These notes refer to the Political Parties and Elections Bill as brought from the House of Commons on 3rd March 2009 [HL Bill 26]

POLITICAL PARTIES AND ELECTIONS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Political Parties and Elections Bill as brought from the House of Commons on 3rd March 2009. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a Clause or part of a Clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. On 16th June 2008, the Secretary of State for Justice announced the publication of a Government White Paper on *Party Finance and Expenditure in the United Kingdom*. This set out the Government's intention to bring forward immediate legislation to tighten controls on spending by political parties and candidates. The Bill is intended to fulfil that commitment.

4. The main purposes of the Bill are to:

- Strengthen the regulatory role of the Electoral Commission through making available to it a wider range of investigatory powers and sanctions, through clarifying its advisory role and through reform of its governance arrangements;

- Add a 'pre-candidacy' spending limit to regulate candidate spending when a Parliament runs for over 55 months; and

- Put in place arrangements to improve the transparency of donations to political parties and other entities subject to the controls on donations put in place by the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act").

The Bill also makes several other reforms, including to the current system for administering elections in the United Kingdom, which are designed better to ensure the successful delivery of elections in the future. These include:

- Enabling holders of relevant elective office to appoint a person to act as a compliance officer, who will share responsibility for compliance with the controls on donations with the office holder;

- Enabling electoral registration officers, in the event of an election, to make amendments to the electoral register in response to applications for registration made on annual canvass forms, before the register is republished at the conclusion of the canvass;

- Providing for European Parliamentary elections in England, Wales and Scotland to be administered at a local level by local authority returning officers, rather than Parliamentary returning officers;

- Transferring responsibility for the retention and provision of copies of election documents produced at Parliamentary elections in Scotland from sheriff clerks to returning officers;

- Providing a power for the Secretary of State to make regulations allowing a vacant seat for Northern Ireland in the European Parliament to be filled without a by-election;

- Extending the Secretary of State's power under Part 1 of the Electoral Administration Act 2006 to allow him to include additional provisions in an order establishing a CORE (Co-ordinated Online Record of Electors) scheme;

- Enabling the Secretary of State to make an order to require a public authority or other persons carrying out functions on behalf of a public authority to provide a specific Electoral Registration Officer with specific information from their databases, in order to ensure that the electoral register is as accurate and complete as possible; and

- Providing for candidates at a parliamentary election to choose that their home address does not appear on election documents which are open to the public.

TERRITORIAL EXTENT AND APPLICATION

5. All of the provisions of the Bill extend to the whole of the United Kingdom. The provisions contained in Clause 8 (declaration as to source of donation) include a power enabling the Secretary of State to modify how these provisions (and the accompanying provisions in Schedule 3) apply to Northern Ireland. This is necessary to take account of the different arrangements that exist in Northern Ireland for the regulation of the funding of political parties. Similar provisions are also contained in Clause 12 (Reports of gifts received by unincorporated associations).

6. Clauses 22 (Schemes for provision of data to registration officers) and 23 (Schemes under section 22: proposals, consultation and evaluation) will not apply to Northern Ireland, because of the definition of "registration officer" adopted by that Clause.

7. Some of the amendments made by the Bill are to provisions in the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") which extend to Gibraltar. The amendments made by subsections (1) and (3) of Clause 1 (Compliance with controls imposed by the 2000 Act etc), Clauses 4 (Selection of prospective Electoral Commissioners and Commission chairman), 5 (Four Electoral Commissioners to be put forward by parties), 6 (Number of Electoral Commissioners), 7 (Political restrictions on Electoral Commissioners and staff) and 9 (Defence to charge of failing to return donation from permissible donor) of the Bill, as well as paragraphs 9 to 11 and 26 of Schedule 5 (Minor and consequential amendments) and the relevant entry in Schedule 6 (Repeals) to the Bill will all extend automatically to Gibraltar. The other provisions of the Bill may be extended to Gibraltar in due course using the power contained in section 12 of the European Parliament (Representation) Act 2003.

8. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

9. The Bill does not have any special effect on Wales and does not affect the National Assembly for Wales.

COMMENTARY ON CLAUSES

Clause 1: Compliance with controls imposed by the 2000 Act etc

10. *Subsections (1)* and *(2)* of Clause 1 amend section 145 of the 2000 Act to provide that, in addition to its existing function of monitoring compliance with various requirements (relating to registered party accounting, political donations, campaign and election expenditure, and referendums), the Commission shall have the function of taking such steps as it considers appropriate to secure compliance with those requirements. The purpose of this provision is to clarify that the Commission is required to both monitor and regulate compliance. *Subsection (3)* allows the Commission to publish guidance as to what conduct it considers to be necessary or sufficient in order to comply with the legislative requirements, and what conduct it considers to be desirable (i.e. best practice) in view of the purpose of those requirements.

Clause 2: Investigatory powers of the Commission

11. *Subsection (1)* of this Clause substitutes a new section 146 of the 2000 Act (investigatory powers of the Commission). This new section gives effect to new

Schedule 19B which is inserted into the 2000 Act by *subsection (2)* of the Clause. Schedule 1 to the Bill contains new Schedule 19B. Schedule 19B provides the Commission with powers to enable it to require access to information for certain purposes (including where it is conducting an investigation into a potential criminal offence) and, in relation to limited categories of individual or body, to enter premises to inspect and make copies of relevant documents in circumstances where it is not conducting any criminal investigation. *Subsection (3)* makes provision as to the penalties for offences under the new Schedule.

Clause 3: Civil sanctions

12. Clause 3 gives the Electoral Commission new powers to apply a range of civil sanctions to offences and contraventions under the 2000 Act.

13. *Subsection (1)* substitutes a new section 147 of the 2000 Act (civil sanctions). This new section gives effect to new Schedule 19C, which is inserted into the 2000 Act by *subsection (2)*. Schedule 2 to the Bill contains new Schedule 19C. It sets out the range of new civil penalties available to the Commission, including monetary penalties, discretionary requirements, stop notice and enforcement undertakings. The new Schedule also explains how and when the Commission is able to apply these sanctions, who they apply to and what appeal processes are available to an individual or organisation subject to a sanction. *Subsection (3)* of Clause 3 inserts a new entry into Schedule 20 of the 2000 Act which provides the penalty for commission of the offence, set out in new Schedule 19C, of failing to comply with a stop notice.

14. *Subsection (4)* inserts new subsection (4A) into section 156 of the 2000 Act. This specifies that an order made under paragraph 16 of new Schedule 19C relating to the following matters is subject to the affirmative resolution procedure:

- An order prescribing the offences or restrictions and requirements of the 2000 Act in respect of which the Commission can impose a fixed monetary penalty (see paragraphs 1(1) to (4) of the new Schedule 19C);

- An order prescribing the offences or restrictions and requirements in respect of which the Commission can impose a discretionary requirement (see paragraphs 5(1) to (4) of Schedule 19C);

- An order prescribing the offences or restrictions and requirements the occurrence or likely occurrence of which the Commission must hold a reasonable suspicion about in order to consider imposing a stop notice (see paragraphs 10(2)(b) and (3)(b) of Schedule 19C);

- An order prescribing the offences or restrictions and requirements the occurrence of which the Commission must hold a reasonable suspicion about in order to

consider accepting enforcement undertakings (see paragraphs 15 (1)(a) of Schedule 19C); and

- Any order amending an Act.

Clause 4: Selection of prospective Electoral Commissioners and Commission chairman

15. Clause 4 amends section 3 of the 2000 Act, which governs the appointment of Electoral Commissioners and the Commission chairman. *Subsection (2)* of the Clause inserts a new subsection (2) into section 3, which expands the series of requirements which must be met in relation to the appointment procedures. Her Majesty will continue to appoint Commissioners on presentation of an Address from the House of Commons; but, in addition to the existing requirements set out in current subsection (2) that the Speaker agree to the making of the motion and that the leader of each party which has two or more members in the House of Commons be consulted on the motion, paragraph (c) of the substituted subsection (2) requires that each person proposed for appointment must have been selected in accordance with a procedure put in place and overseen by the Speaker's Committee.

16. *Subsection (3)* inserts a subsection (5A) into section 3 of the 2000 Act, providing that a Commissioner may be re-appointed without undergoing a fresh selection procedure if recommended by the Speaker's Committee.

Clause 5: Four Electoral Commissioners to be put forward by parties

17. Clause 5 makes provision facilitating the appointment to the Commission of four Commissioners with recent political experience ("nominated Commissioners"). *Subsection (1)* inserts new subsection (4A) into section 3 of the 2000 Act which disapplies, for the nominated Commissioner positions, the restrictions which would normally prevent a person who belongs to a political party or has been engaged in recent political activity from being appointed. Subsection (4A) does not affect the prohibition on appointing a serving officer or employee of a political party or the holder of a relevant elected office.

18. *Subsection (2)* inserts new section 3A into the 2000 Act, which makes provision about the appointment of nominated Commissioners. Subsections (1) and (2) of the new section provide that there shall be four nominated Commissioners, each of whom shall be nominated by the leader of a party with two or more representatives in the House of Commons ("a qualifying party"). Subsections (3) and (4) provide that, of those four Commissioners, three must be selected from the three largest parties (measured according to the criteria set out in subsection (8) of new section 3A) that have nominated at least one candidate for appointment or that have nominated an individual who was appointed and is expected to continue to hold office.

19. Subsection (5) of the new section prevents the appointment of two or more nominated Commissioners from the same political party. The effect of this provision is to ensure that the fourth nominated Commissioner must be nominated by the leader of a party which is not one of the three largest parties. Subsection (7) prevents a nominated Commissioner from being appointed as Chair of the Electoral Commission. Subsection (9) provides that Members of the House of Commons who have not sworn the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation) or who have been disqualified from sitting and voting in the House are not counted for the purposes of the new section.

20. *Subsection (3)* of Clause 5 amends section 14 of the 2000 Act which sets out the Commission's boundary functions, to prevent a nominated Commissioner from being appointed to a Boundary Committee.

Clause 6: Number of Electoral Commissioners

21. This Clause amends section 1 of the 2000 Act to increase the minimum and maximum number of Electoral Commissioners that may be appointed. The effect of the Clause is to increase the minimum from 5 to 9, and the maximum from 9 to 10. The increase in the minimum is intended to ensure that the nominated Commissioners will always be a minority of Commissioners.

Clause 7: Political restrictions on Electoral Commissioners and staff

22. Clause 7 relaxes the restrictions that apply to the political activities of Electoral Commissioners (other than nominated Commissioners) and Electoral Commission staff.

23. *Subsection (1)* of Clause 7 amends section 3 of the 2000 Act so that a person will only be prohibited from appointment as an Electoral Commissioner if they have engaged in certain political activities within the past five years, rather than the past 10 years as is currently the case.

24. *Subsection (2)* inserts a new paragraph 11A in Schedule 1 to the 2000 Act which reduces the restrictions which currently apply to the political activities of Electoral Commission staff, both on appointment and while they hold office. Sub-paragraph (1) of paragraph 11A specifies that staff cannot be appointed to the Electoral Commission if they have been engaged in certain political activities within the "relevant period". Sub-paragraph (2) defines this period (which was previously the last 10 years for all staff) as the last five years for the post of chief executive of the Commission and the last 12 months for all other members of staff.

25. Sub-paragraph (3) of the new paragraph 11A makes clear that the chief executive of the Commission cannot be a member of a registered party. Sub-paragraph (4) provides that the appointment of a member of staff shall be terminated if, after

appointment, they become engaged in any of the types of political activity that would have prevented their appointment.

26. Some of the provisions of the new paragraph 11A restate sub-paragraphs (2) and (4) of paragraph 11 of Schedule 1 to the 2000 Act, and these sub-paragraphs are accordingly repealed (in Schedule 6).

Clause 8: Declaration as to source of donation

27. Clause 8 creates a new requirement for a person who causes money to be received by a registered party, to make a written declaration in respect of a donation of over £7,500 or of over £1,500 where the donation is made to an accounting unit of a registered party.

28. *Subsection (1)* inserts a new subsection 54(1)(aa) into the 2000 Act, which provides that a party cannot accept a donation exceeding £7,500, where the donation is to a party's central organisation, or £1,500, where the donation is made to an accounting unit of a party, if the party has not been given the declaration required by new section 54A of the 2000 Act.

29. *Subsection (2)* of this Clause inserts new section 54A into the 2000 Act. Subsections (1) and (2) of new section 54A, require a person who causes a donation of over £7,500 to be given to a registered party to make a written declaration as to whether someone other than that person has provided or is expected to provide them with money or any other benefit worth over £7,500 with a view to or otherwise in connection with the making of the donation.

30. Subsection (3) of the new section 54A, provides that where a person makes a declaration that they have been given money or a benefit as described in subsection (2), then they must also declare whether or not they are acting as an agent for another person, or as the principal donor for several persons collectively, where they have each given over £7,500 with a view to or otherwise in connection with the making of the donation. The declaration requirement is designed to reveal whether the person apparently making the donation is the true donor or is acting on behalf of someone else. If the person states that they have received money or a benefit in connection with the making of the donation, but they are nonetheless the true donor, they must state why they believe this.

31. Subsection (4) of new section 54A provides that the declaration must provide the full name and address of the person who makes it. If the declaration is made by a person authorised to do so on behalf of a body it must also state that the person is authorised to make it and describe their role or position in the body in question.

32. Subsection (5) of new section 54A lowers the threshold at which a declaration must be made where the donation is made to an accounting unit of a registered party. This provision requires the person causing the donation to be received by the accounting unit to give a declaration if the donation is of over £1,500. This subsection also means that in respect of an accounting unit a declaration is required for the purposes of subsection (2) where the money or benefit provided to it for the purposes of the donation or otherwise in connection with it is worth more than £1,500.

33. Subsection (6) of new section 54A makes it a criminal offence for a person knowingly or recklessly to make a false declaration about a donation.

34. Subsection (7) provides that the Secretary of State may make provision in regulations as to how the value of a benefit is to be calculated for the purposes of subsection (2). By virtue of section 156 of the 2000 Act, the regulations must be made by statutory instrument, subject to the negative resolution procedure.

35. *Subsection (3)* of Clause 8 makes changes to section 56 of the 2000 Act so that the donation, or an equivalent amount, must be returned to the person appearing to be the donor if a declaration under section 54A has not been received. Subsection (4) makes the party and the treasurer guilty of an offence if they fail to do so.

36. *Subsection (5)* inserts in Schedule 6 to the 2000 Act a new paragraph 1A requiring that where a donation report is required to be made in respect of donation to which section 54A applies, the report must include a statement from the party either confirming that the party has no reason to suspect that the declaration is untruthful inaccurate or, give details of any respects in which the declaration was found or suspected to be untruthful or inaccurate.

37. *Subsection (6)* amends Schedule 6 so that where a donation is made without a declaration the party must report this to the Commission under paragraph 6 of the Schedule.

38. *Subsection (7*) of the Clause amends Schedule 20 to the 2000 Act to set out the sanctions for making a false declaration.

39. *Subsection (8)* gives effect to Schedule 3, which makes equivalent provision to the above in respect of individuals and members associations, recognised third parties and permitted participants as defined by the 2000 Act. *Subsection (9)* provides that, after consultation with the Electoral Commission, the Secretary of State may by order amend the insertions made by this Clause or the related Schedule, in their application to Northern Ireland; and may make consequential or supplemental provision. *Subsections (10)* and *(11)* require orders made under this provision to be by way of a statutory instrument, which is subject to affirmative resolution of both Houses.

Clause 9: Defence to charge of failing to return donation from impermissible donor

40. Clause 9 amends section 56 of the 2000 Act by inserting a new subsection (3A). New subsection (3A) clarifies that if a party or a treasurer is charged with an offence of accepting an impermissible donation, the party or party treasurer will not be guilty if they can show that they took all reasonable steps to verify that the donation was from a permissible donor.

Clause 10: Control of donations to holders of elective office: compliance officers

41. Clause 10 amends the 2000 Act to permit the appointment of compliance officers to assist holders of relevant elective office with their obligations under that Act.

42. *Subsection (1)* inserts a new Part 7 into Schedule 7 to the 2000 Act, which is the Schedule concerned with the control of donations to regulated donees (being certain individuals and members associations). Part 7 contains new paragraphs 17, 18 and 19.

43. New paragraph 17(1) allows, but does not oblige, the holder of a relevant elective office to appoint a 'compliance officer'. Holders of relevant elective office are defined in paragraph 1(8) of Schedule 7 to the 2000 Act.

44. Paragraph 17(2*)* sets out the duties that a compliance officer may discharge on behalf of the officer holder and the offences for which they will be held liable if provisions in the 2000 Act are breached. Specifically:

a) New paragraph 17(2)(a) allows the compliance officer (in addition to the office holder) to take responsibility for reporting permissible donations (paragraph 10) and impermissible donations (paragraph 11) to the Electoral Commission. As part of this, the compliance officer may make the declaration that must be made in any donation report regarding its accuracy under paragraph 13 of Schedule 7.

b) New paragraph 17(2)(b) sets out the offences in the 2000 Act with which the compliance officer, the office holder, or both may be charged. Specifically, this applies the offences in section 56(3), (3B) and (4) of the 2000 Act (failure to return a donation from an impermissible donor or to take steps to verify whether the donation is from a permissible donor). It also applies to the offences in paragraph 12(1) and 12(2) of Schedule 7 (failing to report to the Commission permissible or impermissible donations within the time limits or failing to report in accordance with the requirements).

c) New paragraph 17(2)(c) provides that where a compliance officer makes the statutory declaration on a donation report in accordance with paragraph 13 of Schedule 7, the compliance officer instead of the office holder will be liable for the offence in paragraph 13(4) if he or she knowingly or

recklessly makes a false declaration. Where it was the office holder who made the declaration, he or she will remain liable.

45. Paragraph 17(3*)* protects the compliance officer from liability for offences under paragraphs 12(1) and (2) of Schedule 7 relating to the late or incomplete reporting of any controlled donation received by the office holder before he or she was appointed. Therefore the office holder cannot seek to share liability for a particular error by appointing the compliance officer after the error has occurred. This protection does not extend to the offence of making a false declaration under paragraph 13 of the same Schedule.

46. Paragraph 17(4) provides that anybody giving false information to a compliance officer relating to the amount of a donation or its source is guilty of an offence. This mirrors the offences of giving false information to a political party or regulated donee.

47. Paragraphs 18 (1), (2) and (3) set out the details that a notice appointing a compliance officer must contain. To ensure that both parties have agreed to the appointment, sub-paragraph (1) states that the office holder must sign the notice and that it must contain a signed statement by the person to be appointed as compliance officer. Sub-paragraphs (2) and (3) ensure that there is no doubt as to the persons in respect of whom the notice has effect and ensures that the Commission will be able to contact both parties. Subparagraph (2) requires the notice to contain the details of the office holder including their name, position held, address and party affiliation. Sub-paragraph (3) requires the notice to contain details of the person to be appointed as a compliance officer, including their name, address and party affiliation.

48. Paragraph 18(4) provides that the notice will be in force from the date on which it is received by the Commission and will remain in force for 12 months, unless the office-holder or compliance officer gives notice that they both wish the original notice to remain in force. A renewal notice to this effect can be given under paragraph 18(5), confirming that all the statements in the original notice remain accurate, or detailing any information that has changed. Both the office holder and compliance officer must sign this renewal notice. Paragraph 18(6) provides that a renewal notice must be received by the Commission within one month of the expiry of the original 12-month period for which a compliance officer was appointed.

49. Paragraph 18(7) allows the office holder and compliance officer to give a "notice of alteration" to the Commission at any time, making alterations to the information provided in an original notice where circumstances have changed.

50. Paragraph 18(8) allows either the compliance officer or the office holder to provide a signed "notice of termination" to the Commission at any time. To ensure that the appointment of a compliance officer remains consensual, this notice can be signed by

both parties or by just one party to the original notice. However, to ensure that both parties know if an appointment is terminated, where it is signed by only one party, sub-paragraph (9) requires the Commission to inform the other party that the termination notice has been received as soon as reasonably practicable.

51. Paragraph 19(1) requires the Commission to maintain a register of the notices of appointment of compliance officers which are currently in force. Paragraph 19(2) and (3) require the Commission to maintain a register of all compliance officer notices, in a form for them to determine and with any new information to be included as soon as is practicable. However, paragraph 19(4) provides that the information entered onto the register shall not include the home addresses of individuals.

52. *Subsection (2)* of the Clause inserts provision into Schedule 20 of the 2000 Act, setting out the relevant sanctions available for the new offence contained in new paragraph 17(4) of Schedule 7 to the 2000 Act.

Clause 11: Person may not be "responsible person" for more than one third party

53. Clause 11 makes amendments to section 88 of the 2000 Act to change the notification requirements that third parties (i.e. campaigning entities which are not political parties or candidates seeking election) must comply with.

54. Third parties which spend above the limits set out in section 94(5) of the 2000 Act are required to submit a notification to the Electoral Commission in accordance with section 88 of the 2000 Act. Third parties that submit such a notification become recognised third parties for the purposes of Part 6 of the 2000 Act and are subject to additional regulation and a higher spending limit than those that are not recognised. The responsible person for each third party, as defined by section 85(7) of the 2000 Act, is responsible for compliance with the 2000 Act.

55. *Subsection (2)* of the Clause amends subsection (2)(a) of Section 88 of the 2000 Act to provide that an individual who is the responsible person in relation to another recognised third party cannot become a recognised third party in their own right.

56. *Subsection (3)* of the Clause inserts new subsection (3A) into section 88 of the 2000 Act. This new subsection provides that a notification to the Commission in respect of a third party organisation does not comply with the requirement to name a responsible person, if the responsible person that it names is already the responsible person in relation to another third party (whether as an individual or for another organisation); or an individual who would become a responsible person by virtue of a notification given for another third party at the same time.

57. *Subsection (4)* of the Clause makes transitional provision in respect of notifications made before Clause 11 comes into force. At present, a third party's status as a recognised third party lapses 15 months after the original notification is given to the Commission or where that falls within a regulated period before an election, at the end of that period. However, a recognised third party can give a renewal notification to the commission in advance of the notification lapsing. The effect of subsection (4) is that where a notification made prior to the commencement of the amendments to section 88 named a responsible person who is a responsible person for another third party then the renewal notification must, when it is required to be made, name another responsible person.

Clause 12: Reports of gifts received by unincorporated associations making political donations

58. Clause 12 inserts a new section 140A into the 2000 Act. That section introduces a Schedule 19A into the 2000 Act, which is set out in Schedule 4 to the Bill. The broad effect of that Schedule is that an unincorporated association which donates more than £25,000 to any recipient regulated by the 2000 Act (including political parties) in a calendar year will be subject to a new reporting regime in respect of gifts of a certain value it has received within a specified period.

59. *Subsections (4)* to *(6)* of clause 12 provide that, after consultation with the Electoral Commission, the Secretary of State may by affirmative order amend the insertions made by this Clause or the related Schedule, in their application to Northern Ireland; and may make consequential or supplemental provision.

60. *Subsection (7)* clarifies two matters for the purposes of Schedule 19A. First, it makes clear that the first calendar year in which the question of whether donations of more than £25,000 have been made will be relevant is 2010. Second, no gift will be required to be reported under the Schedule if it was received before the day on which the Bill receives Royal Assent.

Clause 13: Increased thresholds in relation to donations etc.

61. Clause 13 amends a number of sections of and Schedules to the 2000 Act. The effect of these amendments is to increase:

a) the financial limit above which a payment or benefit in kind is regarded as a donation, loan or regulated transaction for the purposes of the 2000 Act and ("the donation threshold"); and

b) the financial limit which, when exceeded, requires details of a donation, loan or regulated transaction to be reported to the Electoral Commission ("the reporting threshold").

62. *Subsection (1)* amends the 2000 Act so that the donation threshold is raised from £200 to £500. This threshold is raised in respect of:

a) donations, loans and regulated transactions to registered parties (by virtue of the amendments made to sections 52, 54 and 71F of the 2000 Act);

b) donations, loans and regulated transactions to individuals and members associations (by virtue of the amendments made to Schedules 7 and 7A of the 2000 Act);

c) donations to recognised third parties (by virtue of the amendments made to Schedule 11 of the 2000 Act); and

d) donations to permitted participants that either are not registered parties or are minor parties (by virtue of the amendments made to Schedule 15 of the 2000 Act).

63. *Subsection (2)* of the Clause amends the 2000 Act so that the reporting threshold is raised from £1,000 to £1,500. This threshold is raised in respect of:

a) donations, loans and regulated transactions to registered parties where any previous benefits have been required to be reported (by virtue of the amendments made to sections 62(6A), 62(7), 71M(7) and 71M(8) of the 2000 Act);

b) donations, loans and regulated transactions to accounting units of a registered party (by virtue of the amendments made to sections 62(11) and 71M(11) of the 2000 Act); and

c) donations, loans and regulated transactions to individuals (by virtue of the amendments made to Schedules 7 and 7A of the 2000 Act).

64. *Subsection (3)* of the Clause amends the 2000 Act such that the reporting threshold in certain circumstances is raised from £5,000 to £7,500. This threshold is raised in respect of:

a) donations, loans and regulated transactions to registered parties (by virtue of the amendments made to sections 62, 63, 71M and 71Q of the 2000 Act);

b) donations, loans and regulated transactions to members associations (by virtue of the amendments made to Schedules 7 and 7A of the 2000 Act);

c) donations to recognised third parties (by virtue of the amendments made to Schedule 11 of the 2000 Act); and

d) donations to permitted participants that either are not registered parties or are minor parties (by virtue of the amendments made to Schedule 15 of the 2000 Act).

Clause 14: Limitation of pre-candidacy election expenses for certain general elections

65. Restrictions on candidates' expenses are currently imposed by Part 2 of the 1983 Act. *Subsection (1)* of Clause 14 inserts new section 76ZA into Part 2 of the 1983 Act to provide for a new regulated period for candidate election expenses. Where applicable, this will operate in addition to the existing limit as set out in section 76 of the 1983 Act.

66. Subsection (1) of new section 76ZA specifies that the new spending limit will apply only where:

- a Parliament runs for over 55 months before it dissolves, to be counted from the day on which that Parliament was first appointed to meet (subsection 1(a));

- the election expenses being regulated by the limit are incurred by or of behalf of a candidate in respect of the general election that is held after the Parliament in question is dissolved (subsection 1(b)); and

- the election expenses being regulated by the limit are used between the 55 month point and the day on which the person "becomes a candidate" at the election (subsection 1(c)). The point when an individual "becomes a candidate" in this sense is set out in existing section 118A of the 1983 Act.

67. As the new limit will regulate election expenses before an individual formally becomes a 'candidate' by virtue of section 118A of the 1983 Act, subsection (1) of new section 76ZA clarifies that existing section 90ZA (which relates to the meaning of "election expenses") applies to the new limit with the exception of the words "after he becomes a candidate at the election". This enables the new spending limit to apply to individuals who go on to become candidates under section 118A but who are not yet candidates at the time that the new limit starts to apply.

68. Subsection (2) of new section 76ZA specifies the level of the additional spending limit. The level is the relevant percentage of the aggregate of a fixed sum (£25,000) plus a small amount for each entry in the register of electors. This small amount will be 7p where the constituency is designated as a county (less densely populated) constituency and 5p where the constituency is designated as a borough (urban) constituency.

69. Subsection (3) of new section 76ZA sets out what fraction of the spending limit set out in subsection (2) will apply according to which month of its term a Parliament is dissolved in.

70. Subsection (4) of new section 76ZA clarifies the meaning of "the register of electors" referred to in subsection (2).

71. Subsection (5) of new section 76ZA provides that it shall be an illegal practice for any candidate or election agent to incur or authorise the incurring of election expenses in excess of the permitted amount specified in subsection (2), where the candidate or agent knew or ought reasonably to have known that incurring those expenses would exceed the permitted amount.

72. Subsection (6) of new section 76ZA provides that a candidate's personal expenses are not to be counted against the proposed new limit.

73. *Subsection (2)(a)* of Clause 14 states that the provisions in this Clause will not apply to any expenses incurred before these provisions are commenced. *Subsection (2)(b)* states that the provisions in this Clause will not apply to any expenses which are used

before 1st January 2010. This provision does not exempt from the effect of the provisions any expenditure incurred before that date but used after it.

Clause 15: Election expenses: guidance by Commission

74. Clause 15 amends paragraph 14 of Schedule 4A to the 1983 Act. In addition to their existing power to issue guidance to candidates on the matters that are caught by the list of election expenses set out in paragraph 1 of that Schedule, the Electoral Commission will have a new power to issue guidance about the circumstances in which those expenses are to be regarded as having been incurred for the purpose of a candidate's election.

Clause 16: Election falling within canvass period

75. Clause 16 introduces new arrangements designed to expedite the registration of eligible electors in the event of an election falling within a canvass period. *Subsection (1)* inserts new section 13BB into the 1983 Act, which enables electoral registration officers to amend the published register of electors before the election is held to show details of new electors or other changes that have been recorded on a canvass form.

76. Subsection (1) of new section 13BB provides that the power to amend the register is triggered when an application for registration is made on a canvass form and notice of an election is published, the poll for which will be held in the period between 1st July and 1st December in the year of that canvass.

77. Subsection (2) of new section 13BB provides that when the power to amend the register is triggered, the elector shall be treated as if they made their application for registration on the date the form is received by the returning officer or the date the notice of election is published, whichever is later. This subsection also allows the Secretary of State to prescribe circumstances in which the application should not be treated as made on either date (for instance where the elector has not yet taken up residence at the relevant address).

78. Subsection (3) of new section 13BB provides that the registration officer may not determine an application as if it were made before the election if the canvass form was received by the returning officer after the last point at which it can be determined before the poll (currently the 11th day before the poll). Subsection (4) requires that amendments to the register must be made by way of a notice specifying the appropriate alterations. Subsection (5) provides that where, as a result of the determination that a person is entitled to be registered, that person's entry falls to be removed from the register for another area, and an election is going to be held in that other area during the canvass period, then the registration officer for the other area must (if they are informed about the determination in time) also amend their register to delete that person's entry.

79. Subsections (6) of new section 13BB provides that a notice altering the register must be issued on the appropriate publication date (currently the 5th or 6th day before the poll) and that the alteration comes into effect from the beginning of the day on which it is published. Subsection (7) provides that the requirement to publish a notice altering the register will not apply if the registration officer publishes a revised register taking the changes into account before the 5th or 6th day before the poll date.

80. *Subsection (2)* of Clause 16 inserts new subsection (1A) into section 13 of the 1983 Act. The effect of this new provision is that, in the event of an election taking place during the period from 1st July to 1st December, the electoral registration officer may suspend publication of the electoral register from 1st December until 1st February in the following year to allow time to compile the revised register.

Clause 17: Candidate at parliamentary election may withhold home address from publication

81. This clause makes amendments to the parliamentary elections rules (PERs), found at Schedule 1 to the 1983 Act to allow candidates at a parliamentary election to choose that their home address does not appear on the ballot paper at the election. Under rule 6 of the PERs (concerning the nomination of candidates), candidates at a parliamentary election are nominated by completing the nomination paper. The PERs currently require the candidate's home address to be included on the nomination paper. Under rule 14 (publication of statement of persons nominated), the returning officer will publish a statement showing the persons who have been nominated to stand at the election. The statement will include the names and addresses of the candidates as shown on their nomination papers. The names and addresses of the candidates on the statement of persons nominated are in turn transferred onto the ballot paper for the election.

82. *Subsection (2)* of Clause 17 amends rule 6 of the PERs to provide that the candidate's nomination paper will no longer include the candidate's home address in full. Instead, the nomination paper must be accompanied by a form known as the "home address form" which must show the candidate's full names and home address in full. Provisions concerning the delivery of nomination papers to the returning officer will apply equally to the delivery of the home address form. On the home address form, the candidate may make a statement that he requires the home address not to be made public. If he does so, then the form must also state the constituency within which the candidate's home address is situated, or if that address is outside the United Kingdom, the country within which it is situated.

83. *Subsection (3)* amends rule 11 of the PERs (right to attend nomination) to provide that those specified persons who are entitled to attend the proceedings during the time for delivery of nomination papers or for making objections to them (i.e. other candidates, agents and election observers from the Electoral Commission) also have the right to inspect and object to the contents of the home address form. Otherwise, new rule

11(5) prohibits the returning officer from disclosing the home address form, except for some other purpose authorised by law.

84. *Subsection (4)* amends rule 12 of the PERs (validity of nomination papers) to provide that the provisions in this rule concerning the nomination paper and the candidate's consent to it, also apply to the home address form. As a result, if a candidate fails to return a home address form or to complete it in accordance with rule 6, then the returning officer may hold his nomination to be invalid.

85. *Subsection (5)* inserts new provisions into rule 14 of the PERs (publication of statement of persons nominated). The effect is that where a candidate has stated on the home address form that he does not wish his home address to be made public, the information he has provided about the constituency (or country) within which his home address is situated will appear on the statement of persons nominated, instead of his home address.

86. *Subsection (6)* also inserts new provisions into rule 14 of the PERs to address the situation where two or more candidates have the same or similar names, each of them wishes to withhold their home address and their home addresses are in the same constituency (or country). Where, in the returning officer's opinion, these circumstances are likely to cause confusion (e.g. where both are also independent candidates), the returning officer may cause any of their particulars to be shown on the statement of persons nominated with such amendments or additions as the officer thinks appropriate, in order to reduce the likelihood of confusion.

87. *Subsection (7)* inserts a new rule 53A in the PERs (destruction of home addresses), which provides that the returning officer shall destroy each candidate's home address form on the next working day following the 21st day after the election (being the deadline for submission of an election petition based on the contents of a home address form) or the conclusion either of proceedings arising from any petition submitted during that period or any appeal resulting from such proceedings.

Clause 18: Disposal of election documents in Scotland

88. Clause 18 amends section 63 of, and Schedule 1 to, the 1983 Act. The amendment to section 63 omits the words "Sheriff Clerk". The amendment to Schedule 1 substitutes a revised rule 58, which confers responsibility for the storage of, and provision of access to the election records and documents for a UK Parliamentary election in Scotland on the Parliamentary Returning Officer for the election.

Clause 19: Filling vacant European Parliament seats in Northern Ireland

89. Clause 19 amends section 5 of the European Parliamentary Elections Act 2002 to extend the power to make regulations in respect of filling vacant European Parliament seats in Northern Ireland. Currently, section 5 of the 2002 Act only provides for regulations to be made in respect of by-elections or where a seat has been filled using

a party list. The party list system does not operate in Northern Ireland and the effect of section 5 is that a by-election must ensue if a seat for Northern Ireland in the European Parliament is vacated during term.

90. *Subsection (1)* of Clause 19 inserts new subsections (4) and (5) into section 5 of the 2002 Act. New subsections (4) and (5) provide a power for the Secretary of State to make regulations requiring a vacant European Parliament seat in Northern Ireland to be filled in two different ways. Subsection (4) provides that where the previous MEP was a member of a registered party when returned regulations may require the vacancy to be filled by a person nominated by the nominating officer of that registered party. If the previous MEP was not a member of a registered party when returned, the regulations may provide for a person named in a list of possible replacements submitted by the previous MEP to fill the vacancy.

91. As further regulations will be required to give full effect to the new policy, *subsection (2)* of Clause 19 makes transitional provision to ensure that arrangements provided for in the regulations made under the new subsections inserted by subsection (1) may have effect in relation to any vacancy arising before Clause 19 comes into force but in respect of which a notice of by-election has not yet been issued.

Clause 20: Local Returning Officers for elections to the European Parliament

92. Clause 20 substitutes a new definition of "local returning officer" for that in section 6(5A)(a) of the European Parliamentary Elections Act 2002. The effect of the new definition is that the local returning officers for European Parliamentary elections held in England, Wales and Scotland will be the persons who are returning officers for local authority elections in those countries rather than the persons who are returning officers for UK Parliamentary elections.

Clause 21: CORE Information and action to be taken by electoral registration officers

93. Clause 21 amends section 2 of the Electoral Administration Act 2006 ("the 2006 Act") in relation to the Co-ordinated Online Record of Electors ("CORE").

94. The amendments in *subsection (2)* extend the circumstances of which the CORE keeper is required to inform an electoral registration officer (ERO) in accordance with section 2(5) of the 2006 Act. Their effect is that the CORE keeper must inform an ERO where more than a specified number of postal votes are requested in respect of the same address, and where the same person is appointed as, or votes as, proxy for more than two electors.

95. *Subsections (3) and (5)* extend the order-making powers of the Secretary of State in relation to the establishment of a CORE scheme. *Subsection (3)* inserts new subsection (6A) into section 2 of the 2006 Act, which provides that where the CORE keeper informs an ERO of the circumstances in section 2(6) of the 2006 Act or of any suspicions that the CORE keeper has concerning the commission of an offence under

the 1983 Act, or other impropriety, a CORE scheme may require the ERO to respond by taking such steps, if any, as appear to be appropriate to the ERO. It also provides that a CORE scheme may require an ERO to notify the CORE keeper of the steps taken, or of the reasons for not taking any. The amendments in *subsection (5)* enable the CORE scheme to authorise an ERO to share information with another ERO when responding to information provided by the CORE keeper.

96. *Subsection (4)* enables the CORE keeper to provide an ERO with such information as the CORE keeper thinks is relevant about suspicions that the CORE keeper has concerning the commission of an offence under the 1983 Act or other impropriety.

Clause 22: Schemes for provision of data to registration officers

97. Clause 22 contains provisions empowering the Secretary of State to create, by order, a scheme which requires a public or local authority to supply a registration officer with data which they can use for the purpose of maintaining a complete and accurate electoral register and ensuring that any other information they hold on electors is accurate.

98. *Subsection (1)* provides that the Secretary of State may create an order, referred to as a scheme, which will authorise or require specified persons to provide a registration officer with information from their records, which the registration officer may use for the purposes set out in subsection (2) of the Clause.

99. *Subsection (2)* sets out the purposes for which the registration officer may use the information provided under a scheme. These purposes include ensuring that their records are accurate, and that all those who are eligible to be registered are included in the register, as well as determining whether the objectives of the scheme are being met.

100. To ensure the scheme can be tailored to the specific circumstances of the registration officer or any public authority affected by the scheme, *subsection (3)* provides that a scheme may authorise information to be provided at specified times or in specified circumstances.

101. *Subsection (4)* sets out those persons that may be required to provide information under a scheme, namely local or public authorities and/or persons undertaking functions or services on behalf of an authority.

102. *Subsection (5)* allows the Secretary of State, to create more than one data sharing scheme in the same statutory instrument.

103. *Subsection (6)* provides that an order under the new power, will have the effect of removing all barriers to data sharing, statutory or otherwise, that might otherwise have obstructed the establishment of the scheme. It is anticipated that those sharing data under the auspices of any scheme made by order will have regard to the effect of Article 8 of the ECHR, the common law of confidence or any relevant provisions of the Data Protection Act 1998.

104. *Subsection (7)* places restrictions on the onward disclosure by a registration officer of data provided under a scheme. The registration officer may share the data with a person to whom he may delegate his functions, or to another person where that is for the purposes set out in subsection (2) or is for the purposes of civil or criminal proceedings. A person who breaches these restrictions is guilty of an offence and will be liable to a fine on summary conviction.

105. *Subsection (8)* will provide that a scheme order contain incidental, supplemental, transitional or saving provision. This is to ensure that the order can be tailored appropriately to the individual circumstances of any scheme.

106. *Subsection (9)* provides that a scheme can only be made following the affirmative resolution procedure.

Clause 23: Schemes under section 22: proposals, consultation and evaluation

107. Clause 23 creates a number of procedural steps which must be followed before an order under Clause 22 can be made to create a scheme.

108. *Subsection (1)* provides that a scheme can only be created where a registration officer has submitted a proposal to the Secretary of State for consideration and the Secretary of State implements that proposal or does so with modifications agreed to by the registration officer.

109. *Subsection (2)* provides that before making an order, the Secretary of State must consult the Electoral Commission, the person who authorised or required by the order to provide data to the registration officer and the Information Commissioner.

110. *Subsection (3)* requires that each order must include a specific evaluation date, by which the Electoral Commission must prepare a report on that scheme.

111. *Subsections (4) and (5)* provide the matters which must be included in the report, including a description of the scheme, and an assessment of the matters set out in subsection (5) and any other matters which are specified in the order. The report will establish the extent to which the scheme has enabled the registration officer to enhance the accuracy and completeness of his or her register, as well as whether there were any issues around administration, time, and costs. It will also enable a better understanding as to whether there were any objections to the scheme, for example from members of the public.

112. *Subsection (6)* provides that the registration officer must give the Electoral Commission such assistance as they may reasonably require while preparing the report and that on receipt of the report from the Electoral Commission, the registration officer must publish it as they think appropriate.

Clause 24: Interpretation

113. Clause 24 defines phrases which are used generally in the Bill.

Clause 25: Amendments and repeals

114. Clause 25 gives effect to Schedules 5 and 6. Schedule 5 makes minor and consequential amendments and Schedule 6 contains the appropriate repeals.

Clause 26: Transitional provision

115. Clause 26 is a transitional provision which is needed because certain provisions of the Criminal Justice Act 2003 increasing the power of magistrates' courts to impose imprisonment (in England and Wales) are not yet in force.

Schedule 1: Investigatory powers of the Commission: Schedule to be inserted into the 2000 Act

116. Schedule 1 of the Bill contains new Schedule 19B to the 2000 Act. This gives the Electoral Commission increased investigatory powers.

117. Paragraph 1 of the new Schedule restates powers that the Electoral Commission have in relation to registered parties and others and which are contained in the current section 146 of the 2000 Act. Sub-paragraph (1) lists the individuals and organisations to which the investigatory powers to require information set out in paragraph 1 can be applied. Broadly, these individuals and organisations are those considered to be the primary focus of the Commission's function of monitoring compliance as, together, they are the individuals and organisations on whom obligations under the 2000 Act are principally imposed.

118. Sub-paragraphs (2) and (3) allow the Commission, after issuing a "disclosure notice", to require an individual, or an officer of an organisation, to produce or provide documents or an explanation in relation to income or expenditure where the information in question is reasonably required by the Commission to carry out their functions. Sub-paragraph (4) obliges the person to comply with a requirement set out in a disclosure notice within a reasonable time. It is a criminal offence not to do so without reasonable excuse, under paragraph 13 of the Schedule.

119. Paragraph 2 enables a person authorised by the Commission to enter premises at any reasonable time and inspect relevant documentation, to enable the Commission to carry out their functions. This power is restricted so that it can only be used in relation to registered parties, recognised third parties, permitted participants, members associations and organisations or individuals formerly within these categories.

120. The use of the power in paragraph 2 is subject to paragraph 3(6). Paragraph 3(6) provides that the Electoral Commission may not use its power under paragraph 2 to enter premises and inspect documents for the purposes of an investigation of a suspected offence contained in the 2000 Act or contravention of any restriction or requirement included in the same Act.

121. Paragraph 3 provides the Commission with a new power in cases where they have reasonable grounds for suspecting that an offence under the 2000 Act has been committed or that a contravention of any restriction or requirement of the Act has taken place. Where the Commission hold such a suspicion they may, under sub-paragraph (2), issue a notice to a person requiring that person to produce or provide

any documents or explanation reasonably required for an investigation by them of the suspected offence or contravention. Sub-paragraph (3) obliges the person to comply with the notice within a reasonable time. It is a criminal offence not to do so without reasonable excuse, under paragraph 13 of the same Schedule. This power is wider than that set out in paragraph 1 because it is not restricted to documentation or information relating to income or expenditure nor is it restricted to a list of specified individuals or bodies.

122. Sub-paragraph (4) allows an investigator authorised by the Commission to require a person to come and answer in person any questions that the investigator reasonably considers relevant to the investigation. The powers created by paragraph 3 can be used in relation to a person who is also covered by paragraph 1, albeit for a different purpose (i.e. that of investigating purported wrongdoing), and may be used against any other person who holds, or is thought to hold, information reasonably required for an investigation by the Commission. It follows that use of the power may be used in respect of the individual or body suspected by the Commission of having committed an offence or contravention but is not limited to such an individual or body.

123. Paragraph 4 applies where the Commission has given a notice under paragraph 3 requiring documents to be produced. Sub-paragraph (2) allows a county court or (in Scotland) a sheriff to issue an order against a person following an application from the Commission if satisfied of four things. First, that there are reasonable grounds for believing that there has been an offence under, or other contravention of, the 2000 Act. Second, that documents referred to in the notice under paragraph 3 have not been produced in response to that notice. Third, that the documents are in the custody of the person against whom the order is issued. Finally, that the documents are reasonably required for the purposes of an investigation.

124. Sub-paragraph (3) provides that a disclosure order is an order requiring the person to whom it is given to deliver to the Commission documents referred to in the order within the timeframe set out in the order.

125. Sub-paragraph (4) provides that a document is in a person's control if they have possession of it, or a right to possession of it.

126. Sub-paragraph (5) stipulates that a person who fails to comply with a disclosure order may not be punished for both contempt of court, and an offence under paragraph 13 of the Schedule.

127. Paragraph 5 specifies that the Commission may retain documents delivered to them in compliance with an order under paragraph 4 for three months. However, if during that time any relevant criminal proceedings are begun, or notices are issued or penalties imposed under the new civil sanctions powers given by Schedule 19C, the documents

may generally be retained until they are no longer required in relation to the proceedings or civil sanctions.

128. Paragraph 6 provides that the Commission, or a person authorised by the Commission, may make copies or records of relevant information or explanations obtained under the Schedule.

129. Paragraph 7 requires that any authorisation of a person by the Commission made under this Schedule must be in writing.

130. Paragraph 8 requires the person entering premises under the powers set out in paragraph 2 to provide evidence of their right to do so if the person on the premises asks for this.

131. Paragraph 10 deals with documents held in electronic form. Sub-paragraph (1)(a) gives the Commission a power to require such documents to be made available in a legible form. Sub-paragraph (1)(b) enables a person authorised to inspect documents to require any person on premises being searched to give reasonable assistance to allow the inspector to make legible copies of electronic documents, or records of information contained in them. Under this power such assistance may also be required by an inspector in order to enable him to inspect and check any computer or associated apparatus used in connection with the information.

132. Paragraph 11 exempts information subject to legal professional privilege (or confidentiality of communications in Scotland) from any requirement to produce information (in whatever form) under any power provided by this Schedule. The appropriate test is whether a claim to legal professional privilege or, in Scotland, confidentiality of communications could be maintained in legal proceedings in respect of the material in question.

133. Paragraph 12 deals with the admissibility of statements provided under compulsion. Sub-paragraph (1) provides that a statement made in response to a requirement under the Schedule may be used in any proceedings, provided that it complies with any other rules of evidence in those proceedings. But sub-paragraph (2) provides that the statement is not admissible against the maker of the statement in criminal proceedings or proceedings under the new Schedule 19C, unless evidence about the statement is relied on, or a question about it is asked, by the maker, or unless the proceedings are for an offence mentioned in sub-paragraphs (3) and (4). (These offences are similar to perjury.)

134. Paragraph 13 provides that it is an offence to fail to comply with any requirement imposed under the Schedule (for example, to refuse to supply the Commission with information requested under paragraph 1 or 3); to obstruct intentionally somebody

performing functions under the Schedule; or knowingly or recklessly provide false information in response to a requirement imposed under the Schedule.

135. Paragraph 14 imposes a duty on the Electoral Commission to publish guidance on the matters set out in sub-paragraph (1), which concern the ways in which it will make use of the investigatory powers set out in Schedule 19B. Sub-paragraph (2) obliges the Commission to keep the guidance under review, and sub-paragraph (3) places a requirement on the Commission to consult such persons as they consider appropriate before publishing guidance or revised guidance. Sub-paragraph (4) requires the Commission to have regard to the guidance or revised guidance in exercising their functions.

136. Paragraph 15 requires the Electoral Commission to report on its use of the investigatory powers contained in new Schedule 19B to the 2000 Act (contained in Schedule 1 to the Bill), in its annual report which it lays before Parliament under paragraph 20 of Schedule 1.

137. Sub-paragraph (2) explains what information the Commission must include in the report on the use of its investigatory powers. Sub-paragraph (3) exempts the Commission from having to report any information that, in their opinion, it would be inappropriate to include because it would be unlawful or because it would prejudice an ongoing investigation or proceedings.

Schedule 2: Civil sanctions: Schedule to be inserted into the 2000 Act

138. Schedule 2 to the Bill inserts new Schedule 19C into the 2000 Act. It sets out the range of new civil sanctions available to the Commission.

Part 1: Fixed monetary penalties

139. Paragraph 1 allows the Electoral Commission to impose fixed monetary penalties where they are satisfied beyond reasonable doubt that a prescribed offence under the 2000 Act has been committed or that a contravention of a prescribed requirement or restriction contained in that Act has taken place. "Prescribed" means prescribed in an order by the Secretary of State. Under sub-paragraph (1) a fixed monetary penalty can be imposed on a person who has committed the breach. Sub-paragraphs (2) to (4) allow the Commission to impose a fixed monetary penalty on a political party, a recognised third party or a permitted participant respectively. In the case of a registered party the notice may be served on the party itself if the Commission is satisfied beyond reasonable doubt that a person holding office within the party has committed an offence or contravened a requirement. In the case of a recognised third party or a permitted participant the Commission may impose a penalty on the responsible person where it is satisfied beyond reasonable doubt that an offence has occurred or a requirement has been contravened. . Sub-paragraph (5) explains that the imposition of a fixed monetary penalty will require the individual or other person concerned to pay a prescribed amount of money to the Commission. Sub-paragraph

(6) states that where an individual is issued with a fixed monetary penalty for an offence which is triable summarily (whether or not it can also be tried on indictment) and punishable on summary conviction by a fine, the penalty imposed must not be higher than the maximum fine available in summary proceedings.

140. Paragraph 2 sets out the representations and appeals processes. Sub-paragraph (1) requires the Commission to serve notice of any intention to impose a fixed monetary penalty on a person. This notice must offer the person the opportunity to discharge the penalty at that point by paying a prescribed amount, which cannot exceed the amount of the proposed penalty (sub-paragraph (2)). Alternatively, the person can opt to make written representations and objections to the Commission against the proposal to impose the penalty (sub-paragraph (3)). If the deadline for making representations and objections passes without the person having paid the prescribed amount under sub-paragraph (2), the Commission must decide whether to impose the penalty. If the Commission does decide to impose it, a further notice recording that must be served on the relevant person (sub-paragraph (4)). Sub-paragraph (5) provides that if the person's representations have raised any matter that leads the Commission to no longer suspect the person of having committed a prescribed offence or contravened a prescribed requirement or restriction of the 2000 Act, the Commission may not impose the penalty. That sub-paragraph also enables the Secretary of State to prescribe other circumstances in which a penalty may not be imposed. The person may appeal against the decision to impose the penalty on the grounds set out in sub-paragraph (6). Sub-paragraph (7) specifies that these appeals will be made to a county court, or in Scotland the sheriff.

141. Paragraph 3 explains what information the Commission must include when giving notice of an intention to impose a fixed monetary penalty on a person or when giving notice of a subsequent decision to impose the penalty. This must include information such as the grounds for imposition of the sanction, the right to make representations or appeals and the time periods in which these can be made.

142. Paragraph 4 limits the criminal proceedings that can be taken against a person for a prescribed offence or other breach of the 2000 Act that may be dealt with by way of fixed monetary penalty. Under sub-paragraph (1) if the Commission notifies the person of their intention to impose a fixed monetary penalty for the breach, no criminal proceedings for the breach can be brought during the period when liability can be discharged under paragraph 2(2). This sub-paragraph also precludes such proceedings being taken against a person who does discharge liability by making a payment under paragraph 2(2). Finally, paragraph 4(2) precludes a person on whom the Commission imposes a fixed monetary penalty under paragraph 2(4) from being convicted of an offence for the breach.

Part 2: Discretionary requirements

143. Paragraph 5 allows the Electoral Commission to impose a discretionary requirement on a person, political party, recognised third party or permitted participant where they are satisfied, beyond reasonable doubt, that a person has committed a prescribed offence or contravened a prescribed restriction or requirement of the 2000 Act (sub-paragraphs (1) to (4)). Sub-paragraph (5) defines a discretionary requirement as a sanction that can take the form of a monetary penalty or, alternatively, an instruction to take certain actions designed to either prevent the recurrence of the offence or contravention or restore the position to what it would have been had the offence or contravention not occurred. Sub-paragraph (6) limits the use of discretionary requirements by preventing the Commission from imposing a discretionary requirement on a person more than once for the same act or omission. Sub-paragraph (8) sets the financial limit of a variable monetary penalty for offences which are triable summarily, stating that, where such offences are punishable by a fine, the variable monetary penalty must not be greater than the maximum fine.

144. Paragraph 6, sub-paragraph (1) requires that, where the Commission intends to impose a discretionary requirement on a person for a prescribed offence or other breach of the 2000 Act, they must first notify the person of their intention. Sub-paragraph (2) allows the person to make written representations and objections to the Commission against the proposed penalty. If anything is raised which leads the Commission to no longer be satisfied that the prescribed offence or contravention took place, the Commission may not impose the penalty (sub-paragraph (4)). In all other cases, the Commission may proceed to serve on the person a notice formally imposing the discretionary requirement, which will specify what the requirement is (sub-paragraph (5)). The person may appeal to a county court (or Sheriff in Scotland) against the decision to impose the discretionary requirement, on a number of specified grounds (sub-paragraph (6)).

145. Paragraph 7 explains what information the Commission must include when giving the initial notice of an intention to impose a discretionary requirement on a person. This includes the grounds for imposing the requirement and the period for appeal (no less than 28 days from the day on which the notice is received). Sub-paragraph (3) sets out the information that must be provided by the Commission when they are imposing a discretionary requirement. This is: the grounds for the proposed discretionary requirement, details of any monetary penalty, rights of appeal and the consequences of non-compliance.

146. Paragraph 8 limits the use of other sanctions against a person who has had a discretionary requirement imposed upon them. It explains that if a discretionary requirement is imposed on a person for an offence or a contravention of a restriction or requirement under the 2000 Act, this protects them from being convicted in a criminal court for the same offence. However, this protection from future prosecution does not apply in cases where the discretionary requirement imposed was non-monetary, no

variable monetary penalty was imposed, and the person failed to comply with the non-monetary discretionary requirement.

147. Paragraph 9 allows the Commission to impose a "non-compliance penalty" on a person who fails to comply with a non-monetary discretionary requirement; and also sets out the grounds and avenue of appeal against a non-compliance penalty (sub-paragraphs (3) and (4)).

Part 3: Stop notices

148. Paragraph 10 provides that the Electoral Commission can impose a stop notice on a person in order to prevent them from continuing or repeating a particular activity which the Commission reasonably believes is (or is likely to be) a prescribed offence or a contravention of a prescribed requirement or restriction under the 2000 Act. A stop notice can also be imposed where the Commission believes that a person's behaviour is likely to lead to them committing an offence or acting in contravention of a prescribed requirement or restriction contained in the 2000 Act. In both cases the Commission must believe that the activity, or potential activity, is seriously damaging to public confidence in the effectiveness of the controls in the 2000 Act on income or expenditure by registered parties and others, or that it significantly risks doing so.

149. Paragraphs 11 to 14 set out the details and limitations of how the stop notice system operates. Paragraph 11 lists the information to be included in a stop notice which are the grounds for imposition, rights of appeal and consequences of non-compliance. Paragraph 12 requires the Commission to issue a "completion certificate" once they are satisfied that the person has taken the steps set out in the stop notice (at which point it will cease to have effect). The person upon whom a notice has been imposed may apply for a completion certificate at any time and the Commission must make a decision on the application within 14 days of receipt. Paragraph 13 explains how a person may appeal against the imposition of a stop notice, or against a decision not to issue a completion certificate, and provides that any appeal will be heard by a county court (or the sheriff in Scotland). It also sets out the grounds for appeal in both circumstances. Paragraph 14 provides that a person who does not comply with a stop notice is guilty of an offence.

Part 4: Enforcement undertakings

150. Paragraph 15 outlines the powers of the Commission to accept an enforcement undertaking from a person whom the Commission have reasonable grounds for believing has committed a prescribed offence or contravened a prescribed restriction or requirement of the 2000 Act. An enforcement undertaking may be offered by the person suspected of the offence or contravention and outlines the action they will take (within a specified period). The action may be with a view to preventing the recurrence of the offence or contravention or returning the position to what it would have been had the offence or contravention not taken place or it may be action of a kind that has been prescribed in an order by the Secretary of State. Sub-paragraph

(1)(d) requires that the undertaking will take effect only if the Commission accept it. Sub-paragraph (2) makes clear that a person who has complied with the accepted undertaking will generally be exempt from other sanctions, including criminal proceedings, in relation to the acts or omissions on which the undertaking is based as long as the undertaking is complied with.

Part 5: Power to make supplementary provision etc by order

151. Paragraph 16 gives the Secretary of State the power to make orders that are supplemental to, consequential on or incidental to this Schedule. Such provisions may include transitional provision. This includes the power to amend, repeal or revoke any enactment.

152. Paragraph 17 sets out the consultation process that the Secretary of State must carry out prior to making a supplementary order under paragraph 16. As part of this process the Electoral Commission must be consulted, along with other persons that the Secretary of State considers appropriate. Under sub-paragraph (2) further consultation is required where, following the outcome of the initial consultation, it is apparent that substantial changes to an order will be necessary. Any consultations which are conducted prior to the commencement of this Schedule may count for these purposes.

153. Paragraph 18 sets out the details of what can be included in a supplementary order regarding the Commission's power to impose financial sanctions, including fixed monetary penalties, variable monetary penalties and non-compliance penalties. In particular, provision made by virtue of this paragraph may include detail about early payment discounts, late payment penalties, late payment interest and enforcement.

154. Paragraph 19 sets out the details of what can be included in a supplementary order in relation to enforcement undertakings. The order may include a wide range of detail about procedural matters relating to undertakings, for example, how undertakings are entered into and in what circumstances undertakings are regarded as having been complied with.

155. Paragraph 20 states that a supplementary order may extend the time available to institute criminal proceedings against a person in certain instances. The first of these is where a non-monetary discretionary requirement (but no variable monetary penalty) has been imposed and the person has failed to comply with the non-monetary discretionary requirement. The second is where there has been a breach of all or part of an enforcement undertaking.

156. Paragraph 21 allows a supplementary order to set out the details of the appeals process in relation to the imposition of a requirement or the service of a notice under this Schedule. Such an order may include provision conferring relevant powers on courts (for example, to withdraw the requirement or notice against which there is an appeal).

Part 6: General and supplemental

157. Paragraph 22 limits the use of fixed monetary penalties, discretionary requirements and stop notices. It explains that a fixed monetary penalty may not be imposed on a person if they are already subject to a discretionary requirement or stop notice for a breach. Additionally, if a person has had a fixed monetary penalty imposed on them for a breach or has paid a sum to discharge liability for a fixed monetary penalty, they cannot be given a discretionary requirement or a stop notice in relation to the breach.

158. Paragraph 23 provides that, if someone is required under Schedule 19B to the 2000 Act to make a statement as part of an investigation by the Commission, the Commission must not take account of that statement when deciding whether to impose a civil sanction on the person. The only exception is for the offence of providing false information set out in paragraph 12(3) of Schedule 19B to the 2000 Act.

159. Paragraph 24 stipulates that any financial penalty imposed on an unincorporated association must be paid from its own funds.

160. Paragraph 25 requires the Commission to publish guidance about enforcement of the 2000 Act. The guidance must include details of the sanctions available (both civil and criminal), the circumstances in which civil sanctions may be used and the rights of appeal available. Sub-paragraph (7) requires the Commission to carry out consultations with persons that they consider appropriate prior to publishing guidance. Under sub-paragraph (8) the Commission is required to have regard to the guidance when exercising its functions.

161. Paragraph 26 stipulates that all monetary penalties paid to the Commission as a result of the imposition of the civil sanctions under the Schedule must be paid into the Consolidated Fund.

162. Paragraph 27 requires the Commission to include in their annual report a list of the cases (other than those where sanctions have been successfully appealed against) in which they have imposed fixed monetary penalties, discretionary notices or stop notices; cases in which liability for a fixed monetary penalty has been accepted through payment of a sum; and cases in which an enforcement undertaking has been accepted. Sub-paragraph (2) enables the Commission to exclude information if it might be unlawful for the report to include it (for example, because its inclusion might breach the right to respect for private and family life protected by Article 8 of the European Convention on Human Rights, or there is a statutory restriction on its disclosure). It also enables the Commission to exclude any information that might adversely affect ongoing investigations or proceedings.

163. Paragraph 28 lists the public bodies from which the Commission may request information when exercising the powers under the Schedule. It also precludes disclosures that would contravene certain other relevant legislation on data protection,

and provides that powers of disclosure that are independent of this power are not affected by it.

Part 7: Interpretation

164. Paragraph 29 sets out definitions of words and expressions used in the Schedule.

Schedule 3: Declaration as to source of donation

165. Schedule 3 makes amendments in relation to donations to individuals and members associations, recognised third parties and permitted participants, which correspond to the amendments made in relation to donations to registered political parties by Clause 8. Paragraph 1 inserts new paragraph 6A into Schedule 7 to the 2000 Act (control of donations to individuals and members associations), and paragraphs 2 and 3 make consequential changes to that Schedule. Paragraph 4 inserts new paragraph 6A into Schedule 11 to the 2000 Act (control of donations to recognised third parties) and paragraphs 5 and 6 make consequential changes to that Schedule. Paragraph 7 inserts new paragraph 6A into Schedule 15 to the 2000 Act (control of donations to permitted participants) and paragraphs 8 and 9 make consequential changes to that Schedule.

166. Paragraph 10 amends Schedule 20 to the 2000 Act to specify the penalties which will be incurred for making a false declaration as to the source of a donation to individuals and members associations, recognised third parties and permitted participants.

Schedule 4: Reports of gifts received by unincorporated associations: Schedule to be inserted into the 2000 Act

167. Schedule 4 inserts in the 2000 Act a new Schedule 19A for the purpose of imposing reporting requirement in respect of gifts made to unincorporated association that make political donations of significant financial value.

168. Paragraph 1(1) and 1(2) of new Schedule 19A provide that where in any calendar year an unincorporated association makes a donation with a value of more than £25,000 to a registered party, a regulated donee, a recognised third party, or a permitted participant, or makes donations in that calendar year which in aggregate exceed £25,000, the association must notify the Electoral Commission accordingly within 30 days beginning with the date on which the donation was made. Paragraphs 1(3) to 1(5) make detailed provision about the matters that are to be regarded as a donation for these purposes. Paragraph 1(6) clarifies the status of a donation set on one day and received on another.

169. Paragraph 2 of new Schedule 19A sets out the detail of the reporting requirement in relation to unincorporated associations who make a notification under paragraph 1. The requirement is to report to the Commission certain details about gifts (both monetary or non-monetary) they have received with a value of over £7,500 within the reporting period. Paragraphs (2) and (3) together provide that the reporting period

covers the calendar year in which relevant donations are made in excess of £25,000 and both the preceding and following calendar years.

170. Sub-paragraph (2) also sets out how, and to what timescale, the reporting requirement will apply to gifts that are required to be reported but which were made on or before the date on which the £25,000 limit was exceeded ("the donation date"). Paragraphs 2(3) and 2(4) go on to set out the position in relation to gifts that are received after the donation date and which are required to be reported. Such gifts will be reported on a quarterly basis until the reporting requirement comes to an end. A quarter in this respect means a period running for three months and ending with 31st March, 30th June, 30th September or 31st December.

171. Paragraph 2(5) provides for the aggregation of two or more gifts of more than £500 from the same person in the same calendar year. The result is that where those gifts exceed £7,500 in aggregate they fall to be reported in the same way as an individual gift exceeding that amount.

172. Paragraph 2(6) provides that where an unincorporated association has received a gift of over £7,500 in a calendar year from a single source and subsequently receives any gift of over £1,500 in the same year from that source, the subsequent gift is to be reported as if it were one of over £7,500.

173. Paragraph 2(8) makes provision to exclude from the reporting requirement any gift already reported under a requirement imposed by Schedule 19A or, where the unincorporated association is also a members association, in accordance with Part 3 of Schedule 7 to the 2000 Act.

174. Paragraph 3 of new Schedule 19A sets out the detail that must be contained in reports required to be made under paragraph 2.

175. Paragraph 4 of new Schedule 19A requires each notification and report made under paragraphs 1 and 2 respectively to include a declaration, made by a person authorised to do so, as to the content and accuracy of the notification or report.

176. Paragraph 5 of new Schedule 19A provides for additional detail that must be provided in each notification or report required to be made under the Schedule in respect of an unincorporated association and the person authorised for the purposes of paragraph 4.

177. Paragraph 6 of new Schedule 19A creates three offences which result from the obligations imposed by the Schedule. First, under sub-paragraph (1), an unincorporated association commits an offence if it fails, without reasonable excuse, to give a notification or report to the Commission within the time limits specified. Second, sub-paragraph (2) an offence for an unincorporated association to provide,

without reasonable excuse, a notification or report that fails to comply with any requirement of this Schedule. Finally, sub-paragraph (3) makes it an offence for an individual to knowingly or recklessly make a false declaration under paragraph 3.

178. Paragraph 7 of new Schedule 19A imposes a requirement on the Electoral Commission to maintain a register of all notifications and reports given or made under paragraphs 1 and 2 respectively. Paragraph 7(2) sets out the details that are to be included in the register in the case of any such notification or report. Paragraph 7(3) requires the relevant detail to be added to the register as soon as reasonably practicable. Paragraph 7(4) mirrors existing provision in section 69(4) of the 2000 Act regarding non-publication of an individual's home address in a register maintained by the Commission.

179. Paragraph 8 of new Schedule 19A makes provision in respect of a gift made within the reporting period but prior to inclusion in the register of the fact that a paragraph 1 notification has been made by the unincorporated association to which the relevant gift was made. Sub-paragraphs (2)(a) and (4) have the effect of requiring the Commission to give 45 days notice of it intention to include in the register details about the person who made the gift. If, within that time, the Commission receives any representations in response it shall take those into account before deciding whether to include the details in the register.

180. Paragraph 9 of new Schedule 19A makes provision in relation to the meaning of a gift for the purposes of this Schedule. In particular, sub-paragraph (3) enables the Secretary of State to make regulations about matters that may or may not constitute a gift and how gifts are to be valued.

Schedule 5: Minor and consequential amendments and Schedule 6: Repeals

181. Clause 25 gives effect to Schedules 5 and 6. Schedule 5 makes minor and consequential amendments. All of the amendments in question are consequential on other provisions in the Bill, except those at paragraphs 12 and 18, which make minor drafting changes. Schedule 6 makes a number of repeals.

FINANCIAL EFFECTS

182. The provisions that relate to European Parliament elections have no associated costs and are intended to make the administration of those elections simpler and easier to plan. The provisions that relate to the annual canvass are intended to assist with the registration of electors before an autumn poll. While they do create a new type of administrative burden in the event of an autumn poll being held, the Department does not envisage that this will give rise to increased costs if administrators follow Electoral Commission guidance in this respect; and a much larger burden may arise if no action is taken.

183. The additional costs incurred as a result of the provisions relating to the disposal of election documents are not expected to be significant and will be met by central government through the Fees and Charges Order for Returning Officers.

184. Electoral administrators may incur costs as a result of the provisions relating to the CORE scheme, but these should be partially if not wholly off-set by savings achieved through the reduction of burdens produced through other provisions of the CORE Scheme.

185. The Electoral Commission is directly financed by Parliament (paragraph 14 of Schedule 1 to the 2000 Act). The Commission submits annual estimates to the Speaker's Committee and the Committee examines the estimates, considers advice from HM Treasury and the Comptroller and Auditor General, and lays the estimates before Parliament (explaining any modifications which it has made if relevant). Additional costs from this Bill will be financed in the same way. The Commission has already re-staffed its party and election finance team with a view to the forthcoming legislative changes. The Commission's provisional estimate is that the additional costs arising to it as a result of the changes to its powers and governance in the Bill will amount to approximately £650,000 per annum. The Commission will consider the extent to which this can be met from within its existing settlement.

186. The provision relating to compliance officers is permissive and does not require a compliance officer to be appointed. As a voluntary measure there will be no call on public funds in terms of paying for compliance officers. We expect that, where office holders appoint compliance officers, they will pay them out of their own funds. In terms of registration, the Electoral Commission currently estimates an initial start-up cost of up to £20,000 for incorporating compliance officers into their database. Ongoing administrative costs will depend to some extent on take-up of the provision.

187. There will be associated costs for data matching schemes for both the participating public authority and registration officer in terms of IT and manpower. The Ministry of Justice, who will oversee the pilot schemes, will meet these costs.

188. There would be no cost to the National Loans Fund.

PUBLIC SECTOR MANPOWER

189. As indicated above, a small increase in the manpower of the Electoral Commission may be required in order for it to fulfil its expanded role. In relation to orders made in respect of data matching scheme pilots (Clauses 22 and 23) there may be an impact on manpower for those local authorities and data providers participating in such arrangements. However, the Ministry of Justice will meet any manpower costs attributed to the delivery of the pilots. The Department does not envisage that there

would be any other impact on public manpower as a result of the provisions of the Bill.

SUMMARY OF IMPACT ASSESSMENTS

190. The completed impact assessments for the Bill analyse the costs and potential benefits of the proposals and assess their probable impact on race, gender and disability equality. These are available in the Vote Office.

191. The impact of the Bill will depend upon how the Electoral Commission decides to implement internal changes as a result of its changed role. The level of extra costs which the Commission might incur is estimated above, though this figure does not account for reprioritisation within the Commission and there is likely to be some scope for meeting some of the costs from within the Commission's existing settlement.

192. Under the provision that relates to candidate spending, where a Parliament runs for over 55 months, candidates will have to report all expenses incurred and used for the purposes of promoting their electoral prospects against a 'pre-candidacy' spending limit, rather than just spending incurred and used between dissolution of Parliament and the poll. Whilst this will increase the administrative burden for some candidates and their agents in the case of certain Parliaments, the burden will be lower than it was under the pre-2000 triggering regime and this change to reporting requirements is considered to be a necessary consequence of effective regulation.

193. The provisions that relate to European Parliament elections have no associated costs and are intended to make the administration of those elections simpler and easier to plan. The provisions that relate to the annual canvass are intended to improve the registration of electors before any autumn poll. While they do create a new type of administrative burden in the event of an autumn poll being held, a much larger burden may arise if no action is taken.

194. No impact assessment has been carried out on the provisions relating to the disposal of election documents in Scotland. The additional costs incurred by Parliamentary Returning Officers in Scotland and their support staff as a result of the new policy will not exceed £5m and will be met by central government through the Fees and Charges Order for Returning Officers.

195. No impact assessment has been carried out on the provisions relating CORE scheme. There will be an impact on electoral administrators but this is expected to be less than £5m in total and should be partially if not wholly off-set by savings achieved through the reduction of burdens produced through other provisions of the CORE Scheme. These will be explored in detail through consultation on the CORE Scheme Order.

196. Under the arrangements for greater transparency of donations in Clause 8, donors will be required to make a declaration as to whether or not, to the best of their knowledge, a third party has given the donor to the political party, regulated donee, recognised third party or permitted participant more than £7,500 – or £1,500 with respect to donations to accounting units of registered parties - with a view to, or otherwise in connection with, the making of the donation. The main impact of this policy will be the extra administrative burden placed on donors in completing the declaration, and on recipients, who will have to process the declarations. The simplicity of completing and processing declarations should ensure that the administrative burden is not significant. It is considered that, the relatively small additional burden is justified. This is because the additional requirement applies to those whose donation income is already subject to regulation, and is outweighed by the benefits of the additional transparency this Clause will deliver.

197. The provision that relates to donations by unincorporated associations (unincorporated associations) will mean that unincorporated associations donating more than £25,000 in a calendar year to any recipient regulated by the 2000 Act (including political parties) would be subject to a new reporting regime. This requirement would include unincorporated associations who exceed the threshold as a result of aggregation of donations to different donees (e.g. an MP and a political party). Relevant unincorporated associations would be required to provide the Electoral Commission with details about the source of all donations to them over £7,500 in the calendar year in which the donation is mate, the year before, and the year following the donation. The main impact of this policy will be the extra administrative burden placed on unincorporated associations who would have to source and provide to the Electoral Commission information on donors who have given gifts of over £7,500 to the association over the three year period. Some individuals and organisations giving over £7,500 to unincorporated associations before the unincorporated association falls within the new regime will be required to consider whether they have any objection to their gifts being included in the Commission's register of gifts to unincorporated associations.

198. There will also be an impact on the Electoral Commission who will have to publish a new register of unincorporated associations making significant political donations and the gifts to unincorporated associations that the unincorporated associations declare to the Commission. Additionally, for gifts prior to the unincorporated associations inclusion in the register, the Commission will be required to contact notify individuals and organisations to allow those people to raise any concerns at their inclusion in the register. Where concerns are raised, the Commission will have to consider them before determining the information to be included in the register. We estimate that the number of unincorporated associations making donations to regulated recipients in excess of £25,000 in a calendar year will be small in number, and as such the impact on unincorporated associations, recipients and the Electoral Commission will be small. We believe that the benefits to the public of additional transparency of the most

significant political donations from unincorporated associations more than outweigh the small additional regulatory burden.

199. An impact assessment has been completed for the data matching provisions. In summary, as indicated above, it is intended that funding for each scheme will come from MoJ. It is envisaged that there will be in the region of 10-15 schemes, each of which could cost up to a maximum of £200k, although, given the information above, we think it is more likely that the schemes will each cost in the region of £50-100k each, and the likely total cost will therefore be in the region of £1-2 million. Each individual scheme will be subject to its own RIA and MoJ will want to consider the full costs of each scheme in order to ensure their proportionality before the Secretary of State approves them. The intention is to pilot the schemes and undertake a full analysis of their cost-effectiveness before considering whether such a programme should be rolled out more widely. However, MoJ are committed to piloting data matching schemes in order to enable us to better understand the potential benefits of enhanced data matching in improving the accuracy and completeness of the electoral register.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

200. Section 19 of the Human Rights Act 1998 ("HRA") requires the Minister in charge of a Bill in either House of Parliament to make a statement before second reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

201. Lord Bach, Parliamentary Under-Secretary for Justice, made the following statement of compatibility in accordance with section 19:

"In my view the provisions of the Political Parties and Elections Bill are compatible with the Convention rights.

202. In making the statement the Parliamentary Under-Secretary has given consideration to the fact that the following provisions of the Bill may raise issues in relation to convention rights. For the purposes of what follows the Electoral Commission is considered to be a public authority as defined in section 6(3) of the HRA.

Clause 16

203. Clause 16, which makes provision in relation to voter registration, may be said to engage Article 3 of Protocol 1 (the right to free elections by secret ballot). It is arguable whether this Article is even engaged. However, if it is engaged the provision made by this Bill is compatible as it seeks to ensure effective voter registration, rather than to restrict it.

Schedules 1 and 2

204. While compatible with Convention rights, Schedules 1 and 2 to the Bill provide powers which, when used, may give rise to issues relating to Convention rights. In each case it will be the duty of the Commission (and any other public authority able to exercise a power) to ensure that a power is exercised compatibly with Convention rights in accordance with section 6 of the HRA. The relevant powers have built into them some important safeguards to ensure that each power is capable of being exercised fully compatibly with Convention rights.

Schedule 1 (inserting Schedule 19B in the 2000 Act)

205. Paragraphs 1 and 3 of the Schedule contain various powers for the Commission acting on its own account to require the disclosure of documents and to make copies of, or inspect, those documents or related information. These powers raise a number of issues around Convention rights.

206. Where disclosure is sought under paragraphs 1 and 3 it is a criminal offence under paragraph 13 to refuse to comply with any requirement imposed by the Commission. Use of evidence provided under such a "compulsory" power in proceedings that may incriminate the person providing it could infringe the privilege against self-incrimination in certain cases, a key component of the procedural fairness guarantees provided by Article 6 (right to a fair trial). Paragraph 12 is designed to ensure that the privilege is protected by prohibiting the use of a self-incriminating statement against the person who provided it in criminal or civil proceedings, except where the proceedings relate to the making of false statements. This is supplemented by paragraph 24 of Schedule 19C, which ensures that this type of evidence may not be relied on by the Commission when deciding whether to impose a fixed monetary penalty or a discretionary requirement. An additional safeguard is the power in paragraph 11, which prevents disclosure of information that is subject to legal professional privilege.

207. Obtaining information under the various methods in paragraphs 1 and 3 (and as a result of entry under paragraph 2) may result in the production or inspection of personal information, with the result that Article 8 (right to respect for private and family life) may be engaged. In each case the powers feature appropriate safeguards relating to the nature of the documentation that may be required and the purpose for which it can be examined. In each case, these requirements should help to ensure that any use of the power to obtain disclosure is justified and proportionate in the pursuit of a legitimate aim of helping the Commission perform its monitoring functions. However, an individual judgement will need to be made in each case, and the Commission will have to consider justification and proportionality carefully each time it proposes to exercise the power.

208. The power of entry under paragraph 2 may raise a specific issue under Article 8 and Article 1 of Protocol 1 (protection of property). This paragraph features a safeguard designed to ensure that the powers will be exercised compatibly with Convention rights, by ensuring that entry may only be at a reasonable time. In addition the provision provides only a power to enter. On that basis it is entirely open to the Commission to ensure that that any issues as to Convention Rights are fully taken into account before deciding whether the power should be exercised or not.

209. The power for the Commission to seek a court order for disclosure of documents under paragraph 4 may raise similar issues relating to Article 8 as the power to request documents under paragraphs 1 and 3. The fact that under paragraph 4(2) a court order may not be issued unless the Commission can demonstrate to a court that they hold the same reasonable suspicion as to wrongdoing as under paragraph 3 will ensure that the legitimate aim of investigating a breach of the law is pursued by the granting of a court order. It will, of course, be a matter for the court in each case to ensure that a decision to issue such an order takes into account any issues as to Convention Rights. For these reasons the power should be capable of being used in a way that is fully compatible with Convention rights. Again, this will be matter for careful consideration by the Commission in each case.

Schedule 2 (inserting Schedule 19C in the 2000 Act)

210. The provision of civil sanctioning powers in Schedule 19C to the 2000 Act, as inserted by Schedule 2 to the Bill, raises a number of issues around Convention rights. The most significant issues relate to Article 6 (right to a fair trial) and the Bill contains appropriate safeguards to ensure compatibility with that and other Convention Rights.

211. The first safeguard as regards Article 6 relates to the standard of proof. Before a fixed monetary penalty or a discretionary requirement (monetary or otherwise) may be imposed the Commission must be satisfied to the criminal standard of proof (i.e. beyond reasonable doubt) that a prescribed offence has been committed or a prescribed restriction or requirement has been breached. In contrast a stop notice is essentially preventative in nature. Because of this, a different standard of proof (reasonable belief) applies.

212. Whether the criminal or civil limb of Article 6 is engaged, the Article requires access to an independent and impartial tribunal in certain circumstances. In recognition of this, a final decision of the Commission to impose a fixed monetary penalty, discretionary requirement (whether monetary or otherwise) or stop notice is subject to an appeal to a county court. Other related enforcement decisions (including a decision to impose a non-compliance penalty for failure to comply with a discretionary requirement and a refusal to issue a completion certificate in respect of a stop notice) allow the same right of appeal. These appeal rights are sufficient to ensure that the

provisions are compatible with Article 6 by providing a direct right of appeal to the county court, which stands free of any additional right to seek judicial review.

213. There is no right of appeal as regards enforcement undertakings. Given the voluntary nature of these arrangements, the absence of any dispute between the parties and the fact that failure to comply does not have direct consequences in terms of civil or criminal liability, neither limb of Article 6 is engaged.

214. A third safeguard, contained in paragraphs 4(1) and 8(1) of the inserted Schedule, is that no criminal conviction may be pursued where a decision has been taken to impose a civil penalty that is potentially capable of classification under the criminal limb of Article 6. There are exceptions to this where the sanctions in question do not feature a punitive element. For discretionary requirements an exception to this rule applies where a person fails to comply with a non-monetary discretionary requirement and a variable monetary requirement has not also been imposed. A similar exception is made in respect of enforcement undertakings that are not complied with. Because these sanctions are not punitive in nature the possibility of further criminal or civil proceedings should be preserved in case the entirely preventative requirement is not complied with.

215. In order for this measure to be fully effective, time limits for criminal prosecution in the event of such failure may be extended by order (see paragraph 21 of the inserted Schedule). In making any order of this type the Secretary of State would be bound by section 6 of the HRA to ensure that these time limits are not given retrospective effect so as to contravene Article 7 of the ECHR (no punishment without law).

216. A requirement in a stop notice to cease carrying on an activity could impose a constraint on the ability of an individual or organisation involved in the political process to act in certain ways. A requirement of this sort could be said to engage Article 10 of the ECHR (freedom of expression). Article 10 is unlikely to be engaged as it does not provide a right to participate in the political process in breach of domestic law regulating such participation. Even if Article 10 is engaged, there should be no interference as a stop notice seeks to prevent unlawful acts rather than lawful participation in the political process. In any event, the high threshold to be satisfied before a stop notice can be issued should ensure that any decision to do so is justified and proportionate in pursuit of a legitimate aim.

217. In addition, Article 1 of Protocol 1 (protection of property) might be said to be engaged, depending on the factual circumstances. However, if engaged, then, for the same reasons given in respect of Article 10, any interference would be justified and proportionate in the pursuit of a legitimate aim.

218. Paragraph 27 imposes an obligation on the Commission to include in their annual report a summary of the cases in which civil sanctions have been imposed. There is a

wide discretion about what a report may contain and the power should be capable of being exercised fully compatibly with Article 8 (right to respect for private and family life) should it be engaged. As an extra safeguard, paragraph 27(2) enables the Commission to omit anything that it thinks (a) would or might be unlawful, or (b) might adversely affect any current investigation or proceedings.

219. Paragraph 28(1) enables specified bodies to provide information which they hold, or which is held on their behalf, to the Commission for the purposes of enabling the Commission to exercise any powers provided by Schedule 19C. It will be for the named bodies to ensure that the power is exercised compatibly with Convention rights, notably Article 8. In all cases, the exercise of the power should be in pursuit of a legitimate aim (i.e. that of enabling the Commission to perform its regulatory role properly and effectively). Whether the purported exercise is proportionate to that aim will be a matter for the disclosing body to consider in each case.

Schedule 4 (inserting Schedule 19A into the 2000 Act)

220. The requirement in paragraph 2 of new Schedule 19A for an unincorporated association to provide details about gifts made to it before it is public knowledge that that the new reporting requirements apply to it may raise an issue relating to Article 8 ECHR in individual cases. That is because the potential twin effect of the requirements that the unincorporated association to report details about such gifts to the Commission and that the Commission to include those details on a register available for inspection by the public would be to require disclosure of details that an individual did not know would be publicly available at the time that the gift was made.

221. It is conceivable in some cases of this type that an individual or organisation that has made a gift may subsequently become associated with an unincorporated association and the party or individual or entity to which it has donated in a way that was not anticipated. It may also lead that person to be associated with a party or entity to which donations were made by the unincorporated association and whose aims the person does not support. If the result is to identify that person publicly with the aims of that party, particularly if that association has an adverse consequence for the individual, then an Article 8 issue may arise.

222. Paragraph 8(2) of the new Schedule will mean that the Electoral Commission will be able to consider the concerns about inclusion in the register of the details of any gift made to an unincorporated association in these particular circumstances. Paragraph 8(2) makes specific provisions in relation to a gift made on a date before the register is altered to show that the unincorporated association is subject to the Schedule 19A reporting requirements. In such a case the Commission will be required to make reasonable efforts to serve a notice inviting representations within 45 days about the proposed inclusion of the relevant detail in the register. If representations are received in response to that notice the Commission must take account of them before deciding whether to include the information in the register. This will allow the Commission to fully take into account any issue relating to Article 8 that an individual may wish to raise when deciding whether or not to include the detail in the register.

223. It is not considered that the same Article 8 issue arises in respect of gifts made after the registration point. In those circumstances the fact that the details of the gift will be made public is capable of being ascertained and taken into account by the individual making the gift before it is made.

Clauses 22 and 23: Schemes for the provision of data to registration officers

224. These amendments enable the Secretary of State to make provision in an order made by statutory instrument to require a specified public authority or local authority to provide a specified registration officer with information for the purposes of assisting

the registration officer to secure, so far as is reasonably practicable, that his register and other records relating to electors are accurate.

225. In general, under current legislation, organisations which hold personal data may share that data where they are not barred by statute (or by the effect of Article 8 of the ECHR, the common law, or the law of confidence) from doing so and where it is not prohibited by the various provisions of the Data Protection Act 1998. Where one of the controllers is a body governed by administrative law, there are likely to be restrictions upon what actions it has the power to carry out within the governing framework of public law. Statutory bodies in particular are only able to act as is provided for by statute.

226. Where an order is made under the new power, it will have the effect of removing all barriers to data sharing between the public or local authority and the registration officer that might otherwise have obstructed the scheme. Therefore, the amendments may engage Article 8 because they provide a means by which the further processing of an individual's personal data can be expressly authorised, even though it might otherwise have been prevented. However, where Article 8 is engaged by the terms of a particular scheme, any interference may be justified as being in accordance with the law, necessary in a democratic society and in pursuit of a legitimate aim in accordance with Article 8(2). Specifically, each order will be made by statutory instrument and will be subject to the affirmative resolution procedure. The new provisions state that an order can only require data to be transferred from a public authority to a registration officer for the purpose of assisting them to ensure that their register, or other records relating to electors, are accurate and complete. Ensuring that the electoral register is, so far as practicable, accurate and complete is a legitimate aim. As the power is tied to achieving that aim, and as Ministers are subject to section 6 of the Human Rights Act 1998 when exercising the power to create a scheme, it will be for the Minister to ensure that in each instance the order is proportionate to that aim.

COMMENCEMENT DATES

227. By virtue of Clause 29, the following Clauses will come into force on Royal Assent:

- Clause 1(1) and (3) (compliance with controls imposed by the 2000 Act etc);
- Clause 4 (selection of prospective Electoral Commissioners and Commission chairman);
- Clause 5 (four Electoral Commissioners to be persons put forward by parties);
- Clause 7 (political restrictions on Electoral Commissioners and staff);

- Clause 12 (Reports of gifts received by unincorporated associations making donations);
- Clause 15 (election expenses: guidance by Commission);
- Clause 19 (filling vacant European Parliament seats in Northern Ireland);
- Clause 24 (interpretation);
- Clause 25 (amendments and repeals) and various provisions in Schedules 5 (minor and consequential amendments) and 6 (repeals) so far as relating to the above Clauses;
- Clauses 26 to 30 (various general and supplemental provisions).

228. All other Clauses will come into force on a date to be appointed by the Secretary of State, by an order made by statutory instrument.

POLITICAL PARTIES AND ELECTIONS BILL

EXPLANATORY NOTES

These notes refer to the Political Parties and Elections Bill as brought from the House of Commons on 3rd March 2009 [HL Bill 26]

Ordered to be Printed, 3rd March 2009

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HL Bill 26—EN 54/4

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