in respect of declarations made by registered parties and of notifications made by individuals, companies and other bodies. These include, in the case of companies and other bodies, a requirement that the notification must include the name of the person or officer responsible for compliance with the accounting and disclosure provisions of this Part (ie. the “responsible person”). *Subsection (5)* makes provision for a permitted participant to notify the Commission if any of its notified details need to be changed during the referendum period.

### ***Section 107 : Register of declarations and notifications for the purposes of section 105***

204. *Section 107* requires the Electoral Commission to maintain a register of political parties which have made a declaration under *section 106* and of other persons or bodies who have given a notification under that section.

### ***Section 108 : Designation of organisations to whom assistance is available***

205. *Section 3* of the Referendum Act 1975 identified two umbrella campaign organisations (‘Britain in Europe’ and the ‘National Referendum Campaign’) which had emerged since the then government announced its intention to hold a referendum on continued membership of the Common Market. *Section 108* enables the Electoral Commission to designate similar umbrella organisations in any referendum to which Part VII applies.

206. Where there are only two possible outcomes in a particular referendum (as has been the case with seven of the eight national or regional referendums held to date), *subsection (2)* provides that the Commission may designate one umbrella organisation

for each of these outcomes. The Commission may not designate an umbrella campaign organisation for one side but not the other.

207. Where there are more than two possible outcomes (as was the case in the 1997 referendum on Scottish devolution), the Commission may designate an umbrella organisation for each of the possible outcomes specified by the Secretary of State (*subsections (3) and (4)*).

### ***Section 109 : Applications for designation under section 108***

208. *Section 109* sets out the procedure and timetable for applications for designation and the basis on which the Commission is to determine such applications. The whole process, which commences at the start of the referendum period determined in accordance with *section 102*, takes a maximum of six weeks (four weeks for applications to be submitted and two weeks for the Commission to come to a decision), although there is a power (*in subsection (6)*) to vary the timetable by order.
209. The criterion for determining applications (namely, “whichever of the applicants appears to [the Electoral Commission] to represent to the greatest extent those campaigning for that outcome”) is similar to that employed in respect of the 1975 referendum where the Government undertook to identify two organisations “which adequately represent” each side of the question (see paragraph 40 of the White Paper ‘Referendum on United Kingdom Membership of the European Community’, February 1975, Cmnd 5925). Under *subsection (5)* it is possible for the Commission to decide that none of the applicant organisations in relation to a particular outcome qualifies should be designated. Where that is the case, *section 108 (2)* would require that no organisation be designated in respect of any of the possible outcomes of the referendum.

### ***Section 110 and Schedule 12 : Assistance available to designated organisations***

210. *Section 110 and Schedule 12* confer certain benefits on designated umbrella organisations. *Subsection (2)* of *section 110* provides that the Commission may award each designated organisation a grant of up to £600,000. This figure is broadly the equivalent at today’s prices of the £125,000 grant paid to each of the umbrella organisations in the 1975 referendum under the provisions of section 3 of the Referendum Act 1975. All umbrella organisations designated in connection with a particular referendum must receive the same level of grant. Such grants are intended to provide a designated campaign organisation with sufficient resources to mount an effective campaign. *Subsection (3)* enables the Commission to attach such conditions to a grant as they may determine. The conditions attached to the grants made to the umbrella groups in the 1975 referendum included a requirement that the grant be used only for purposes connected with the referendum; that the accounts were available for audit within two months of the date of the referendum; and that the accounts would be subject to audit by the Comptroller and Auditor General (Accounts of Campaigning Organisations, October 1975, Cmnd 6251). *Subsection (4) and Schedule 12* confer benefits on designated referendum campaign organisations similar to those conferred on candidates and political parties at elections, namely:
- a) the sending of a referendum address free to every household or elector;
  - b) the use of public rooms free of charge for holding public meetings; and
  - c) referendum campaign broadcasts. Under the terms of *paragraph 4 of Schedule 12* the broadcasting authorities must, in determining their rules in respect of referendum broadcasts, have regard to any views expressed by the Electoral Commission.

**Section 111 and Schedule 13 : Referendum expenses**

211. *Section 111* defines for the purposes of this Part the terms “referendum expenses”, “for referendum purposes” and “referendum campaign”. “Referendum expenses” are defined by reference to a list of qualifying expenses set out in *Part I of Schedule 13*. This Schedule mirrors Schedule 8, which similarly defines qualifying campaign expenditure for the purposes of Part V. As with Schedule 8, Schedule 13 allows for the Electoral Commission to provide guidance through means of a code of practice and for the amendment of Part I of the Schedule by order made by the Secretary of State.

**Section 112 : Notional referendum expenses**

212. *Section 112* makes provision, equivalent to that in *sections 73 and 86*, for treating as referendum expenses the value of any property, services and facilities provided for the use or benefit of an individual or body campaigning in a referendum, either free of charge or at a substantial discount.

**Sections 113 to 116 : General restrictions relating to referendum expenses incurred by permitted participants**

213. In order to ensure proper observance of the limits on referendum expenses by permitted participants, *sections 113 and 114* require that all such expenditure, and any payment in respect of such expenditure, must be authorised or made by the responsible person or a person authorised in writing by him. Similarly, *section 115* requires that any claim for payment in respect of referendum expenses must be sent to the responsible person or other authorised person. These provisions (and *section 116*, which provides for disputed claims) are similar to the provisions in Part II of the Representation of the People Act 1983 concerning election expenditure by candidates and their agents.

**Section 117 : General restriction on referendum expenses**

214. *Section 117* makes it an offence for a person to incur, during a referendum period, referendum expenses in excess of £10,000 unless they are a permitted participant.

**Section 118 and Schedule 14 : Special restrictions on referendum expenses by permitted participants**

215. *Subsection (1)* introduces Schedule 14 which imposes limits on referendum expenses incurred by permitted participants. The limits for participants in a UK-wide referendum are set out in *paragraph 1(2) of Schedule 14*.

216. The limits are as follows:

- a) for a designated umbrella organisation - £5 million
- b) for a registered political party a sum based on the percentage of the vote secured by the party at the previous parliamentary general election, namely:

<i>Percentage of UK vote</i>	<i>Permitted limit</i>
	<i>£m</i>
More than 30%	5
20 – 30%	4
10 – 20%	3
5 – 10%	2
Less than 5%	0.5

- c) other permitted participants - £0.5 million.

*These notes refer to the Political Parties, Elections and Referendums Act 2000 (c.41) which received Royal Assent on 30th November 2000*

217. If a referendum were held under the provisions of Part VII during the course of the Parliament elected in 1997, the permitted limit for the main political parties would be as follows: Labour (43.2% of the vote) £5 million; Conservative (30.7%) £5 million; Liberal Democrat (16.8%) £3 million. All other political parties secured less than 5% of the UK-wide vote and would consequently have a limit of £500,000.
218. *Paragraph 2 of Schedule 14* provides for the expenses limits in a referendum which is not a UK-wide referendum to be determined by order. *Subsection (2) of section 118* makes it an offence for a permitted participant to incur referendum expenses in excess of the permitted limit.

### ***Section 119 and Schedule 15 : Control of donations to permitted participants***

219. *Section 119* gives effect to *Schedule 15* which provides for controls on donations to permitted participants in referendum campaigns. *Part I of Schedule 15* defines donations to permitted participants in a referendum in terms equivalent to those in sections 50 to 52 in respect of donations to registered parties. *Part II of Schedule 15* applies restrictions on the acceptance of donations equivalent to those in section 54 to 61. *Part III of Schedule 15* provides that the return as to referendum expenses, required under section 120, must include a statement giving details of the source and amount of donations of more than £5,000 (including aggregate sums). The statement must also detail donations received, but rejected, from impermissible or unidentifiable donors. The requirements of section 119 and *Schedule 15* do not apply to registered parties (other than a minor party) given that they will be subject to the ongoing controls on donations set out in Part IV.

### ***Sections 120 to 124 : Returns***

220. *Sections 120 to 124* require a permitted participant which has incurred referendum expenses during any referendum period to make a return to the Electoral Commission as to those expenses. The requirements as to the content, auditing and submission of such a return are similar to those in sections 96 to 100 governing returns as to controlled election expenditure by third parties. In addition to detailing payments made in respect of referendum expenses, returns by permitted participants (other than registered parties) must also record relevant donations accepted for the purpose of meeting referendum expenses.

### ***Section 125 : Restriction on publication etc. of promotional material by central and local government, etc***

221. *Section 125* prohibits the government of the day, a local authority or any other publicly-funded body from publishing promotional material in relation to a referendum in the 28 days prior to the date of the poll. The prohibition applies to material addressed or made available to the public at large but not to material specifically requested by a member of the public. The provisions of this section do not apply to the Electoral Commission, which could therefore, for example, publish material designed to encourage voting in a referendum.

### ***Section 126 : Details to appear on referendum material***

222. To help the Electoral Commission identify who is behind referendum publications, and therefore who has incurred referendum expenses, *section 126* requires material relating to a referendum which is published during a referendum period to include certain specified information. *Subsections (2) to (5)* are concerned with printed material such as leaflets, posters and newspaper advertisements. *Subsection (2)* specifies the relevant details that must be included in a printed document, namely the name and address of the printer, promoter and any person on behalf of whom the material is published (and who is not the promoter). The “promoter” is defined in *subsection (11)* as the person causing the material to be published. This may be, for example, the agent

of a permitted participant, if not the permitted participant itself. Where the “promoter” is not the permitted participant, that individual or organisation will instead be “the person on behalf of whom the material is published”. *Subsection (3)* is concerned with a single-sided document such as a poster. *Subsection (4)* is concerned with advertisements in newspapers or periodicals. *Subsections (6) and (7)* are concerned with material published in a non-printed format, for example on the internet or in the form of a video. To take account of changes in technology it is left to subordinate legislation to prescribe the manner and form which the promoter’s details are to appear on the material. The regulation-making power may only be exercised after consultation with the Commission. *Subsections (8) to (10)* create offences and provide for a defence where a contravention of the requirements took place in circumstances beyond a person’s control (for example, where the agent of a permitted participant supplied to a newspaper the text of an advertisement which included the relevant details, but owing to an error by the newspaper publisher these details did not appear in the advertisement as printed).

### ***Section 127 : Referendum campaign broadcasts***

223. *Section 127* requires that broadcasters may only include a referendum campaign broadcast in their broadcast services if it is made on behalf of an organisation designated by the Electoral Commission under the provisions of section 108. This requirement (taken with that on broadcasters’ existing duty of impartiality) is intended to ensure that, in any referendum, each side of the campaign will have equal access to free airtime for referendum broadcasts. The two umbrella bodies in the 1975 referendum were each awarded free airtime for four ten-minute television broadcasts and three ten-minute and two five-minute radio broadcasts. Attempts to provide referendum broadcasts in the 1979 devolution referendums foundered following the decision of the Scottish courts in the case of *Wilson v Independent Broadcasting Authority* which held that the IBA, in deciding to allocate a broadcast to each of the four Scottish parliamentary political parties (which divided three to one in favour of devolution) had acted in breach of its statutory duty to ensure that programmes broadcast on the subject of the referendum maintained a proper balance.

### ***Sections 128 and 129 : Conduct of referendums***

224. *Section 128* makes arrangements for the counting of votes in a referendum. The section designates the Chairman of the Electoral Commission as the Chief Counting Officer in any referendum to which Part VII applies (save in the case of a referendum held in Northern Ireland only where the Chief Electoral Officer is designated the Chief Counting Officer). The Chief Counting Officer is required to appoint a counting officer for each relevant local government area in Great Britain (the Chief Electoral Officer will be the counting officer in Northern Ireland) who will be responsible for certifying the result in that area before the result as a whole is certified by the Chief Counting Officer. *Section 129* confers a power on the Secretary of State to make provision, by order, for regulating the conduct of referendums. Such an order may, in particular, create criminal offences and apply, with modifications, the provision of other enactments. The intention is to use the order-making power to apply those provisions of the Representation of the People Acts and Regulations that relate to the administration of a referendum poll (polling hours; arrangements for postal and absent voting; issue of polling cards etc.).

## **Part VIII : Election campaigns and proceedings**

### ***Section 130 and Schedule 16 : Control of donations to candidates***

225. *Section 130 and Schedule 16* insert new section 71A and new Schedule 2A in the Representation of the People Act 1983. The new section gives effect to the new Schedule which provides for controls on donations to candidates of more than £50 made for the purpose of meeting election expenses. Part I of new Schedule 2A defines donations to candidates in terms equivalent to those in sections 50 to 53 in respect of donations to registered parties. Part II of new Schedule 2A applies restrictions on

the acceptance of donations equivalent to those in sections 54 to 61. Part III of new Schedule 2A provides that the return as to election expenses, required under section 81 of the 1983 Act, must include a statement giving details of the source and amount of donations of more than £50. The statement must also detail donations received, but not accepted, from impermissible or unidentifiable donors.

### ***Section 131 : Election expenses incurred otherwise than by candidate***

226. *Section 131* amends section 75 of the Representation of the People Act 1983. The effect of *subsections (2) and (3)* is to substitute new limits on third party expenditure in support of or in opposition to a candidate at a parliamentary or local government election. The existing limit of £5 was held by the European Court of Human Rights in the case of *Bowman v United Kingdom* (9 February 1998) to be so low as to amount to an unjustified restriction on freedom of expression. A new limit of £500 is set for parliamentary elections. The new limit for a local government election is £50 plus 0.5 pence per elector. By virtue of *subsections (4) and (5)* the new limit for local government elections will also apply to Greater London Authority elections in place of the special provision made by and under section 75(1B) and (1C) of the 1983 Act (as inserted by paragraph 19(4) of Schedule 3 to the Greater London Authority Act 1999).

### ***Section 132 : Financial Limits applying to candidates' election expenses***

227. *Section 132* amends section 76 of the Representation of the People Act 1983. *Subsection (2)* inserts a new section 76(1) in place of the existing provision. The effect of the new subsection is to align this provision with the new definition of election expenses in new section 90A (inserted by section 134). *Subsection (4)* inserts new subsection (1B) into section 76 of the 1983 Act. This new subsection re-casts the criminal offence of exceeding the election expenses limit so that it is in similar terms to parallel offences created by this Act in respect of, for example, campaign expenditure by political parties. *Subsection (3)* makes consequential amendments to section 76(1A) which is concerned with elections to the Greater London Authority.
228. Under section 76(2) of the 1983 Act, the expenditure limit for parliamentary by-elections is presently limited by a formula based upon whether the constituency is a borough or a county constituency and the number of registered voters in the constituency (the average is some £34,000). The Neill Committee observed that the limits on by-election expenditure imposed by the existing formula were unrealistic, given the intensity of by-election campaigns, and recommended that a higher maximum be set. *Subsection (5)* increases to £100,000 the maximum amount a candidate may spend at a parliamentary by-election. This new flat-rate limit applies to all constituencies.

### ***Section 133 : Power to vary provisions about election expenses***

229. *Section 133* substitutes a new section 76A of the Representation of the People Act 1983. Under the existing section 76A the various monetary limits in sections 73, 74, 75 and 76 of the 1983 Act may only be varied, by order, to the extent necessary to keep pace with inflation. The revised section 76A preserves that power, but also enables more significant variations in the monetary limits in question where the Electoral Commission so recommends.

### ***Section 134 : Meaning of "election expenses"***

230. Restrictions on candidates' expenses are currently imposed by Part II of the Representation of the People Act 1983. For the purposes of that Part, section 118 of the 1983 Act defines "election expenses" in relation to an election as "expenses incurred, whether before, during or after the election on account of or in respect of the conduct of management of the election".



231. The purpose of *section 134* which inserts new section 90A to 90D, is to clarify the meaning of “election expenses”. In particular, these new sections provide for benefits in kind given to candidates to be regarded as election expenses. In doing so, they bring the 1983 Act’s treatment of notional expenses into line with the provisions of this Act in respect of campaign expenditure by political parties, controlled expenditure by third parties (as defined in Part VI) and referendum expenses by permitted participants (as defined in Part VII).
232. New *section 90A* of the 1983 Act defines “election expenses” as any expenses incurred for the acquisition or use of property or for the provision of services or facilities used for the purposes of the candidate’s election. *Subsection (3)* provides for a number of exemptions from the definition of “election expenses”, including the payment of the candidate’s deposit, material relating to the election published in a newspaper or periodical or included in a broadcast service (other than advertisements), facilities made available to candidates under the 1983 Act (for example, free mailing facilities), and the provision of services by a person free of charge and in his own time.
233. New *section 90B* is concerned with the calculation of election expenses incurred for the purposes of new section 90A. *Subsection (1)* deals with the valuation of property, goods, services or facilities acquired direct by the candidate or his agent. *Subsection (2)* is concerned with the apportionment of the cost of property, goods, services or facilities which is or are not used exclusively for the purposes of the candidate’s election. Such apportionment may be appropriate, for example, where parliamentary and local government elections are held on the same day and a party’s candidates for such elections jointly acquire premises to act as their campaign headquarters in respect of both elections.
234. New *section 90C* makes provision for treating as election expenses the value of any property, goods, services or facilities provided for the use of a candidate either free of charge or at a substantial discount. New *section 90D* modifies the application of sections 90A to 90C to fit the circumstances of an election of the London members of the London Assembly.

### ***Section 135 : Meaning of “candidate”***

235. *Section 135* amends the definition of a “candidate” currently in section 118 of the Representation of the People Act 1983. The new definition is contained in a separate section, *section 118A*, in the 1983 Act which is inserted by *subsection (2)*. The definition of a candidate is relevant to determining the date from which the restrictions on incurring election expenses apply. The revised definition makes two substantial changes. First, in relation both to a parliamentary and a local government election, the reference to a candidate who is elected is omitted; this will ensure that sitting MPs and councillors are treated on an equal footing with other candidates. The second change is that the definition of a local government candidate now includes a starting time for a person’s candidature, namely the last day for the publication of the notice of election (that is, 25 working days before the date of the election). The definition of a candidate in a local government election is also expanded to cover an election of the London members of the Greater London Authority. To avoid election expenses being incurred before that time in an attempt to evade the limit on election expenditure, new section 90A(2) of the 1983 Act (as inserted by *section 134*) provides that any expenditure on property, goods, services or facilities, purchased in advance of the relevant time but used after it, will nonetheless need to be accounted for as election expenses.

### ***Section 136 : Corrupt and illegal practices : consequences for persons convicted of such practices***

236. *Section 136* substitutes new sections 173 and 173A of the Representation of the People Act 1983 for the existing section 173. At present section 173 of the 1983 Act precludes a

person convicted of a corrupt practice from sitting in the House of Commons or holding any public or judicial office, but there is no such provision in respect of conviction for an illegal practice. Section 173 as substituted by this clause brings the consequences of conviction for an illegal practice into line with those for conviction for a corrupt practice. *Subsections (4) and (5)* of the new section 173 are intended to clarify the law in respect of the vacation of a seat or office following conviction for a corrupt or illegal practice. The vacation of a seat or office under subsection (4) will be final. However, subsection (5) makes provision for a stay of vacation where a notice of appeal against conviction is given, until either the determination of that appeal or the end of a period of three months whichever is sooner. The revised section 173 clarifies the statutory provisions following the Divisional Court's decision of 30 April 1999 in the case of *Fiona Jones*. In its revised form section 173 will now deal only with the electoral consequences of a conviction for a corrupt or illegal practice. The loss of any public or judicial office (other than an elected office) will henceforth be dealt with under the normal conditions of employment for such offices. However, new section 173A of the 1983 Act preserves in respect of Scotland the penalty of loss of any public or judicial office following a conviction for a corrupt practice.

### ***Section 137 and Schedule 17 : Corrupt and illegal practices: election petitions etc***

237. *Section 137* introduces *Schedule 17* which amends the provisions of the Representation of the People Act 1983 in respect of the procedure on election petitions and the consequences of reports by election courts. The changes to the 1983 Act made by *Schedule 17* in respect of election petitions are largely by way of repeal of provisions which are no longer considered necessary to the effective operation of the petitioning procedures.

### ***Section 138 and Schedule 18 : Election campaigns and proceedings: miscellaneous amendments***

238. *Section 138* introduces *Schedule 18* which makes various changes to Parts II and III of the Representation of the People Act 1983. *Paragraphs 2, 12, and 13* of *Schedule 18* repeal sections 72, 101 to 105, and 108 of the 1983 Act respectively, which are considered out of date and no longer serve a useful purpose.
239. *Paragraphs 3 to 5* of *Schedule 18* are concerned with the payment of election expenses. *Paragraph 3(2) and (5)* amend subsections (1) and (5) of section 73 of the 1983 Act respectively so as to specify more clearly the circumstances in which the requirement that the payment of election expenses be made through an election agent applies. *Paragraph 3(3)* amends section 73(2) so that any payment of £20 or more in respect of election expenses may be vouched by an invoice or a receipt instead of an invoice and a receipt. New subsection (1B) of section 74 of the 1983 Act, which is inserted by *paragraph 4(3)*, provides that a candidate may pay any election expenses incurred by him before the date on which he appoints an election agent. New section 74A of the 1983, inserted by *paragraph 5*, disapplies the requirement that election expenses are paid only through a candidate's election agent in circumstances where the expenses are originally incurred by a candidate in respect of goods, services or facilities for purposes other than his election, but which subsequently fall to be treated, on account of their use for that purpose, as election expenses. In such circumstances, however, the candidate's agent is required to make a declaration as to the amount of expenses that fall to be treated as election expenses as mentioned in new section 74A(1).
240. *Paragraph 7* of *Schedule 18* amends section 81 of the 1983 Act principally to omit the requirement that the form of return for candidates' election expenses should be that in *Schedule 3* to that Act. The form of return in *Schedule 3* is now considered out of date referring, for example, to telegrams but not to modern forms of communication. New section 81(10A) of the 1983 Act, inserted by *paragraph 7(7)*, instead provides that the Electoral Commission may set out a form of return in regulations.

241. *Paragraph 8* of Schedule 18 repeals section 82(4) of the 1983 Act thereby removing the requirement that an election agent's declaration as to the accuracy of an expenses return must be witnessed by a justice of the peace or other specified person.
242. *Paragraph 9* of Schedule 18 inserts new section 87A into the 1983 Act. This new section places a duty on returning officers in respect of parliamentary elections and elections of the Mayor of London to forward returns as to election expenses to the Electoral Commission. As regards other local government elections, the returning officer is required to forward a copy of a particular return if requested to do so by the Commission. This provision links into the Commission's functions of monitoring compliance with the restrictions on candidates' election expenses contained in section 145 of this Act.
243. *Paragraph 14* of Schedule 18 substitutes a new section 110 of the 1983 Act. This section is concerned with the information that must appear on election publications intended to promote or procure the election of a particular candidate. *Subsections (3) to (6)* of the new section 110 are concerned with printed documents such as leaflets, posters and newspaper advertisements. *Subsection (3)* specifies the relevant details that must be included in a printed document, namely the name and address of the printer, promoter, and any other person on behalf of whom the material is published (and who is not the promoter). The reference to the "promoter" of the material (in *subsection (3) (b)*) is intended to cover the agent of a candidate or of a third party who caused the material to be published. The person referred to in *subsection (3)(c)* is the candidate or third party itself. *Subsection (4)* is concerned with a single-sided document such as a poster. *Subsection (5)* is concerned with documents of two or more sides such as a leaflet. *Subsection (6)* is concerned with advertisements in newspapers or periodicals. *Subsections (7) and (8)* enable regulations to be made imposing requirements as to the inclusion of relevant details in any election material which is not a printed document. *Subsections (9) to (12)* create offences and provide for a defence where a contravention of the requirements took place in circumstances beyond a person's control (for example, where the agent of a candidate supplied to a newspaper the text of an advertisement which included the relevant details, but owing to an error by the newspaper publisher these details did not appear in the advertisement as printed). *Subsection (13)* defines certain terms used in the section.
244. *Paragraph 18* of Schedule 18 repeals various provisions of the 1983 Act relating to legal proceedings; such matters are now dealt with by rules of court.
245. *Paragraph 19* of Schedule 18 updates the terminology used in the 1983 Act in relation to legal proceedings. The terms "writ" and "summons" are no longer appropriate. The current terminology varies as between the three legal jurisdictions in England and Wales, Scotland and Northern Ireland. The phrase "legal process" is therefore used as a catch-all and is defined so as to include new documents used in England and Wales (for example, a claim form and application form) and the existing terminology used in Scotland and Northern Ireland.

## **Part IX : Political donations and expenditure by companies**

### ***Section 139 and Schedule 19 : Control of political donations by companies***

246. The general purpose of *section 139 and Schedule 19* is to require directors of companies to seek the approval of the company in general meeting to the making of political donations to political parties or organisations or to the incurring of expenditure for political purposes. At present the making of political donations and expenditure by a company on other political purposes is left to the general discretion of the directors and the management of the company. As a result of the Act the detailed arrangements will continue to lie with the directors, but it will not be lawful for such action to be taken unless approved in advance by the company in general meeting.
247. Part IX of the Act goes further than the regulation of political funding in the United Kingdom and covers the approval of company donations to political parties and

organisations in other member states of the European Union. This reflects the potential for the views of political parties based in other member states to have a direct impact on the commercial climate in the UK through bodies such as the European Parliament.

248. The regime for the control of political donations and expenditure is set out in Schedule 19 of the Act, which inserts new Part XA (comprising new sections 347A to 347K) into the Companies Act 1985.
249. Part IX of the Act does not extend to Northern Ireland, which has separate company law.

### **New Sections 347A and 347B : Introductory provisions and exemptions**

250. *Section 347A* establishes the general purpose of the sections on control of political donations and expenditure by companies, as set out above in relation to section 139 of this Act. In addition, it provides the following definitions in respect of the new Part XA (subject to the exemptions in section 347B):

- (a) “director” includes shadow director;
- (b) “donation” means anything that would constitute a donation for the purposes of sections 50 to 52 of this Act;
- (c) “EU political expenditure” means any expenditure incurred by a company-
  - in respect of the preparation, publication or dissemination of any advertising or other promotional material which could reasonably be regarded as intended to affect public support for any EU political organisation, or
  - in respect of any activities by the company itself which are capable of being reasonably regarded as intended to affect public support for a political party registered under this Act, any other EU political party or any independent candidates at elections, or to influence voters in relation to any national or regional referendum in any EU member state.
- (d) “EU political organisation” means:
  - (i) a political party registered under the Act, or
  - (ii) a political party which carries on, or proposes to carry on, activities for the purpose of, or in connection with, the participation of the party in any election or elections to public office held in an EU member state other than the United Kingdom, or
  - (iii) an organisation which carries on, or proposes to carry on, activities which are capable of being reasonably regarded as intended to affect public support for-
    - any registered party,
    - any other political party within (ii) above, or
    - independent candidates at any election or elections to public office held in an EU member state, other than the UK, or
  - (iv) an organisation which carries on, or proposes to carry on, activities which are capable of being reasonably regarded as intended to influence voters in relation to any national or regional referendum held under the law of any EU member state.

251. *Section 347B(1) to (3)* provide for the following exemptions:

- a subscription paid to an EU trade association for membership of the association is not to be regarded as a political donation for the purposes of the new Part XA;

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- an all-party parliamentary group composed of members of one or both of the Houses of Parliament (or of such members and other persons) is not an EU political organisation for the purposes of that Part.
252. Under *section 347B(4) to (7)*, a company (including, where appropriate, a subsidiary company) does not need to seek prior shareholder consent for donations to EU political organisations except to the extent (if any) that the amount or aggregate amount of any such donation or donations made in a particular qualifying period exceeds £5,000.
253. A “qualifying period” is defined in *subsection 347B(6)* as a period of twelve months. The first such period will commence either on the date of the company’s first annual general meeting after this section has come into force or on the date immediately following the end of the 12-month period beginning with the date of the coming into force of this section, whichever is sooner.
254. Under *section 347B(8)*, the Secretary of State may make an order by statutory instrument conferring an exemption on companies or expenditure of any description or category specified in the order. The Government has said that it intends to exempt business activities such as the publication of newspapers which, by their very nature, involve the publication or dissemination of material which seeks to influence the views of members of the public.

### **New Section 347C : Prohibition on donations and political expenditure by companies**

255. *Section 347C* prohibits a company from making a donation or incurring political expenditure unless the transaction or the expenditure is authorised under, or by virtue of, a resolution of the company in general meeting. An approval resolution must be one passed by the company in general meeting which authorises the making of donations and incurring of expenditure for a period of not more than four years commencing with the date of the passing of the resolution up to a value specified in the resolution. The resolution must not identify specific transactions but must simply seek approval for the global amount to be spent on donations and political expenditure within the relevant period.
256. *Subsection (5)* provides that where donations are made or expenditure incurred without an approval resolution it cannot be subsequently ratified or approved in any way by the shareholders. The consequences will be governed only by *section 347H*.
257. *Subsection (6)* provides that nothing in *section 347C* is to be taken as authorising a company to make political donations etc where its constitution does not permit it. Similarly any such approval will not override any mandatory provisions of the political funding regime set up under this Act.

### **New Section 347D: Special rules for subsidiaries**

258. *Section 347D* specifies special rules which apply to a company incorporated in Great Britain which is a subsidiary of a holding company. (The terms “subsidiary”, “holding company” and “wholly-owned subsidiary” each have the meaning given by *section 736* of the Companies Act 1985.) *Subsection (2)* provides that, when the subsidiary company is not a wholly-owned subsidiary, it may not lawfully make any donation or incur any expenditure which has not been approved in general meeting by both the holding company and the subsidiary company itself.
259. *Subsection (3)* provides that, when the subsidiary is a wholly owned subsidiary of its holding company, then the subsidiary need not pass its own resolution but the resolution of the holding company will still be required.
260. *Subsections (4), (6) and (9)* provide that the resolution of the holding company must be in the same terms as those required for the subsidiary itself.

261. *Subsection (7)* provides that, where donations or expenditure by a number of subsidiaries are required to be approved by the holding company, there must be separate resolutions dealing with each subsidiary. *Subsection (8)* applies the prohibition on subsequent ratification and approval described in relation to section 347C above to holding company approval resolutions.

### **New Section 347E : Special rule for parent company of non-GB subsidiary undertaking**

262. *Section 347E* places an obligation on the directors of the holding company to take all such steps as are reasonably open to them to secure that any “subsidiary undertaking” (as defined in section 258 of the Companies Act 1985) that is incorporated or otherwise established outside Great Britain only makes a political donation or incurs political expenditure authorised by a prior resolution of the holding company in general meeting. The holding company resolutions are to be in the same form as required for GB subsidiaries and no subsequent ratification or approval of unauthorised donations or expenditure is permitted.

### **Section 347F : Remedies for breach of prohibitions on company donations etc.**

263. *Section 347F* sets out civil remedies in relation to the making of donations or the incurring of political expenditure without the required approval of shareholders (“unauthorised transactions”). The remedies are to be available to a company and are to be pursued in the normal manner by the company; i.e. they will be pursued by the directors in the exercise of the management powers conferred by the articles of association, who will be subject to the various fiduciary and other duties applicable to directors in the conduct of the company’s business.
264. *Subsections (2) and (4)* provide that, where a company has engaged in an unauthorised transaction, the company is to have a statutory right to recover the amount of the donation or expenditure jointly and severally from the directors of the company (including for this purpose shadow directors) in office at the time the transaction was entered into. The company is also to have a statutory right to recover damages for any harm caused to the company by the unauthorised transaction e.g. if it is established that the unfavourable publicity surrounding an unauthorised transaction caused a loss of business to the company. Under *subsection (3)*, the company is also entitled to interest on the amount of the unauthorised expenditure from the time of the unauthorised transaction until the amount is repaid at a rate to be prescribed by the Secretary of State by regulations subject to the negative procedure.
265. *Subsection (6)* provides that, where the company entering into an unauthorised transaction is a subsidiary of a holding company incorporated in Great Britain, that holding company is to have equivalent rights of action to those of the subsidiary itself against the directors of the holding company at the time the subsidiary entered into the unauthorised transaction. Again the liability is to be joint and several and is to include shadow directors and to be on the same terms as the actions vesting in the subsidiary company itself.
266. *Subsection (8)* disapplies the general power of the court under section 727 of the Companies Act (to grant relief to directors in breach of their duty) to liability arising under this section.

### **New Section 347G : Remedy for unauthorised donation or expenditure by non-GB subsidiary**

267. *Section 347G* provides that, where the unauthorised transaction is entered into by a subsidiary incorporated outside Great Britain, the holding company is to have the rights of action set out in section 347F against the directors of the holding company at the time the transaction was entered into, jointly and severally, where the directors are

shown to have failed to take all such steps as were reasonably open to them to prevent unauthorised transactions. Section 727 is also disapplied in this subsection.

### **New Section 347H : Exemption of directors from liability in respect of unauthorised donations or expenditure**

268. *Section 347H* provides that, when proceedings are brought against a director or former director in respect of unauthorised donations or expenditure, it is a defence for the director to show that:
- (a) the amount involved in any unauthorised transaction has been repaid to the relevant company, together with any interest on that amount up to the date of repayment;
  - (b) the repayment has been approved by the company in general meeting;
  - (c) the notice of the resolution to be submitted to that meeting disclosed in full the circumstances in which the unauthorised transaction occurred and the circumstances and source of the repayment made to the company.
269. *Subsection (2)* provides that, in the case of directors of a holding company, it will be a defence to show in relation to unauthorised transactions by a subsidiary company that:
- (a) the unauthorised amount has been repaid, together with any interest on that amount up to the date of repayment;
  - (b) the repayment has been approved by both the subsidiary and the holding company in general meeting;
  - (c) the notice of the resolution to be submitted to each of those meetings disclosed in full the circumstances in which the unauthorised transaction occurred and the circumstances and source of the repayment made to the company.
270. *Subsection (3)* provides that, in the case of a wholly-owned subsidiary of the holding company, it is not necessary for the repayment to be approved by the subsidiary company in general meeting.
271. *Subsection (4)* provides that, in the case of directors of a holding company, it is a defence to show that proceedings have been commenced by the subsidiary against its directors and are being pursued with due diligence by that company unless the subsidiary is wholly owned. Under *subsection (5)*, this defence may only be raised with the leave of the court which may make, on such application for leave, such order as the court thinks fit, including an order adjourning or permitting the continuance of the action on such terms and conditions as the court thinks fit.
272. *Subsection (6)* provides that it is a defence for directors of a holding company of a subsidiary incorporated outside Great Britain to show that:
- (a) the unauthorised amount has been repaid to the subsidiary undertaking, together with any interest on that amount up to the date of repayment;
  - (b) the repayment has been approved by the holding company in general meeting;
  - (c) the notice of the resolution to be submitted to that meeting disclosed in full the circumstances in which the unauthorised transaction occurred and the circumstances and source of the repayment made to the company.

### **New Section 347I : Enforcement of directors' liabilities by shareholder action**

273. *Section 347I* provides for an action to be available under which shareholders may enforce on behalf of the company any of the remedies outlined in section 347F above.

274. Under *subsection (2)*, the shareholder action is only to be available when brought by one of the groups of shareholders described in section 54(2) of the Companies Act 1985; i.e. those groups entitled to challenge the re-registration of a public company as a private company. No shareholders other than those comprised in any one of such groups (“an authorised group”) will be able to bring the shareholder action.
275. Under *subsection (3)*, an authorised group can only commence an action after:
- (a) serving a notice on the company which sets out the cause of action, a summary of the facts on which it is based, the names and addresses of the shareholders making up the group and the grounds on which they qualify as an authorised group; and
  - (b) a period of 28 days has elapsed between the service of the notice and the commencement of the action.
276. Under *subsections (4), (5) and (6)*, any director may apply to the court during the period of 28 days to bar the shareholder action on any of the following grounds:
- (a) repayment of the amounts claimed has been made in accordance with the procedures described in section 347H above;
  - (b) the company has itself commenced proceedings and is pursuing those proceedings with due diligence. If the company makes an application on this basis, the court has a full discretion under *subsection (6)* not only to bar the shareholder action but to permit it to continue on such terms and conditions as the court thinks fit or to require the company’s action to be discontinued in favour of the shareholder action or for the company’s action to be continued on such terms and conditions as the court may think fit;
  - (c) the members proposing to bring the shareholder action do not constitute an authorised group.
277. *Subsection (7)* provides that, if proceedings are brought by an authorised group of members, the group is to conduct the action on behalf of the company as if they were the directors of the company bringing an action on its behalf in the normal manner. The members are, in so far as they are acting on behalf of the company, to be subject to the same duties in relation to their acting on behalf of the company as would be owed by the directors themselves when conducting the action. But no action by the company to enforce such a duty is to be brought without the leave of the court.
278. Under *subsection (8)*, the authorised group is to require the leave of the court to discontinue or compromise a shareholder action, and the court may give such leave on such terms as it thinks fit.

### **New Section 347J : Costs of shareholder action**

279. *Section 347J* provides that the authorised group of members of a company are not to be entitled as of right to have the cost of the shareholder action met from the funds of the company except as provided in the section. Under *subsection (2)*, they have the right to apply to the court for an indemnity out of the company’s assets in respect of costs incurred or to be incurred in a shareholder action. The court has full discretion to grant such an indemnity on such terms as it thinks fit. Under *subsection (4)*, if the company is awarded costs or they are agreed to be paid to the company and no *subsection (2)* order has been made, the costs are paid to the group. *Subsection (5)* provides, in the same circumstances but where costs go the other way, for them to be paid by the group.

### **New Section 347K : Information for purposes of shareholder action**

280. *Section 347K* provides that the authorised group of members of a company is entitled, once the action is commenced, to be provided by the company with all information possessed by it, under its control or obtainable by it and relating to the subject matter



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of the action. Under *subsection (2)*, this right may be enforced by the authorised group by application to the court for an order directing the company, and any officers or employees specified in the application, to disclose to the group all or any such information in such form and by such means as the court may direct.

### ***Section 140 : Disclosure of political donations and expenditure in directors' report***

281. *Section 140* establishes separate disclosure regimes for donations and expenditure within the UK/EU area and for monetary donations or contributions to political parties in the rest of the world. Both regimes are embodied under the section by amendments to Schedule 7 to the Companies Act 1985, which sets out the matters on which directors have to provide information in the directors' report.
282. The existing provisions relating to political gifts in *paragraphs 3 to 5 of Schedule 7* to the Companies Act are replaced by the provisions mentioned below (the provisions as to charitable donations simply restate the existing provisions under those paragraphs).

### **Donations and expenditure within the UK/EU area**

283. A company (other than a wholly owned subsidiary of a company incorporated in Great Britain) which makes political donations or incurs EU political expenditure exceeding, in aggregate, £200 in the financial year to which the directors' report relates is required to make the disclosures described below in the directors' report. Where the company is a holding company, its directors' report should include, separately identified by reference to each subsidiary, the donations made and expenditure incurred by that subsidiary.
284. The content of the disclosure is as follows:-
- i) the name of each registered party or other EU political organisation which has been the recipient of a donation;
  - ii) the total amount given to that party or organisation by way of such donations in the financial year; and
  - iii) the total amount incurred by the company in the financial year by way of EU political expenditure.

### **Monetary donations or contributions to political parties in the rest of the world**

285. In relation to the "rest of the world" disclosure regime, a company (other than a wholly owned subsidiary of company incorporated in Great Britain) is required to disclose only a single aggregate figure covering monetary donations or contributions made to any political party which carry on activities wholly outside the UK or any other EU member state. Where the company is a holding company the single aggregate figure is to include contributions both by the holding company itself and by any of its subsidiaries wherever incorporated. There is no threshold in relation to the "rest of the world" disclosure requirement.

## **Part X : Miscellaneous and general**

### ***Section 141 : Reduction of qualifying period for overseas electors***

286. *Section 141* amends sections 1 and 3 of the Representation of the People Act 1985 so as to reduce the qualifying period for registration as an overseas elector from twenty years to fifteen years. The qualifying period was initially set at five years by the 1985 Act. It was subsequently raised to twenty years by the Representation of the People Act 1989.

### ***Section 142 : Pre-consolidation amendments***

287. *Section 142* makes two technical changes to the European Parliamentary Elections Act 1978. The need for these changes emerged during the drafting of a Bill to consolidate the European Parliamentary Elections Acts 1978, 1993 and 1999. *Subsection (2)* corrects a defect in paragraph 5(4) and (4A) of Schedule 1 to the 1978 Act. That paragraph provides for the consequences where a disqualified person is elected under section 3 of the 1978 Act, which concerns elections in Great Britain, without providing for the consequences where the person is elected under section 3A, which concerns elections in Northern Ireland. *Subsection (3)* corrects a similar defect in paragraph 6 of Schedule 1 to the 1978 Act, which is concerned with judicial proceedings as to the disqualification of an MEP.

### ***Section 143 : Details to appear on election material***

288. *Section 143* requires that advertisements and other election material designed to promote or procure the electoral success of a registered party or candidates who hold particular opinions must include certain specified information. *Subsections (2) to (5)* are concerned with printed documents such as leaflets, posters and newspaper advertisements. *Subsection (2)* specifies the relevant details that must be included in a printed document, namely the name and address of the printer, promoter, and any other person on behalf of whom the material is published (and who is not the promoter). The “promoter” of the material (in *subsection (2)(b)*) is intended to cover the agent of the registered party or third party who caused the material to be published. The person referred to in *subsection (2)(c)* is the registered party or third party itself. *Subsection (3)* is concerned with a single-sided document such as a poster. *Subsection (4)* is concerned with documents of two or more sides such as a leaflet. *Subsection (5)* is concerned with advertisements in newspapers or periodicals. *Subsections (6) and (7)* enable regulations to be made imposing requirements as to the inclusion of relevant details in any election material which is not a printed document. *Subsections (8) to (10)* create offences and provide for a defence where a contravention of the requirements took place in circumstances beyond a person’s control (for example, where the agent of a party supplied to a newspaper the text of an advertisement which included the relevant details, but owing to an error by the newspaper publisher these details did not appear in the advertisement as printed). *Subsection (11)* defines certain terms used in the section, including “election material” which has the same meaning as in *section 85(3)*.

### ***Section 144 : Broadcasting of local items during election period***

289. *Section 144* substitutes a new section 93 of the Representation of the People Act 1983. The existing section 93 imposes two restrictions on broadcasting during parliamentary and local elections. The first restriction, set out in section 93(1)(a), is that pending an election it is not lawful for an item about the constituency or electoral area to be broadcast if any of the persons who are candidates at the election takes part in the item and the broadcast is not made with his consent. There is thus a legal requirement for the candidate’s consent to the broadcasting of an item in which he has taken part must be secured by the person responsible for making the broadcast.
290. The second of the present restrictions, contained in section 93(1)(b), is that if an item about the constituency or local government electoral area, as appropriate, is broadcast pending an election, then if the broadcast either is made before the last time for the delivery of nomination papers or is made after that time but without the consent of any candidate validly nominated for the election, any person taking part in the item for the purposes of promoting or procuring his election is guilty of an illegal practice unless the item is made without his consent. The object of the restriction is to prohibit an electioneering broadcast made before all the candidates have been nominated or one which is made without the consent of all the candidates.

291. These restrictions have been criticised by the broadcasting authorities (BBC, Independent Television Commission, Radio Authority and the Welsh Channel Four Authority) for effectively giving any candidate a veto over the broadcasting of an item relating to a particular parliamentary constituency or local government electoral area.
292. To address this the new section 93 does away with the current restrictions and instead places a duty on the broadcasters to adopt up a code of practice concerning the involvement of candidates in election period broadcasts about the constituency or local government electoral area. Before drawing up such a code the broadcasters are required to have regard to any views expressed by the Electoral Commission about its contents.

***Section 145 : General function of Commission with respect to monitoring compliance with controls imposed by the Act etc.***

293. *Section 145* confers on the Electoral Commission the general function of monitoring compliance by registered political parties, recognised third parties and permitted participants in a referendum with the restrictions and other requirements set out in Parts III to VII of the Act. In addition, the Commission is also to monitor compliance with the restrictions on candidates' expenses and on donations to candidates imposed by the Representation of the People Act 1983 (as amended) and other enactments relating to elections.

***Section 146 : Supervisory powers of Commission***

294. *Section 146* empowers the Electoral Commission to require registered political parties, recognised third parties, permitted participants in a referendum campaign, regulated donees and candidates at an election to provide information to the Commission relating to their financial affairs. A person authorised by the Commission may also enter the premises of a registered party, recognised third party or permitted participant to inspect their financial records.

***Section 147 : Civil penalty for failure to deliver documents etc***

295. *Section 147* creates a civil penalty for failure to deliver specified documents to the Electoral Commission as required under Parts III to VII. *Subsections (3) and (4)*, which are modelled upon the financial penalties to which public companies are liable for failure to submit accounts under section 242A of the Companies Act 1985, provide for a scale of penalties based upon the length of the period during which the party has failed to comply with the relevant requirements. However, unlike the equivalent penalties under the Companies Act, which are recovered administratively, the Commission will, under *subsection (5)*, recover the penalties as a debt through the courts.

***Section 148 : General offences***

296. *Section 148* creates general offences intended to guard against the evasion of the requirements of any provisions of the Act through the alteration or suppression of relevant documents or through the withholding or false supply of information.

***Section 149 : Inspection of Commission's registers etc***

297. *Subsection (1)* provides for public access to the various registers maintained by the Electoral Commission, namely the registers of:
- a) political parties;
  - b) recordable donations;
  - c) recognised third parties; and
  - d) permitted participants in a referendum campaign.

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298. *Subsection (6)* makes similar provision for public access to documents which are required to be deposited with the Commission, namely:
- a) political parties' annual statements of accounts;
  - b) political parties' returns as to campaign expenditure;
  - c) recognised third parties' returns as to controlled expenditure; and
  - d) permitted participants' returns as to referendum expenses.
299. The Electoral Commission will be required to make the registers and documents available for public inspection during ordinary office hours and, in addition, may make other arrangements for access to their contents (for example, it might make copies of the registers available on the Internet). *Section 149*, in its application to the register of political parties, replaces section 11 of the Registration of Political Parties Act 1998 which provides for public right of access to the register to be determined by regulations.

### ***Sections 150 to 154 : Provisions relating to offences***

300. *Section 150 and Schedule 20* set out the penalties for all the criminal offences created by the Act.
301. *Sections 151 to 153* are concerned with summary proceedings and offences committed by bodies corporate and unincorporated associations. *Section 154* requires the courts to notify the Electoral Commission of the conviction of any person under the provisions of the Act or under any enactment relating to elections. Such notifications will enable the Commission to check whether a person registered as a party's treasurer or as the treasurer of an accounting unit, or as a deputy treasurer, is disqualified from holding such office by virtue of sections 24(8), 27(3) and 74(3) respectively.

### ***Section 155: Power to vary specified sums***

302. *Section 155* confers a power on the Secretary of State (for these purposes the Home Secretary) to vary any sums set out in the Act (save those specified in sections 12(8) and 36(5)). Save where any sum is simply being updated to allow for inflation, any variation must be on the recommendation of the Electoral Commission.

### ***Section 156 : Orders and regulations***

303. *Section 156* provides for the Secretary of State's powers to make orders and regulations.

### ***Section 157 : Documents for purposes of the Act***

304. *Section 157* sets out requirements in respect of documents.

### ***Section 158 : Minor and consequential amendments and repeals***

305. *Section 158* gives effect to *Schedules 21 and 22* which set out minor and consequential amendments and repeals.

### ***Schedule 21 : Minor and consequential amendments***

306. *Paragraphs 1 and 2 of Schedule 21* add the Electoral Commission to the list of bodies subject to the Public Records Act 1958 and the Parliamentary Commissioner Act 1967 respectively.
307. *Paragraphs 3 and 4 of Schedule 21* add Electoral Commissioners, Deputy Electoral Commissioners, Assistant Electoral Commissioners and the staff of the Commission to the list of persons disqualified from membership of the House of Commons and Northern Ireland Assembly by virtue of the provisions of the House of Commons

Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 respectively.

308. *Paragraph 5 of Schedule 21* amends the European Parliamentary Elections Act 1978. *Sub-paragraph (3)* removes the power in *Schedule 1* to that Act to make regulations prescribing limits on election expenses incurred in relation to a general election as a whole. Such limits will in future elections be determined by Part V of this Act.
309. *Paragraph 6 of Schedule 21* makes further amendments to the Representation of the People Act 1983. *Sub-paragraph (2)* transfers to the Electoral Commission the Secretary of State's function (under section 18(5) of the 1983 Act) of arbitrating on the siting of polling places. *Sub-paragraph (3)* transfers to the Commission the Secretary of State's responsibility (under section 29 of the 1983 Act) for reimbursing returning officers' expenses incurred in connection with a parliamentary election. The power to prescribe by regulations the categories of expenses for which returning officers may seek reimbursement is also transferred to the Commission. *Paragraph 7 of Schedule 21* makes consequential amendments to the Representation of the People Regulations 1986.
310. *Paragraph 6(4)* amends section 47(1) of the 1983 Act so as to transfer from the Secretary of State to the Commission responsibility for determining whether equipment purchased from central funds for use in connection with a parliamentary election may be used for local elections.
311. *Paragraph 6(5)* inserts a new subsection (1A) into section 52 of the 1983 Act. Section 52(1) confers on the Secretary of State power to issue directions to registration officers in respect of the discharge of their registration duties. New subsection (1A) provides that such directions may include directions requiring a registration officer to maintain his registers of electors in a specified electronic format.
312. *Paragraph 6(6)* removes a reference to illegal "hiring" in section 175 of the 1983 Act as a result of the repeal of section 101 of that Act by paragraph 12 of Schedule 18.
313. *Paragraph 6(7)* amends section 201 of the 1983 Act (regulations) consequential upon amendments to section 29 and 110.
314. *Paragraph 6(8)* amends the definition of a registered party in section 202 of the 1983 Act to take account of the replacement by this Act of the registration scheme in the Registration of Political Parties Act 1998.
315. *Paragraph 6(9)* inserts a new paragraph (5) into Rule 14 of the Parliamentary Elections Rules. New Rule 14(5) requires a returning officer to send to the Electoral Commission a copy of the statement of persons nominated and, in the case of each candidate standing in the name of a registered party, the certificate received by the officer in accordance with Rule 6A. This information will enable the Commission to determine the relevant limit on campaign expenditure for each registered party under the provisions of Part V of the Act.
316. *Paragraph 9 of Schedule 21* amends section 13 of the Local Government Act 1992 which sets out the functions of the Local Government Commission for England. *Sub-paragraph (2)* substitutes new subsections (1), (1AA) and (1A) in section 13 for the existing subsections (1) and (1A). The effect of this change is to enable the Secretary of State to direct the Local Government Commission for England to conduct a review of an area he specifies and to make either structural, boundary or electoral recommendations or any combination of the three he may direct. (As section 13(1) and (1A) stand, it is not possible for the Secretary of State to direct the Commission to carry out a review of any specified area which is limited only to structural or boundary or electoral changes; a review must at present embrace all three types of possible changes.)
317. *Paragraph 9(4) of Schedule 21* omits subsections (3) and (4) of section 13 of the 1992 Act. The effect of this change is to remove the current obligation on the Local

Government Commission to conduct periodic electoral reviews at ten to fifteen-year intervals. Henceforth it will be a matter for the Local Government Commission (and subsequently the Electoral Commission when it assumes the functions of the Local Government Commission in accordance with the provisions of section 18) to determine when to conduct periodic electoral reviews.

318. *Paragraph 12 of Schedule 21* amends the Government of Wales Act 1998. *Sub-paragraph (2)* removes the power in section 11(2)(c) of the 1998 Act to make regulations governing election expenses incurred by registered political parties. For future Assembly elections, campaign expenditure by registered parties will be controlled by Part V of this Act. *Paragraph 13(3) of Schedule 21* makes a parallel amendment to the Scotland Act 1998. *Paragraph 12(3)* adds a new section 34A to the 1998 Act which enables the National Assembly to make payments to groups of Assembly members for the purpose of assisting Assembly members in the groups to perform their function as Assembly members. Such financial support to party groups in the Assembly is equivalent to that paid to Opposition parties represented in the House of Commons (under a scheme known as ‘Short money’), although in the case of the Assembly payments may be made to all parties. (Section 97 of the Scotland Act 1998 already contains provision in connection with the Scottish Parliament, equivalent to the new section 34A.)
319. *Paragraph 14 of Schedule 21* amends the Northern Ireland Act 1998. *Sub-paragraph (3)* substitutes a new paragraph 13 of Schedule 2 to the 1998 Act. The existing paragraph 13 provides that the registration of political parties is an excepted matter. The revised paragraph 13 makes the whole subject matter of this Act an excepted matter, with the exception of Part IX (political donations and expenditure by companies). Under the 1998 Act the regulation of companies is a devolved matter.
320. *Paragraphs 16 and 17 of Schedule 21* amend sections 10 and 11 of the Representation of the People Act 2000. The amendments to section 10 of the 2000 Act (together with section 9 of this Act) provide for the Electoral Commission’s involvement in pilot schemes to test new electoral procedures. In particular, the amendment to section 10(6) of the 2000 Act will require the Electoral Commission, rather than the relevant local authority, to prepare a report on a pilot scheme. The amendment to section 11 of the 2000 Act provides that the order-making power in subsection (1) of that section (which enables successfully piloted electoral procedures to be rolled-out to local government elections generally) may only be exercised on the recommendation of the Electoral Commission.
321. *Paragraph 18 of Schedule 21* amends sections 44 and 45 of the Local Government Act 2000. These sections contain regulation-making powers in relation to the conduct of elections and referendums in respect of directly elected mayors. In common with the policy set out in sections 7 and 8 of this Act, any regulations in respect of mayoral elections may only be made after consultation with the Electoral Commission and, to the extent that the regulations prescribe the limits on election expenses by candidates in a mayoral election, they may only be made on a recommendation of the Commission (except where any increase in the limits is in line with inflation). Similarly, regulations governing the conduct of mayoral referendums may only be made after consultation with the Commission. The Commission’s role in respect of the wording of a referendum question and the limits on referendum expenses mirrors that in respect of national or regional referendums governed by Part VII of the Act (see section 104 and Schedule 14).

### ***Section 159 : Financial provisions***

322. *Section 159* makes financial provision in respect of expenditure arising from the provisions of the Act.

### ***Section 160 : General interpretation***

323. *Section 160* is the interpretation section.

### **Section 161 : Interpretation : donations**

324. *Section 161* is a general interpretation section in respect of donations. Amongst other things the section:
- a) ensures that references to donations for meeting a particular kind of expenditure (eg. controlled expenditure by a recognised third party) include donations designed to save the donee incurring that kind of expenditure (so releasing funds to spend on the election campaign) (*subsection (2)(a)*);
  - b) enables donations which in all the circumstances must reasonably be assumed to be incurred for a particular purpose to count as donations for that purpose (*subsection (2)(b)*);
  - c) make clear that the words of exception (eg. in section 50(2)(d)) do not include a person who, although paying money out of his own resources (with no right to reimbursement), could be said to be acting on behalf of the party (*subsection (4)*);
  - d) fixes a time when a donation consisting of the direct payment of expenses (eg. as mentioned in section 50(2)(d)) is to be treated as received by the party (*subsection (5)*).

### **Section 162 : Interpretation : exempt trust donations**

325. *Section 162* defines an “exempt trust donation” for the purpose of the controls on donations to registered parties and others. The section creates two forms of exempt trust donation. The first category, in *subsection (2)*, consists of trusts created before 27<sup>th</sup> July 1999 (when the Government’s White Paper on the Funding of Political Parties (Cm.4413) was published). In the case of such a trust, it is not necessary to establish that the person who created it was a permissible donor. But an old trust loses its exemption if any property has been transferred to it after 27<sup>th</sup> July 1999 or if its terms have been varied since then (these conditions are designed to ensure that an old trust is not used as a shell for what is in effect a new set of transactions); and the trustee must supply the party with at least the names of the settlor and any transferors (thus guarding against “blind trusts”).
326. The second category of exempt trust donation, created by *subsection (3)*, has no time-limit and is ongoing. Subsection (3) makes it permissible for a donation to be received from a trust, provided that the trust was created (and any further moneys put in) by a permissible donor. Subsection (3) makes it a condition of exemption that the trustees give the necessary names etc. to the recipient party or other donee.
327. A trust donation (old or new) falling within subsection (2) or (3) is only exempt if it does not fall within subsection (5), that is, if the trust is a non-discretionary trust. Where the trustee has a discretion (ie. he could make the money over to someone else, consistently with the terms of the trust), the donation would in effect be from the trustee himself; and a trustee is not a permissible donor. Trustees inevitably enjoy discretion under a trust as to the circumstances in which payments are made. However, in order to be an exempt trust, there should be no discretion as to the party which enjoys the benefits of the trust.

### **Section 163 : Short title, commencement, transitional provisions and extent**

328. *Section 163* provides for commencement and gives effect to *Schedule 23* which contains transitional provisions. The section also provides that the provisions of the Act extend throughout the United Kingdom, save for certain exceptions in respect of Northern Ireland.

### **Schedule 23 Part I : Transfer of registration of existing registered parties**

329. The purpose of *Part I of Schedule 23* is to ensure that parties already registered under the Registration of Political Parties Act 1998 (of which there were 138 as of

14th December 2000) make the necessary arrangements to comply with the registration scheme established under the provisions of the Act. In particular, those parties will be required to submit, within six weeks of the “initial date” (ie. 14<sup>th</sup> December 2000), a copy of the party’s constitution and a draft scheme as required under section 26 (paragraph 3(2)). In order that the time taken to consider and approve these schemes (and the work involved in doing so is likely to form a considerable part of the Commission’s initial workload) does not delay the application of the requirements of *Parts III to V* of this Act, *paragraph 4(4)* provides that a draft scheme will have effect as if it had been approved by the Commission either until it is in fact approved or until the end of the period of nine months beginning immediately after the end of the compliance period. If the Commission is not able to approve a draft scheme within that nine-month period it will be able to impose a scheme incorporating such modifications to the proposed scheme as it considers appropriate (*paragraph 4(5)*).

330. An existing registered party will also be required to submit, again within the six-week ‘compliance period’: a declaration for the purpose of *section 28 (paragraph 2)*, details of its registered treasurer and, where the party is a party with accounting units, the name and address of each accounting unit and the name of the treasurer and one other officer of each such unit (*paragraph 3(3) to (5)*).
331. Where a party fails to provide all the necessary documentation and information required under *paragraphs 2 and 3* of the Schedule within the time allowed, its registration is terminated with effect from the appointed day for the commencement of *Part II* (16<sup>th</sup> February 2001); the party could not then field candidates at an election. Such a party may, however, revive its registration if, within the three month period beginning immediately after the end of the six-week compliance period, it submits the necessary outstanding material to the Commission (*paragraph 5*).
332. By virtue of *paragraph 7 of Schedule 23*, the register of political parties maintained by the Registrar of Companies under the Registration of Political Parties Act 1998 is frozen with effect from the initial date (i.e. two weeks after Royal Assent). After that point no further additions or alterations to the 1998 Act register may be made.

### ***Schedule 23 Part II : Other transitional provisions***

333. *Paragraph 8 of Schedule 23* provides that any agreement conferred by the Speaker to the appointment of Electoral Commissioners-designate (for the purpose of section 3(2)) prior to Royal Assent shall be treated in the same fashion as agreement conferred after that point. Consultation with the leaders of relevant parliamentary parties conducted prior to Royal Assent is similarly validated.
334. *Paragraph 11 of Schedule 23* makes interim arrangements for parties to confirm their registered particulars pending the commencement of section 45 (read with section 32). The treasurer of a registered party will be required to submit a notification to the Commission which complies with section 32(2) and (3) within the period beginning 11 months after the commencement date for Part II (16<sup>th</sup> February 2001) and ending 15 months after that date.