

POLITICAL PARTIES, ELECTIONS AND  
REFERENDUMS ACT 2000



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**THE SPEAKER'S COMMITTEE**

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**FIRST REPORT 2009**

*Presented to the House of Commons in pursuance of  
paragraph 1(1) of Schedule 2 of the Political Parties,  
Elections and Referendums Act 2000*

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## The Speaker's Committee

The Speaker's Committee is appointed in accordance with the provisions of section 2 of the Political Parties, Elections and Referendums Act 2000 to perform the functions conferred on it by that Act.

### Current membership

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Rt Hon Sir Alan Beith MP, *Chairman of the Justice Committee*

Mr John Healey MP, *Minister for Local Government*

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### Previous Reports in the current Parliament

Second Report 2005, was published in July 2005 as House of Commons Paper No. 435 of Session 2005–06.

Third Report 2005 was published in December 2005 as House of Commons Paper No. 783 of Session 2005–06.

First Report 2006, was published in August 2006 as House of Commons Paper No. 1581 of Session 2006–07.

First Report 2007, was published in August 2007 as House of Commons Paper No. 996 of Session 2006–07.

Second Report 2007, was published in August 2007 as House of Commons Paper No. 997 of Session 2006–07.

Third Report 2007, was published in February 2008 as House of Commons Paper No. 288 of Session 2007–08.

First Report 2008, was published in July 2008 as House of Commons Paper No. 961 of Session 2007–08.

Second Report 2008, was published in December 2008 as House of Commons Paper No. 109 of Session 2008–09.

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## Speaker's Committee First Report 2009

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1. The purpose of this report is to place in the public domain the report of the Comptroller and Auditor General under paragraph 16(1) of Schedule 1 of the Political Parties, Elections and Referendums Act 2000 (PPERA) on his examination into the economy, efficiency and effectiveness with which the Commission has used its resources. The Committee has a statutory obligation<sup>1</sup> to have regard to the most recent such report when considering the Electoral Commission's proposed Estimates and Corporate Plan. The report, which we considered on 23 March 2009 in the context of our examination of the draft Estimate for 2009-10 and draft Corporate Plan for 2009-14, is reproduced in the Appendix.

2. The report considers the effectiveness of the Electoral Commission in the regulation of political party finances and makes four recommendations about how that effectiveness could be improved. The report notes that the Political Parties and Elections Bill, which is currently before Parliament, will once enacted have a direct bearing on the Commission's regulatory work and in particular on the sanctions available to it. We have therefore thought it best to place the Comptroller and Auditor General's Report in the public domain at the earliest opportunity.

3. We are grateful to the Comptroller and Auditor General for producing his report. We will consider the recommendations made in it and will discuss them with the Electoral Commission. If we consider it appropriate, we will make a further Report to the House.

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<sup>1</sup> By virtue of paragraphs 14 and 15 of Schedule 1 of the Political Parties, Elections and Referendums Act 2000.

# Appendix: Report of the Comptroller and Auditor General

## Electoral Commission: compliance with regulations on funding political parties

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The Electoral Commission is an independent body corporate, established by the United Kingdom Parliament under the provisions of the Political Parties, Elections and Referendums Act 2000.

This report has been prepared under paragraph 16 (1) (a) of Schedule 2 to the Political Parties, Elections and Referendums Act, which requires the Comptroller and Auditor General to carry out an examination into the economy, efficiency or effectiveness (or, if he so determines, any combination thereof) with which the Commission have used their resources in discharging their functions (or, if he so determines, any particular functions of theirs) each year.

The Speaker's Committee have regard to the most recent report of the Comptroller and Auditor General in considering the Commission's five year plan, and considering the economy, efficiency and effectiveness with which the Commission discharge their functions.

## Summary

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1. The Fifth Report of the Committee on Standards in Public Life<sup>2</sup> said, "Many members of the public believe that the policies of the major political parties have been influenced by large donors, while ignorance about the sources of funding has fostered suspicion." The Electoral Commission (the Commission) has a key role in ensuring integrity and transparency of party and election finance. In carrying out this role, the Commission has power to investigate potential breaches of the law and to apply sanctions. The Commission was established as an independent body corporate under the Political Parties, Elections and Referendums Act 2000 (the Act)<sup>3</sup>.
2. The Electoral Commission is responsible for the regulation of the funding of political parties under the Act. This report considers the work of the Commission in the regulation of party finances and how its effectiveness could be enhanced, applying the best practice laid down by recent reports on better regulation and the effective use of sanctions. Part 2 examines the current regime of sanctions; and Part 3 draws comparisons with other regulators.
3. Figure 1 summarises the main sources of evidence for this report. We have analysed the data submitted to the Commission. We have also reviewed the legislation on the Commission's role as regulator, and ascertained the Commission's existing policies on sanctions; and compared both to overseas Electoral Commissions and other UK regulators.

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<sup>2</sup> The Funding of Political Parties in the United Kingdom (Cm 4057, October 1998)

<sup>3</sup> Available at <http://www.opsi.gov.uk/acts/acts2000/20000041.htm>

**Figure 1: Our sources of evidence in carrying out this examination**

Method	Purpose
Analysis of data submitted by Parties	To determine the levels of donations; the level of late reporting; the impact of enforcement action and the effectiveness of the Commission as a regulator.
Review of legislation	To understand the Commission's role, powers and responsibilities.
Review of the Commission's policies on sanctions	To assess consistency and transparency of the Commission's approach and the effectiveness of its strategy.
Review of Overseas Electoral Commissions	To compare effectiveness, benchmark the UK Commission and identify best practice.
Review of UK Regulators	To compare effectiveness, benchmark the UK Commission and identify best practice.

## Key findings

### *On the use of sanctions within the regulatory framework:*

4. Sanctions are an important part of any regulatory system, providing both an incentive to ensure compliance and a deterrent. For sanctions to operate effectively, those regulated need to understand clearly what their obligations are.
5. The regulatory environment in which the Commission works is a complex one. The political parties and other regulated bodies vary in size and structure, from small single issue parties to the larger parties, with seats in Parliament, and a more organised structure. At present, the Commission's enforcement tools are a limited range of fines and referrals to the police or prosecuting authorities for criminal investigation. It has little scope for flexibility in its use of sanctions because of the legislative framework. The fines cannot be varied according to circumstances and do not cover the full range of offences and contraventions under the legislation.
6. There are pending changes to the legislative framework which will clarify and expand the Commission's regulatory role in securing compliance with the law. The Political Parties and Elections Bill currently before Parliament would, if enacted, provide a wider range of flexible sanctions and enable the Commission to take a more proportionate approach.
7. We found that the Commission wrote to all registered parties when it decided to begin levying penalties for late submission of donation and loan returns and annual accounts in 2007, but did not publicise this change in other ways including on its website, as it has with its policy on allegations and investigations. Best practice in regulation states that policies should be shared with all interested parties as an aid to compliance, but especially with those subject to regulation.
8. The Commission analyses the statutory returns it receives to identify trends and assess changes in compliance levels, but does not report publicly on them. As yet, the Commission does not have a robust set of outcome focused performance measures that can be set against this analysis in order to assess its performance in regulating party finance.

### *On comparisons with other regulators:*

9. Other UK regulators and overseas Electoral Commissions have more flexible sanctions available to them, are longer established and generally regulate better established and tested rules. The Commission could nevertheless do more in the following areas:
- preparation and publication of a policy on sanctions to improve transparency;
  - use of its investigative powers to be more proactive in identifying reasons for non-compliance with the statutory reporting requirements;
  - better use of communications to publicise the enforcement actions it takes and its reasons for acting; and
  - introduction of performance measures to show its effectiveness as a regulator.

## Recommendations

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We recommend the following:

- **The Commission does not yet have a fully risk based strategy for enforcement and compliance as best regulatory practice suggests.** The Commission recognises the lack of such a strategy and is in the process of developing one.
- **The Commission does not yet have a comprehensive and transparent enforcement and sanctions policy. Work is well underway on indicative draft policies and guidance to coincide with Parliament's consideration of the Political Parties and Elections Bill.** The Commission should develop and promulgate their guidance, based on a risk based strategy, through all available means (electronic and other) as an aid to compliance.
- **The Commission does not have a performance measurement framework with performance measures linked to outcomes as recommended in the Hampton report as best practice for regulators.** We have provided separate guidance to the Commission on developing performance measures and once the risk based strategy recommended above is in place, it would be timely to develop performance measures.
- **The Commission is actively working towards compliance with the principles of effective regulation.** The Commission needs to demonstrate its compliance with these principles in order to make effective use of a more flexible sanctions regime.

## Part 1: The current regulatory regime for party finance

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1.1 The Electoral Commission (the Commission) was established following a recommendation in the Committee on Standards in Public Life's Fifth Report to ensure the integrity and transparency of party and election finance. The Commission was established as an independent body corporate under the Political Parties, Elections and Referendums Act 2000 (the Act)<sup>4</sup>. The Act gives the Commission the general function of monitoring compliance with the controls on funding and spending set out in the Act, and provides the Commission with a limited range of supervisory and sanctioning powers. The Political Parties and Elections Bill, published in July 2008, includes proposals to give the Commission the expanded statutory role of securing compliance with the legislation, with wider investigatory powers and access to a new range of civil sanctions for non-compliance.

### The role of the Electoral Commission in the regulation of party finances

1.2 The role of the Electoral Commission in the regulation of party finances is defined in Section 145 of the Act. The Act sets out restrictions on the donations that registered political parties, third parties<sup>5</sup> and party members acting on their own account (regulated donees<sup>6</sup>) may accept, and restrictions on expenses that parties are permitted to incur during election campaigns. In terms of regulation the key elements set out in the Act are as follows.

- Political parties must be registered in order to field candidates in the party's name at elections.<sup>7</sup> The Electoral Commission is required to maintain a register of political parties.<sup>8</sup>
- Registered parties must deliver annual statements of accounts to the Electoral Commission by specified deadlines.<sup>9</sup>
- The Electoral Commission is required to make the parties' statements of accounts available for public inspection as soon as possible after receiving them.<sup>10</sup>
- Only permissible donations may be accepted by parties and other regulated entities, including party members, holders of elective office and members' associations related to parties. Regulated entities must return impermissible donations within 30 days of receipt.<sup>11</sup>

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<sup>4</sup> Available at <http://www.opsi.gov.uk/acts/acts2000/20000041.htm>

<sup>5</sup> Third parties are individuals or organisations, other than political parties and candidates, that campaign during an election.

<sup>6</sup> Regulated donees are members of registered political parties (acting on behalf of themselves not the party), holders of relevant elective office (e.g. MEP's) and member's associations.

<sup>7</sup> PPERA Section 22.

<sup>8</sup> PPERA Section 23

<sup>9</sup> PPERA Sections 42-45

<sup>10</sup> PPERA Section 46

<sup>11</sup> PPERA Sections 54-57

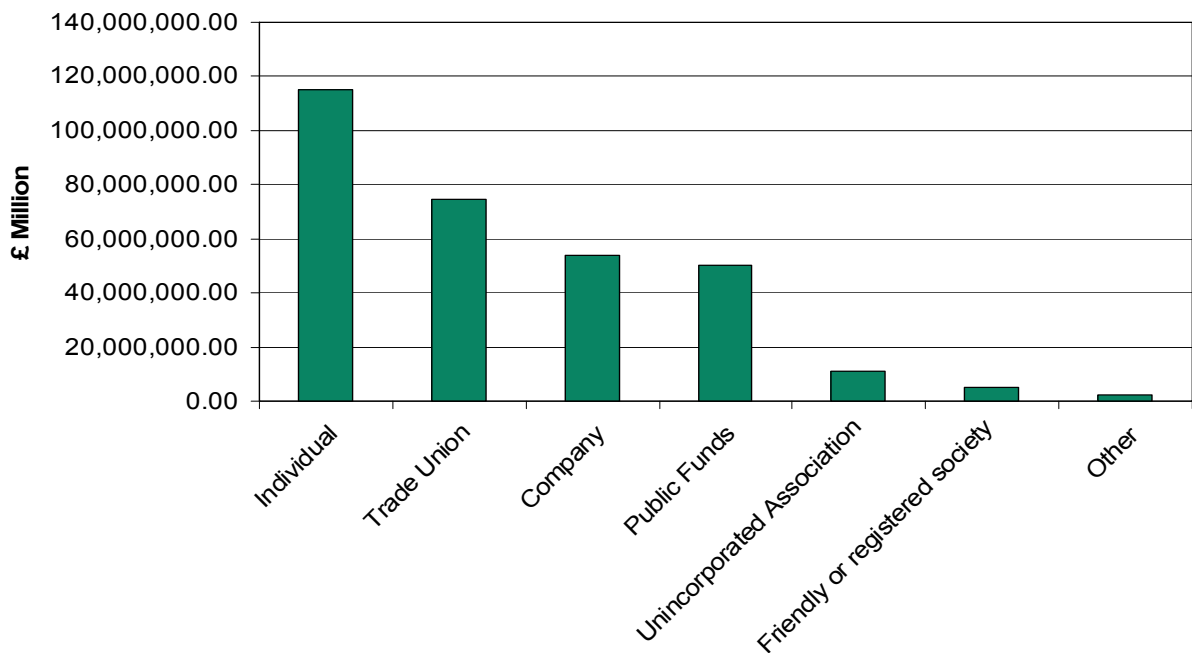
- Parties are required to make quarterly reports of donations received.<sup>12</sup> The Electoral Commission is required to maintain a register of donations reported by parties.<sup>13</sup> The same requirements have applied to 'regulated transactions' including loans from 11 September 2006.
  - Parties are also required to comply with limits on their campaign spending in the period leading up to major elections, and must report to the Electoral Commission their campaign expenditure incurred during a relevant election to UK or European Parliaments<sup>14</sup>.
- 1.3 Currently employing over 150 people and spending around £22 million per annum, as well as administering a total of £2 million per annum in Policy Development Grants to major political parties, the Commission's aim is to foster:
- "integrity and public confidence in the UK's democratic process"
- One of the Electoral Commission's five key objectives is to achieve "integrity and transparency of party and election finance". This objective is the responsibility of the Party and Election Finance directorate of the Commission, which employs just under 30 staff. Excluding spending on Policy Development Grants, the Commission spends just over £3 million annually for this purpose. A key element of the Commission's corporate plan for 2007-08 to 2010-11 is to demonstrate and enhance its effectiveness as the regulator of party and election finance. The Commission's account of its approach to this objective, together with challenges and risks, issues and key activities for the next five years is at **Annex 1**.
- 1.4 Since the formation of the Commission in 2000 until October 2008, political parties in the United Kingdom have received around £300 million, of which over £100 million was in the form of donations from individuals and over £50 million from public funds, including £2 million per annum in Policy Development Grants administered by the Commission itself (see breakdown at **Figure 1**).

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<sup>12</sup> PPERA Section 62

<sup>13</sup> PPERA Section 65

<sup>14</sup> PPERA Section 72

**Figure 1: Political party funding 2001-2008 by source**

Source: National Audit Office analysis of Electoral Commission data.

## Public funding of political parties

1.5 Eligible political parties are allocated a share of an annual £2 million policy development grant which Parliament has made available to encourage long-term policy development. They can spend the grant on developing policies for inclusion in their manifestos but not on routine expenditure or campaigning. Eligible parties are, on the 7 March each year, those that have at least two Members of the House of Commons who have taken the Oath and are not disqualified from sitting or voting in the House. The grant is paid in arrears against claims submitted by eligible parties in respect of qualifying expenditure.

1.6 Other sources of public money include annual grants to help parties in opposition in the House of Commons and the House of Lords with their costs (in the form of "Short Money" and "Cranborne Money" respectively). These grants are named after the leaders of the two Houses at the time of the grants' introduction. The conditions for eligibility for these grants are broadly similar to the eligibility conditions for Policy Development Grants. The money should be used exclusively in relation to a party's Parliamentary business.

## The Commission's powers of investigation and enforcement

1.7 The Act gives the Commission powers over the finances of registered political parties, and other recipients of political donations. These are set out below and cover investigation, enforcement and compliance.

## General power

1.8 Under section 145 of the Act, the Commission has a “general function of monitoring compliance” with:

- (a) the restrictions and requirements imposed on the finances of political parties, and other recipients of political donations; and
- (b) the restrictions imposed on election expenses incurred by or on behalf of candidates at elections, or donations to candidates or election agents.

## Investigative power

1.9 Under section 146 of the Act, the Commission has “supervisory powers” which enable it to access financial records and information, and to enter the premises of some regulated entities to inspect, and make copies of, relevant documentation. The Commission can use its powers to obtain information about the financial records of:

- registered parties;
- registered third parties;
- permitted participants;
- regulated donees (in respect of their political activities); and
- candidates (in relation to their election expenditure or relevant donations).

The Commission has no powers under section 146 to require information from other bodies or individuals, such as unregistered third parties, or donors to political parties. The Political Parties and Elections Bill currently before Parliament includes proposals to give the Commission a wider range of supervisory and investigatory powers.

1.10 Under Section 46, where a registered party's gross income or total expenditure in any financial year exceeds £250,000, the accounts of the party for that year must be audited by a qualified auditor, and the Commission may appoint a qualified auditor to audit these parties' accounts if it appears to the Commission that the accounts have not been duly audited by the statutory deadline. The Commission can require registered parties with income and expenditure under £250,000 to have their accounts audited where the Commission considers that it is desirable to do so.

## Regulation making power

1.11 The Act gives the Commission regulation making powers, focused on enabling it to require further information, or to prescribe the format in which information is submitted, to enhance the accessibility of the public registers and to assist the Commission in its monitoring and investigative roles. The Commission consulted in 2008 on using its regulation-making power to require registered parties and their accounting units to prepare statements of accounts in a standard format. An accounting unit is a constituent or affiliated organisation within a party which is responsible for its own financial affairs, e.g. a constituency party. Accounting units must be registered with the Electoral Commission. The Commission is now working with the parties to finalise guidance on the proposed new standard requirements, which are expected to become mandatory from financial year 2010.

## The Electoral Commission's powers of sanction

1.12 The current penalties regime under the Act provides for four types of sanctions: criminal sanctions, civil penalties, forfeiture and deregistration.

### Criminal sanctions

1.13 Schedule 20 of the Act sets out the sections of the Act which, if breached, may give rise to criminal sanctions. The majority of breaches under the Act are criminal offences, and criminal proceedings can be brought by the Crown Prosecution Service (CPS), the Procurator Fiscal in Scotland and Public Prosecution Service of Northern Ireland for offences ranging from failure to submit specified documents to evasion of restrictions on donations and overspending by a political party. Penalties range from a level 5 fine (currently £5,000) to custodial sentences of 6 months or 1 year.

1.14 The Commission can refer matters to the police and prosecuting bodies as appropriate for further investigation and potential prosecution; it is not itself a prosecutor. The Commission made two such referrals to the Metropolitan Police during the period November 2007 to February 2008, both of which were subsequently referred to the Crown Prosecution Service. The CPS has decided not to prosecute one of the matters and the other is still pending.

### Civil penalties

1.15 Section 147 of the Act provides a limited range of civil penalties (fines) for failure to deliver specified documents within statutory deadlines to the Commission.

1.16 In 2007 the Commission issued 154 penalties under section 147 totalling £112,150. Nearly all these penalties related to late filings by small parties with low levels of income and expenditure. Parties were offered the opportunity to have the penalty waived by either deregistering or filing a statutory nil return within a specified period. As a result, the Commission subsequently waived 38 penalties (totalling £33,500) for parties that deregistered and 85 penalties (totalling £63,000) for parties filing nil returns; 13 penalties totalling £7,650 due from larger parties and accounting units were paid; and 18 penalty notices, (totalling £9,500) remained unpaid. The 18 penalties not recovered related to parties with minimal or no income and expenditure. The Commission has used its regulatory powers flexibly in this instance in order to increase compliance and reduce the number of dormant parties it has to monitor. For active parties, the Commission has sought to recover penalties.

### Forfeiture

1.17 Section 58 of the Act gives the Commission the power to seek a court order requiring a registered party to forfeit an amount equivalent to the value of impermissible donations which have been accepted or retained by the party in breach of controls under the Act. This provision is replicated in other sections of the Act with regard to impermissible donations accepted by other regulated bodies or individuals. Forfeiture provisions are also applicable under section 65(6) to instances where a court is satisfied that failure to

comply with donation report requirements is attributable to the intention to conceal the existence or true amount of a donation.

- 1.18 The Commission has sought forfeiture of £513,586 in donations. It initiated forfeiture proceedings against the United Kingdom Independence Party (UKIP) and then sought judicial review of the magistrate's decision in that case. On 21 January 2009, the High Court ordered a re-hearing in this case. Some of the impermissible funds have been voluntarily forfeited by parties; others await resolution of the UKIP case.

### **Deregistration**

- 1.19 Since the passing of the Electoral Administration Act 2006, political parties that fail to submit their annual confirmation of registered details within six months of the statutory deadline can be deregistered involuntarily. The Commission statutorily deregistered 48 parties in 2007 and 35 parties in 2008 for failure to submit annual confirmation of registered details as required. Such deregistration aids effective regulation of active political parties, as it shows that the Commission will use its powers to counter non-compliance with statutory requirements. It also helps in simplifying the regulatory field.

## Part 2: Securing compliance with regulations on party finance

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### The principles of good regulation

- 2.1 Making regulation effective is the subject of Philip Hampton's report, *Reducing administrative burdens: effective inspection and enforcement* (March 2005)<sup>15</sup>. The Hampton report is intended to make regulation more effective and less burdensome by getting all regulators to design their systems in accordance with the principles of good regulation in a comprehensive risk based way. Regulatory effort should be focused on areas of greatest risk, cutting down on routine inspection and leading to earned autonomy for well run organisations. The resources freed up could then be put into advice and guidance for those regulated, thereby improving compliance.
- 2.2 Professor Richard Macrory's report, *Regulatory Justice: Making Sanctions Effective*<sup>16</sup>, published in November 2006, aimed to ensure that regulatory sanctions were consistent with and appropriate for the risk based approach to regulation as set out in recommendation eight of the Hampton Review. This recommendation proposed that the penalty regime should be based on the risk of re-offending and the impact of the offence, with a sliding scale of penalties that are quick and easier to apply for most breaches, with tougher penalties for rogue organisations that persistently break the rules. The Macrory Report found that most regulators were heavily dependent on criminal sanctions which are cumbersome to apply and might not be proportionate or appropriate to the regulatory breach. (See Annex 2 for more specifics on both the Hampton & Macrory reports.)

### The Commission's current enforcement powers

- 2.3 The Commission's current investigation and enforcement powers under the Act are based on the recommendations of the Fifth Report of the Committee on Standards in Public Life.<sup>17</sup> The Committee envisaged the Commission as having a number of roles to operate the controls laid down in the Act, including an investigative role and a power to make enquiries concerning all aspects of political parties and third party accounts. The Committee also considered that an enforcement scheme backed by criminal sanctions was necessary in order to encourage compliance and to deter political parties from breaking the rules. As described in Part 1, the sanctions regime includes civil and criminal penalties, with additional options of forfeiture of impermissible donations and deregistration.

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<sup>15</sup> <http://www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf>

<sup>16</sup> <http://www.berr.gov.uk/files/file44593.pdf>

<sup>17</sup> The Funding of Political Parties in the United Kingdom (Cm 4057, October 1998)

## The purpose of sanctions within a regulatory system

2.4 Sanctions are an important part of any regulatory system. They provide both a deterrent to non-compliance and an incentive to ensure compliance. Sanctions also make clear that non-compliance will not be tolerated<sup>18</sup>. The sanctions regime described in Part 1, comprising both civil and criminal sanctions, and powers of forfeiture and deregistration, is in place to support the regulatory framework for party financing put in place under the Act.

### *Good practice in using sanctions*

2.5 For sanctions to operate effectively, those regulated need to understand clearly what their obligations are. The regulator needs to apply sanctions consistently, fairly, and proportionately according to the offence committed and to be supported by investigative powers so that the regulating authority can determine whether and how rules have been broken. The output from these investigations can then be used as a deterrent to other regulated parties, and also as guidance on risks which could lead to breaches of the Act, and ways to manage those risks. Under the current framework, the Commission does not have discretion on varying the size of a penalty or the circumstances in which they are imposed. The only choice is to seek to recover the penalty or not. The Commission therefore faces difficulty in applying a genuinely risk-based enforcement policy at present.

## The Commission's use of its sanctions regime

2.6 We looked at the Commission's use of sanctions to identify how well these are working, in terms of the effect they are having on compliance with the rules by those regulated. We then drew from the use of sanctions conclusions about the approach of the Commission and how it could be improved, in order for the Commission to adopt fully the Hampton approach of comprehensive and transparent regulation.

## The impact of enforcement on compliance

### *Timely submission of annual accounts*

2.7 Political parties are required to submit their annual accounts to the Commission by no later than 4 months after the party's year end for parties with both income and expenditure below £250,000, and no later than six months and seven days for parties with both income and expenditure over £250,000. We analysed the available data, which show that a high proportion of annual accounts are submitted within one month of the deadline. There was a marked increase in 2005-06, followed by some slippage in 2006-07 (**Figure 2**). The measure of 'within one month of the statutory deadline' was the Commission's Key Performance Indicator at the time, and meant one month past the statutory deadline. The Commission now measures compliance against the statutory deadline itself with no grace period and in 2007-08, the

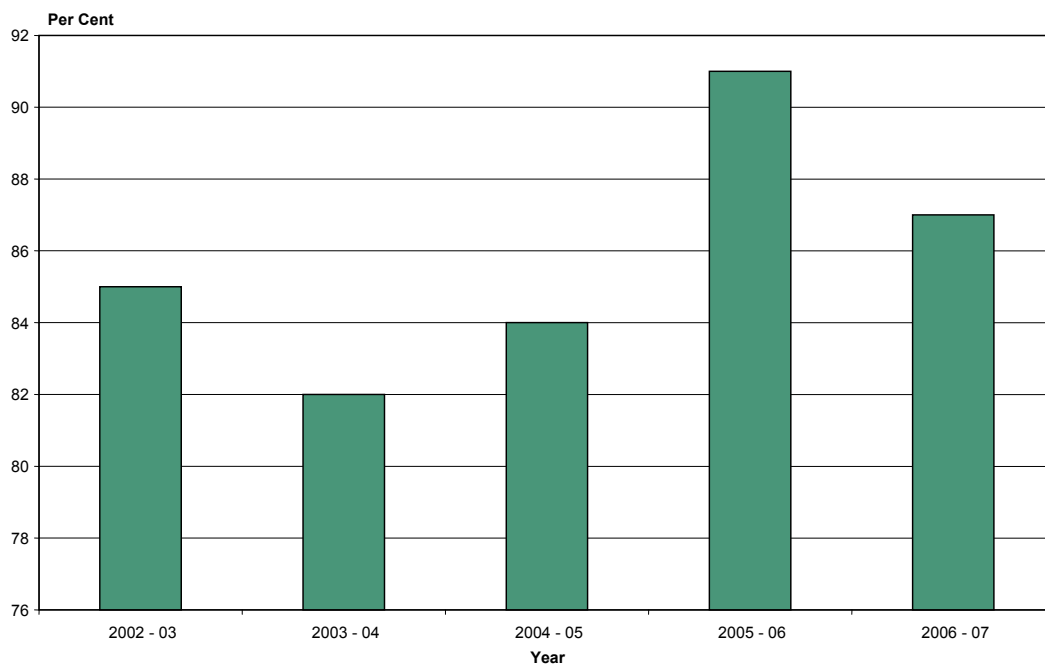
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<sup>18</sup> Professor Richard B. Macrory, *Regulatory Justice: Making Sanctions Effective, Final Report*, November 2006.

proportion of statements of accounts submitted on time was 84%, which shows an improvement in performance.

2.8 In 2007, the Commission began to impose penalties for the late filing of annual accounts. In the first year, the Commission imposed penalties only on parties and constituent parts of parties (accounting units) with income and expenditure over £100,000. In 2008, the Commission imposed penalties on all those bodies which failed to file timely accounts. The fall in compliance in 2006-07 could be related to the fact that a number of parties which had filed a series of nil returns and had thus become exempt from filing quarterly returns mistakenly believed that they were also exempt from filing an annual statement of accounts (see 2.9 below).

**Figure 2: Percentage of annual accounts received by the Electoral Commission within one month of the statutory deadline**

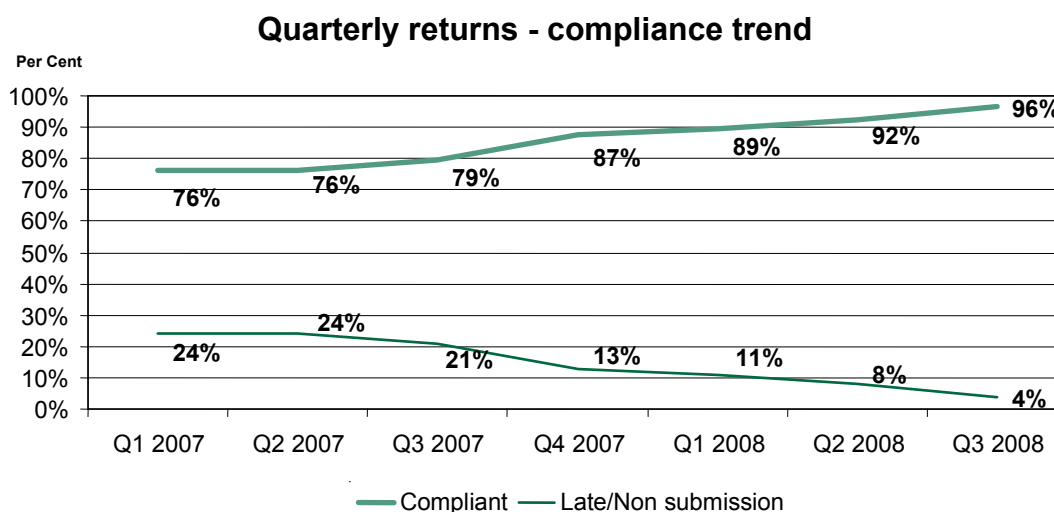


*Source: National Audit Office analysis of Electoral Commission data.*

### Timely submission of quarterly returns of donations

2.9 Section 62 of the Act requires parties to make quarterly returns of donations. The Commission started imposing fines for non-compliance with donation reporting requirements in 2007, and has taken steps to clarify the reporting obligations of the parties. The Commission also sends parties reminders of filing deadlines each quarter, and includes information about late filed returns in its quarterly donation and loan press releases. The recent improvement in the rate with which parties submit their quarterly returns on time (**figure 3**) could be attributed to these actions. The fact that some parties who do not receive donations are now exempt from filing quarterly returns, as a result of legislation in the Electoral Administration Act 2006, may also be a contributing factor. Under the 2006 Act, a party that submits four consecutive quarterly nil returns is exempt from further quarterly returns until they have a reportable donation or loan.

**Figure 3: Percentage of quarterly returns received by the Electoral Commission less than one month late**



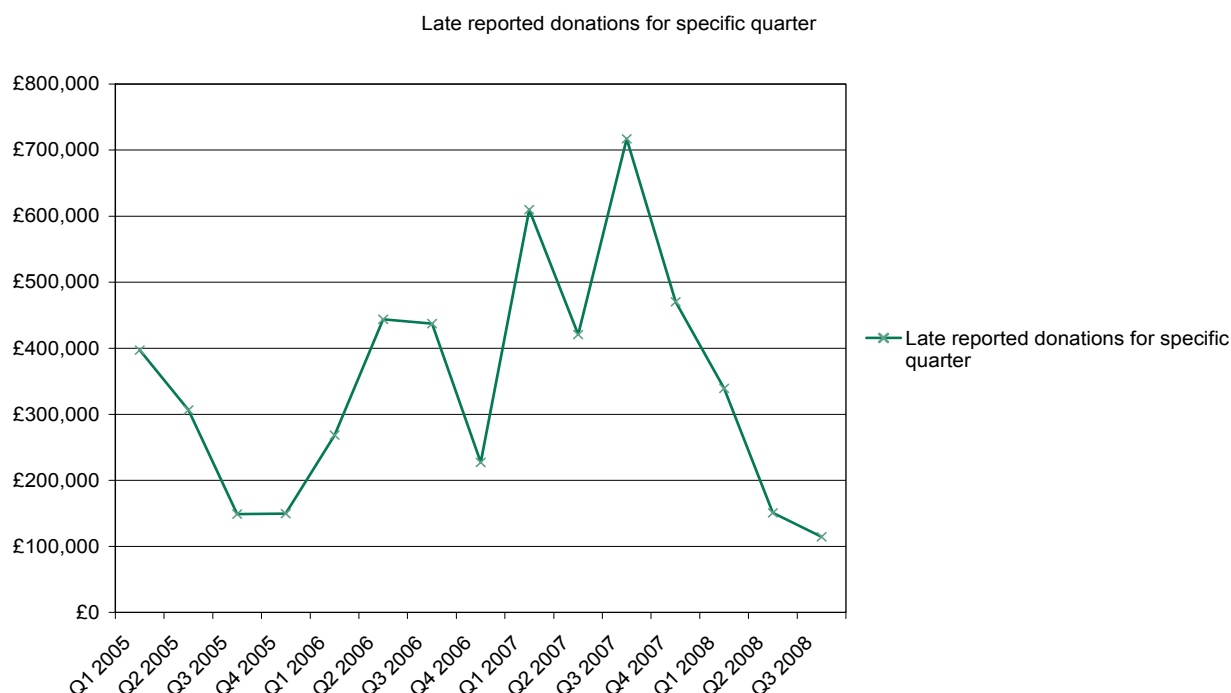
Source: NAO analysis of Electoral Commission data

### Late reporting of donations by political parties

2.10 Although the legislation carries financial penalties for the late submission of quarterly returns, which are required to include details of all reportable donations received during the relevant period, there are no civil penalties if a report omits reportable details. The only remedy in that case is referral for consideration of a criminal offence, which is disproportionate in the case of administrative errors.

2.11 The Commission has referred to the late reporting of individual donations by political parties in its press release for quarterly returns for several years. In 2008, the Commission also wrote to parties who reported late donations seeking an explanation and enquiring about measures the party intended to put into practice to avoid further non-compliance, particularly for the parties' central offices. **Figure 4** shows the total value of late-reported donations by all parties.

2.12 The number of donations reported late by the central offices of political parties however has decreased recently, which may be a result of the Commission pressing parties on this issue, though recent figures are also depressed because they do not include recent donations not yet reported. The Electoral Commission told us that all donations reported late in Quarter 3 2008 were from constituent parts of parties (accounting units under the Act) which were often staffed by volunteers.

**Figure 4: Value of donations reported late to the Electoral Commission****Notes:**

1. The chart shows the total value of late-reported donations by the quarter in which they were received. For example, a donation received on 3 July 2005 and reported in the return for the first quarter of 2006 would be assigned to the third quarter of 2005.
2. Only donations reported up to the present time are shown. Those donations received to date which will be reported late are not included. It is therefore likely that these charts underestimate the late-reported donations for some quarters, and that such an effect is greater for quarters in the recent past than for quarters in the more distant past.

*Source: National Audit Office analysis of Electoral Commission data.*

2.13 The Commission's practice of commenting on late reporting of donations that should have been included in the return for an earlier quarter is the only deterrent, short of pursuing criminal action, available for the submission of incomplete reports of quarterly donations by political parties. These details are published on its website. The deterrent effect is limited. The Commission has commented repeatedly on this problem, and with some improvement in reporting on time.

2.14 The Commission's new approach is to reference the accounts received to donations reported on a quarterly basis and identify discrepancies. The Commission is also starting to develop its risk based approach further by identifying parties and their constituent parts (accounting units) with high levels of income and expenditure, or constituencies where high levels could be expected (e.g. target seats for the parties).

## Return to donors of impermissible donations

- 2.15 The Act lays down that parties must return impermissible donations to donors within 30 days. The register of donations (from 2001 to December 2007) to political parties on the Commission's website includes 17 impermissible donations received by parties and returned to donors (or, in one case, to the Electoral Commission) outside the statutory period of 30 days. It also includes 4 donations from unidentifiable donors: 3 were returned to the agent from whom they were received and one to the Electoral Commission.
- 2.16 In 2007, the Commission began to seek forfeiture of an amount equal to the value of impermissible donations including those that were returned beyond the 30 day period. Since then, amounts equal to two donations, one for £500 and the other for £1,675, have been voluntarily forfeited despite having been returned to the donor.

### Rules on the acceptance or return of donations

Where— (1)

(a) a donation is received by a registered party; and

(b) it is not immediately decided that the party should refuse the donation,

all reasonable steps must be taken by the party to verify or ascertain the identity of the donor, whether he is a permissible donor, and (if that appears to be the case) all such details in respect of him as are required by virtue of paragraph 2 of Schedule 6 to be given in respect of the donor of a recordable donation.

(2) If a registered party receives a donation which it is prohibited from accepting then the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on his behalf within the period of 30 days beginning with the date when the donation is received by the party.

*Source: PPERA section 56*

2.17 The Commission's decision to seek forfeiture of amounts equal to the value of impermissible donations returned to their donor after the 30 day window is in keeping with the Commission's decision to be more robust in its approach to compliance. Our analysis of the donation returns also shows that while some parties report a number of impermissible donations, others do not. The Commission conducts permissibility checks on donations reported in quarterly returns and regularly assesses whether impermissible donations are being reported.

### Flexibility of sanctioning options

2.18 The Macrory Report emphasises the need for sanction regimes to be flexible and to take account of circumstances, so as to be proportionate. Reasons vary for political parties' late submission of required information to the Commission. The penalties cannot be flexed to take account of the circumstances of the breach or the size of the party, as the choice is simply to seek to recover the fine or not. This lack of flexibility then leads to outcomes explained below.

2.19 Because there is no provision under the Act to take into account the circumstances and seriousness of the offence in determining the level of the fine imposed on political parties for late reporting, there is no flexibility in the sanctions available. In circumstances where the Commission considers that the only sanctions available for late reporting by parties are disproportionate, it does not seek to recover the civil penalty set out in the

Act.<sup>19</sup> It would for example, refrain from doing so where late reporting by a party is a one-off occurrence attributable to operational difficulties or simple error; or where a quarterly report of donations is made on time but is incomplete, and the donations missing from that report are reported in a subsequent quarterly report. Repeated and habitual late reporting by political parties, and where there is evidence that a party is attempting to conceal information deliberately or delay its public release, would attract a different response and the Commission would recover the penalty.

2.20 In 2007, the Commission issued 154 penalty notices for late submission of statutory returns. The value of these notices amounted to £112,150. For the reasons set out in paragraph 1.16, 123 of these penalties were waived because the majority of the parties to whom they were issued (125 parties in all) proved to be inactive, and took the opportunity to de-register, or to file a nil return. Nil returns are checked by the Commission by comparing them against Statements of Account submitted by parties. Of the remaining 31 penalty notices, the Commission received payment on 13 and wrote off 18.

2.21 In the fixed scale of administrative fines available to the Electoral Commission to enforce the Act, the amount of the fine depends only on the degree of lateness of the submission of accounts or quarterly reports of donations or loans. Where the Commission decides to recover a fine, it has no flexibility but to seek the level of a fine imposed by the Act, irrespective of a party's income and assets. In practice the Commission tends not to levy fines on very small parties.

2.22 The Commission has a policy on how it handles complaints and on when it will apply sanctions. The policy on complaints handling and investigations is on the Commission's website. The policy on when it will apply sanctions has been sent to all political parties but is not on the Commission's website. Best practice laid out in the Hampton<sup>20</sup> and Macrory<sup>21</sup> reports says that policies should be shared with all interested parties as an aid to compliance, but especially with those subject to regulation. The Commission's approach to enforcement and sanctions is focussed on larger parties, where it believes the risks lie, but it informs all political parties of changes to its approach on enforcement action.

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<sup>19</sup> For example in press releases of 24 February 2006 (<http://www.electoralcommission.gov.uk/media-centre/newsreleasedonations.cfm/news/513>), 22 May 2007 (<http://www.electoralcommission.org.uk/media-centre/newsreleasedonations.cfm/news/632>) and 20 November 2007 (<http://www.electoralcommission.org.uk/media-centre/newsreleasedonations.cfm/news/685>).

<sup>20</sup> <http://www.berr.gov.uk/files/file44593.pdf>

<sup>21</sup> <http://www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf>

## Part 3: Comparison with other regulators

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3.1 In this part of the report, we compare the Commission's role as regulator and its policies on sanctions with the Hampton principles of good regulation and the guidance set out by Macrory on flexible and proportionate sanctioning tools that can be used by regulators to achieve more effective regulation. We also draw comparisons with other UK and overseas regulators, to bring out useful points of comparison for the Commission.

### Better Regulation Principles

#### Hampton & Macrory

3.2 Hampton and Macrory set out the need for proportionate sanctions, together with a clear and transparent strategy for enforcement. A summary of the main principles of their reports is at **Annex 2** (see also **figure 6**). We have also shared with the Commission a questionnaire, developed with the Better Regulation Executive, which is based on the Hampton principles, and enables regulators to assess their own performance.

#### Figure 6: Hampton Principles of good regulation:

1. **Risk Assessment** - concentrate resources on areas that need them most and place the greatest burden on the non-compliant.
2. **Advice and guidance** - increase the probability of compliance through authoritative and accessible advice.
3. **Form Filling** - simplify / minimise the form filling process and streamline the volume of data that the regulated must supply.
4. **Penalty Regimes** - create deterrence through proportionate and meaningful sanctions.
5. **Regulatory Structures** - simplify the structure of regulation
6. **Accountability** - be clearly accountable for performance in regulation

Source: *Reducing administrative burdens: effective inspection and enforcement*, Philip Hampton, HM Treasury, March 2005

3.3 There are also examples of good practice which the Commission could use to improve their sanction regime, although there may be a need for legislative change for some aspects.

- 3.4 The Commission recognises that it has some way to go before it meets all the Hampton criteria. The Regulatory Enforcement and Sanctions Act offers a greater range of administrative penalties open to those regulators who comply with Hampton principles. The Political Parties and Elections Bill<sup>22</sup> currently before Parliament would offer the Commission similar flexibility. It proposes to strengthen the Commission by proposing wider investigative powers and a more flexible range of sanctions for breaches of the rules on party and election finance.
- 3.5 Currently the Commission operates an implicit policy of not imposing sanctions (i.e. a fine) where to do so would be judged disproportionate. It would be helpful to those regulated if this policy were made explicit in the Commission's enforcement strategy and more transparent. A transparent sanctions policy would become even more important if the Commission were given the more flexible powers contained in the Bill.

### International Comparisons

- 3.6 The sanctions regimes established in Australia, the United States of America and Canada, set out in detail at **Annex 2**, provide useful examples for the Commission.

### *The Australian Electoral Commission*

- 3.7 The Australian Electoral Commission has a range of fines at its disposal. As well as a fine of up to Au\$5,000 for a party agent who fails to lodge a return on time, it provides for a fine of up to Au\$1,000 for lodging an incomplete return and a fine of up to Au\$10,000 for a party agent who knowingly lodges a return containing false or incomplete information. Fines therefore take account of the circumstances surrounding late submission in a way that fines available to the Electoral Commission in the United Kingdom cannot.
- 3.8 The Australian Electoral Commission adopted a more rigorous approach to compliance reviews in 2006-07<sup>23</sup>, with more detailed analysis of the financial records of organisations. The new approach meant that fewer compliance reviews were conducted in 2006-07 (58) than in 2005-06 (95), but parties and bodies received more detailed and comprehensive findings. Sums found to be undisclosed increased substantially. In two cases, outstanding disclosure obligations of more than Au\$1m were identified for parties that had had few findings of non-compliance in the past. Implementing a more detailed compliance review process in the UK would not require legislative change.

### *The US Federal Election Commission*

- 3.9 The Federal Election Commission (FEC) in the United States of America has established a practice of reporting action taken following investigation,

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<sup>22</sup> <http://www.publications.parliament.uk/pa/cm200708/cmbills/141/2008141.pdf>

<sup>23</sup> AEC Annual Report 2006-07

including identifying minor non-compliances where it has “admonished” the regulated body or person. The admonition makes clear the reason for the decision and can also act as advice and guidance for the regulated, as well as pointing out the risks for regulated bodies and individuals. The FEC can also take into account the circumstances of breaches of the act.

- 3.10 In addition to the letter of admonishment, the US has a process for self-reporting of violations. These are generally resolved more quickly with lower civil penalties than other complaints. Thus the number of litigation and enforcement matters that the FEC needs to address is reduced. The aim of using sanctions is to encourage compliance with the regulations.
- 3.11 As a supplement to the standard enforcement process, the US Commission also uses what it terms an Alternative Dispute Resolution program. This program provides for negotiating the settlement of cases outside the formal enforcement process. Instead, cases are settled through informal negotiation between the Federal Election Commission and the respondent. Agreements typically involve smaller civil penalties, but require respondents to take specific steps to prevent repeat infractions. Thus the regulation is designed to encourage compliance.
- 3.12 In July 2000 the FEC introduced an administrative fines program for violations of reporting requirements. The fines are calculated using published schedules. In their 2006 performance report, the FEC note that the program “has served to reduce resource requirements associated with addressing failures to timely filing disclosure reports. The program facilitates the expeditious resolution of these relatively straightforward violations and allows the agency to devote more resources to addressing more complex cases”. As a result the FEC’s agency-wide enforcement program dismissed only 11% of its cases without substantive action in FY 2001-2005, compared to 54% in the period from FY 1995-2000. Fines and penalties collected during the most recent five years totalled approximately US\$11m, up from just under US\$5m in the preceding five years.
- 3.13 The direct effect of the administrative fines program is seen in the FY 2005 statistics which show fewer fines assessed than in comparable prior years, along with considerable improvement in the time required to complete action after reports were due. There is also evidence of improved compliance with reporting deadlines. The number of cases by fiscal year (2000 to 2005) since the program began are 361, 117, 394, 137 and 214 (earliest figure first).

*“The number of Administrative Fines assessed in FY2005 was down considerably from FY 2003 and FY 2001 levels even though these years include pre-election and post-election reports and for 2003 BCRA required quarterly filings in non election years. This suggests greater overall compliance with filing deadlines during the 2004 campaign.” FEC Enforcement Report 2005*

### **The Canadian Electoral Act**

- 3.14 The Canadian Electoral Act makes provision for a varied range of sanctions to be used in different circumstances. These include community service and, as with the Commission in the UK, the deregistration of a party, and also liquidation of its assets, and the liquidation of the assets of the party's

registered associations. Furthermore, a person found guilty of an illegal act or corrupt practices loses the right for a period to be a candidate in a federal election, to sit as a member in the House of Commons and to hold any office to which the incumbent is appointed by the Crown or by Governor in Council.

- 3.15 The Commissioner of Canada Elections is responsible for ensuring that the Canada Elections Act is complied with and enforced. Prior to the Act (S.C. 2000, c. 9), the only enforcement tool in the Act was prosecution. The Act has enhanced the compliance role of the Commissioner.
- 3.16 The Commissioner has been given authority to conclude a compliance agreement with anyone the Commissioner believes on reasonable grounds has committed, is about to commit or is likely to commit an act or omission that could constitute an offence. A compliance agreement is a voluntary agreement between the Commissioner and the person (the contracting party) in which they agree to terms and conditions that the Commissioner considers necessary to ensure compliance with the Act. A compliance agreement may include a statement by the contracting party in which he or she admits responsibility for the act or omission that constitutes the offence. The admission of responsibility does not constitute a criminal conviction by a Court of law and does not create a criminal record for the contracting party. In order to maintain transparency, a notice that sets out the contracting party's name, the act or omission in question and a summary of the compliance agreement is made public.

## Other Regulators

### *Financial Services Authority*

- 3.17 The Financial Services Authority (FSA) has a range of supervision and sanctioning options available according to the severity of the breach, as illustrated at **Figure 7**. The nature of the options available and the criteria used are clearly set out in the FSA Handbook<sup>24</sup>. This handbook and other information on the FSA's approach to regulation is freely available, and should help ensure a consistent approach to regulation, and provide a source of advice and guidance to regulated bodies.

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<sup>24</sup> Available at <http://fsahandbook.info/FSA/html/handbook/>.

**Figure 7: Financial Services Authority Sanctioning Options**

Severity	Enforcement tools	Supervisory tools
 High	Criminal Prosecution	
	Removal of Authorisation/Approval/Prohibition Orders	Variation of permission (own initiative variation of permission)
	Financial Penalties/Public censures	S.166 Skilled Persons Report/ Past-business review
	Private Warnings <sup>31</sup>	Letter to Board
		Supervisory Discussion
Low		No action

Source: *Financial Services Authority Hampton Implementation Review Report*

3.18 The enforcement tool used can be varied according to a number of factors including:

- the nature, seriousness and impact of the breach, including whether it was deliberate or reckless, frequency and consequent benefit or loss;
- the conduct of the person after the breach including the speed, effectiveness and completeness with which the breach was brought to attention, degree of cooperation and remedial steps taken; and
- the previous disciplinary record and compliance history of the person;

3.19 In addition to these factors, in determining the appropriate level of financial penalty, the FSA can consider:

- the deterrent effect of the fine;
- the size, financial resources and other circumstances of the person or body corporate; and
- the difficulty in detecting the breach: a higher fine may be imposed where the breach was conducted in such a way as to make it difficult to detect.

Discounts may be available for early settlement.

3.20 In all cases the FSA tries to be open about its approach and issues enforcement press releases, published on its website. These detail the circumstances of the enforcement action and the action taken. They also act to advise the regulated and may act as a deterrent.

## Lessons from overseas and from UK regulators

3.21 Other UK regulators and overseas Electoral Commissions have more flexible sanctions available to them, are longer established and generally regulate better established and tested rules. The Commission could nevertheless do more in the following areas:

- preparation and publication of a policy on sanctions to improve transparency;
- use of its investigative powers to be more proactive in identifying reasons for non-compliance with the statutory reporting requirements;
- better use of communications to publicise the enforcement actions it takes and its reasons for acting; and
- introduction of performance measures to show its effectiveness as a regulator.

## Development of performance measures

3.22 Best practice laid down in the Hampton report suggests that regulators should develop performance measures to measure their performance in regulating over time, in order to improve performance. We have advised the Commission separately on ways to develop performance measures drawing on best practice published by the Treasury, the Audit Commission and the National Audit Office.

# Annex 1 - The Electoral Commission's Objective Relating to Party and Election Finances

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The Electoral Commission's Corporate Plan for 2008-09 states:

## **Objective 1: Integrity and transparency of party and election finance<sup>1</sup>**

**Our overriding priority for the next five years is to fulfil our responsibilities as the regulator of UK party and election finance.**

### **Challenges and risks**

- enhancing public confidence in the funding of political parties through effective regulation, while recognising that increased awareness of the financial affairs of parties may in practice fuel existing public distrust of politicians and parties;
- avoiding disproportionate regulatory burdens on political parties, especially smaller parties, while maintaining consistent standards of transparency and openness;
- managing the regulatory framework in a way that acknowledges the volunteer nature of key officers of over 400 political parties, but not allowing this to become an excuse for non-compliance; and
- introducing and ensuring compliance with new controls on donations made to parties in Northern Ireland.

### **Our approach**

Since 2001, we have focused on encouraging political parties, and other organisations and individuals engaging in political campaigns to comply with the legal obligations introduced by the Political Parties, Elections and Referendums Act 2000 (PPERA) through the provision of guidance and advice. More recently, following the completion of a first full cycle of elections under PERA, we have moved in favour of more rigorously intervening to ensure compliance. This trend will continue and strengthen over the next five years.

Our role as regulator is to oversee the statutory controls regulating the financing of political parties, and other organisations and individuals engaging in political campaigns. We do not have judicial powers, nor are we a prosecuting body. Nevertheless, we want the public to have confidence that we hold parties and other regulated organisations and individuals effectively to account. This will require changes to the PERA penalty framework, and we welcome the proposals for a strengthened penalty framework made by recent reports. We anticipate that any changes in this regard will be included in the legislation to follow the Review of the Funding of Political Parties conducted by Sir Hayden Phillips.

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<sup>1</sup> This Annex is drawn from the Commission's 2008-09 Corporate Plan, HC 491

We are also responsible for maintaining public registers of financial information submitted by political parties and others and we publish the data we collect. We are keen to develop a more rigorous and comprehensive approach to analysis and publication of the data we receive from those subject to regulation. We intend to work proactively to encourage greater scrutiny of the information by interested stakeholders. We shall also publish information in more accessible and understandable formats to promote more public engagement.

### Longer-term issues

We intend to enhance our capacity to identify and analyse trends in party and election financing. In parallel, we will ensure that we remain abreast of best practice internationally. This approach should enable us to track issues likely to have an impact on the regulatory framework over the longer term and to anticipate and plan accordingly.

Recent reports from Sir Hayden Phillips, the Constitutional Affairs Committee and CSPL highlight key issues we need to address and potential new areas of work over the next five years.

### Key activities for the next five years:

1. ensure a strategic, risk-based approach to regulation in order to focus resources on high-risk areas;
2. adopt a rigorous approach to enforcement where breaches by parties and candidates occur, maintaining effective partnerships with prosecuting authorities;
3. raise public and stakeholder awareness of the regulatory system and its underpinning principles to promote greater public confidence in the standards we enforce;
4. publish data and analysis about political finances in a timely and accessible manner in order to provide a clearer picture of party finance to the public, media and other external stakeholders;
5. keep operating procedures and our use of technology under constant review, to ensure that our approach to regulation is both proportionate and robust;
6. encourage high levels of party and candidate compliance with current and new controls on political finances by providing clear, timely and practical resources tailored to the needs of regulated bodies while minimising the administrative burden on them;
7. use the party registration process to confirm the capacity of each party to meet the requirements of the legal framework;
8. distribute public funds to political parties efficiently and fairly;

9. maintain a constant state of readiness to apply the legal rules in relation to referendum campaign finances; and
10. monitor the legal framework for regulation of political finances to ensure the rules are appropriate in light of changes to the wider political environment, making recommendations for changes to the law as necessary.

### Key success measures

- increasing public and stakeholder confidence that the financial regulation of political activity is effective and that we operate appropriately in this area;\*
- increasing levels of compliance with statutory financial reporting requirements: proportion of significant returns received within the prescribed timescales;\*
- increasing the proportion of key financial information reported on time;\*
- and
- decreasing the proportion of corrections required to information submitted by parties and candidates.

#### Notes:

1. An asterisk (\*) indicates where existing corporate success measures will be carried through to the new plan.
2. Activities that will be prioritised in 2007-8 are highlighted in bold.

## Annex 2 - Hampton and Macrory Reports

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### Hampton Review (March 2005)

The aim of Hampton's report is to identify ways to:

- Reduce the regulatory burden; and
- Maintain or improve regulatory outcomes.

The findings break down the improvements into 5 key areas of the regulation process. A good regulator should be successful in doing the following:

1. **Risk Assessment** - concentrate resources on areas that need them most (particularly inspections / investigations etc). This should mean that regulation places the greatest burden on the non-compliant;
2. **Advice and guidance** - increase the probability of compliance through authoritative and accessible advice;
3. **Form Filling** - simplify / minimise the form filling process and streamline the volume of data that the regulated must supply;
4. **Penalty Regimes** - create deterrence through proportionate and meaningful sanctions; and
5. **Regulatory Structures** - simplify the structure of regulation (e.g. reduce overlapping regulatory jurisdiction).

It is also recommended that regulators should have a performance management framework and systems in place to monitor the impact of changes on those they regulate.

### Macrory Report (November 2006)

This was designed to identify a set of flexible and proportionate sanctioning tools that can be used by regulators to achieve more effective regulation. This follows on from Hampton's findings that many penalty regimes are cumbersome and ineffective.

Macrory found that many regulators are heavily reliant on one tool - criminal prosecution. This is problematic as:

- The sanctions imposed are often insufficient;
- Criminal prosecution may be a disproportionate response (e.g. where non-compliance was unintentional); and

- Criminal sanctions are costly and time consuming for all parties. The regulators may be deterred from using their powers which creates a *compliance deficit*.

### Macrory's solution

1. The government should initiate a review of the drafting and formulation of criminal offences relating to regulatory non-compliance (to clearly distinguish between matters of regulation and criminal offending).
2. In the design of appropriate sanctioning regimes there should be regard for the following 'Penalty Principles' and 'Characteristics'.

#### Six Penalties Principles

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

#### Seven characteristics of a successful sanctioning regime

Regulators should:

1. Publish an enforcement policy;
  2. Measure outcomes not just outputs;
  3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
  4. Follow-up enforcement actions where appropriate;
  5. Enforce in a transparent manner;
  6. Be transparent in the way in which they apply and determine administrative penalties; and
  7. Avoid perverse incentives that might influence the choice of sanctioning response.
3. The effectiveness of the criminal courts for regulatory offences should be increased via:
    - Sentencing Guidelines Council should prepare guidelines for cases of regulatory non-compliance;
    - Prosecutors should make clear to the court any financial benefits resulting from the non-compliance;

- Prosecutions in particular regulatory fields could be held in designated Magistrates' Courts (i.e. to build up court level understanding of the regulations); and
  - Regulators should provide specialist training to prosecutors.
4. Fixed and Variable Monetary Administrative penalties should be available to regulators who are compliant with the Hampton and Macrory principles and characteristics (particularly risk assessment) and there should be an appeals mechanism in respect of these.
  5. Statutory notices should be considered as part of an expanded sanctioning toolkit.
    - They should be systematically followed up using a risk based approach; and
    - Administrative penalties or criminal proceedings should be available where the notices are not complied with.
  6. The government should consider the use of Enforceable Undertakings as an alternative to criminal prosecution.
  7. Pilot schemes should be considered for Restorative Justice.
  8. Alternative sentencing should be available to criminal courts - Profit Orders, Corporate Rehabilitation Orders, Publicity Orders.
  9. Transparency and Accountability should be improved via
    - A Better Regulation Executive working group of regulators / departments to share best practice; and
    - Each regulator should publish a regular list of its completed enforcement actions.

## Annex 3 - International Comparators

### Australia - the Australian Electoral Commission (AEC)

#### **Offences and Penalties<sup>2</sup>**

The AEC's aim is to assist agents to fulfil their obligations under the Act. It may, however, initiate prosecutions for offences against the disclosure provisions after other reasonable avenues to resolve matters have been exhausted.

Offences include:

**Failure to lodge a return by the due date** - A person who fails to lodge a disclosure return by the due date is punishable by a fine of up to \$5,000 for a party agent, or up to \$1,000 for any other person. A person convicted of having failed to lodge a return who continues not to lodge the return is punishable by a fine of up to \$100 per day for each day that the return is outstanding after the initial conviction.

**Lodging an incomplete return** - A person who lodges an incomplete return is punishable by a fine of up to \$1,000. The Administration chapter of this Handbook provides advice for the situation where information cannot be obtained.

**Including false or misleading information in a return** - A person who knowingly lodges a return containing false or misleading information is punishable by a fine of up to \$10,000 for a party agent, or up to \$5,000 for any other person.

**Knowingly providing false or misleading information for inclusion in a return** - A person who knowingly provides a party agent with false or misleading information for inclusion in a return is punishable by a fine of up to \$1,000.

**Failure to retain records for 3 years** - Failure to retain records containing information that could be required to be included in a return for 3 years is punishable by a fine of up to \$1,000.

**Failure to comply with a notice authorising a compliance review or investigation** - A person who refuses or fails to comply with a notice authorising a compliance review or investigation by the AEC is punishable by a fine of up to \$1,000.

**Providing false or misleading information during a compliance review or investigation** - A person who knowingly provides false or misleading information during a compliance review or investigation by the AEC is punishable by a fine of \$1,000, or imprisonment for six months, or both.

*Note: references to party agents and to others refer to the Australian situation where donors are required to submit returns as well as parties: it is only the reference to party agents that is comparable to the legislative requirements in Great Britain.*

<sup>2</sup> Source: Australian Electoral Commission Funding and Disclosure Handbook for Political Parties 2007 edition  
[http://www.aec.gov.au/pdf/political\\_disclosures/handbooks/2007/political\\_parties/political\\_parties\\_2007.pdf](http://www.aec.gov.au/pdf/political_disclosures/handbooks/2007/political_parties/political_parties_2007.pdf)

## **Compliance reviews**

The AEC conducts regular compliance reviews of registered political parties, their branches, and other people or organisations subject to the disclosure regime to verify the accuracy and completeness of disclosure returns. The reviews:

- Ensure compliance with the disclosure requirements of the Act; and
- Provide an opportunity for advice and guidance to be provided by AEC officers.

The reviews are intended to check whether a party, associated entity or donor has met its disclosure obligations.

The process involves:

- Advisory letter notifying an intended compliance review visit. This advises the sorts of records and information that will need to be accessed for the review;
- An entrance interview will be followed by a review of the records relevant to the annual return, and an exit interview during which the preliminary results of the review are discussed;
- A written report of the visit is subsequently provided.

AEC staff will treat the information accessed during a compliance review in the strictest confidence. The details of a compliance reviews are not discussed with anyone other than the organisation concerned without prior agreement or unless otherwise required by law.

The records of local party units, including the campaign committees of candidates and Senate groups, may be inspected. The party or branch agent or their nominee can be present.

## **USA - The Federal Election Commission (FEC)**

### **Flexibility in Ensuring Compliance with the Law**

#### **Letters of Admonishment<sup>3</sup>**

The Commission approved a policy statement that clarifies the various actions the Commission may take when beginning the enforcement process. The Commission will find "reason to believe" in situations where there is enough evidence to warrant an investigation and where the alleged violation is serious enough to require an investigation or immediate conciliation. Previously, the Commission used the finding "reason to believe, but take no further action" when the Commission found a basis for investigating or attempting to conciliate but declined to investigate or conciliate. The Commission has determined that "dismissals" or "dismissals with admonishment" are clearer explanations about the Commission's intentions than "reason to believe but take no further action."

The Commission may dismiss a matter when it concludes that a violation did occur, but the violation is of minor significance. In such a matter, the Commission will send a letter admonishing the respondent. If available information provides no basis for proceeding with the matter, the

<sup>3</sup> Federal Election Commission Annual Report 2006

Commission will find “no reason to believe.” Such a finding occurs when the complaint, the response by the respondent and any publicly available information, taken together, fail to suggest that a violation has occurred.

### **Self-Reporting of violations**

The Commission proposed an enforcement policy designed to encourage political committees and other persons to self-report possible violations of the Act. These self-reported violations— also known as *sua sponte* submissions—are generally resolved more quickly and result in lower civil penalties than matters arising by other means, such as complaints or the Commission’s own review of reports. The proposed policy seeks to increase the number of *sua sponte* submissions in order to expedite the enforcement process and decrease the number of litigation and enforcement matters that the Commission must address. The policy details the various factors the Commission may consider in deciding how to proceed regarding *sua sponte* submissions.

The factors include the nature of the violation, the extent of corrective action (including new self-governance measures taken by the respondent), and the level of cooperation and disclosure with the Commission once the violation has been reported. Based on its consideration of these factors, the Commission may choose to reduce the amount of the civil money penalty it would otherwise have sought in the enforcement process. Additionally, a limited number of cases of self-reported violations may be subject to an expedited “Fast-Track Resolution,” which may be granted at the Commission’s discretion.

### **Dispute Resolution**

As supplements to the standard enforcement process, the Alternative Dispute Resolution (ADR) program offers a process for negotiating the settlement of cases and the Administrative Fine Program handles late filing and failure to file disclosure reports.

A permanent Commission program since 2002, ADR resolves cases outside the formal enforcement process. Instead, cases are settled through informal negotiation between the FEC and the respondent. Agreements typically involve smaller civil penalties, but require respondents to take specific steps to prevent repeat infractions. The Administrative Fine Program promotes timely filing by assessing civil money penalties for committees that file reports and notices late or fail to report at all. Not only has the program significantly increased the timeliness of committee filings, but it has enabled the Commission to devote its enforcement resources to more substantive violations.

In sum, the FEC closed 315 enforcement matters in 2006 (including Administrative Fine and Alternative Dispute Resolution cases), the largest number since 2001. At year’s end, the total in civil penalties collected by the Commission in 2006 was \$6,262,052, with \$5,925,800 from enforcement cases, \$136,299 through its Alternative Dispute Resolution program, and \$201,953 from Administrative Fines.

## Canada

### **Alternatives to fines and imprisonment**

In addition to the more traditional sanctions of a fine or a period of imprisonment, the Canadian Electoral Act allows a Court to impose additional penalties, such as:

- performing community service;
- performing the obligation that gave rise to the offence;
- compensating for damages, or any other reasonable measure the Court considers appropriate; and
- with respect to certain offences, the deregistration of a party and liquidation of its assets, and the liquidation of the assets of the party's registered associations

Furthermore, a person found guilty of an illegal act or of corrupt practices loses the right to be a candidate in a federal election, to sit as a member in the House of Commons and to hold any office to which the incumbent is appointed by the Crown or by Governor in Council - for five years in the case of an illegal act, and for seven years in the case of corrupt practices.