



Fifth Report of the Committee on  
Standards in Public Life

*Chairman: Lord Neill of Bladen, QC*

# *Standards in Public Life*

The Funding of  
Political Parties in the  
United Kingdom

**Volume 1: Report**

Presented to Parliament by the Prime Minister  
by Command of Her Majesty  
October 1998

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## The Seven Principles of Public Life

### *Selflessness*

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### *Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### *Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### *Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### *Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

Holders of public office should promote and support these principles by leadership and example.

# *Committee on Standards in Public Life*

***Standards in  
Public Life***

**Chairman:**

*Lord Neill of Bladen QC*

*Dear Prime Minister,*

October 1998

I am pleased to present the Fifth Report of the Committee on Standards in Public Life, which addresses the funding of political parties.

The extended terms of reference which you gave this Committee last November to enable us to undertake this study were very broad. We have endeavoured to meet the challenge implicit in those terms of reference by addressing a wide range of issues connected with political party funding. Our enquiries have not been confined to the regulation of donations to political parties. We have addressed the regulation of political parties' election expenditure, the funding and expenditure of third-party organisations and their role in the election process, referendums, the honours system, the provision of state funding to political parties, and changes in the system of Short money. We have also considered the implications for the Scottish Parliament and the new Assemblies in Wales and in Northern Ireland.

Many members of the public believe that the policies of the major political parties have been influenced by large donors, while ignorance about the sources of funding has fostered suspicion. We are, therefore, convinced that a fundamentally new framework is needed to provide public confidence for the future, to meet the needs of modern politics and to bring the United Kingdom into line with best practice in other mature democracies.

In preparing this report, we took oral evidence over 17 days, in London, Cardiff, Edinburgh and Belfast, from political parties, academics, journalists, representatives of organisations and individuals with relevant personal experience. We commissioned a small survey of the financial circumstances of local party organisations, and we have considered points raised in over 400 written submissions. Some of my colleagues and I have visited Germany, Sweden, the United States of America and Canada, and we have drawn valuable lessons from those countries' respective experiences of the regulation of political party funding.

Unlike the Committee's first four reports, which focused on ethical questions relating to standards of conduct in public life, this report is concerned additionally with broader issues of public policy. While this might have caused dissension among my colleagues, I am pleased to say that, subject to a single dissent on one issue (the imposition of a cap on election expenditure), all the other areas in this report have the unanimous backing of the Committee.

My colleagues and I commend this report to you. We believe that the health of the political parties would be enhanced by the adoption of our recommendations.

*Yours sincerely,  
Patrick Neill*

LORD NEILL OF BLADEN QC



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## Summary and List of Recommendations

**S.1** The special terms of reference which the Prime Minister gave to the Committee for this study have enabled us to look widely into issues relating to the funding of political parties. This topic goes beyond our usual focus on standards of conduct in public life, although there are many areas of overlap. Indeed, we believe that three of our well-known 'seven principles of public life' – Integrity, Accountability and Openness – are especially relevant to the funding of political parties.

**S.2** Although we are not an investigative body and have no powers to demand information from individuals or organisations, the political parties have co-operated in providing us with a significant amount of background information about their income and expenditure. This is the first time that such detailed information has been forthcoming. We believe this information, which we summarise in this report, gives a useful insight into the parties' finances. We have also obtained what we believe is a realistic assessment from the parties of what they spend on campaigning, research and administrative activities. The Conservative and Labour parties have told us that between them they spent some £54 million on the last general election campaign.

**S.3** Without doubt the parties' belief that elections can only be won by the expenditure (mainly on advertising) of vast sums of money has given rise to something of an arms race. This in turn has put enormous pressure on party fundraisers to devise innovative ways of attracting donations. The result has been the well-publicised, very large donations to both main political parties and also the development of strategies – such as the fundraising dinner attended by senior party figures – which together give credibility to accusations that money buys access to politicians.

**S.4** It is a small step from the thought that money buys access (encouraged by some party fundraisers) to the widespread public perception that money can buy influence. This accusation is denied by politicians on all sides in respect of their own parties (though they are not averse to suggesting that that is the case with their political opponents). While we have no evidence that such influence has been bought, we believe that the widespread assumption among the public that it can be bought is extremely damaging. This is of particular concern because, as we make clear in this report, we believe that political parties are of fundamental importance to the democratic process.

**S.5** We are conscious of the changes in political arrangements that have been taking place very recently and will continue to take place in the near future. Among these changes are: the Northern Ireland Assembly; the National Assembly for Wales, and the Parliament in Scotland; proposals for a Greater London Authority and elected Mayor for London; new voting systems for the Assemblies and Scottish Parliament and changes to voting arrangements for elections to the European Parliament. There exists the potential for even more widespread reform of the voting systems following the forthcoming report of the Jenkins Commission. Our proposals for change, therefore, which are not only substantial but are interrelated, aim to have the flexibility to meet changing demands.

**S.6** The most significant part of our philosophy depends on transparency. Some of our witnesses suggested this in itself would solve all the problems. While we accept transparency is of major importance, we do not believe that it is sufficient by itself.

**S.7** Fundamental to our considerations was to ask how much money the political parties need to raise and how far our proposals would affect their ability to do so. Our starting point, from the information received from the parties, was that, to date at least, they have had no insuperable difficulty in raising the funds they need, even with the escalating arms race, although the 1997 general election left both the Conservative and Labour parties in substantial debt.

**S.8** We have little doubt that the effect of some of our recommendations will have an adverse influence on the parties' ability to raise money, although we cannot say how great this will be. But we also believe that other proposals will have a significant dampening effect on the need for the parties to spend money. Taken as a whole, therefore, it would be difficult to claim that our proposals will have a deleterious effect on the financial health of political parties. We hope the reverse will be true.

## ELEMENTS OF OUR PROPOSALS

**S.9** Our proposals consist of various elements. These include:

- Clear rules on full public disclosure of donations (including benefits in kind) to political parties – of £5,000 or more nationally and of £1,000 or more in a constituency – in any one financial year, from any one person or source
- An end to blind trusts
- Donations to political parties to be allowed only from a 'permissible source' (defined so as effectively to ban foreign donations)
- A ban on anonymous donations to political parties in excess of £50
- A limit of £20 million on national campaign expenditure in a general election (including benefits in kind) by a political party
- Clear rules on the preparation and auditing of a political party's annual accounts and national expenditure on an election
- No new state funding, but tax relief on donations up to £500, to encourage small donations to political parties
- Wider scrutiny by an Honours Scrutiny Committee of all proposals where there might be or be perceived to be a connection between the honour and a political donation



- A review of the arrangements for financing opposition parties in the House of Commons and House of Lords, with a recommended increase in funding to enable them to discharge their roles more effectively
- Controls on the activities of organisations and individuals (other than a political party) spending more than £25,000 nationally on political activity during a general election, with registration and reporting requirements, a ban on foreign donations and both national and local expenditure limits
- Maintenance of free access to television and radio for party broadcasts
- Maintenance of the ban on political advertising on television and radio
- Shareholder consent for company donations.

### *Election Commission*

**S.10** The extensive changes we propose have convinced us of the need for a totally independent and authoritative Election Commission with widespread executive and investigative powers, and the right to bring cases before an election court for judgment. As well as undertaking the administrative and enforcement work needed in connection with the day-to-day regulation of our detailed recommendations, we envisage the Commission taking over responsibility for the registration of political parties and, in conjunction with the existing network of returning officers, having broad oversight of the conduct of elections. Criminal prosecutions would be in the hands of the Director of Public Prosecutions.

**S.11** We also believe that the political scene and technological innovations in the media are changing so fast that it is vital to our democracy that there is a body, outside government, which can advise and comment on how the rules should develop to meet the changed circumstances. That body should, we believe, be the Election Commission.

### *Scotland, Wales and Northern Ireland*

**S.12** We have been particularly conscious of the significant changes in political arrangements in Scotland, Wales and Northern Ireland. Throughout this report we have constantly considered whether special arrangements are needed to meet these differences. Our view is that these differences can best be met by appropriate modifications of our main recommendations.

**S.13** The Election Commission should maintain offices in each of these parts of the United Kingdom. Our aim in proposing this is to ensure that the new electoral arrangements in these areas are fully monitored and any changes required in the system are taken into account by the Commission as a whole.

## *Other Issues*

**S.14** In our Issues and Questions paper which we published at the start of the enquiry, we raised a number of related issues. Some of them (for example, the question of ensuring fair play during referendums) assumed greater importance as we took our oral evidence. Key areas on which we comment in this report include:

- The need to provide both sides of an argument with a proper voice during the course of a referendum
- Greater transparency on expenditure on political advertising and a watching brief for the Election Commission in relation to party broadcasts.

**S.15** We believe that the above proposals, which we set out in detail in the succeeding chapters of this report and which we summarise in the following list of recommendations, when taken as a whole, provide a framework which will encourage:

- More openness about the sources and use of party funds
- Greater public confidence that individuals and organisations are not buying influence with political parties
- Individual parties to seek out many more small to medium-sized donations to their funds.

**S.16** As a result, we have confidence that this report will contribute to the health of political parties and of democracy in the United Kingdom.

## **RECOMMENDATIONS**

### **Chapter 4: Donations: Transparency and Reporting**

- 1.** Donations to the funds of political parties from one source which total £5,000 or more in one year must be publicly disclosed. (p 53)
- 2.** Donations to party constituency organisations or to regional organisations of political parties from one source which total £1,000 or more in one year must be publicly disclosed. (p 53)
- 3.** Audited annual accounts of income and expenditure of political parties should be delivered to the Election Commission within three months of each year's end. (p 54)
- 4.** The Election Commission should have power to prescribe a standard year and a standard form for such accounts. (p 54)

5. State funds should be made available to political parties for the purpose of meeting the start-up costs of complying with the new disclosure regulations. (p 54)
6. The term 'donation' should be broadly defined and should include sponsorship and donations in kind. (p 55)
7. The published information concerning donations should clearly identify the donor, specify the amount of the donation or its cash value, state the date when made (or, in the case of a series of donations exceeding the statutory limit, the date of the last one) and whether made to the central funds of the party or to a constituency association etc. (p 56)
8. Anonymous donations of £50 or more should be refused. (p 56)
9. There should be an obligation on a political party's central office to designate a responsible officer whose duty would be to report to the Election Commission all disclosable donations received by any part of the party's organisation. (p 57)
10. The Election Commission should publish as soon as possible after receipt the information concerning disclosable donations reported to it by the political parties. It should also maintain a public register of all disclosed donations. (p 57)
11. In periods between elections each political party should report quarterly to the Election Commission the relevant information concerning disclosable donations received. (p 58)
12. In an election period (a term to be defined in legislation) each political party should report to the Election Commission the best available information concerning donations received within seven days of receipt. (p 58)
13. The Election Commission should have wide powers to call for information and to investigate the financial affairs of political parties. (p 59)
14. There should be criminal sanctions for a deliberate failure to report to the Election Commission a disclosable donation and for the supply of false information to the Commission. (p 59)
15. In any case of a failure to report to the Election Commission a disclosable donation (whether such failure is deliberate or inadvertent) the court should have power to order the defaulting political party to forfeit a sum not exceeding the unreported donation. (p 59)
16. Prosecutions should be brought by the Director of Public Prosecutions and not by the Election Commission. (p 59)
17. It should be made a criminal offence to take intimidatory or discriminatory action against any person or body in consequence of any donation made or proposed to be made by any person or body to any political party. (p 59)

- 18.** It should be made a criminal offence to attempt to evade or render nugatory the statutory reporting requirements relating to disclosable donations. (p 60)
- 19.** Any person or organisation transmitting to a political party any consolidated donation which consists of contributions received from two or more persons should supply a list of any individual donations received which are at or above the disclosure threshold. (p 60)
- 20.** The Government should consider in the context of the development of the peace process whether it would be expedient to introduce a short term and reviewable exemption from the reporting requirements in respect of donations made to political parties in Northern Ireland. (p 61)
- 21.** Blind trusts should be prohibited as a mechanism for funding political parties, party leaders or their offices, Members of Parliament or parliamentary candidates. (p 62)
- 22.** Open trusts designed to fund party leaders or their offices, Members of Parliament or parliamentary candidates should be permitted but on condition that the trustees are bound to report to the Election Commission any donations which would be disclosable if made to a political party. The recommendations made earlier in this chapter should apply with appropriate modifications. (p 62)
- 23.** Donations of £5,000 or more given to an individual party member or group, in connection with political activity within the party or publicly, should be made through the creation of an open trust or be subject to similar provisions and should be reported to the Election Commission. (p 63)

## Chapter 5: Foreign Donations

- 24.** Political parties should in principle be banned from receiving foreign donations. (p 71)
- 25.** Political donations should be receivable by political parties only if originating from a permissible source (as defined). (p 71)
- 26.** The definition of a permissible source should cover:
- As to individuals: registered UK voters and those entitled to register as UK voters
  - As to corporations: companies incorporated in the United Kingdom
  - As to partnerships: partnerships based in and having their principal sphere of operations in the United Kingdom
  - As to trade unions: trade unions registered here pursuant to statute
  - As to other organisations: organisations, voluntary associations and trusts etc. genuinely based in and having their principal sphere of operations in the United Kingdom (but excluding branches of foreign organisations of whatever character).
- (p 74)

**27.** It should be made a criminal offence to attempt to evade or render nugatory the statutory provisions which confine political parties to donations received from a permissible source. A specific provision should be made to cover possible abuse by the utilisation of UK subsidiaries of foreign corporations. (p 74)

**28.** The responsibility for ensuring that donations are received only from a permissible source should be placed on each political party. The designated responsible officer of the party would be required to certify the position to the Election Commission annually when reporting on the donations received. (p 75)

**29.** In relation to donations to political parties in Northern Ireland, the definition of a permissible source should also include a citizen of the Republic of Ireland resident in the Republic subject to compliance with the Republic's Electoral Act 1997. (p 77)

**30.** The Election Commission should have wide powers to call for information and to institute investigations into any suspect foreign donations received by a political party or a sub-unit. (p 77)

**31.** Criminal sanctions should attach to a deliberate acceptance of a donation from a source falling outside the definition of a permissible source. There should be a power for the court to order a defaulting political party to forfeit a sum of up to ten times the donation wrongfully accepted. (p 77)

## Chapter 6: Donations: Other Issues

**32.** No limit should be introduced on the amount which an individual, company or institution may contribute to a political party. (p 80)

**33.** No change should be made in the law relating to trade unions and their political funds. (p 83)

**34.** Legislative provision should be made to require any company intending to make a donation (whether in cash or in kind, and including any sponsorship, or loans or transactions at a favourable rate) to a political party or organisation to have the prior authority of its shareholders. This authority could be in the form of a broad enabling power, valid for no longer than four years, and typically conferred by a resolution passed at an annual general meeting giving the board of directors discretion about the making of such donations up to a prescribed limit. (p 86)

## Chapter 7: Public Funding of Political Parties

**35.** The provision of free postage (for Parliamentary and European elections) and free rooms (for Parliamentary, European and local elections) should be continued and extended to elections to the Scottish Parliament, to the National Assembly for Wales and to the Northern Ireland Assembly. (p 89)

**36.** No new system should be introduced whereby the state is obliged for the indefinite future to provide financial support for the political parties. (p 93)

**37.** There should be established a Policy Development Fund, initially of no more than £2 million per annum, to enable the political parties to engage more fully in policy development. The fund should be administered by a politically neutral body, to which the parties should be accountable for the monies spent. (p 93)

## **Chapter 8: Tax Relief**

**38.** Tax relief by deduction at source should be introduced, limited to the basic rate, on donations of up to £500 a year to eligible registered political parties. (p 99)

**39.** Political parties should be eligible to claim under the tax relief scheme if at the last general election two members of the party were elected to the House of Commons or one member was elected and the party won at least 150,000 votes. (p 99)

## **Chapter 9: Financing Political Parties in Parliament**

**40.** The political parties in the House of Commons should review the amount of Short money now made available to the opposition parties, with a view to increasing it substantially, perhaps by as much as three times. (p 103)

**41.** The political parties in the House of Commons should review the allocation of Short money to ensure that the Official Opposition's allocation is fixed and does not depend on the outcome of the previous general election and also to ensure that the allocation of Short money to all opposition parties is sufficient to enable them to perform their functions adequately. (p 104)

**42.** The political parties in the House of Lords should review the amount of money now made available to the opposition parties under the Cranborne money scheme, with a view to increasing it. (p 105)

**43.** The political parties in House of Commons should assess the reasonable cost of running the Leader of the Opposition's Office and then, as part of the review of the Short money scheme, should specifically earmark a portion of the Short money, additional to that in recommendation 40 above, for funding that Office. (p 106)

**44.** The political parties within the Scottish Parliament and the new national Assemblies should consider making provision for their financial support from the available parliamentary or assembly funds for the purpose of the better performance of their parliamentary or assembly functions. (p 109)

## Chapter 10: Limits on Campaign Expenditure

- 45.** Power should be taken to set a higher maximum permitted limit for a parliamentary candidate's expenditure at a by-election. A sum in the order of £100,000 seems appropriate to the Committee, but the Government should establish the figure after appropriate consultation. (p 112)
- 46.** The Government should undertake the revision of Schedule 3 to the Representation of the People Act 1983 so that it contains a full and up-to-date list of items of expenditure which should be declared by candidates at parliamentary elections. The contents of the schedule should be kept under review by the Election Commission. (p 113)
- 47.** A limit should be placed on the campaign spending of political parties in respect of elections to the House of Commons. The operation of this limit, both in principle and in practice, should be kept under review by the Election Commission. (p 122)
- 48.** The new national spending limits should be separate from, and additional to, those that now apply to candidates in individual constituencies. (p 123)
- 49.** On the assumption that a national spending limit is in place for the next general election, the limit for parties that contest more than 600 seats at that election should be set at £20 million. That limit should then be index-linked. It should not be varied in future except on the recommendation of the Election Commission. (p 124)
- 50.** The limits in a general election for parties that contest fewer than 600 seats should be lower and should be based on a formula taking account of the number of seats they are contesting. (p 124)
- 51.** Expenditure limits should continue to be set in terms of the purposes for which expenditure is incurred rather than in terms of any specified time period. Expenditure limits, at both national and local level, should be rigorously enforced. (p 125)
- 52.** The national expenditure limits should cover benefits in kind as well as cash expenditure. Parties' accounts should itemise benefits in kind separately from cash expenditure and should indicate both the nature of each benefit in kind and its true market value. (p 126)
- 53.** Legislation governing national expenditure limits should include a schedule, analogous to our proposed revised Schedule 3 to the Representation of the People Act 1983, setting out a comprehensive list of items of relevant expenditure which should be declared by political parties at parliamentary elections. The contents of the schedule should be kept under review by the Election Commission. (p 126)
- 54.** Section 75(1)(ii) of the Representation of the People Act 1983 should be amended to allow third-party spending in support of (or to the prejudice of) a candidate in a general election to be increased from £5 to £500. (p 130)

- 55.** Individuals and organisations other than political parties that wish to incur 'election expenses' of £25,000 or more must register, like a political party, with the Election Commission. No individual or organisation not so registered may incur election expenses in excess of £25,000. (p 132)
- 56.** 'Election expenses' should be taken to include expenses that are clearly intended to promote or have the foreseeable effect of promoting one or more parties or to disparage other parties irrespective of whether such parties are mentioned by name in the individual's or organisation's advertising or other promotional material. (p 133)
- 57.** Registered third parties should be required, as a condition of continued registration, to set up a separate election fund. They should be required to disclose to the Election Commission (and the Election Commission should publish) the source and amount of any donation of £5,000 or more. They should also be barred from accepting any donations into their political fund from any source other than a permissible source (as defined in Chapter 5 of this report) and be required to make a formal declaration that they have used their best endeavours to determine that they have not accepted any donations from a non-permitted source. The Election Commission should have similar investigatory powers in respect of third parties as it has in respect of political parties. (p 134)
- 58.** There should be a national limit on election spending by 'third parties' set at 5 per cent of the maximum limit set for any political party. (p 134)
- 59.** Limits should be placed on the campaign spending of political parties in respect of elections to the Scottish Parliament and the National Assembly for Wales. How well these limits work, both in principle and in practice, should be kept under review by the Election Commission. (p 135)
- 60.** Candidates for the Scottish Parliament and the National Assembly for Wales who contest an election only as a constituency candidate under the first-past-the-post part of the system should be subject to the same expenditure limits, and the same arrangements for enforcing them, as House of Commons candidates. (p 137)
- 61.** Independent regional candidates for election to the Scottish Parliament and the National Assembly for Wales should be subject to an expenditure limit calculated by combining the total constituency limits of those constituencies contained within the region. The limit should be enforced in the same way as the limits for constituency candidates. (p 137)
- 62.** Limits should be placed on the campaign expenditures of political parties in respect of elections to the Scottish Parliament and the National Assembly for Wales. On the assumption that such spending limits are in place for the first elections to the Parliament and the Assembly, the limits should initially be set at £1.5 million in Scotland and £600,000 in Wales. The limits should then be index-linked. They should not otherwise be varied in future except on the recommendation of the Election Commission. (p 138)



**63.** Campaign expenditure by constituency candidates which also promotes their party's Scottish or Welsh national campaign should be treated, for purposes of expenditure limits, only as constituency expenditure. (p 138)

**64.** Limits on third-party campaign spending in connection with elections to the Scottish Parliament and the National Assembly for Wales should be along the same lines as the limits proposed for elections to the House of Commons. Third parties proposing to engage in significant campaign expenditure should, as in the United Kingdom case, be required to register. (p 139)

**65.** A limit should be placed on the campaign expenditures of political parties in respect of elections to the Northern Ireland Assembly. The limit for the next elections to the Assembly should be set at £300,000. It should then be index-linked. It should not be varied in future except on the recommendation of the Election Commission. (p 139)

**66.** A limit on third-party expenditure in respect of elections to the Northern Ireland Assembly should be along the same lines as the limits proposed for elections to the Scottish Parliament and the National Assembly for Wales. Third parties proposing to engage in significant campaign expenditure should, as in Scotland and Wales, be required to register. (p 140)

**67.** In the light of further information the Government should place a limit on the campaign expenditure of political parties (and third parties) in respect of elections to the European Parliament. The limit, when established, should be index-linked and should not be varied in future except on the recommendation of the Election Commission. (p 142)

**68.** Oversight of compliance with the statutory limit on expenditure at general and other elections should be in the hands of the Election Commission. (p 145)

**69.** Legislation should provide for:

- (a) the rendering by each political party of an account of general election expenditure, such account to be submitted within a prescribed period following polling day to the Election Commission supported by a statutory declaration as to its accuracy by a designated party official;
- (b) the scrutiny by the Election Commission of all such accounts and follow-up investigations as necessary;
- (c) a duty on the Election Commission to take proceedings before an election court where the facts in its opinion disclosed overspending by a political party;
- (d) a power in the election court to impose a financial penalty on a political party proved to have been guilty of overspending;

- (e) criminal sanctions (fines and imprisonment) for individuals guilty of culpable conduct (including deliberate and reckless acts) in relation to over-spending by a political party;
- (f) other appropriate provisions applying the principles outlined above to the other recommendations in this chapter, such as limits on third-party expenditure and limits on expenditure in the Scottish Parliament, the National Assemblies and so forth. (p 145)

## Chapter 11: The Election Commission

**70.** An Election Commission should be established. (p 147)

**71.** The Commission should publish a report on the conduct and administration of each major election or referendum within 6 months of its taking place. (p 148)

**72.** The Commission should have the duty to advise the Government on the modernisation and revision of electoral law. The Government should consult the Commission before making or proposing any changes relating to electoral law and administration. (p 148)

**73.** The Commission should have the executive and investigatory powers detailed in our other recommendations. (p 148)

**74.** The Commission should not be a court or have any substantial judicial power. (p 149)

**75.** The Commission should be, and be seen to be, an independent and impartial body. Its members should be chosen on a non-partisan basis and by means of a non-partisan procedure. Its members should nevertheless be acceptable to the leaders of the main political parties. (p 150)

**76.** The members of the Commission should be given long periods of office and should enjoy substantial security of tenure. (p 150)

**77.** The Commission should consist of five part-time members. (p 150)

**78.** The Commission's budget should be set in such a way as to preserve its impartiality and independence (p 150)

**79.** The Commission's remit should cover the whole of the United Kingdom, with individual commissioners taking special responsibility for overseeing electoral matters in Scotland, Wales and Northern Ireland. (p 151)

**80.** Election returns should be sent to the Election Commission through the acting returning officers. (p 153)

- 81.** The Election Commission should have powers to investigate suspected breaches of electoral law. (p 153)
- 82.** The Election Commission should assume the role of registrar of political parties. (p 154)

## Chapter 12: Referendums

- 83.** In any referendum campaign there must be a fair opportunity for each side of the argument to be properly put to the voters. (p 164)
- 84.** Depending on the circumstances, each side should be given equal access to an amount of core funding sufficient to enable it to mount at least a minimal campaign and to make its views widely known. (p 164)
- 85.** The Election Commission should decide which organisations, if any, should be in receipt of core funding. (p 164)
- 86.** A campaign organisation in receipt of core funding should be required to submit its audited accounts to the Election Commission within three months of the referendum. (p 165)
- 87.** The core funding provided to the two sides in a UK-wide referendum should, in real terms, be not less than that provided in connection with the 1975 referendum. It should be enough, in connection with all referendums, to cover the establishment of a campaign headquarters for each side, with basic equipment and staff. (p 165)
- 88.** Each side should also be provided with the same facilities as parliamentary candidates in general elections, namely, a free mailing of a statement of its views to every household and the free use of public premises for the holding of meetings. (p 165)
- 89.** The government of the day in future referendums should, as a government, remain neutral and should not distribute at public expense literature, even purportedly 'factual' literature, setting out or otherwise promoting its case. (p 169)
- 90.** Donations to campaigning individuals and organisations in referendums from one source which total £5,000 or more should be publicly disclosed in audited accounts which should be delivered to the Election Commission within three months of the holding of the referendum. (p 171)
- 91.** Campaigning individuals and organisations other than political parties that wish to incur 'referendum expenses' of £25,000 or more, should register, like a political party, with the Election Commission. No individual or organisation not so registered may incur expenses in connection with a referendum in excess of £25,000. (p 171)
- 92.** Campaigning individuals and organisations taking part in referendum campaigns should be restricted to the receipt of donations only from a 'permissible source'. (p 171)

**93.** The Election Commission should have as part of its remit keeping referendums and referendum campaigns under review and making reports and recommendations to Parliament and the Government concerning them. (p 172)

### Chapter 13: The Media and Advertising

**94.** The ban on political advertising on television and radio should be maintained. Existing legislation should be reviewed to ensure that its reach is sufficiently wide to block attempts at evasion by new modes of communication. (p 176)

**95.** The broadcasters should do all in their power to maintain their established tradition of strict political neutrality. (p 177)

**96.** The political parties should seek to agree, in association with the advertising industry, a code of best practice for political advertising in the non-broadcast media. (p 177)

**97.** In addition to its overall duty of keeping election and funding arrangements under review, the Election Commission should be specifically charged with monitoring the working of the current arrangements for the provision of party political and election broadcasts and the effect on political advertising generally of developing communications technologies. (p 183)

### Chapter 14: The Honours System

**98.** In future the Political Honours Scrutiny Committee (p HSC) should be requested to scrutinise every case where a nominee for an honour of CBE and above has directly or indirectly donated £5,000 or more to a political party at any time in the preceding five years. The PHSC should satisfy itself that the donation has made no contribution to the nomination for an honour. (p 191)

**99.** In future the PHSC should monitor the relationship between nominations for honours (at CBE level and above) and donations made to political parties or associated organisations in order to ensure that an undue preponderance of honours is not conferred on those who have directly or indirectly made donations. (p 193)

**100.** The PHSC should be renamed the 'Honours Scrutiny Committee'. (p 193)

## INTRODUCTION AND BACKGROUND

**1.1** The Committee on Standards in Public Life is a standing committee which was originally appointed by the then Prime Minister, the Rt. Hon. John Major MP, in October 1994. The Committee's terms of reference are:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

**1.2** Following completion of its first report, there were suggestions that the funding of political parties raised questions about standards of conduct, and that these should be examined by this Committee. The Committee considered whether this matter fell within its terms of reference and on 16 May 1995 the Committee said:

It would not be within the Committee's present terms of reference to examine the overall nature of party political funding and, for example, to address such wider questions as whether state funding of political parties was desirable. But, as noted by the Chairman when the Committee was set up, certain aspects of party political funding do fall within its terms of reference. It would be wholly wrong for political parties to seek or accept funds against an expectation of, or following, the award of public office, honours, contracts or improper influence.

### The context for the present study

**1.3** The Labour Party's 1997 *Election Manifesto* contained the following undertaking:

We will oblige parties to declare the source of all donations above a minimum figure: Labour does this voluntarily and all parties should do so. Foreign funding will be banned. We will ask the Nolan Committee to consider how the funding of political parties should be regulated and reformed.

**1.4** The Queen's Speech at the opening of Parliament on 14 May 1997 included the words:

My Government will seek to restore confidence in the integrity of the nation's political system by upholding the highest standards of honesty and propriety in public life. They will consider how the funding of political parties should be regulated and reformed.<sup>1</sup>

**1.5** At the Labour Party Conference on 30 September 1997, the Prime Minister, the Rt. Hon. Tony Blair MP, said in the course of his speech to delegates:

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<sup>1</sup> *Hansard* (HL) 14 May 1997, col 44.

I can announce to you we are going to bring forward a Bill to ban foreign donations to political parties and to compel all parties to make contributions above £5,000 public. And we will ask the Nolan Committee to look at the wider question of party funding. At the next election all political parties will at last compete on a level playing field.

**1.6** The Prime Minister announced on 12 November 1997 extended terms of reference to enable this Committee to study the funding of political parties. These additional terms of reference are:

To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.

**1.7** In the course of giving answers at Prime Minister's Questions in the House of Commons on 12 November 1997, the Prime Minister identified the following issues which he expected the Committee would address:

- (1) Should all donations be declared?
- (2) Should the amounts be declared?
- (3) Should there be a limit on the size of individual donations?
- (4) Should there be increased state funding for political parties?
- (5) Should there be restrictions on party expenditure?<sup>2</sup>

**1.8** In a submission from the Home Office dated 6 March 1998,<sup>3</sup> the Government sought the Committee's advice on the following topics:

- (1) How should 'foreign' funding be defined? Should personal donations be restricted to persons on the electoral register eligible to vote in the United Kingdom? How should foreign donations in relation to companies and voluntary associations be defined? How can circumvention of the ban on foreign funding be prevented?
- (2) What should be the mechanics for disclosure of donations? Should there be a separate threshold for the acceptance or rejection of anonymous donations? What should be the timing of disclosure?
- (3) What are the implications of the *Bowman* judgment? (This was a judgment in February 1998 by the European Court of Human Rights about how far third-party individuals and organisations should be free to spend money on a particular cause during election campaigns.)
- (4) What new rules on limits on election expenditure should be introduced to accommodate the new electoral systems?

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<sup>2</sup> *Hansard* (HC) 12 November 1997, col 899.

<sup>3</sup> Written submissions are on the CD-Rom in Volume 2 of this report.

- (5) How should the future financial arrangements for the political parties be linked with the Government's proposed legislation on the registration of political parties?

**1.9** We have addressed these points, and others raised in response to our Issues and Questions consultation paper, in the following chapters of this report.

## The Government's legislative plans

**1.10** The Government's original intention was to legislate in the 1997–98 session of Parliament both to provide for the registration of political parties and to implement the manifesto undertakings about party funding. In response to representations from this Committee that there would be overlap between issues which would arise in parliamentary debates and issues canvassed in submissions to the Committee, the Home Secretary announced on 28 January 1998 that the Government had decided to defer introducing legislation on party funding on account of the simultaneous consideration of these matters by the Committee, but that Ministers remained committed to reform and would bring forward proposals in the light of the recommendations of the Neill Committee.<sup>4</sup>

**1.11** Accordingly, the Registration of Political Parties Bill is confined to two main purposes. It will give formal status to those political parties which choose to register and so enable them to field lists of candidates for the new voting systems which the Government proposes for elections to the Scottish Parliament, the National Assembly for Wales and the European Parliament. The Bill will also prevent the use of misleading descriptions, by requiring a registered party to authorise the use of its name and emblem on a ballot paper. All other aspects of party funding were deferred pending this Committee's report.

## The Committee's method of working

**1.12** On 17 December 1997 the Committee published an Issues and Questions consultation paper. Although the formal closing date for responses was 27 February 1998, the Committee was able to take account of submissions received up to 21 May. Over 400 written submissions were received. Those submissions which we have permission to place in the public domain are published in the CD-ROM which is included with Volume 2 of this report.

**1.13** During February 1998 members of the Committee went on study tours of Germany and Sweden (8-13 February) and Canada and the United States (21-28 February). Those four countries were selected on the ground that they exemplified a wide range of radically different approaches to party funding. On 22-23 July members of the Committee Secretariat visited the Republic of Ireland to look at the recently introduced legislation on party funding there in the light of the Committee's public hearings in Belfast. The main lessons learned from the study tours are set out in Appendix I but a few of them are worth noting briefly here.

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<sup>4</sup> *Hansard* (HC) 29 January 1998, col 275.

**1.14** The state funding of political parties in both Germany and Sweden is extremely generous, though the Germans, in particular, are concerned that the sums provided by the state should not exceed the sums raised by the parties themselves. In neither country does state funding appear to have depressed party activity; but the scale of state funding did give rise to questions about the size of the party bureaucracies in both countries and whether the politicians were more entrenched in the Government machine than engaged with their own constituents. In Germany, we were struck by the fact that the elaborate accounting mechanisms required under the relevant legislation appeared to impose considerable book-keeping and other administrative burdens on both the government and the parties themselves.

**1.15** In Canada, as in Germany, the relevant legislation seeks to provide parties and candidates with state funds while at the same time encouraging the parties to raise money from private sources. Tax concessions are employed to encourage fund-raising by the parties. Very low thresholds for disclosure of donations are set both in the Provinces and at Federal level (C\$100 and C\$200 respectively). These appear to operate smoothly and without criticism. Another important feature of the Canadian system is the presence within it of a Chief Electoral Officer with wide-ranging powers and virtually total autonomy.

**1.16** Our study of campaign finance in the United States pointed to several administrative devices that might be adapted for use in this country; but many of the lessons we learned in the United States were of things to avoid. Campaign spending in the United States seemed to us to have spun out of control, and the belief is widespread that elections can, in effect, be 'bought'. Certainly the American parties and candidates for public office in the United States devote huge amounts of time and energy to raising funds from individuals and interest groups. Abuse is perceived to be widespread in both the raising and the spending of money. The methods devised for dealing with the worst abuses of the American system have largely been circumvented by the device of 'soft money', which is not attributed to a candidate's expenditure. The substantial bureaucracy of the Federal Election Commission can, therefore, only partially regulate expenditure. Its ability to tackle the more difficult problems is further impeded by its bi-partisan rather than non-partisan composition.

**1.17** Between mid-April and mid-June the Committee spent seventeen days taking evidence at public hearings: eleven days in London, and two days each in Cardiff, Edinburgh and Belfast. A list of the 120 individuals who gave evidence, either on their own behalf or representing one of 75 organisations, and the transcripts of their evidence, are published in Volume 2 of this report, in accordance with what has become the Committee's practice.

## Acknowledgement

**1.18** The Committee wishes to record its appreciation of the witnesses who took time and trouble to submit written evidence and in some cases to appear and give oral evidence. Committee members gained much insight, knowledge and experience from these interchanges. It was especially valuable to hear at first hand from people who are actively engaged in the political process in Wales, Scotland and Northern Ireland, and also to have



two sessions each with the three main political parties, at the beginning and at the end of our public hearings programme. The Committee is also grateful to the Hansard Society for arranging a seminar at Oxford in March, when a number of prominent commentators shared their views with members of the Committee and secretariat.

**1.19** The Committee commissioned two research studies. *Mr Ian Clyde* of the Treasury Solicitor's Department undertook a comparative study of freedom of expression jurisprudence. A résumé based on this study appears in Appendix II. *Dr Justin Fisher* of London Guildhall University analysed for the Committee the results of a survey aimed at discovering the scale of the income and expenditure of the local constituency parties in sixty selected constituencies in England. Dr Fisher's work is discussed in Chapter 3. The Committee is most grateful to him and to Mr Clyde for their assistance.

### Previous reports on funding political parties

**1.20** There have been five reports about funding of political parties over the last twenty-five years.

**1.21** The Committee on Financial Aid to Political Parties (the Houghton Committee) reported in August 1976 (Cmd 6601). It recommended by a majority a system of state financing. First, there would be an annual grant to political parties of 5p per vote at the most recent general election, provided the party (a) had saved the deposits of its candidates in at least six constituencies, *or* (b) had had at least two candidates elected as Members of Parliament, *or* (c) had one of its candidates returned as an MP and received a total of at least 150,000 votes. Secondly, there would be a grant to reimburse election expenses, applying to local council and Parliamentary elections: it would meet up to half the legal maximum expenditure for any candidate who polled at least one-eighth of the vote. The recommendations of the Houghton Report were not implemented, although in 1975 the Short money system (see paragraph 1.39) was introduced with the aim of assisting opposition parties in the House of Commons.

**1.22** The Hansard Society commissioned two reports into the funding of political parties, in 1982 and 1992. The 1982 study recommended state aid, on the basis that for each £2 donated to an eligible political party, the state would give another £2. A donation exceeding £2 would still attract only a £2 state contribution, so encouraging small donations and mass membership.

**1.23** The 1992 report of the Hansard Commission on Election Campaigns was divided. Some members favoured the Houghton proposals, others a flat-rate subsidy for parties obtaining a proportion of votes, and others an extension only of assistance in kind. The Commission supported the experimental introduction of 'check-off' by which taxpayers can assign a small part of their tax bill to a political fund. This system operates in the United States, where the fund is distributed to presidential candidates according to a formula.

**1.24** An all-party group including two former Ministers argued, in a 1985 report from the Constitutional Reform Centre/Hansard Society, that companies should be allowed to

continue to make political donations provided shareholders agreed such a policy at least once in the life time of a Parliament, and that specific donations were agreed in advance at the company's annual general meeting. Donations should be made directly to a party, not through an intermediary body.

**1.25** In 1994, the Home Affairs Select Committee of the House of Commons failed to endorse the case for a general extension of state funding along the lines proposed either by the Houghton Committee or the Hansard Commission.<sup>5</sup> The Select Committee divided on party lines. It proposed that one or two civil servants should be seconded to each opposition political party as an experiment, and it recommended that the party should publish accounts, and have them independently audited, but that there should be no binding rules on the format of the accounts, on the ground that "trust in the integrity of the party concerned must suffice". The Select Committee recommended that spending should be broken down by category and that all income and benefits in kind should be declared, but there should be no requirement to declare institutional donations, and no restrictions on foreign donations. It also recommended that each party should adopt a code of practice making it clear that (a) money given to a political party would secure neither influence nor honours, (b) illegally obtained money was unacceptable and should be returned, (c) substantial anonymous donations should be refused, and (d) donations from foreign governments and rulers would be refused. The proposed code of practice was accepted by the Conservative Party, but the other parties felt that it was insufficiently rigorous.

**1.26** A minority report drafted by Labour members of the Committee argued that there were unacceptable elements connected with the raising of funds for political parties in the United Kingdom. This draft report called for stricter rules of disclosure, the banning of foreign donations, the establishment of political funds for companies wishing to make donations, and the creation of an Electoral Commission to regulate campaign spending. The draft argued that organisations which were not political parties, but which had overtly political objectives (such as think-tanks) should have to disclose the origin of their funds.

### The financial needs of the political parties and the public perception

**1.27** Chapter 3 contains an account of the income and expenditure of the political parties over the years 1992 to 1997. The trend is towards increased income and increased expenditure – in particular at the national level at the time of general elections. The increases are well ahead of inflation.

**1.28** Witnesses in their evidence to the Committee expressed concern about some features of the current situation. Reference was made to the 'arms race', by which is meant a struggle between the two major parties to maximise income for electoral purposes. This entails the risk that a cynical public will come to believe that the result of an election can be bought by extravagant electioneering expenditure. A further undesirable consequence of the arms-race culture is the excessive amount of time and energy which the party leaders have to devote to fund-raising activities.

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<sup>5</sup> House of Commons Home Affairs Select Committee, *Report on Funding of Political Parties*, HC 301, 1993-94.

**1.29** Adverse criticism was also directed at very large donations, especially if from an unknown source. Even where the identity of the donor was known, problems were perceived where the donor was (or could be) involved in policy discussions with the recipient party which became the party of government. The gift of £1 million by Mr Bernie Ecclestone to the Labour Party was cited as an instance of this. For their part, the Conservatives were criticised by witnesses for having received large foreign donations from undisclosed donors.

**1.30** The view was repeatedly affirmed to the Committee that money should not buy, nor be perceived to buy, either influence over policy or access to decision makers.

**1.31** Looking to the future, the demands on the resources of the political parties are likely to be increased by two new developments: the additional elections which will be held in Scotland, Wales, Northern Ireland and London, and the emerging practice of submitting major constitutional issues to the electorate for decision by referendum.

### *New election systems*

**1.32** Elections in 1999 to the Scottish Parliament and to the National Assembly for Wales will involve the Additional Member voting system (AMS). Under AMS a proportion of the members are elected by a vote for the party not for the candidate. The 1999 elections to the European Parliament will be by a list system of proportional representation. The existing statutory limitations on expenditure by candidates at constituency level which apply to elections to the House of Commons are inherently inappropriate for these new election systems.

**1.33** The European Parliamentary Elections Bill, which provides for the introduction of a regional list system for elections to the European Parliament, contains a power allowing regulations to be made governing parties' election expenditure. It has been drafted deliberately to be as wide as possible so as not to preclude, at this stage, any of the options. Similar powers allowing for the limitation of election expenses of candidates *and* of registered political parties are included in the Scotland Bill and the Government of Wales Act 1998 in respect of elections to the Scottish Parliament and the National Assembly for Wales.

### *Referendums*

**1.34** In 1979 the Government held referendums in Scotland on the establishment of a Scottish Parliament and in Wales on the establishment of a National Assembly for Wales. There was also a referendum in London in 1998 on the question whether there should be an elected Mayor of London. In 1998 in Northern Ireland there was a referendum on the Good Friday Agreement.

**1.35** Two further referendums have been promised by the Government – one on European Economic and Monetary Union and another on the recommendations of the Commission chaired by the Rt. Hon. Lord Jenkins of Hillhead which may advocate a system of proportional representation for elections to the House of Commons.

**1.36** It is conceivable that in the course of the next few years other questions will be put by way of referendum to the voters or a section of them. Regional Assemblies might be one possible topic.

**1.37** The frequency of the resort to referendums as a method of ascertaining the popular will caused many witnesses to urge this Committee to address the whole topic. Particular concern was expressed that, whereas in connection with the 1975 referendum on the United Kingdom's continued membership of the European Economic Community, core funding was supplied by the state for a 'Yes' campaign and a 'No' campaign, and whereas other steps were taken to secure some degree of fairness in connection with the campaign, no state funding was made available for the 1997 campaigns and no ground rules were established, whether by legislation or other means, to ensure any basic element of funding for both sides.

**1.38** The Committee's consideration of the funding and other aspects of referendums is contained in Chapter 12.

### Current arrangements for supporting the political parties with public money

**1.39** Chapter 9 reviews the form of state aid known as Short money. In essence this is public money provided to the opposition parties in Parliament to enable them to carry out effectively their parliamentary role.

**1.40** Apart from Short money, the assistance provided by the state to the political parties consists of the following benefits (which are also available to candidates who belong to no political party):

- (1) All candidates at parliamentary elections are entitled to free postage for one election communication to every elector in the constituency.<sup>6</sup> According to the Home Office evidence, it cost £20.5 million to provide this service to candidates in the 1997 general election.
- (2) All candidates at parliamentary (and local government) elections are entitled, for the purpose of holding election meetings, to use without charge rooms in schools and other meeting rooms maintained out of public funds.<sup>7</sup>

In practice today little use of benefit (2) above is made. Election meetings of the type envisaged have largely disappeared from the electoral scene.

**1.41** A further benefit to political parties (though not one for which the state has to pay) is that the parties are given free broadcasting air-time both for party political broadcasts (which may take place at any time) and party election broadcasts. The parties themselves have to meet the cost of making the programmes. This can be a heavy burden.

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<sup>6</sup> Representation of the People Act 1983, s91.

<sup>7</sup> Representation of the People Act 1983, ss95 and 96.

**1.42** An additional benefit to the political parties – though it may appear paradoxical so to describe it – is that they are prohibited by law from indulging in paid advertising on radio and television.<sup>8</sup> In the United States this is where most of the parties' money is spent at election times.

**1.43** We hope that this report will be valuable not only for its detailed recommendations, but also for the substantial amount of background material contained in this Volume and Volume 2 – which includes the transcripts of oral evidence, supporting material and, on a CD-Rom, the written material submitted to us.

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<sup>8</sup> Broadcasting Act 1990, e.g. ss8, 60 and 92.

## THE COMMITTEE'S APPROACH

### The importance of political parties

**2.1** Political parties are essential to democracy. Needless to say, they are not always popular. They emphasise conflict rather than co-operation. They are associated with vehement controversy. They can appear self-serving. Nevertheless, no modern democracy can exist without them. In Edmund Burke's words, "Parties must ever exist in a free country."<sup>1</sup>

**2.2** The parties contribute substantially to the making of public policy. They offer voters alternative policies and candidates from which to choose at elections. They make possible the conduct of effective parliamentary government. Not least, political parties are the principal means through which ordinary citizens can, and do, become involved in the democratic process. One of our principal aims throughout this report has been to strengthen the parties in this country and to lead them to being held in higher, not lower, esteem by the general public.

### Public opinion and the funding of parties

**2.3** There is a delicate relationship between the funding of political parties and public opinion. Periodically public concern erupts and action is taken. In 1880 there was an outcry in the wake of the general election. Huge sums had been expended in the constituencies, in effect to bribe the voters. Only the rich could stand for election. Some £1.6 million was spent by the candidates in 1880. At May 1997 prices this is about £106 million. In comparison, the combined sum spent by Labour and the Conservatives on their national campaigns in 1997 (around £54 million) seems quite modest. Following on from a Royal Commission Report, which detailed some of the abuses, Parliament enacted the Corrupt and Illegal Practices Act 1883. This quite rapidly put a stop to corruption at constituency level – essentially by imposing strict limits on how much each candidate could spend.

**2.4** In 1922 the Lloyd George Coalition Government fell, partly as a result of the sale of honours scandal in which the Prime Minister himself was implicated. The response was a Scrutiny Committee to safeguard from abuse those honours awarded 'for political services'. An Act was also passed to make it a crime to buy and sell honours.

**2.5** Some 50 years later the funding of political parties once again came to the fore. The Houghton Committee reported in 1976. Nothing happened. The House of Commons Home Affairs Select Committee reported in 1994. Still nothing happened. Then a year ago this Committee was asked to examine the problem.

**2.6** What problem? The answer is far less clear-cut than it was in 1880 and 1922. There is no overt corruption in the constituencies and no overt trade in honours. Yet in broad outline what today concerns the public is the inscrutability of the sources from which the parties

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<sup>1</sup> Edmund Burke, *On Conciliation with America*, 1775, p 59.

derive their money. People ask: Who is paying? And how much? In return for what? Is it British or foreign money? No satisfactory answers are vouchsafed.

**2.7** In addition there is a public perception that the sums spent by the parties on general elections are escalating, although today the money is spent on national campaigns, not in the constituencies. Marketing techniques are deployed. Big fund-raising drives have to be launched to pay the bills and wipe out the parties' overdrafts.

## Standards of conduct

**2.8** In our first report we promulgated seven Principles of Public Life. These struck a resonant chord and have gained currency in a number of subsequent codes of conduct, including the House of Commons Code. The Seven Principles are reproduced in the front of this report.

**2.9** Three of those principles are especially relevant to the funding of political parties:

### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### *Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### *Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**2.10** We are not an investigating committee, and in the course of our inquiry we were not offered any direct evidence of misconduct by the political parties in general or by their fund-raisers in particular. We have, however, to take note of the fact that many allegations of misconduct were made during the 1980s and 1990s and that some of these allegations were widely believed to be true. Allegations of this kind, and the unnecessary mystery that surrounds the funding of the political parties, is damaging. It damages the parties themselves. It is also a factor tending to corrode public confidence in the political process as a whole.

**2.11** That is to be deplored. The pursuit of politics is an honourable profession to which many men and women devote their lives. Behind each career politician stands a regiment of dedicated voluntary party workers.



**2.12** The political parties perform an indispensable role in a democracy. To sustain the trust of the public they must be seen to act in accordance with the highest standards.

**2.13** The Committee sees it as its role to try to entrench within the funding process the principles of Integrity, Accountability and Openness to which we have referred. Our aim is to eradicate the grounds for criticism and suspicion which lead to public scepticism, and have proved damaging to the political parties.

### Public policy questions

**2.14** Our first four reports dealt exclusively with standards of conduct in public life; but, as we explained in the previous chapter, our terms of reference have now been broadened to include the funding of political parties. It follows that, whereas we were previously concerned almost entirely with ethical questions, we are now concerned, in addition, with broader questions of public policy. We need, therefore, to say a few words about the principal questions which we think arise, specifically in connection with party funding.

**2.15** The first question is the one most closely related to our original terms of reference and to our principles of integrity, accountability and openness. This might be called the *misconduct* question. Do the ways in which political parties are funded at the moment cause Ministers, opposition leaders and others to behave in ways that they ought not to behave? For example, do party donations by individuals, companies and trade unions, in effect, buy privileged access to Ministers? Do they influence policy? Do they influence the awarding of contracts? Do they influence the awarding of honours? Clearly, they should not do any of these things.

**2.16** Moreover, we need to consider the possibility that reasonable people, even in the absence of hard evidence proving that there has been actual misconduct or that undue influence has been exercised, might reasonably suppose that Ministers or others have, or may have, behaved improperly. The most recent edition of the Prime Minister's *Ministerial Code* states in paragraph 1.vii that "Ministers should avoid accepting any gift or hospitality which might, *or might reasonably appear to*, compromise their judgement or place them under an improper obligation" (emphasis added). In our view, a rule that applies to Ministers ought also to apply to the political party to which they belong. The same is true, of course, for Shadow Ministers and the opposition parties. It is at this point that the principles of Integrity, Accountability and Openness are particularly applicable. We make recommendations in this connection in Chapter 4 (Donations: Transparency and Reporting), Chapter 5 (Foreign Donations), and Chapter 14 (The Honours System).

**2.17** The second question – one frequently referred to – might be called the *fairness* question. The contentions underlying this question are (a) that some parties have much more to spend during elections than others, (b) that the fact that some parties have more to spend than others gives the former an electoral advantage and (c) that this advantage is, in some sense, 'unfair'.



**2.18** It should be noted immediately that this question has little or nothing to do with the first question, the misconduct question. All the main political parties could have amassed large amounts of resources, and they could all have amassed their resources in ways that were perfectly ethically acceptable. Even if they did so a situation could develop in which one party – possibly as a result of the greater wealth of its supporters, or greater popularity, or superior fund-raising skills – had amassed far greater resources than the others. In such a case, there would have been no misconduct, but the fairness question would still arise.

**2.19** It goes without saying that there is no simple answer to the fairness question. Not only does it raise both empirical and ethical issues, but it could turn out that fairness could be achieved only at too high a price in terms of civil liberties and unnecessary rules and regulations.

**2.20** We should record our view that 'fairness' and a 'level playing field' are not necessarily the same thing (even though those who refer to 'level playing fields' frequently imply that they are). At the 1997 general election, for example, the financial resources of the Labour Party and the Conservative Party were far greater than those of the Natural Law Party and, in that sense, the playing field in 1997 was not level; but no one seriously suggests that the election was 'unfair' on that ground alone.

**2.21** Nevertheless, while holding to the view that the creation of a level playing field is an unattainable aspiration, we do consider that fairness has a real part to play in the overhaul of the country's electoral and constitutional arrangements. Fairness is a driving force behind some of our conclusions, for example, in Chapter 10 (Limits on Campaign Expenditure) and in Chapter 12 (Referendums).

**2.22** The third question – seldom posed explicitly but implicit in much of the current discussion about party funding – might be called the *over-spending* question. Are the political parties simply spending far too much on election campaigns? Has the whole thing got out of hand? Many at the moment feel, for example, that the scale and expense of modern campaigns is unacceptable because it offends voters and may thereby alienate them from the political process. Worse, the scale and expense of modern campaigns may also help to create, in a diffuse way, the impression that, irrespective of party, 'money talks' – thereby further alienating the voting public. We address this question in Chapter 10.

**2.23** The fourth question might be called the *civic engagement* (or the maximum participation) question. This question is of a different character from the others and is seldom explicitly raised (at least in this country). The argument here is that strong, healthy political parties are essential to the functioning of a strong, healthy democracy. In particular, strong and healthy parties are necessary as a means of recruiting ordinary citizens into decision-making positions at all levels of government, local as well as national, and also as a means of engaging very large numbers of people – as campaigners, activists, fund-raisers and participants in public debate – in the whole democratic process. Our view is that parties are indeed essential in this way, and our recommendations, especially those in Chapters 7 (Public Funding of Political Parties) and 8 (Tax Relief) are intended to foster vigorous party activity, especially at the local level, but in ways that are consistent with the

principle of openness and help to preserve both the independence and the accountability of the political parties.

**2.24** The fifth question – which should not be confused with the fourth – might be called the *party effectiveness* question. This question relates to the parties' ability to perform their other principal functions: namely, acting as a check on the government of the day (of whichever political party) and developing in opposition new ways of thinking about issues and new policies that are realistic and capable of being implemented in government. We believe that the political parties represented in the UK and Scottish Parliaments, and in the new Assemblies for Wales and Northern Ireland, do need to be effective along these lines, and we make appropriate recommendations in Chapter 9 (Financing Political Parties in Parliament).

**2.25** The sixth and final question is the question of *freedom*. We have alluded to this in paragraph 2.19, and it has arisen at many points in our deliberations. Today, there are strikingly few legal restraints imposed on political parties as to how they may raise or spend or account for their money. Equally, those wishing to support a political party financially, whether they are based in the United Kingdom or overseas, are free to do so in any manner and up to any figure they can afford. All this can be done anonymously or at least without public disclosure of names and amounts.

**2.26** To what extent and at what point and with what justification is the state entitled to intervene to curtail freedom and rights of privacy in relation to the getting and spending of monies intended for the use of political parties?

**2.27** We have proceeded on the basis that freedom should prevail save where we identify an overriding public interest calling for some limitation. We are totally satisfied that it is impossible to maintain all existing freedoms and at the same time to ensure that public concern about the funding of the parties is dissipated. The restrictions on freedom which we recommend are those which we believe to be essential to purify the funding of political parties.

### The changing political scene

**2.28** It is important to bear in mind that our inquiry has been conducted against a background of quite massive innovation in connection with both the United Kingdom's political institutions and the methods of voting used. Resort has been had to referendums to ascertain the will of the peoples of Wales, Scotland and Northern Ireland. In each case they have voted for the establishment of new instruments of government – a Parliament in Scotland, a National Assembly for Wales and an Assembly for Northern Ireland. London has opted by a referendum for regional government and an elected Mayor of London.

**2.29** These four recent examples of the use of the referendum may soon be followed by two more – on Economic and Monetary Union and on the recommendations of the Jenkins Commission concerning the electoral system for future elections to the House of Commons.

**2.30** In the case of elections to the European Parliament, a new system of proportional representation will be used in May 1999. For the Parliament in Scotland and the National Assembly for Wales there will be a new Additional Member System (AMS) of voting: a majority of the members being elected on the established constituency system and a minority chosen from the party lists. The voting system for the new Northern Ireland Assembly is by single transferable vote (STV).

**2.31** We have had to make our recommendations in the light of these developments. We have also had to take note of the fact that some existing legal rules, such as limits on campaign expenditure by candidates in constituencies, will simply be inappropriate in an election like that to European Parliament in 1999, which will be conducted under a regional list system of proportional representation.

### Effective enforcement

**2.32** We have concluded that the recommendations which we advocate call for the creation of a new body. We have called it the Election Commission and we describe its role in detail in Chapter 11. Its existence is necessary because several of our proposals, if adopted, will impose serious and continuing duties on each of the political parties – to monitor donations received, to report some and to decline others, and to submit proper accounts. A new body must oversee compliance with these requirements, institute action where necessary, and make proposals to government as to any necessary reforms in the working of the machinery.

### Simplicity

**2.33** We have set out a series of recommendations which, taken as a whole, will secure the reforms outlined above. We have sought in doing so to avoid over-elaboration and unnecessary bureaucracy. To the maximum extent possible, the political parties should be allowed to get on with their normal activities without let or hindrance but with, we hope, enhanced public esteem.

### Our recommendations form an overall integrated scheme

**2.34** In concluding this Chapter setting out our approach, we wish to emphasise that our recommendations have been conceived as part of an overall integrated scheme for the reform of the funding of political parties. There is a direct linkage between all the recommendations, which should be viewed as a whole.

## INCOME AND EXPENDITURE OF THE POLITICAL PARTIES

### Introduction

**3.1** We now turn to the present financial circumstances of the political parties. There has, in the past, been little published information about the parties' income and expenditure and no standardised categorisation of either area. We have therefore had to rely on the parties' responses to our requests for information and we have endeavoured to interpret these in a consistent way. In this chapter we give income and expenditure figures for the three main UK political parties, that is, the Labour Party, the Conservative Party and the Liberal Democrat Party. We also include some figures for Plaid Cymru and for the Scottish National Party. No figures are shown here for the political parties which operate in Northern Ireland. This varying treatment reflects the extent to which we asked the various parties to give us figures. Fuller figures about the parties' finances are reproduced on the CD-Rom in Volume 2 of this report. Unless otherwise stated, all figures in this chapter are expressed in nominal prices (that is, cash terms).

### National income

**3.2** At the time of publication of the Issues and Questions consultation paper (December 1997) we wrote to party treasurers asking them to provide an indication of the sources of past donations. The aim was to provide Committee members with a broad indication of the nature of the sources and the scale of funding of each party since 1992.

**3.3** We sought information about the annual total income received by way of donations, subscriptions, affiliation fees and so on, and the sources of donations (UK and overseas) including: corporations; individuals; trade unions; pressure groups; and other sources. We asked the parties to provide the information in bands: between £5,000-£10,000; then in £10,000 bands up to £100,000; above £100,000 in bands of £100,000. We also asked that donations in kind of a value in excess of £5,000, and details of guarantees and loans at other than commercial rates, should be included.

**3.4** The Labour Party set out their total annual income from 1992 to 1997 as in Table 3.1 below.

*Table 3.1*

#### The Labour Party's Total Annual Income (£m)

	1992	1993	1994	1995	1996	1997*	Total
Subscriptions	1.6	1.7	1.9	2.5	2.1	1.9	11.7 <sup>†</sup>
Affiliation fees	7.1	6.9	6.7	6.8	6.9	6.4	40.8
Donations	3.5	3.0	3.7	4.2	10.1	14.5	39.0
Commercial	0.3	0.4	0.4	0.5	0.6	0.4	2.6
Other	0.7	0.8	1.0	1.1	1.8	0.9	6.3
<b>Total</b>	<b>13.2</b>	<b>12.8</b>	<b>13.7</b>	<b>15.1</b>	<b>21.5</b>	<b>24.1</b>	<b>100.4</b>

\* Estimate

† Accounting conventions for subscriptions changed between 1992 and 1997.

**3.5** The Conservative Party's total annual income from 1992 to 1997 is set out in Table 3.2 below.

*Table 3.2*

**The Conservative Party's Total Annual Income (£m)**

	1992	1993	1994	1995	1996	1997	Total
Donations	20.0	7.8	9.4	12.7	18.8	38.2	106.9
Constituency quota	1.3	1.1	0.7	0.9	0.8	1.1	5.9
Sundry income*	2.1	2.7	4.0	1.7	1.8	3.2	15.5
<b>Total</b>	<b>23.4</b>	<b>11.6</b>	<b>14.1</b>	<b>15.3</b>	<b>21.4</b>	<b>42.5</b>	<b>128.3</b>

\* Mainly income from conferences, sales of publications and services, subscriptions.

**3.6** In evidence, the Chairman of the Conservative Party, Lord Parkinson, explained that in 1996 the party had a debt of, in broad terms, £19 million. In order to meet that debt *and* to build up an election fund during 1996-97, the party's income increased as shown. "We faced a £19 million overdraft ... so we were running two things at the same time: we were inviting people to help us pay off our overdraft and we were trying to build up an election fund."<sup>1</sup> The process of reducing the debt began in 1995-96. Lord Parkinson told us subsequently that by 31 March 1996 the figure had fallen to £14 million, when party treasurers faced the task of eliminating that remaining debt and funding the 1997 election. Recent reports about reductions in the party's staff following an internal review indicate that the financial difficulties of the Conservative party remain.<sup>2</sup>

**3.7** The Liberal Democrats' total annual income from 1992 to 1997 is shown in Table 3.3 below.

*Table 3.3*

**The Liberal Democrat Party's Total Annual Income (£m)**

	1992	1993	1994	1995	1996	1997	Total
Subscriptions	0.9	1.2	1.2	1.2	1.2	1.3	7.0
Donations	2.1	0.6	1.2	1.1	1.5	2.5	9.0
<b>Total</b>	<b>3.0</b>	<b>1.8</b>	<b>2.4</b>	<b>2.3</b>	<b>2.7</b>	<b>3.8</b>	<b>16.0</b>

**3.8** The recommendations in this report for the regulation of party funding are made against the backdrop of a proportional decline in support from the trade unions for the Labour Party. The Labour Party told us in its written submission that between 1992 and 1996 the proportion of the party's income coming from trade unions fell from 66 per cent to 35 per cent, rising to 40 per cent in 1997.<sup>3</sup> In percentage terms, the Conservatives are

<sup>1</sup> Volume 2 of this report, p 502, para 6158.

<sup>2</sup> Conservative Party press release of 23 July 1998.

<sup>3</sup> Written submission to the Committee from the Labour Party, 27 February 1998, Background Briefing, App V, Table 2.

now far more reliant than they once were on non-institutional sources of income. In the mid 1980s, for example, it was estimated that about 50 per cent of the Conservative Party's income came from corporate sources. According to the party's accounts for 1996-97, that figure has now fallen to around 20 per cent.<sup>4</sup> Labour is also far more financially reliant on non-institutional sources of income than it used to be.

***Tom Sawyer, General Secretary of the Labour Party***

*"... if we are to raise that kind of finance, we have to be able to seek donations and to do so at a fairly high level ... We have had to seek donations up to £1 million and we would need to continue that sort of fundraising programme in the absence of any substantial state aid."*

(Vol 2, p 489, paras 5991-4)

***Lord Parkinson, Chairman of the Conservative Party***

*"People felt it was important enough that we survived to give us money to pay off our overdraft and also to fund the election campaign ... We came out of the 1992 election deeply in debt. This debt grew, but it just had to be cleared ... There was a huge blitz of one-off, big donations."*

(Vol 2, p 502, para 6158)

***Dr Michael Pinto-Duschinsky, Senior Research Fellow in Politics, Brunel University***

*"...there is clearly a malaise. It arises from the loss of party members. It is this loss which has led the parties to seek 'fat cat' donors."*

(Vol 2, p 94, opening statement)

*"Since there are many fewer members, you get less money from members. Since there is less money from members, there is the temptation for political parties to raise large individual contributions and when they raise large contributions from individuals, they do not have the incentive to raise the money from members and therefore membership does not go up. The real challenge is to increase participation and to raise, not large money from a small number of donors, but large money from a large number of donors, in small sums."*

(Vol 2, p 69, para 781)

**3.9** In 1997 the percentage of the Labour Party's income from individual and corporate donations and membership fees was 55 per cent, double the 1992 level. According to their evidence, corporate donations amounted to less than £100,000 and so were not recorded separately. Ms Margaret McDonagh, the Deputy General Secretary, said in evidence that 40 per cent of the party's funding was made up of small donations. Some 70,000 members pay a monthly subscription, while a further 500,000 people make a donation each year. Thirty per cent of the party's income comes from the trade unions; 20 per cent from high-value donors, and 10 per cent from commercial sales and so forth.<sup>5</sup> The Labour Party has set up a 1000 Club, where party members pledge to give £1,000 each year, and a High

<sup>4</sup> Conservative Party Annual Report and Accounts, 31 March 1997.

Value Donors Unit, with a small staff, who organise fundraising events to attract high value donors.<sup>6</sup> According to the Labour Party's response, over 130 individuals gave over £5,000 in 1997, compared to 30 or so individuals in 1992.

**3.10** Personal donations now account for almost 80 per cent of the donation income of the Conservative Party. The remaining income comes from the constituency quota (the system of quota payments, which encourage constituencies to channel funds to the centre), and sundry income from conferences and sales. In written evidence, the party recognised that in recent years Central Office has become more reliant upon larger donations from individuals. In 1996-97, in the run-up to the 1997 general election, the party received 150 individual donations, and over 200 corporate donations of more than £5,000.

**3.11** In the six-year period from 1992 to 1997, the Labour Party received almost 300 donations of over £5,000, representing a third by value of all individual donations. Over the period 1992-97, the Conservatives received over 1,300 donations of over £5,000. By comparison the Liberal Democrats received 100, the Scottish National Party 10, and Plaid Cymru none.<sup>7</sup>

#### *UK/Overseas donations*

**3.12** Analysis of the figures given to us shows that over 1992-97 the Labour Party received no overseas donations, while the Conservative party accepted 47 donations worth a total of £16.2 million including, prior to the 1997 general election, 20 or so "personal and individual" donations from overseas. In July 1997 the Conservative Party Leader announced that no foreign donations would in future be accepted by the party. The Liberal Democrats received less than £1 million from overseas sources. The Scottish National Party received two donations of between £40,000 and £50,000 from an individual who lived part of the time overseas; and Plaid Cymru received less than £5,000 from members and supporters living overseas.

#### *Guarantees and loans below commercial rates*

**3.13** The Labour Party listed two items germane to our study:

*Business Plan Guarantors:* Several trade unions lodged monies with Unity Trust Bank as part of the arrangements for the Labour Party's developmental fundraising project – the Business Plan Phase Two. The unions also gave the bank guarantees that they would cover any potential loss on the plan, up to a specified amount. The purpose of these deposits was to provide security at Unity Trust Bank that money would be available to cover a portion of the party's overdraft with the bank; and to offset some of the interest which would otherwise be charged. The sums lodged with Unity Trust were £275,000 and the overall sum covered by the guarantee was £295,000 as disclosed in the 1997 Report of the

<sup>5</sup> Vol 2, p 83, para 977.

<sup>6</sup> Vol 2, p 83, para 980-5.

<sup>7</sup> Responses by the parties to our request for information about their income, reproduced on the CD-Rom in Volume 2 of this report.



National Executive Committee. In fact the Business Plan ran an overdraft for only a short period of time. The guarantees were never called upon. The Labour Party expect that similar arrangements will be put into place for the Business Plan Phase Three.

*Constituency Labour Party (CLP) Investment Fund:* CLPs lend money to head office which places the deposit in a special account with the Labour Party. The party earns interest at a competitive rate for savings, and benefits from the Co-operative Bank charging interest only on the net overdraft balance. Loans are repayable on demand.

**3.14** The Conservative Party benefits from interest-free loans, including loans from Constituency Associations. In 1997 the party enjoyed interest-free loans totalling £11.2 million. Bank deposits of £3.2 million were maintained in respect of loans of an equivalent amount, including loans from Constituency Associations of £3 million. These loans are interest free and repayable on demand. Additional loans, totalling about £8 million, were also interest-free and repayable within one year. The repayment terms for two loans totalling £1.1 million were renegotiated and these were repayable after 31 March this year. A further loan of £1 million was converted into a donation.<sup>8</sup>

**3.15** The Liberal Democrats received an interest-free loan of £200,000 prior to 1992, of which £100,000 was repaid in 1994. The balance is repayable on demand. The Scottish National Party received one loan, between £5,000 and £9,999, in 1992. Plaid Cymru periodically receives interest-free or low interest loans from members, supporters and local branches. These loans seldom exceed £5,000, but in 1995 an interest-free loan of £5,000 was received and in 1997 a low interest loan of £50,000. Both loans have since been repaid.

#### *Services supplied in kind worth more than £5,000*

**3.16** The Labour Party told us they keep no record of these. In their submission they said: "In recent years we believe the level of these services has declined as centralisation of styles and logos has increased. The most recent contribution to the party in kind was the use of trade-union organisers to help in the election campaign. Our understanding is that the organisers were able to work for Labour through a combination of annual leave and paid secondment."

**3.17** The Conservative Party relies upon "the dedication and skills of vast numbers of volunteers". For the 1997 general election they received help from supporters with transport, printing and other services. It was not possible to put a monetary value to such voluntary effort and support. Conservative Central Office and its regional offices were staffed by professionals paid directly by the party nationally. During the election period staff were not augmented in any significant way by staff provided by outside organisations.

**3.18** For the Liberal Democrats, other than Executive Committee members' personal guarantees over the party's bank overdraft, no guarantees were given to the party during 1992-97, nor were any services worth over £5,000 supplied at other than commercial rates.

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<sup>8</sup> Conservative Party Annual Report and Accounts, 31 March 1997.



**3.19** These responses from the three main parties illustrate the complexity of identifying expenditure which is not cash. In the past, parties have not kept separate records of benefits supplied to them in kind, because they had no reason to do so, so it is hard to put any figures on the amounts involved. And yet there is a perception that parties receive a huge benefit from these services, particularly when the party leaders are seen travelling round the country at election time in 'battle buses', and helicopters and aeroplanes.

### National expenditure

**3.20** We also requested information from the parties about their annual total expenditure (from and including 1992) on election and referendum campaigns, purchasing or leasing party premises (national and local), hiring staff, paying for publications, and commissioning research. We asked that the information on election and referendum campaigns should be broken down as follows:

- newspaper advertising
- outdoor advertising
- any other advertising
- publications (including newsletters and newspapers)
- direct mail
- telemarketing
- production of party political broadcasts and videos
- any other areas of expenditure

### *Total annual expenditure by the Labour Party*

**3.21** The Labour Party had difficulty in presenting historical figures in the way requested. This is because, in previous years, their budget categories focused on the analysis of expenditure by individual and by purpose, but not by type of expense. They therefore tried to recreate the categories of expenditure in this format.

Table 3.4

**Labour Party: Total Spending (£m)**

	1992	1993	1994	1995	1996	1997	Total
Premises	0.4	0.5	0.5	0.7	1.6	1.4	5.1
Staff	5.1	4.7	5.4	6.6	8.3	9.0	39.1
Publications	0.7	0.3	0.3	0.2	0.8	1.3	3.6
Research				0.3	0.3	0.3	0.9
Other	4.1	4.4	2.9	4.4	4.5	4.6	24.9
<b>Total</b>	<b>10.6</b>	<b>9.9</b>	<b>9.1</b>	<b>11.9</b>	<b>15.5</b>	<b>16.6</b>	<b>73.6</b>

**3.22** Mr Tom Sawyer, the General Secretary, in his oral evidence suggested that the Labour Party needed £20 million to £25 million annually to function properly. "Modern political parties are expensive to run. For example, to fulfil its role in the democratic process the Labour Party needs to raise between £20 million and £25 million per year from its members and supporters."<sup>9</sup> This was subsequently clarified as an estimate of annual running costs over an election cycle.

Table 3.5

**Labour Party: Campaign Spending (£m)**

	1992	1993	1994	1995	1996	1997	Total
Newspaper advertising					0.1	0.8	
Outdoor advertising						4.8	
Other advertising						0.1	
Publications					0.5	1.0	
Direct mail					1.1	0.7	
Telemarketing					0.3	0.2	
Party political broadcasts and videos					0.1	0.5	
Other areas of spending*					8.7	6.8	
<b>Total</b>	<b>8.4</b>	<b>0.3</b>	<b>1.9</b>	<b>3.5</b>	<b>10.8</b>	<b>14.9</b>	<b>39.8</b>

\* This includes the cost of events, campaign tours, information and rebuttal systems, regional expenditures, polling, personnel, touring costs of key campaigners, financial management and administrative costs of the election, and associated finance, interest and bank charges.

***Total annual expenditure by the Conservative Party***

**3.23** Accounting procedures changed in 1992 and, for that reason, direct comparisons between the 1992 and 1997 figures should be made with some caution.

<sup>9</sup> Vol 2, p 75, para 854.

Table 3.6

**Conservative Party: Operating Expenditure Analysis (£m)**

	1992-93	1993-94	1994-95	1995-96	1996-97	Total
Party premises*	0.9	0.8	0.8	0.8	0.9	4.2
Staff – salaries, NI, pension	6.0	4.6	4.7	4.5	5.2	25.0
– directly employed agents†		0.2	0.3	1.1	1.9	3.5
Publications‡	0.7	0.8	0.7	0.7	1.1	4.0
Research (inc. staff costs)§	0.8	0.6	0.7	0.8	1.0	3.9
<b>Total</b>	<b>8.4</b>	<b>7.0</b>	<b>7.2</b>	<b>7.9</b>	<b>10.1</b>	<b>40.6</b>

\* Premises relate to the party's regional offices, but also to some related space at 32 Smith Square. The party has a 250 year lease on the Smith Square building. The figures include lease rentals, rates, and property service charges but exclude repairs, maintenance, lighting and heating.

† The staff cost numbers are those shown in the party's accounts. The directly employed agents work for the Conservative Agents' Employment Board. This body has taken over responsibility for employing many of the agents from constituency associations. These costs have effectively been transferred from constituency associations, which are outside the scope of the party's published accounts.

‡ Publication costs include the costs of printing and distribution.

§ Research costs are the direct costs of the Conservative Research Department excluding overheads.

Table 3.7

**Conservative Party: General Election Expenditure Analysis (£m)**

	1992*	1997†	Total
Newspaper advertising	1.8	3.2	5.0
Outdoor advertising	4.0	11.1	15.1
Other advertising		0.1	0.1
Publications	0.7	1.0	1.7
Direct mail		2.2	2.2
Telemarketing		0.0	0.0
Party political broadcasts and videos	2.3	0.5	2.8
Other areas of expenditure			
Rallies (inc. election tours)	1.0	4.4	5.4
Press conferences (inc. press facilities)	0.1	1.2	1.3
General election staff	0.7	1.8	2.5
Opinion research	0.2	0.6	0.8
Other	0.4	2.2	2.7
<i>Total other expenditure</i>	<i>2.4</i>	<i>10.2</i>	<i>12.7</i>
<b>Total</b>	<b>11.2</b>	<b>28.3</b>	<b>39.6</b>

\* April 1991–April 1992.

† April 1996–May 1997. The figures for general election expenditure in 1997 also include local election expenditure because of the timing of polling day.

*Total annual expenditure by the Liberal Democrat Party*

**3.24** The information given does not include expenditure by local parties or regional parties. It does include grants made by the national party to local parties (included under campaign publications) to assist them in paying for publications, but it does not include expenditure on, for example, general administration. No request was made for this information and none was therefore provided by the Liberal Democrat Party.

*Table 3.8***Liberal Democrat Party: Expenditure under specific categories (£m)**

	1992	1993	1994	1995	1996	1997	Total
Premises costs	0.3	0.2	0.3	0.3	0.3	0.3	1.7
Staff salaries	0.5	0.5	0.5	0.7	0.8	0.8	3.8
Publications	0.1	0.1	0.1	0.1	0.1	0.1	0.5
Commissioning research	0.1	0.0	0.0	0.0	0.1	0.1	0.3
<b>Total</b>	<b>1.0</b>	<b>0.8</b>	<b>0.9</b>	<b>1.1</b>	<b>1.3</b>	<b>1.2</b>	<b>6.3</b>

*Table 3.9***The Liberal Democrat Party: Campaign Expenditure (£m)**

	1992	1993	1994	1995	1996	1997	Total
Newspaper advertising							
Outdoor advertising	0.2				0.0	0.1	0.3
Other advertising							
Publications	0.1	0.1	0.2	0.2	0.3	0.2	1.1
Direct mail	0.3			0.0	0.0	0.2	0.6
Telemarketing		0.0				0.3	0.3
Party political broadcasts	0.1	0.0	0.0	0.1	0.1	0.2	0.6
Other	0.8	0.0	0.3	0.3	0.7	1.3	3.4
<b>Total</b>	<b>1.5</b>	<b>0.2</b>	<b>0.5</b>	<b>0.6</b>	<b>1.2</b>	<b>2.3</b>	<b>6.3</b>

**3.25** In 1997, the only year for which the Labour Party were able to supply directly comparable figures, they spent £6 million on advertising out of a total spend of £30 million.

**3.26** The Conservative Party nationally spent £28.3 million in the 13 months prior to the 1997 general election (of which £9.8 million was spent in the month between 1 April and 1 May 1997, which was polling day), although it should be noted that this included expenditure on local elections. About half was spent on advertising. A similar situation occurred in 1992 when the party spent about half their overall spend of over £11 million on advertising.

**3.27** The expenditure figures above for the Labour, Conservative and Liberal Democrat parties are not strictly comparable. The Labour figure for campaign spending covers the two calendar years 1996 and 1997 whereas the Conservative figure, as stated in the

previous paragraph, covers only the 13 months prior to the 1997 election. Nevertheless, as it seems unlikely that the Conservatives incurred very large amounts of campaign expenditure as early as January-April 1996, we believe that the two figures can be regarded as broadly comparable. On this basis, we calculate that the Labour Party spent roughly £26 million on the 1997 election campaign (the same figure as the one quoted in the Labour Party's 1998 Annual Report) while the Conservatives spent roughly £28 million. The discrepancy between the two major parties was thus not as great as it had been at some previous elections (see, for example, Tables 3.10 and 3.11 below).

### Income and expenditure at local level

**3.28** Information on income and expenditure at the local level has been even less readily available than national data. The last relatively comprehensive survey was carried out by Research Surveys of Great Britain Limited on behalf of the Houghton Committee which reported in 1976. As we felt that the constituency party organisations play a crucial role in raising funds for local and national party activities, we commissioned Dr Justin Fisher, from the Department of Politics and Modern History at London Guildhall University, to undertake a survey on our behalf.<sup>12</sup> We are grateful for the national parties' co-operation with this survey and the assistance of the local party organisations involved.

**3.29** Our survey covered the three main parties in 60 representative constituencies in England. Although we had recognised that some constituency organisations, especially those without a full-time agent or secretary, would find it hard to supply information over an extended period, we nevertheless asked for information covering the calendar years 1992 to 1997. The sample was selected to represent:

- marginal and safe seats at the time of the 1997 election (using the definition that a seat is marginal if there was a majority (at the 1992 election) of 10 per cent or less);
- the regions (ie (1) south-east England (including Greater London), (2) the Midlands and East Anglia, (3) north and north-west England, including Yorkshire and Humberside; and (4) south-west England – using a quota to reflect the uneven split of (1) 36 per cent, (2) 24 per cent, (3) 31 per cent and (4) 10 per cent;
- county and borough constituencies;
- the three main parties.

**3.30** The information sought was broadly about the income and expenditure of constituency organisations for each of the years selected, broken down by source and destination respectively. Party organisations were asked to distinguish between election expenditure and inter-election expenditure, and were told that we guaranteed anonymity (but not confidentiality). It was envisaged that the survey would provide the following sorts of information:

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<sup>12</sup> Survey of local party income and expenditure.

- *ranges of income and expenditure;*
- *average income, broken down by source and party, and average expenditure, broken down by election or inter-election expenditure, by destination and by party;*
- *changes over time in income and expenditure;*
- *differences between the parties according to region, whether marginal or safe, whether borough or county.*

**3.31** The response rate was just under 50 per cent. By normal postal survey standards this was not exceptionally low but, given the straightforward nature of the questionnaire and the generous deadline, the number of responses was disappointing. However, the responses match the population and sample profiles outlined in paragraph 3.29, although both Labour and Liberal Democrat Parties responded in far fewer numbers than the Conservatives.

**3.32** Many parties were affected by boundary changes, and some of the sample constituencies only came into being after the Boundary Commission changes in 1995. The standard of questionnaire completion varied from very comprehensive to poor. Some parties wrote to claim that such straightforward information was simply untraceable. Moreover, respondents varied in the ways in which they reported data. It is perhaps worth remembering that constituency party organisations at a local level are, for all intents and purposes, voluntary organisations, which are, in many cases, ill-equipped to respond to such a request. Full details of the survey can be found on the CD-Rom in Volume 2.

#### *Local party income*

**3.33** Dr Fisher found that constituency parties received less income in 1997 than in 1992 and there was also a very wide income range. In 1992, the average level of income was £29,873 while the level in 1997 was £20,267. The lowest income recorded was £101 whilst the highest was £240,055.

**3.34** The Conservative Party appeared to be suffering the most. Average Conservative income in 1992 was £44,304, while in 1997 it was £33,305. By comparison, Labour's average income in 1992 was £7,586 and, whilst there was a mid-general election cycle dip, in 1997 the average rose to £8,912. The Liberal Democrats experienced a similar cycle, with an average income in 1992 of £5,020 and one of £6,199 in 1997.

**3.35** In the Labour Party, overall income from individuals was comparable to that received from trade unions. In 1997, the average local party's income from membership subscriptions and individual donations was £1,554 and £1,969 respectively. The average level of individual donations rose over the period from £148 in 1993, although the level of individual income stayed significantly below that of the Conservative Party. By contrast, trade-union donations were largely targeted at general elections. Whilst local Labour Parties received an average of £2,016 in 1997, average donations in non-general election years barely exceeded £200 and in the pre-election year of 1996 were only £446. Trade-union

sponsorship of candidates was very rare in this sample. Finally, local party fund-raising consistently raised around £1,200 per annum.

**3.36** Income from individuals provides an important source of income to local Conservative Party associations. Between 1993 and 1996, the average local party's income from this source fell steadily from £14,190 to £12,712, before rallying to £16,499 in the 1997 general election year. This figure was, however, lower than that raised in 1992 (£19,143). The average level of company donations in 1997 was £2,444 – comparable with 1992, but lower than 1995 (£4,718). Fund-raising has been a traditional strength in the Conservative Party and it was significantly more successful than the other parties in this respect. However, the level of fund-raising declined slightly from an average of £7,795 in 1993 to £7,230 in 1997. A comparison with 1992 suggested a more serious problem: the average level of fund-raising in that year was £9,147. Finally, 'Other' income averaged between £8,000 and £9,000 in years without a general election. Initial analyses suggest that rent from property often formed a significant proportion of this income. Moreover, some local parties reported receiving reasonably large 'fighting funds' in general election years.

**3.37** The principal sources of income for Liberal Democrat constituency parties are individual donations and fund-raising. Fund-raising was on a par with Labour and generated an average of around £1,200 per annum throughout the period. Individual donations reflected the general election cycle. Thus, averages of £1,160 and £2,269 were received in 1996 and 1997, but between 1993 and 1995, the levels ranged from £500 to £700. Dr Fisher perceived that, overall, the period saw a steady rise in individual donations.

### *Local party expenditure*

**3.38** The average level of expenditure by local Labour parties increased from £8,501 in 1992 to £9,577 in 1997. None the less, spending reflected the general election cycle. There was a wide range of expenditures. One party reported spending no money in one year, another spent only £471 in 1997, while another constituency party spent £60,570 in 1997.

**3.39** The spending of local Conservative parties declined markedly between the election years of 1992 and 1997. The average expenditure in 1992 was £41,485, whilst in 1997 it was £30,761. Like Labour, there was a very wide range of expenditures. Again, one constituency party reported spending nothing in 1993, whilst another spent only £120 in 1995. By way of contrast, one local party spent £161,531 in 1996.

**3.40** Like Labour, the average level of Liberal Democrat spending increased. Average expenditure in 1992 was £5,551 and £7,195 in 1997. Again, as with Labour, spending reflected the general election cycle. Finally, as with the other two parties, the range of expenditure varied considerably. One party reported spending only £13 in 1996, whilst another spent £24,164 in 1997.

**3.41** Only two Constituency Labour Parties reported salary costs in 1997, a mean of £9,664. Both communication and premises costs were also less common and more modest. In years without a general election, around £500 was spent per annum on postal

and telephone services, rising to £1,249 in 1997. Costs of premises were reported as being around £600 between 1993 and 1995, and rose to £1,099 and £1,222 in 1996 and 1997.

**3.42** The largest routine costs for the Conservative parties were salaries, incurred by around 80 per cent of respondents. Such expenditure declined over the period, from £18,952 in 1993 to £17,794 in 1996. Costs increased in 1997 to £18,530, presumably because of increased activity associated with the general election, though this figure was less than the average cost of £20,598 incurred in 1992. Communication and premises costs are the other routine expenditures worthy of note. In general election years, parties spent around £3,200 on postal and telephone services, while in the period between general elections, the figure was between £2,200 and £2,500. Finally, the costs of premises rose throughout the period, from an average of £3,807 in 1992 to £4,223 in 1997. These costs may appear modest, but they are far higher than those incurred by other parties.

**3.43** Liberal Democrat salary costs, where they were incurred, exceeded £1,000 only once (in 1992). Of the four constituencies reporting such costs, the 1997 average was £375. Postal and telephone costs were generally around £300, rising to £432 in 1997. The cost of premises never exceeded £300.

#### *Local party income and expenditure: conclusions*

**3.44** Dr Fisher concluded that despite the highly variable quality of accounting, certain patterns were apparent:

- Conservative constituency parties appear to be in some decline. However, they are generally far better financed than Labour or Liberal Democrat parties, despite the apparent improvement of circumstances in Labour's constituency parties.
- There are very large variations in the size of parties. Despite the large size of some parties, others have tiny memberships – some as low as six.
- The wide variations in income lead to equally wide variations in expenditure
- There is evidently geographic variation in parties' finances, both in terms of region and in terms of urban or rural location.
- Individuals are very important to the finances of all parties, both in terms of simple membership, and for the money they provide for the parties.

#### *'The arms race'*

**3.45** Many of our witnesses expressed concern about the apparent 'arms race' of election expenditure. The increase in election expenditure, which we define in paragraph 10.77 below as any expenditure by the parties undertaken with a view to or with the foreseeable consequence of (1) promoting the electoral prospects of any political party or political



parties or (2) opposing or damaging the electoral prospects of any political party or parties, can be graphically demonstrated by Tables 3.10 and 3.11 below.

Table 3.10

**General Election Expenditure since 1983 (£m)\***

Election year	Conservative	Labour	Alliance/Lib Dem.
1983	3.6	2.2	1.9
1987	9.0	4.4	1.9
1992	11.2	10.2	1.8
1997	28.3	26.0	2.1
<b>Total</b>	<b>52.1</b>	<b>42.8</b>	<b>7.7</b>

\*This table has been compiled from a variety of sources. Figures for the 1983, 1987 and 1992 general elections are drawn from David Butler and Dennis Kavanagh, *The British General Election of 1987*, Macmillan, 1998, p 235, and *The British General Election of 1992*, Macmillan, 1992, p 260. The figures for the 1997 general election have been provided by the three main parties in their submissions to us. (The parties also supplied figures for the 1992 election, but in our view the figures given by Butler and Kavanagh provide a better comparison.)

Table 3.11

**General Election Expenditure since 1983 at 1997 prices (£m)**

Election year	Con. £m	Per cent increase/decrease	Labour £m	Per cent increase/decrease	Alliance/Lib Dem. £m	Per cent increase/decrease
1983	6.6	—	4.0	—	3.5	—
1987	13.8	+109%	6.6	+65%	2.9	-17%
1992	12.7	-8%	11.2	+70%	2.0	-31%
1997	28.3	+123%	26.0	+132%	2.1	+5%
<b>Total change 1983-97</b>	<b>+21.7</b>	<b>+329%</b>	<b>+22.0</b>	<b>+550%</b>	<b>-1.4</b>	<b>-40%</b>

**Peter Riddell, Political Columnist, The Times**

*"There is no serious evidence that differences in levels of national or local spending have any significant impact on results. Labour did not lose elections in the 1980s because it was outspent by the Conservatives. Similarly, the Tories spent a record amount last year for their worst result since the franchise began to be extended in the last century. The high spending by the two main parties is like the doctrine of mutually assured destruction – MAD – of the superpowers during the cold war. If we do not spend, they will. But beyond a certain point, a law of diminishing returns operates and extra money has little effect, much though it benefits the owners of poster sites and newspapers."*

(Vol 2, p 24, opening statement)

***Tom Sawyer, General Secretary of the Labour Party***

*"To achieve fairness between political parties, we need to eliminate the 'arms race' which currently exists in electoral spending. The consequence of 'arms races' is that they will be won only by those who can afford to buy the 'arms'. We do not believe that this is healthy for British democracy."*

(Vol 2, p 75, para 859)

***Lord Parkinson, Chairman, the Conservative Party***

*"The emphasis was on poster boards and a lot of money was spent on this. I am not sure that one could say, in the light of the result, that one got a lot of value out of it. It gives the lie to the notion, I would have thought, that you can buy elections and that there is a direct correlation between spending and success. I do not think that is true."*

(Vol 2, p 121, para 1441)

***Lord Razzall, Treasurer, Liberal Democrat Party***

*"There is no doubt for us that more money to spend would have bought more votes, and probably some more seats. As far as the other parties are concerned, it is a matter for them how they spend their money. I would suspect that there has almost been a Russian-American nuclear standoff between the Labour Party and the Tory party in that they've poured millions of pounds into political advertising, which at best probably bored people to death and at worst turned them off the process, but that is because of the way in which they spent their money ... If we take the 1979 election ... That was a very successful campaign. It got across a message that I suspect resulted in the Conservative Party replacing the Labour Party in that election, and it was done with an enormous amount of money, because one could not run that campaign without an enormous amount of money. Had the Conservatives not had that money to spend, I suspect they would not have won the election in the way that they did. That is an example of money buying electors, but it is a complex issue."*

(Vol 2, p 108, para 1274-6)

***Martin Bell MP, Independent Member of Parliament for Tatton***

*"Clearly, we have to end the "arms race" of campaign funding, because it opens the door to at least the suspicion of influence buying and selling."*

(Vol 2, p 178, para 2198)

### DONATIONS: TRANSPARENCY AND REPORTING

**4.1** We have already recorded (p aragraph 1.4 above) the Government's intention to introduce legislation requiring disclosure of donations of £5,000 or more made to political parties. It has, nevertheless, seemed to the Committee worthwhile to consider both the objections to the traditional practice of secrecy concerning donations and the arguments which have been adduced to justify that practice.

**4.2** In the discussion which follows in paragraphs 4.3 to 4.26 we concentrate on donations from individuals. There are already in place statutory provisions dealing with donations by companies and trade unions. We deal in Chapter 6 below with issues which have arisen in connection with these donations. Transparency is a feature of the current arrangements for companies and trade unions, though there is a debate as to whether the present rules go far enough.

#### Objections to secrecy over the source and amount of donations

**4.3** We start from the premise that it is undesirable that a political party should be dependent for its financial survival on funds provided by a few well-endowed individuals, corporations or organisations. The familiar maxim that he who pays the piper calls the tune is widely believed to operate in the sphere of politics. Whether or not the suspicion is justified, the ordinary voter is apt to suspect that a very large gift to a political party must be made with some specific object in view.

**4.4** The two most obvious objects which are supposed by the cynical to underlie large political donations are the purchase of access to Ministers (or Shadow Ministers) and the purchase of influence over policy. A third possible object is the desire to be considered for an honour (a topic which we discuss in Chapter 14). A fourth possible object is the donor's wish to enhance his or her prospects of subsequent selection for some public position or appointment. In some other countries (but not in the United Kingdom) there have been allegations of a fifth object, namely, cash in return for defence procurement contracts or the like.

**4.5** In fact, the suspicions which are entertained concerning large givers are commonly lacking in any justification. We have been given no evidence that leads us to doubt that nearly all give generously either because they support the general aims of the party which they finance, or in order to minimise the risk of the opposing party attaining power.

**4.6** Yet, if the identity of the generous giver is unknown – as traditionally in the United Kingdom it has been – it is impossible to allay the suspicion that each large giver is actuated by some improper motive and that the recipient political party has accepted some tacit obligation to one or more of such givers. Where both the names of the givers and the amounts given are unknown – as has been customary – there is room for unlimited speculation and rumour as to the identity of those who may be 'bank-rolling' this or that political party.

**4.7** In the past, apart from the Labour Party, no political party in the UK has disclosed the names of its donors. Thus, the published accounts of the Conservative Party and the Liberal Democrat Party have revealed the total of all donations received centrally, but not the names of any givers or the size of any donation.

**4.8** Since 1995 the Labour Party's published accounts have set out the names of those who have given more than £5,000 in the financial year under review, although the amounts given are not shown. Thus, the accounts for the calendar year 1997, presented to the Party Conference in September 1998, disclose the names of 96 donors and 38 sponsors who had contributed more than £5,000 in 1997. Under this system of disclosure the delay between the Labour Party's receipt of a donation and the date when the giver's name is published may be anywhere in the range of 9 to 21 months.

**4.9** We deal below with the current attitudes of the major parties and their submissions to this Committee.

**4.10** In the closing months of John Major's administration, allegations appeared in the press concerning big gifts to the Conservative Party from overseas donors. Thus, *The Guardian* of 22 May 1996, under the heading "Tangled purse strings", listed Mr Li Ka-Shing, Hong Kong Head of Hutchison Telecommunications, whom it said had given £900,000 to the Conservatives in the 1992 general election campaign and £100,000 for the forthcoming (1997) election; Mr Stanley Ho, owner of casinos on Macao, who had given £100,000 to the Conservatives; Mr Asil Nadir, described as a fugitive from British justice, who had given £440,000; and 'Mr X', a wealthy Serbian businessman based in Britain, who was alleged to have given £100,000. *The Guardian* commented:

What Tory donors buy is impossible to judge by virtue of the swirling mists which surround donations. Old lags are adamant that Chinese walls separate cash and policy. Honours and the glamour of a Downing Street date probably do for most donors, but useful policy nudges and, at several removes, lucrative contracts must be there sometimes. In politics gratitude is a two-way street.

**4.11** Concerns about large donations to a political party were sharpened in November 1997 when it was revealed that Mr Bernie Ecclestone, the leading figure in Formula One motor racing, had given £1 million to the Labour Party to help finance its May 1997 general election campaign. The disclosure came shortly after Mr Ecclestone had had a meeting with the Prime Minister to discuss the exemption of motor racing from the ban on tobacco advertising at sporting events. The Labour Party at that point, and after consultation with the Chairman of this Committee, returned Mr Ecclestone's donation. He wrote a letter which was published in *The Times* explaining that his gift had not been motivated in any way by commercial considerations.<sup>1</sup>

**4.12** These matters convinced many people that transparency in relation to large gifts to political parties was urgently required. This at least was the opinion of a very high proportion of those who provided written or oral testimony to the Committee.

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<sup>1</sup> *The Times*, 13 November 1997.

**4.13** As to the degree of disclosure required, most witnesses thought that both the name of the donor and the amount of the gift ought to be made public, and that this information should be published promptly. Opinions differed as to the size of the donation which called for disclosure. We discuss this aspect further below.

**4.14** In Canada, the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) stated in its final report:

Full disclosure of information on financial contributions and expenditures is an integral component of an electoral system that inspires public confidence. Essential to enhancing the integrity of the political system are the principles of transparency and public accountability. Full and timely disclosure requirements help remove suspicion about the financial activities of candidates and parties by opening the process to public scrutiny.<sup>2</sup>

**4.15** In summary, the advantages that can be claimed for transparency include the following:

- (1) the public and the media know who is financing each political party;
- (2) rumour and suspicion wither;
- (3) the possibility of secret influence over Ministers or policy is greatly diminished;
- (4) public confidence in the probity of the political process is raised.

### **The arguments in favour of secrecy concerning the source and amount of donations to political parties**

**4.16** The arguments which we rehearse below are no longer fashionable and there is a risk that they will be discounted in the public debate which is likely to ensue. Nevertheless, in the Committee's opinion, they deserve serious consideration.

**4.17** The principal argument in favour of the status quo and against disclosure is that what a man or woman does with his or her own money is that individual's own affair and nobody else's. A person is entitled to be parsimonious or extravagant. No public accounting of an individual's expenditure is required by law – not, at least, until the point of bankruptcy is reached. Again, there is no requirement to disclose publicly gifts made to charity, whether large or small. Why then, it is asked, should an individual be required by law uniquely to disclose one particular type of giving, namely, a gift to a political party?

**4.18** In this context reference is made to the right of privacy. This claimed right, whether or not protected generally by positive law, has long been recognised as an integral part of the moral fabric which underpins the decency of civilised existence. The argument can be

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<sup>2</sup> *Final Report, Reforming Electoral Democracy, Vol I, 1991, pp. 421-2.*

made, and was made to us, that an individual's political affiliation is an important aspect of his or her private life and as such should not be the subject of compulsory disclosure merely because he or she has made a contribution to a political party.

**4.19** It seems probable that the privacy argument as stated above cannot be strengthened by reliance on Article 8 of the European Convention on Human Rights (right to respect for private and family life).<sup>3</sup> Other countries which accept the obligations of the Convention have for many years imposed legal requirements calling for disclosure of political donations (for example, Germany) and such laws have not been challenged on the basis of Article 8.

**4.20** However, further specific support for the privacy argument can be derived from the principle of the secret ballot. It has been the law since the Parliamentary and Municipal Elections Act 1872, commonly known as the Ballot Act, that a voter is entitled to vote in secret and cannot be required to disclose the name of the candidate or the party for which the vote was cast.<sup>3</sup> It is inconsistent with the existence of this fundamental statutory protection, so runs the argument, to require a voter or potential voter to disclose the identity of the party to which he or she has made a donation, the imposition of such a requirement necessarily involving publication of that voter's political choice.

**4.21** In support of privacy it was further urged upon the Committee that there are many perfectly reputable reasons why an individual should not want it to be known that he or she had made a gift to a political party. First, there is the desire for anonymity – the freedom to do good by stealth. Many give to charity in this way and the same freedom is claimed in respect of gifts to political parties.

**4.22** Then there are fears as to the consequences of disclosure. Some fear that the publicised news of their ability to pay out a large sum to a political party might cause them to be pestered by causes good and bad. Others may reasonably consider that disclosure of their donations will be the equivalent of an advertisement to the criminal classes.

**4.23** Others again may not wish their standing as office holders to be brought into question as a result of their contributions to a particular political party. Examples given in evidence included a trustee who sits on a number of public boards, a civil servant charged with administering public policy, a businessman whose company is dependent upon local authority or government contracts, and a person occupying a public position such as that of Lord Lieutenant of a county.

**4.24** Cases of potential or actual discrimination or intimidation were brought to our attention. In particular, it was said that terrorism still poses a danger in Northern Ireland. We received evidence from several sources to the effect that, notwithstanding the Good Friday Agreement (10 April 1998) and the subsequent favourable result of the referendum

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<sup>3</sup> The Representation of the People Act 1983 (Sched 1, rule 56) sets out the circumstances in which (*inter alia*) marked ballot papers may be inspected. The circumstances are confined to where an order has been made by the House of Commons or by the High Court (or a county court) in proceedings such as prosecutions for election offences or for the purpose of an election petition. The rules under the 1983 Act require that when such an order is put into effect "care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it is proved (i) that his vote was given, and (ii) that the vote has been declared by a competent court to be invalid" (Sched 1, rule 56 (3)).

(22 May 1998), it would still be unsafe in Northern Ireland to disclose the names of those who had made gifts to a particular political party there. The testimony was not unanimous, but the majority opinion, which we accept, underlined the continuing risk. Since we received that evidence there has been the Omagh massacre and a continuing series of individual acts of violence in the Province. These events have fortified us in the conclusion about the continuing risk which we had already reached.

**4.25** The foregoing discussion about why many donors wish to be able to give to a political party without details of their gift, in particular their names, becoming public information leads on to the pragmatic argument in favour of the status quo. This argument is that it is impossible to tell what the effect on fund-raising would be if there were a general requirement that all gifts to political parties had to be made public. Even if the level for disclosure were to be set as high as £5,000 or £10,000, it is still impossible to predict what the result would be. On the most pessimistic assumptions such a legal requirement would gravely impair the ability of the parties both to raise sufficient funds to finance their ongoing activities and to pay for general election campaigns on what is now the customary scale.

**4.26** We have already noted in paragraph 4.8 above that in the year 1997 the Labour Party received 134 donations (including sponsorships) at or above the £5,000 level. Of these, 21 were in excess of £50,000. The corresponding figures for the Conservative Party's accounting year 1996-7 were 375 and 119 respectively.

### The views of the political parties

**4.27** In the following summary of the views of the parties on the disclosure issue we have also included a reference to what they have said on some other issues. This is because the many aspects of the problems concerning funding of political parties are inter-related.

(a) *The Liberal Democrats*

Their proposals include limited state funding of political parties; an annual restriction of £50,000 on the size of any donation by an individual or organisation; and transparency of all donations over £1,000. The thinking underlying the last two points is as follows:

Those who give money to political parties should have no more influence over events than those who do not. Whilst donors may seek to influence the policies or organisations of political parties, their influence should not result from their donations.

In practice, the only way of avoiding the apparent or real influence upon parties and decision-makers by large donors is to ban large donations and ensure that records of all but the smallest donations are publicly available.<sup>4</sup>

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<sup>4</sup> Written submission to the Committee from the Treasurer of the Liberal Democrat Party, Lord Razzall CBE. See App V, p 244, para 2.



(We address in Chapter 6 the matter of putting a ceiling on donations.)

(b) *The Conservative Party*

The guiding principle underlying the submission of the Conservative Party is as follows:

The health of our nation's democracy depends upon the success of political parties in attracting broadly based financial support and in ensuring that the public has confidence in the way that parties raise funds.

The party recognises that in recent years it has become more reliant upon larger donations from individuals. It nevertheless supports the principle of disclosure to the extent that with effect from 24 July 1997 it undertook to publish with its annual accounts the names of all donors giving more than £5,000 in any one financial year. This commitment does not, however, extend to publishing the amounts actually given by each donor. The party took the position in its oral testimony that disclosure of the amounts given was unnecessary. It has also tentatively advocated that the opportunity for anonymous giving should be retained by the creation of a 'Political Donations Institute' which would receive anonymous gifts and pass them on to the donor's designated political party, taking care to ensure that the recipient party was kept in ignorance of the identity of the donor. The object of this proposal is to deal with the case of wealthy individuals who might be deterred from giving to political parties for fear of the suspicion that they were seeking to buy influence.<sup>5</sup>

(c) *The Labour Party*

One of the principles advocated by the Labour Party in its submission to the Committee was "the principle of openness and transparency in the financial affairs of political parties". Under the head of full and frank disclosure of the parties' financial affairs, the Labour Party proposes that donations of £5,000 or more should be reported by each party to an Electoral Commission, together with the name of the donor. It would then be for the Commission to make this information public. The same principle would apply where a series of donations from one source aggregated £5,000 or more. An even more extensive *reporting* requirement is advocated: "Political parties should be required to report annually to the Electoral Commission the name of all donors who donate annually £50 or more, and the amount of the donation." This information would not be made public, but would ensure that the Commission had a detailed insight into the fund-raising achievements of each political party. As regards donations to the regional and constituency associations and parties of the political parties, the Labour Party considers that the £5,000 figure is too high and that contributions of £500 or more should trigger an obligation to report to the Commission, followed by disclosure by the Commission.<sup>6</sup>

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<sup>5</sup> Written submission to the Committee from the Conservative Party, 27 February 1998. See App V, p 240. Oral evidence of Lord Parkinson, Chairman of the Party. Vol 2, pp.120-1 para 1429-36.

<sup>6</sup> Written submission to the Committee from the Labour Party, 27 February 1998. See App V, pp 218, 219, 'Transparency, Participation, Equality' at paras 2.1, 3.3 and 3.5.



## The Committee's conclusion on the questions of principle

**4.28** The Committee recognises the strength of the arguments in favour of privacy set out in paragraphs 4.17 to 4.24 above and accepts that the right to privacy in this sphere should not be invaded unless there is a compelling case for doing so. A compelling case arises when the public interest is involved. The public interest which we identify is the need for the public to know when a donation is made to a political party which is significant enough to prompt questions or to raise suspicion about its purpose.

**4.29** We accordingly do not wish to see the United Kingdom following the Canadian precedent where public disclosure is required at the level of C\$100, equivalent to about £40 (\$200 in some Provinces).

**4.30** Similarly, we do not support the Labour Party's proposal (noted in paragraph 4.27(c) above) that the parties should report annually to an Electoral Commission the names of all donors who give £50 or more annually. Although the information would be communicated only to the Electoral Commission and would not be publicised, reporting at this level would, in our opinion, be both unnecessarily intrusive and administratively burdensome, especially for the local party organisations. Nor is it required in order to ensure due supervision of the other transparency provisions which we recommend.

**4.31** Clearly, opinions will differ as to what constitutes a significant donation made to the central funds of a political party. (We deal separately below with gifts in the constituencies and regions.) The Liberal Democrats set the level at £1,000; the Labour and Conservative parties opt for £5,000, as do Plaid Cymru and in Northern Ireland the Alliance Party. In Germany the disclosure point under the 1994 amendments to the Law on Political Parties is DM20,000 (roughly equivalent to £7,000).

**4.32** The level selected has to be one at which it might just be credible to suppose that there *could* be some improper purpose underlying the donation – the desire to gain access to Ministers, to influence policy, to be considered for an honour or to receive preference in selection for some public position. Ideally, the level would be set just low enough to provide a cushion of comfort before concern would actually arise.

**4.33** We acknowledge that the selection of a figure which satisfies the above criterion is somewhat arbitrary and a matter of judgement. The conclusion to which the Committee has come is that £5,000 is the best figure that can be chosen. It happens to be the figure which the Political Honours Scrutiny Committee has for some time treated as a useful benchmark<sup>7</sup> and is also the figure which seems appropriate to four of the political parties (as mentioned in paragraph 4.31 above).

**4.34** As regards a donation made to a party constituency organisation, the position is rather different. In a general election the amount which a candidate can lawfully expend on constituency election expenses is in the order of £8,000 (see paragraph 10.5 of this report). Hence, a donation of (say) £4,500 to a party constituency organisation is a very significant

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<sup>7</sup> Written submission to this Committee from the Ceremonial Officer, para 12, February 1998.

contribution, representing as it does 50 per cent of the permissible statutory limit. Transparency, in our view, demands disclosure of such a donation on account of its scale in relation to the statutory ceiling. Indeed, we consider that the disclosure threshold for constituency donations should be set at the much lower figure of £1,000. The same limit should also apply to donations to regional organisations of political parties.

**4.35** In proposing this £1,000 disclosure threshold we have had in mind, first, that local and regional party organisations may (depending upon how they operate, and the resources at their disposal) have many bills to pay each year (for premises, agent's salary, for example) which add up to far more than the general election constituency spending ceiling of about £8,000. That might argue for a disclosure threshold of £5,000. However, we are conscious that although individual local party organisations are unlikely to exert influence on central government policy, they may well be influential in relation to decisions made by local authorities about such matters as the award of contracts or whether to grant planning permission. (The Committee received much evidence about this for its third report, into standards of conduct in local government.<sup>8</sup>) Our proposed £1,000 disclosure threshold is intended to avoid any likelihood of improper influence being successfully sought over such local decisions.

**4.36** We have recorded in paragraph 4.27 (b) above the view of the Conservative Party that it would be sufficient to require publication of the names of donors who give more than £5,000 to a political party but that publication of the amounts given is not required. We cannot agree. If, as we strongly believe, transparency and openness are the end to be achieved so as to dispel public disquiet, this goal cannot be achieved by partial disclosure. The difference between a donation of £5,000 and a donation of £1 million is vast and the implications of the two donations differ fundamentally. Quite different questions tend to be asked in relation to a donor who has given £1 million. So we are firmly of the opinion that the public needs to know both the name of the donor and the precise amount given.

**4.37** As regards the Conservative Party's tentative proposal of a Political Donations Institute (as summarised in paragraph 4.27(b) above), we were unconvinced. It appears to the Committee to be a vehicle designed to preserve the possibility of large anonymous donations into an era in which transparency will have become the guiding principle. Transparency and secrecy cannot live side by side. We deal with this further in paragraph 4.68 below.

**4.38** In paragraph 4.25 above we noted that if all donations of £5,000 and above have to be disclosed this may cause donors to abstain from giving large donations and lead to the impoverishment of the political parties. As we have said, nobody can confidently predict what the effect of the disclosure requirement would be. The general opinion appeared to be that it is bound to have an inhibiting effect on donors. It seems virtually certain that some will cease to give. However, there is the experience of the Labour Party which has recently been publishing annually the names of those who have given £5,000 or more, and the numbers have been increasing. It is true that the amounts given have not been published; so the precedent is not directly applicable to a regime under which both name and amount will be published.

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<sup>8</sup> *Third Report of the Committee on Standards in Public Life, July 1997, Cm 3702.*

**4.39** The conclusion which the Committee has reached is that the need for transparency is so compelling that the risk will have to be taken that there will be fewer large donations, at least in the early years of the new system. After an adjustment period, it is perfectly possible that donors (or a sufficient number of them) will come forward and make large donations to political parties without being deterred by the publicity requirement. If, however, the optimistic predictions are falsified and if indeed the parties become too poor to carry out their essential roles, the topic will have to be reviewed and careful consideration would have to be given to a measure of state funding.

*R1 Donations to the funds of political parties from one source which total £5,000 or more in one year must be publicly disclosed.*

*R2 Donations to party constituency organisations or to regional organisations of political parties from one source which total £1,000 or more in one year must be publicly disclosed.*

### The machinery for achieving transparency

**4.40** Having decided the broad policy question we turn now to the many subordinate issues which have to be addressed if the necessary degree of transparency is to be achieved.

**4.41** The following points will be discussed in this section:

- (1) publication of annual accounts of income and expenditure of political parties;
- (2) the definition of a donation;
- (3) the information about a donation which must be publicly disclosed;
- (4) anonymous donations;
- (5) persons or bodies responsible for reporting or disclosing;
- (6) time limits for disclosure;
- (7) enforcement and penalties;
- (8) discrimination against donors;
- (9) the problem of evasion;
- (10) exceptions to the general duty to disclose.

### *(1) Publication of annual accounts of income and expenditure of political parties*

**4.42** It appeared to be common ground between the political parties that the public should be entitled to have access to the annual accounts of income and expenditure of every political party. We believe that this should be put on a statutory basis. The accounts should be delivered to the Election Commission within three months of each year's end. For the purposes of comparison, the Commission should have power to require all the parties to account in respect of the same 12 month period, the choice presumably lying between the financial year and the calendar year, and to prescribe a standard lay-out for the accounts with prescribed headings of information to be furnished. The accounts as submitted would have to carry an auditor's certificate. The parties will no doubt continue to make their annual accounts available to the media and the public. Internet is one obvious method. The Election Commission would also be in a position to supply to any enquirer copies of the accounts of any party.

**4.43** Our recommendations for the reform of party funding have as one of their aims improving standards of probity within political parties. We are, however, concerned that reform should not entail additional hardship for parties by imposing administrative obligations which are expensive to fulfil. With this in mind, we believe that state funds should be available to political parties to meet the start-up costs (for example, purchasing computer equipment and software) of complying with new disclosure regulations. There is a precedent in the public money provided for trade union ballots in the Trade Union Act 1984.

*R3 Audited annual accounts of income and expenditure of political parties should be delivered to the Election Commission within three months of each year's end.*

*R4 The Election Commission should have power to prescribe a standard year and a standard form for such accounts.*

*R5 State funds should be made available to political parties for the purpose of meeting the start-up costs of complying with the new disclosure regulations.*

### *(2) The definition of a donation*

**4.44** This term should be given a wide definition so as to cover all means by which financial aid could be given to a political party or to candidates or Members of Parliament. It would cover cash gifts, gifts in kind, sponsorship and affiliation fees. (There should, however, be a *de minimis* exemption for money raised by, for example, the sale of tickets for 'wine and cheese' functions, coffee mornings and lunches and dinners where the tickets cost less than £50, and for raffles and jumble sales where it is unlikely that individuals will be contributing more than a few pounds at any one event.) The provision of paid employees' time and free use of equipment and facilities would all rank. So too would any

goods or services supplied at below their true cost, the gift element being the difference between true cost and the charge actually made. Loans on other than arm's length open-market terms would be presumed to be in part donations, examples being interest-free loans, loans with uncommercial rates of return and loans which revert to gifts (at the time they revert).

**4.45** As regards sponsorship, the Committee's view is that in many cases this should be regarded as simply a particular method of providing financial support for a political party. Sponsorship is nearly always inherently transparent, but it is important that the amount involved should be disclosed. Money provided by way of sponsorship may be seen by the sponsor as marketing expenditure. So far as concerns the political party which benefits, however, it does not differ intrinsically from a donation, in circumstances where the effect of the sponsorship is to replace (and so to release) funds which the party would otherwise have to or would like to spend. The fact that a sponsor may be seeking additionally to gain a commercial advantage for itself does not change the fundamental position. The arguments in favour of disclosure apply with equal force to both donations and sponsorship.<sup>9</sup>

*R6 The term 'donation' should be broadly defined and should include sponsorship and donations in kind.*

### ***(3) The information about a donation which must be publicly disclosed***

**4.46** Sufficient information must be published to make clear the identity of the donor. Full name and either home or business address would be appropriate for an individual. If the donor is a company, trade union, or other organisation, full particulars with registered address, registration number, etc. as appropriate should be furnished.

**4.47** As regards the donation itself the most straightforward provision to make is that the precise cash gift should be specified or the best possible valuation given in other cases falling with the definition proposed in paragraph 4.44 above. Some commentators have suggested that it would suffice to indicate the band within which a gift fell, e.g. between £5,000 and £10,000. In our view transparency calls for the actual facts, not approximations. No doubt, for later analysis purposes the Election Commission and others might choose to publish summaries showing the number of donations received by each party falling within particular bands. But that is a different matter.

**4.48** Further facts which should be disclosed are the date when the donation was made and whether the recipient was the central fund of the party or some sub-unit of the party such as a constituency organisation or a regional party. It would be unnecessary to notify every subsequent small gift which took the donor's total further beyond £5,000, but every subsequent increment of £1,000 should be disclosed.

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<sup>9</sup> The Labour Party said to us "The Labour Party believes that full and frank disclosure means also that the identity of large donors, including sponsors, should be disclosed." (App V, p 219, para 3.3.)

*R7 The published information concerning donations should clearly identify the donor, specify the amount of the donation or its cash value, state the date when made (or, in the case of a series of donations exceeding the statutory limit, the date of the last one) and whether made to the central funds of the party or to a constituency association etc.*

#### **(4) Anonymous donations**

**4.49** A consequence of requiring disclosure is that any donation which a party receives on an anonymous basis must be refused although we suggest a *de minimis* exclusion for anonymous donations of less than £50. To avoid abuse of the *de minimis* exception, political parties would be required to scrutinise small anonymous donations received to ensure that no pattern emerged indicating that this route was being used as a means to circumvent the disclosure requirement. We understand that some people prefer to give their money to a favoured cause without divulging their identity, but in the political arena this aspect of privacy has to cede to the public interest in the shape of openness and transparency.

*R8 Anonymous donations of £50 or more should be refused.*

#### **(5) Persons or bodies responsible for reporting or disclosing**

**4.50** In theory there are three possibilities: the obligation could be placed on the donor, or on the political party centrally, or on each sub-unit within the political party's national or regional structure.

**4.51** We exclude the donor. It would be wholly unreasonable to saddle a donor with a legal obligation to report backed by criminal sanctions. The donor should be entitled to make his gift and walk away without further obligation.

**4.52** The real choice lies between the headquarters of the political party and the unit or sub-unit which actually receives the money or money's worth. On the assumption that there will be an Election Commission (as we propose in Chapter 11 of this Report and have assumed throughout) we consider that the Commission should have a key role in disclosing to the public the information which it receives from the political parties. The Election Commission would be the central point at which all relevant information was available and which would on a regular basis publish what it had been told. It would also maintain a public register of all disclosed donations.

**4.53** On the approach outlined above the question becomes one of reporting. Clearly a political party's central office would be in a position to report to the Election Commission all donations at or above the £5,000 level which it receives. The party centrally could also be expected to maintain adequate records which would enable it to aggregate two gifts in the course of a year from 'Mr J Brown' and 'Mr John Brown' if coming from the same

source. Each party should designate a responsible officer (in practice, probably its Treasurer) who would be charged with the duty of reporting to the Election Commission.

**4.54** The real problem relates to donations made to the various sub-units of a political party. Thus, in the case of the Labour Party there is a Constituency Labour Party in all constituencies apart from Northern Ireland. There are in addition Regional Parties. The Conservatives have numerous constituency associations. Other parties have their own arrangements, but all have sub-units operating independently of the main party headquarters in London, Cardiff, Edinburgh or Belfast as the case may be. In the case of donations received by these sub-units where is the reporting obligation to lie? If the obligation is placed on the individual sub-units the Election Commission will be faced with the task of maintaining direct relationships and instituting follow-up procedures with hundreds of sub-units. But it will lack the knowledge (which is or ought to be in the possession of each party centrally) to determine whether gifts from donors with similar names should be aggregated and counted against the threshold for disclosure.

**4.55** In the opinion of the Committee the preferable course to adopt is to place the reporting obligation fairly and squarely on the shoulders of the responsible officer of each political party. It will be up to each party to ensure that its overall structural organisation is such that each sub-unit supplies to the responsible officer at the party's central office the information which is needed to enable that officer to report to the Election Commission all material data about disclosable donations. Where donations are made to a candidate or an election agent or to an MP, the obligation to notify the Election Commission would fall on that individual. As we propose in paragraph 4.44 above, there should be a *de minimis* exemption from the reporting obligation for small donations.

*R9 There should be an obligation on a political party's central office to designate a responsible officer whose duty would be to report to the Election Commission all disclosable donations received by any part of the party's organisation.*

*R10 The Election Commission should publish as soon as possible after receipt the information concerning disclosable donations reported to it by the political parties. It should also maintain a public register of all disclosed donations.*

## **(6) Time limits for disclosure**

**4.56** We have drawn attention in paragraph 4.8 above to the delay in reporting donors' names which can currently occur even under the most open system now in operation. However, disclosure loses its effectiveness if information is not made available in a timely and comprehensible manner. Piecemeal and belated disclosure of information is difficult to assess and to assemble into a coherent whole. There is, therefore, a strong argument in principle in favour of rapid public disclosure of information about donations.



**4.57** Yet it is necessary to take account of the practicalities. A very large number of sub-units of the parties are potentially involved. All these will have to supply to the central office information about disclosable donations received. There will also be possible problems both for the sub-units and centrally in setting a value on sponsorship and donations received in forms other than cash.

**4.58** In periods between elections it would, therefore, be reasonable to require the parties centrally to report quarterly to the Election Commission the relevant information concerning disclosable donations. But in the period immediately before a general election (which could be taken to run from the date when the election is announced until polling day) a much more peremptory system of reporting will have to be interposed. The information is urgently needed at that time. It may have an immediate bearing on the response of other potential donors and it may impact upon voters' intentions. In this period, therefore, there should be a recurrent obligation to furnish the best available information about disclosable donations within seven days of receipt. The formula 'best available information' is proposed because there is bound to be difficulty in the hectic pre-election days in producing absolutely comprehensive information.

**4.59** A statutory definition of 'the election period' will be required. We suggest in paragraph 4.58 above what the definition might be in the case of a general election. The definition may be more problematic in the case of elections such as those in 1999 for the European Parliament and the Scottish Parliament where it is known a long time in advance when polling day will be. We suggest that our proposed accelerated reporting arrangement might be extended to those other elections (but not to local government elections) in the light of experience with a general election.

*R11 In periods between elections each political party should report quarterly to the Election Commission the relevant information concerning disclosable donations received.*

*R12 In an election period (a term to be defined in legislation) each political party should report to the Election Commission the best available information concerning donations received within seven days of receipt.*

## **(7) Enforcement and penalties**

**4.60** We envisage that the Election Commission will have statutory powers to call for information and, where necessary, to appoint investigating officers or accountants to look into the affairs of any political party. The powers would be exercisable in cases of actual or suspected failures to comply with reporting requirements. The powers would extend to the sub-units of political parties.

**4.61** The reporting obligations of the political parties should be backed by criminal sanctions. These should be so drafted as to distinguish between inadvertent and deliberate



failure to report a disclosable donation. In the latter case those responsible could be fined or imprisoned. In both cases the court would have power to order the defaulting political party to forfeit a sum not exceeding the unreported donation. Knowingly to make a false return should also be an offence. Prosecutions would be put in the hands of the Director of Public Prosecutions and should not be the concern of the Election Commission. Private prosecutions should be allowable.

*R13 The Election Commission should have wide powers to call for information and to investigate the financial affairs of political parties.*

*R14 There should be criminal sanctions for a deliberate failure to report to the Election Commission a disclosable donation and for the supply of false information to the Commission.*

*R15 In any case of a failure to report to the Election Commission a disclosable donation (whether such failure is deliberate or inadvertent) the court should have power to order the defaulting political party to forfeit a sum not exceeding the unreported donation.*

*R16 Prosecutions should be brought by the Director of Public Prosecutions and not by the Election Commission.*

## **(8) Discrimination against donors**

**4.62** We have referred in paragraph 4.24 above to evidence which we heard of actual or anticipated reprisals against donors who were known to have given to a particular political party. It should be made a criminal offence to take intimidatory or discriminatory action against any person (whether an individual, a corporation or an organisation) in consequence of any donation made or proposed to be made by any person to any political party.

*R17 It should be made a criminal offence to take intimidatory or discriminatory action against any person or body in consequence of any donation made or proposed to be made by any person or body to any political party.*

## **(9) The problem of evasion**

**4.63** It should be made a criminal offence to attempt to evade or to render nugatory the statutory reporting requirements relating to disclosable donations. An obvious ruse for the purpose of evading the statute would be for a wealthy individual to give (say) £24,000 to a political party by procuring six friends or relatives to give £4,000 each (this sum in each

case being furnished by the wealthy individual). If these gifts were made to the central funds of the party, no reporting obligation would arise.

**4.64** Many other cases can easily be imagined. They might be difficult to detect unless leaked to the media or to a rival political party. The Election Commission should have power to investigate.

**4.65** Concern has been expressed that donors might contribute sums in excess of the disclosure threshold to organisations which are closely aligned to a particular political party (such as UNISON or Aims of Industry). The organisation might in turn send a consolidated donation to the political party. This consolidated gift would then be duly reported without the names of the individual donors appearing. All this could take place in good faith and without any deliberate intent at evasion.

**4.66** To deal with this problem there should be a statutory requirement that any person or organisation transmitting to a political party a consolidated donation of the type envisaged would have to supply to the party a list of any individual donations received at or above the disclosure threshold. The information to be provided in the list would have to cover the matters set out in paragraphs 4.46 to 4.48 above (with any necessary adaptations). Responsibility for any default would lie with the transmitting person or organisation. The political party receiving such a list would be required to include the information in its next report to the Election Commission. In the Committee's view it would be unnecessary and excessive to require the list to include the name of *every* contributor no matter how small the contribution. This could impose a massive administrative burden on a body such as a trade union.

*R18 It should be made a criminal offence to attempt to evade or render nugatory the statutory reporting requirements relating to disclosable donations.*

*R19 Any person or organisation transmitting to a political party any consolidated donation which consists of contributions received from two or more persons must supply a list of any individual donations received which are at or above the disclosure threshold.*

## **(10) Exceptions to the general duty to disclose**

**4.67** Even with a statutory prohibition against discrimination, which we recommend in paragraph 4.62 above, it is possible to imagine situations in which potential donors might entertain a reasonable fear that they or their businesses or their company's businesses would be victimised if publicity were to be given to their large donation to a particular political party. In theory at least it would be possible to put in place some system whereby a potential donor could make a confidential application to some authority (whether a court, special tribunal or the Election Commission) to obtain an exemption from the reporting requirement which would otherwise attach to the donation.

**4.68** The secrecy that would necessarily have to accompany such an application (otherwise the whole exercise is futile) is in itself objectionable in the era of transparency which we recommend. Moreover, we are not really convinced that there is a pressing need for the elaborate procedures which would be required. We did not receive any evidence of serious cases of discrimination. This matter can, we think, be left on the basis that the issue could be reviewed if evidence later comes to light which establishes that the disclosure requirements when put into operation lead with some regularity to unacceptable results.

**4.69** There is, however, a special case for an exemption from the general reporting requirement. We have already referred to the problem. It concerns Northern Ireland. The evidence of continuing risk came from several witnesses whom we heard in Belfast.<sup>10</sup> We have recorded in paragraph 4.24 above that we accepted the view put to us by these witnesses. This leads us to the conclusion that if the matter were left to us we would be in favour of a temporary exemption from the reporting requirements for donations made to political parties in Northern Ireland.

**4.70** The decision is, however, a political one which will have to be made by the Government in the light of the development of the peace process in Northern Ireland. Any exemption made should clearly be on a short-term basis only and be subject to continuing review.

*R20 The Government should consider in the context of the development of the peace process whether it would be expedient to introduce a short term and reviewable exemption from the reporting requirements in respect of donations made to political parties in Northern Ireland.*

## Blind trusts

**4.71** The evidence presented to the Committee included information about the creation, operation and closing of blind trusts that funded the private offices of the Leader of the Opposition and other members of the Opposition Front Bench during the 1992-97 Conservative Government. (As we note in paragraph 9.22 below, there seem to be earlier precedents.) The Committee understands that those blind trusts have been or are being dissolved, and that none has been created by the Conservative Party or the Liberal Democrat Party in opposition under the current government.

**4.72** The dominant feature of blind trusts is that the beneficiaries purportedly do not know who contributed to them, so eliminating a possible means of buying influence. The Committee rejects the very concept of such blind trusts as being inconsistent with the principles of openness and accountability. Moreover, there must be considerable doubt

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<sup>10</sup> Jonathan Stevenson and Tim Attwood of the Social Democratic and Labour Party; Josias Cunningham and Jack Allen of the Ulster Unionist Council; and Sir Kenneth Bloomfield, former Head of the Northern Ireland Civil Service; Lynn Sheriden of the UK Unionist Party and Dr Boyd Black of Labour in Northern Ireland (Vol 2, pp 539-68, paras 6548-954); Pat Bradley, Chief Electoral Officer (Vol 2, p 590, paras 7162-3). Lord Alderdice of the Alliance Party took a different view (Vol 2, p 575-6, paras 7044-51).

whether they ensure anonymity. While we do not impugn the integrity of those who administer such funds, the cynical will always be ready to conclude that a donor can easily let it be known to the beneficiary that he or she has made a substantial contribution to the relevant blind trust. Accordingly, the Committee recommends that blind trusts should be prohibited.

*R21 Blind trusts should be prohibited as a mechanism for funding political parties, party leaders or their offices, Members of Parliament or parliamentary candidates.*

## Open trusts

**4.73** None the less, we recognise that there is a significant cost involved in setting up and running opposition party leaders' offices and the offices of appointed frontbench spokespersons. We refer to this in Chapter 9 (Financing Political Parties in Parliament) where we propose an extension of 'Short' money. We see no objection to opposition parties' setting up open trusts as a mechanism for funding such offices. There may also be circumstances rendering it convenient to establish an open trust in favour of a Member of Parliament or a candidate. Donations to all such trusts would have to be disclosed in accordance with the recommendations in this chapter, and would also fall to be entered in the House of Commons Register of Members' Interests. The obligation to report to the Election Commission should be placed on the trustees.

*R22 Open trusts designed to fund party leaders or their offices, Members of Parliament or parliamentary candidates should be permitted but on condition that the trustees are bound to report to the Election Commission any donations which would be disclosable if made to a political party. The recommendations made earlier in this chapter should apply with appropriate modifications.*

## Other donations

**4.74** There may be circumstances in which donations are made to individuals or groups within a political party in order for them to campaign within the party or publicly on a particular issue or issues. The principles of openness which we set out in the preceding chapters should apply equally to such donations.

**4.75** Although it might be argued that the funding of campaigns which are purely internal to a political party should be a matter for the parties themselves and not subject to external regulation, we are not persuaded by this argument. We take this view for three main reasons. First, to draw a distinction between general donations to a political party or to individuals within political parties and donations earmarked for specific campaigns within the party would be administratively complicated and would provide a potential avenue for circumventing our preceding recommendations on disclosure. Secondly, it is appropriate, in

the emerging culture of transparency, to require all political donations, irrespective of the purpose for which they are given, to be subject to regulation. Thirdly, the result of any internal campaign may eventually have an impact on the relationship between a political party and the general public when it becomes the policy adopted by the party.

**4.76** Where the purpose of the donation is to enable an individual politician or group to draw public attention to an issue or issues, it seems to the Committee incontestable that transparency requires a donation of £5,000 or more to be subject to the same disclosure requirements as apply to donations to political parties.

*R23 Donations of £5,000 or more given to an individual party member or group, in connection with political activity within the party or publicly, should be made through the creation of an open trust or be subject to similar provisions and should be reported to the Election Commission.*

## FOREIGN DONATIONS

**5.1** As with Chapter 4, we are dealing here with a topic on which the Government has already declared its position. The Labour Party's 1997 *Election Manifesto* stated: "Foreign funding will be banned". At the Labour Party's Annual Conference on 30 September 1997 the Prime Minister said: "I can announce to you we are going to bring forward a Bill to ban foreign donations to political parties ..."

**5.2** Naturally, a critical question which arises in connection with such a ban is: What is a foreign donation? We consider this in some detail below, but we draw attention here to the difficulties involved in producing a general definition of the word 'foreign' and to the special problems which arise in the case of Northern Ireland (see paragraphs 5.32 to 5.41 below).

**5.3** As in the case of Chapter 4, we believe that it assists with the subsequent analysis to start by examining the arguments which are advanced for and against foreign donations. However, before setting out these arguments we give two examples of very different attitudes to the receipt of foreign donations.

**5.4** In Quebec, we encountered what is perhaps the most extreme purist position in relation to donations. The only persons entitled to contribute to the funds of a political party in Quebec are those who can vote in elections in the Province. The logic of this position is carried to the extent of banning all donations from corporations and organisations, notwithstanding the fact that they carry on business in Quebec. Naturally, there is a complete ban on foreign donations.

**5.5** At the opposite end of the spectrum stands the Republic of Ireland. By long tradition, the political parties there have been and are supported by foreign donations. This is regarded as completely in order. When legislation was enacted there recently (the Electoral Act 1997) requiring the disclosure of all donations at or above Ir£4000 and making other important changes in the law, no attempt was made to ban foreign donations. No political party would have been in favour of such a ban.

**5.6** It is relevant to note that as part of the Good Friday Agreement signed on 10 April 1998, the Irish Government stated that it would hold a referendum to amend the Constitution so that Article 2 should provide:

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.

**5.7** The referendum held in the Republic on 22 May 1998 adopted the new constitutional provision by a very large majority. It is obvious that the third sentence of Article 2 of the Constitution quoted above is fully in accord with the long tradition of overseas donations being made and accepted to support the functioning of the political parties there.

## Arguments against the imposition of a ban on foreign donations

5.8 The principal arguments against a ban on foreign donations appear to be the following:

- (1) There are a number of political parties within the United Kingdom which rely on and value contributions from those living overseas. The position is similar to that noted above in connection with the Republic of Ireland. In Cardiff, Edinburgh and Belfast the nationalist parties argued very strongly that they should not be cut off from their overseas links.
- (2) There is nothing intrinsically wrong with an overseas donation, provided that it does not come from a foreign government. Examples were brought to the attention of the Committee in which UK residents and organisations had given financial support to overseas political parties, in some cases, to be sure, to parties in countries that were not yet democracies or were emerging democracies. Thus:
  - (a) *African National Congress*  
 Sir Martin Jacomb in his evidence said: "I mention the case of the ANC. I remember meeting President Mandela here when he was seeking funds. Personally, I think that was a worthwhile and important thing to support. Those of us who did support the ANC did not have a vote there."<sup>1</sup> Mr Bill Morris, referred to in (b) below, shared this view.

### Wales

**Mr Daffyd Wigley MP, President Plaid Cymru:**

*"If it is decided that sums more than £5,000 are an appropriate threshold for transparency, clearly that transparency should be equally effective for citizens living abroad. I would not like to deny the good people of Patagonia the right to contribute to Plaid Cymru if they so wished. Unfortunately, I do not imagine that many of them are rich enough to make a large contribution. Equally, there are people who will as individuals identify with the UK without necessarily being UK citizens."* (Vol 2, p 522, para 6333)

### Scotland

**Mr Magnus Linklater, journalist**

*"The government has announced it intends to ban foreign donations and there may be an argument for barring companies based abroad from donating to Scottish party funds, since their motives in doing so would certainly be open to question. But what about individuals? It is said that Scotland's greatest export is its people and many of them have achieved great success abroad. Even second or third generation Scots retain a passionate interest in their native country. Provided donations over £5,000 were declared, why should they not help the party they believe best represents the interests of Scotland?"* (Vol 2, p 438, opening statement)

<sup>1</sup> See Volume 2 of this report, p 300, para 3619.



**Mr George Reid, Vice-Convenor for Fund Raising, The Scottish Nationalist Party**

*"If a foreign government were to offer money to the SNP – and it has not – it would be refused. But I think we have to look at what I might call the Celtic dimension on this. This is something we share in common with the SDLP in Northern Ireland. There is a Celtic diaspora, particularly strong in North America, Canada, Australia and New Zealand. In North America we have around 1,000 registered supporters of the SNP. The amount of money generated from that source at present is remarkably small, but we would not want to deny these people, many of whom hold joint nationality, the opportunity to contribute to the party in future if they so wish".*

(Vol 2, p 417, para 5055)

**Mr Mike Russell, Chief Executive, The Scottish Nationalist Party**

*"...there is a huge interest in Scotland in North America. A large number of people who are first, second or third generation removed from Scotland, have a tremendous and informed interest. It is not a wild sort of Braveheart interest, it is an informed interest in what is taking place in Scotland and these people wish to contribute. As I said in our opening statement, our Internet site is about to establish a secure server that will permit donations to be made directly to the party. In all these circumstances, providing they meet with the regulations we are talking about, I see no reason why they should not be allowed to participate".*

(Vol 2, p 418, para 5057)

### **Northern Ireland**

**Mr Tim Attwood, Director of Organisation and Development Social Democratic and Labour Party**

*"The Irish diaspora is a very important issue for this island. It is something we are very proud of, in terms of developing linkages across the world. There is a synergy between the Irish community wherever it is – in Australia or America. The Ireland Fund has linkages throughout the world that support charities throughout this island. We want to see those networks developed in a positive and proactive way, not only in terms of economic regeneration and inward investment but political support for parties such as our own. All the main parties on this island – including Fianna Fail and Fianna Gael in the South – have developed networks in North America. We want to see equality between ourselves and other Irish parties in the South".* (Vol 2, p 542, para 6590)

(b) *The Gibraltar Labour Party and the Australian Labour Party*

The Committee was told by Mr. Bill Morris, Union Chair, National Trade Union and Labour Party Liaison Committee, that the Transport and General Workers Union had supported not only the ANC, but also the Gibraltar Labour Party and the Australian Labour Party. He saw the donations to the Gibraltar Labour Party as being something which had brought direct benefit to the TGWU's 6,000 members resident there.<sup>2</sup>

(c) *Westminster Foundation for Democracy*

This organisation is funded mainly by the Government and was established as recently as 1992. It is administered jointly by the three

<sup>2</sup> Vol 2, p 314, para 3822; p 315, para 3836; p 318, paras 3878-9.



major political parties in the United Kingdom. The Foundation makes grants on a regular basis and some of these have been made in favour of, for example, political parties in the newly emerging democracies.<sup>3</sup>

- (3) The impact of foreign donations has been exaggerated. It is claimed that the amounts involved – mainly to the Conservative Party and the nationalist parties – have not been large in scale and they have had no discernible effect on the formulation of policy by those in government or by those in opposition. Thus, Dr Guy Goodwin-Gill, Rubin Director of Research, Institute of European Studies at Oxford, stated:

The impact of foreign donations, it seems to me, is greatly over-estimated, and if there is a concern it could be most easily met by what I have argued for in general terms, namely, transparency and disclosure.<sup>4</sup>

In similar vein, Dr Michael Pinto-Duschinsky, Senior Research Fellow in Politics, Brunel University, while recognising that the Government was committed to a ban, said:

But ideally I would prefer to go down the route of disclosure rather than banning, because it seems to be that a ban brings a number of problems in its wake that had not been anticipated.<sup>5</sup>

According to this view, any fear of improper influences being brought to bear on UK politics by individuals and corporations abroad will be removed by the adoption of the disclosure recommendations made in Chapter 4 above.

- (4) It is difficult to draft a satisfactory legislative ban on foreign donations. All sorts of difficulties arise as to the persons and corporations which must be treated as foreign for this purpose. Should citizens of the European Union be regarded as foreign? Should citizens of colonies still subject to British rule be regarded as foreign? Should an overseas corporation which carries on a huge volume of business in the United Kingdom and employs many people here but without having a subsidiary company incorporated in the United Kingdom be treated as foreign? The illustrations can be multiplied. They are used to support the argument that it is not worth making the effort to produce what, on any basis, will be a contentious definition which will cause arbitrary damage to the funding of certain political parties.
- (5) At a cruder level, there is the argument that the future funding of political parties will be to some extent at risk as a result of the disclosure requirements called for in Chapter 4. As we have recognised, nobody knows what their precise

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<sup>3</sup> The 1996-97 Annual Report of the Westminster Foundation for Democracy, at p 25, lists grants for the support of the Liberal Party of Bosnia & Herzegovina totalling £27,406 and the 1997-98 Annual Report at p 29 lists a grant of some £3,200 for "Training for the Hungarian Socialist Party".

<sup>4</sup> Vol 2, p 270, para 3284.

<sup>5</sup> Vol 2, p 73, para 838.

effect will be. This is not the moment, so runs the argument, to introduce a further legislative restriction on the ability of political parties to secure adequate funding. If, as is the case with the two largest political parties, a political party elects, of its own motion, not to accept foreign donations, that is entirely within its own prerogative. But this view should not be compulsorily inflicted on all other political parties which may have different traditions and different needs.

- (6) Finally, there is the argument about special cases. To take two examples. First, there are the residents of the Channel Islands, Isle of Man and other territories (such as Bermuda and Gibraltar) which come under the ultimate sovereignty of the United Kingdom. Such residents, it may be said, have a direct interest in political developments here. Second, there is the difficulty that could be caused for a future cross-border party in Europe wishing to give financial help to its candidates in the United Kingdom in a European election.

### Arguments in favour of a ban on foreign donations

**5.9** The arguments in favour of a ban include the following:

- (1) The political parties are involved in the democratic process taking place within the United Kingdom. In particular, the parties have to submit their proposed policies to the electorate by manifestos and the governing party is chosen by popular vote. The political parties should, therefore, be confined to seeking financial support from those entitled to vote for them, subject to reasonable extensions to include UK registered companies and UK organisations and trusts. Put in its simplest form the argument is: what happens here is the concern of those who live and work here and the political parties should not be entitled to fill their coffers with donations from abroad, made by persons and corporations who have no genuine stake in the country.
- (2) Disclosure is not enough. This would merely bring to light the extent to which a political party was in receipt of foreign donations. In theory, at least, it could be the case that foreign donations could account for 50 per cent or more of the funds of some new political party. This would be highly undesirable.
- (3) Such difficulties as there may be with the legislative definition of a ban must be tackled, and the best solution possible produced. Drafting difficulties should not stand in the way of implementing something which is perceived to be an important constitutional principle.
- (4) Clearly, there may be instances (such as those referred to in paragraph 5.8(6) above) in which it would be tempting to introduce an exception to the general ban on foreign donations so as to recognise that certain categories of overseas residents have a genuine stake in the future of this country. However, it would be difficult, if not impossible, to formulate a single principle on which exceptions could be based. Allowing donations from dependent territories would potentially

open up a substantial loophole in the prohibition of foreign donations and would be difficult to monitor. Cross-border European parties do not yet exist, and issues relating to them can be deferred until they do.

### The views of the three major parties

**5.10** The view of the Labour Party is clear from paragraph 5.1 above. Their written evidence stated:

The Labour Party proposes that political donations should not be permitted by:

- Individuals who are not ordinarily resident in this country, or who are not on an electoral register in this country
- companies, unless incorporated under the laws of this country or carrying on substantial business in this country.<sup>6</sup>

**5.11** The Conservative Party has stated that it too does not see a role for foreign donations in the political process:

Although, we have no reason to believe that any money received by a Party in the past should not have been accepted, Mr Hague has made it clear that in the future we will not accept foreign donations. No such donations have been offered or received since the General Election.<sup>7</sup>

**5.12** While not disputing the general view that action needs to be taken, the Liberal Democrat Party adopts a somewhat different approach. While it advocates that donations from foreign governments should be outlawed, it does not seek a blanket ban on foreign donations, provided there is an overall limit on donations from individuals.

Most importantly, donations from foreign governments should be illegal. Donations from non-UK citizens should be subject to the same limits as UK citizens and providing that this limit is sufficiently low (say £50,000) and is transparently given, there should not be a problem with undue influence.

If further controls were needed there could be a maximum limit (say 10 per cent) of all party income to be from non-UK sources.<sup>8</sup>

**5.13** With regard to the proposal made in the last sentence of the quotation from the Liberal Democrats' submission, we would see enormous difficulty in trying to impose a percentage limitation on how much a political party could receive from overseas over a particular period. The inflow of contributions is to a considerable extent unpredictable.

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<sup>6</sup> The Labour Party submission to the Committee, App V, p 221, para 4.3.

<sup>7</sup> The Conservative Party submission to the Committee, App V, p 238.

<sup>8</sup> The Liberal Democrat submission to the Committee, App V, p 245, para 10.

Party treasurers would have severe problems in ensuring that overseas donations came up to but did not exceed 10 per cent of an unknown total. Such a system could presumably only work by the treasurer standing back at the end of the year and looking to see whether the overseas money represented more or less than 10 per cent of the (by then) established total.

## The Committee's conclusion

**5.14** The Committee was impressed by the strength of feeling displayed by the nationalist parties in the face of a proposal that would cut them off from their funding links overseas. It is right to say that these political parties regard the funding that reaches them from abroad, not only as a useful addition to their financial resources, but, more significantly, as sustaining valuable links with what was referred to in evidence as their diaspora, that is to say, with persons who feel a continuing association with Scotland, Wales or Northern Ireland, as the case may be (often tracing these links back through several generations).

**5.15** The Scottish National Party (SNP) added a further dimension to the argument, namely, that in the election to the Scottish Parliament they will be competing with, amongst others, the Scottish Labour Party. They had little doubt that the Scottish Labour Party would receive strong financial support from south of the border. The SNP felt it would be very unfair in these circumstances if they were to be cut off from their own overseas contributors whom they regarded as the counterpart of the Labour contributors south of the border. In their opening statement at the Edinburgh hearing they said:

We are mindful of the fact that the Labour Party in Scotland in particular will (by their own admission) receive massive financial and other support from their London HQ to contest purely Scottish elections next year. It would be invidious if the SNP could not draw upon equally committed support from outside Scotland (often arising from the Scots Diaspora) and we see little difference in such support coming (at a time of globalisation) from London, Lisbon or Los Angeles.<sup>9</sup>

**5.16** We would expect, however, that parties such as the SNP, faced with a bar on foreign donations, would campaign even more vigorously for funds in other parts of the UK, which, of course, they would be fully entitled to do. We have, therefore, concluded that, at a time when the whole question of the funding of political parties is being re-examined, it is right to take the opportunity to lay down the principle that those who live, work and carry on business in the United Kingdom should be the persons exclusively entitled to support financially the operation of the political process here.

**5.17** There is, moreover, a new climate of opinion in relation to foreign donations. As noted in paragraphs 5.10 and 5.11 above, the two largest political parties in the United Kingdom are united in their determination not to accept foreign donations. All parties are agreed that donations from foreign governments or governmental agencies should be outlawed.

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<sup>9</sup> Volume 2 of this report, p 439, opening statement.

*R24 Political parties should in principle be banned from receiving foreign donations.*

## Definition of foreign donation

**5.18** We began by attempting to produce a definition of a foreign donation which would be reasonably simple to operate and free from ambiguities. The difficulty with that approach is that it is necessary to cater for all manner of exceptions. For example, the mere fact that money is received by a political party from overseas would not be within the spirit of a ban on foreign donations if, in fact, the money came from an expatriate UK citizen who happened to be working for six months in Geneva.

**5.19** This, and other similar difficulties, persuaded us that it would more constructive to approach the problem from the opposite direction and to attempt to define what was to be regarded as 'a permissible source' from which donations may be received.

*R25 Political donations should be receivable by political parties only if originating from a permissible source (as defined).*

## Permissible sources

### *Individuals*

**5.20** We begin by considering those individuals from whom the political parties should be able to receive donations. We believe that they come under two headings:

- (1) those who are registered voters in the United Kingdom; and
- (2) those who are eligible to be put on an electoral register in the United Kingdom.

**5.21** As to the distinction between (1) and (2) above, we think that a donation could be properly received from a person who was eligible to be put on the electoral register because such a person already has, under existing legislation, the right to participate in the electoral process subject to taking the additional step of securing registration.

**5.22** Categories (1) and (2) cover not only British subjects resident here, but extend to Commonwealth citizens resident here, citizens of the Republic of Ireland resident here, and citizens of the European Union resident here. The categories also include persons known as 'overseas voters'.

**5.23** The position in relation to overseas voters is summarised in a Home Office publication, issued in 1996, entitled *Keeping Your Vote When Living Abroad*. The material part of this is as follows:

*Introduction*

Many British citizens living abroad have the right to vote at parliamentary and European Parliamentary elections held in the UK. (This does not include local government elections) ...

*Who can vote?*

If you do not live in the UK you can vote in parliamentary and European Parliamentary elections if you register as an overseas elector. However, you must be a *British citizen*. You must also satisfy either of the following two sets of conditions:

**Set 1**

- Your name was previously on the electoral register for an address in the UK.
- You were living in the UK on the qualifying date for that register.
- There are no more than twenty years between the qualifying dates for the register and the register you now want to be on.

**Set 2**

- You have lived in the UK less than twenty years before the qualifying date for the register you now want to be on.
- You were too young to be on the electoral register which was based on the last qualifying date before you left.
- A parent or guardian was on that electoral register, for the address where you were living on that date.
- You are at least 18 years old, or will become 18 when the register you now want to be on is in force.

*Only British citizens can register as overseas electors. Other Commonwealth citizens or citizens of the Republic of Ireland can register and vote at UK elections only when resident in the UK.*

Each one of the above should constitute a 'permissible source'.

## *Corporations*

**5.24** So far as companies are concerned, we think the principle should be that donations may be received from them, provided that they are incorporated under domestic law. The full regime of the Companies Acts applies to such companies, and many aspects of their affairs have to be made public. It would follow that, if, for example, an American corporation had a subsidiary which was incorporated within the United Kingdom, the subsidiary could give to a political party, whereas the parent company could not. There is the possibility for evasion here, and we say more on this topic below.

**5.25** We have considered whether foreign companies should be brought within the definition of 'permissible source' if they have taken advantage of the provisions of Part XXIII of the Companies Act 1985 by registering in accordance with the requirements there laid down. One set of provisions applies to a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain.<sup>10</sup> The second set of provisions applies to a company incorporated outside Great Britain which establishes a place of business in Great Britain and registers the prescribed documents and particulars with the Registrar of Companies.<sup>11</sup> We do not consider that companies utilising these statutory provisions are in the same category as those which are incorporated here and are subject to the full statutory regime under the Acts. So we would not extend the definition of 'permissible source' to cover them.

## *Partnerships*

**5.26** Many partnerships are made up of British citizens who carry on business exclusively within the United Kingdom. Other partnerships have a wider territorial reach. Indeed, some are fully international. To fall within our concept of a 'permissible source' a partnership would have to be essentially a UK partnership with its principal sphere of operations being within the United Kingdom.

## *Trade unions and other organisations*

**5.27** Trade unions registered under UK legislation would clearly come within the definition of a 'permissible source' and so would other organisations, voluntary associations and trusts, if genuinely UK based.

## *Exclusions*

**5.28** Any person or body which did not fall within the definition of a 'permissible source' would be excluded from giving to a political party. To some extent, the Scottish and Welsh diaspora might be assisted by the provisions concerning overseas voters referred to in paragraph 5.23 above. Some who have recently left Scotland and Wales to live abroad would be able to take advantage of these provisions. But those who left more than twenty

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<sup>10</sup> Section 690A and Schedule 21A of Companies Act 1985 as amended (Branch Registration under the Eleventh Company Law Directive (89/66/EEC)).

<sup>11</sup> Section 691 and following.

years ago, and, of course, those with merely ancestral links, would fall outside the definition and could not lawfully give to any of the UK political parties.

*R26 The definition of a 'permissible source' should cover:*

*As to individuals: registered UK voters and*

*those entitled to register as UK voters*

*As to corporations: companies incorporated in the United Kingdom*

*As to partnerships: partnerships based in and having their principal sphere of operations in the United Kingdom*

*As to trade unions: trade unions registered here pursuant to statute*

*As to other organisations: organisations, voluntary associations and trusts etc. genuinely based in and having their principal sphere of operations in the United Kingdom (but excluding branches of foreign organisations of whatever character).*

### **Evasion**

**5.29** We have brought within the definition of 'permissible source' all companies incorporated in the United Kingdom. This, as we have said, would include a UK subsidiary of a foreign company. It is possible to imagine that a foreign corporation wishing to evade the underlying purpose of the provisions which we advocate might cause to be brought into being a UK subsidiary, the sole function of which would be to receive money from the foreign corporation and then channel it to the political party of its choice. This would clearly be an abuse of the system and could be met by provisions designed to ensure that, in the case of a donation from a UK subsidiary of a foreign company, that subsidiary was carrying on a genuine business within the United Kingdom and was generating income here sufficient to fund any donation made to a UK political party.

**5.30** There would, of course, also have to be a general provision along the lines of that recommended in Chapter 4, making it a criminal offence to attempt to evade or to render nugatory the statutory provisions limiting donations to those coming from 'permissible sources'. It would, for example, be a crime for an individual in the United Kingdom, who did not, himself or herself, have the resources to make a large donation, to become a mere conduit pipe through which foreign money was channeled to a particular party. The provisions would be of general application and would extend to the other bodies and entities falling within the 'permissible sources' definition.

*R27 It should be made a criminal offence to attempt to evade or render nugatory the statutory provisions which confine political parties to donations received from a 'permissible source'. A specific provision should be made to cover possible abuse by the utilisation of UK subsidiaries of foreign corporations.*



## Responsibility for ensuring donations received only from ‘permissible sources’

**5.31** We follow the approach taken in Chapter 4. This responsibility must be placed on the shoulders of the various political parties. The responsible officer (referred to in paragraph 4.51 above) when forwarding the party’s annual accounts to the Election Commission would have to certify not only that all disclosable donations had been individually listed, but that they all came from a permissible source. It would, we think, be reasonable that in so certifying the responsible officer should be able to use the formula “to the best of my knowledge, information and belief”, because it would not be right to require the responsible officer to certify something as a fact which might not be ascertainable on due inquiry. Naturally, the responsible officer would, as a condition precedent to certifying, be obliged to make due and rigorous inquiry, not only within party headquarters, but down to the various sub-units of the party referred in Chapter 4.

*R28 The responsibility for ensuring that donations are received only from a permissible source should be placed on each political party. The designated responsible officer of the party would be required to certify the position to the Election Commission annually when reporting on the donations received.*

### Northern Ireland

**5.32** In considering Northern Ireland and foreign donations, it is necessary to take account of certain matters which apply uniquely to donations in that part of the United Kingdom.

**5.33** First, it is necessary to have in mind the provisions of the Ireland Act 1949 (the 1949 Act) section 2(1). This sub-section has not been repealed and is in the following terms:

It is hereby declared that, notwithstanding that the Republic of Ireland is not part of His Majesty’s dominions, the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom or in any colony, protectorate, or United Kingdom trust territory, whether by virtue of a rule of law or of an Act of Parliament or any other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, and references in any Act of Parliament, other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, to foreigners, aliens, foreign countries, and foreign or foreign-built ships or aircraft shall be construed accordingly.

**5.34** It will be evident from the language of the above-quoted sub-section that problems might have arisen if we had sought to produce a definition on an exclusive basis conceived in terms of banning a donation if it were ‘foreign’. Nevertheless, although the letter of the sub-section does not directly read onto our definition, which is cast in terms of a ‘permissible source’, it does have implications which need to be considered in association with the following point.

**5.35** The terms of the Good Friday Agreement not only contemplated the alteration of the Republic's Constitution so as to include a new Article 2 (already quoted), but also provided for a new Article 3 expressing "the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions." Additionally, under the heading 'Constitutional Issues', the participants endorsed the various commitments made by the British and Irish Governments that they would in a new British-Irish agreement (*inter alia*):

recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

**5.36** The Good Friday Agreement further made provisions in Strands One, Two and Three for Democratic Institutions in Northern Ireland, a North/South Ministerial Council, and for other co-operative institutions.

**5.37** The third relevant feature of the situation is that there are political parties in Northern Ireland which have offices in both Belfast and Dublin. The most important of these are the SDLP and Sinn Féin. Indeed, the latter party operates politically on both sides of the border. As is well known, these parties raise funds overseas, in particular in the United States; so too does the Ulster Unionist Council.

**5.38** The impact of the matters set out in paragraphs 5.33 to 5.37 above, has a strong political dimension and raises issues which the Government will have to confront. This Committee considers that it would be very difficult, in the light of both the letter and spirit of the 1949 Act and the Good Friday Agreement, to place a ban on a citizen of the Republic of Ireland from contributing to a political party in Northern Ireland. Our view is that this should be allowed.

**5.39** Furthermore, as a practical matter (even if it were legally possible) it would be virtually impossible to halt the flow of funds from the Dublin offices of the SDLP or Sinn Féin to their Belfast offices.

**5.40** Confronted by these difficulties, it seems to the Committee that a pragmatic decision will have to be made. This would be to create a special exception expanding our 'permissible source' definition so that it would allow a citizen of the Republic of Ireland resident in the Republic to contribute to the funds of a Northern Ireland political party provided that such a citizen complied with the provisions of the Republic's Electoral Act 1997.

**5.41** We recognise that, if this special exception were to be created, there would exist the possibility of overseas donations reaching the Republic of Ireland (where there is no ban on their receipt) and then being re-routed to the North by an individual or via one of the parties' offices in Dublin or elsewhere in the Republic. We have not been able to devise anything that would prevent this other than statutory provisions which would arguably be

inconsistent with section 2 of the 1949 Act, or incompatible with the letter and spirit of the Good Friday Agreement.

*R29 In relation to donations to political parties in Northern Ireland, the definition of a 'permissible source' should also include a citizen of the Republic of Ireland resident in the Republic subject to compliance with the Republic's Electoral Act 1997.*

## Enforcement and penalties

**5.42** In essence, what we said in Chapter 4 at paragraphs 4.60 and 4.61 should apply here too with necessary modifications. Thus, the Election Commission will have statutory powers to call for information and to institute an investigation into any donation which it suspects has not come from a permissible source. If a party were to be guilty of a deliberate acceptance of a donation from a source outside the definition of a permissible source, criminal sanctions should attach to all responsible, and a sum not less than the donation should be liable to forfeiture from the party's funds; in significant cases of attempted evasion of the rules a penalty of up to ten times the overspend might be levied. A forfeiture power should also apply even if the receipt were innocent or inadvertent, although the courts would clearly take into account the degree of culpability in setting the level of forfeiture.

*R30 The Election Commission should have wide powers to call for information and to institute investigations into any suspect foreign donations received by a political party or a sub-unit.*

*R31 Criminal sanctions should attach to a deliberate acceptance of a donation from a source falling outside the definition of a permissible source. There should be a power for the court to order a defaulting political party to forfeit a sum of up to ten times the donation wrongfully accepted.*

## DONATIONS: OTHER ISSUES

**6.1** In this chapter we consider two further aspects of donations to political parties:

- (1) whether there should be a limit on donations
- (2) institutional donations from trade unions and companies

### A limit on donations?

**6.2** In our Issues and Questions consultation paper we asked whether there was a case for limiting donations to political parties in order to prevent access and influence being sold. We invited comments about enforcing such a limitation and about the effect on the formation of new political parties.

**6.3** The Liberal Democrat Party is the only one of the three main political parties to favour an annual restriction on the size of any donation by an individual or organisation. They propose a limit of £50,000. The party contends that this is necessary in order to restore the public's confidence in the political process. It would make it harder for very wealthy individuals or organisations to buy into the political process, and would make it necessary for newer political parties to have more widespread support. The Liberal Democrats concede, however, that ultimately it may prove easier to introduce and enforce expenditure limits, than to seek to control every item of income.<sup>1</sup>

**6.4** A contrary view was put to the Committee by the Conservative Party:

I think it is a very serious invasion of people's rights. I think if people and trade unions have acquired their money legitimately they should be free to spend it in a way which is legal, and I think that that is an intrusion on people's liberty to say to them "You can give your money to the local dogs home but you can't give your money in the quantity you desire to the party of your choice."<sup>2</sup>

**6.5** The Labour Party believes that public concern about the size of political donations could best be met by disclosure reforms, which would ensure transparency and remove suspicion of improper access or undue influence, allied with the party's proposal for spending limitations, which would reduce the pressure to seek large donations. The party expressed no particular view about the merits of limits on donations, although they invited us to have regard to any difficulties in enforcing such limits.<sup>3</sup>

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<sup>1</sup> Written submission to the Committee from Lord Razzall, CBE, Treasurer, the Liberal Democrat Party. See App V, p 244.

<sup>2</sup> Evidence by Lord Parkinson, Chairman, the Conservative Party, p.115. para 1369.

<sup>3</sup> Written submission to the Committee from the Labour Party, App V, p 221, 'Transparency, Participation, Equality', para 4.7.

**6.6** The Committee has been offered four arguments in favour of limits on donations:

- (1) parties receiving large donations may be so unfairly advantaged that electoral competition becomes distorted, with wealthy individuals 'buying' the outcome of an election;
- (2) parties should not be over-dependent upon a narrow income base, both to avoid apparent or real illegitimate pressures and for the practical reason that the withdrawal of a large donation could cause a party financial difficulty;
- (3) a donation limit would require parties to broaden their support base and so increase popular political involvement. This would be particularly true of newer political parties, for example the Social Democratic Party in 1981 or the Referendum Party in 1996;<sup>4</sup>
- (4) large corporate donations from organisations, businesses or trade unions which have been able to exercise (or appear to exercise) influence over public policy as a result of financial contributions should be subject to limits to mitigate any such influence.<sup>5</sup>

**6.7** We do not agree with these arguments, for the following reasons:

- (1) Individuals should have the freedom to contribute to political parties, and the parties should be free to compete for donations. That is part of a healthy democracy. We are recommending limits on the expenditure of political parties, and we believe that may tend to lessen the need for large donations.
- (2) Our recommendation for disclosure of any donation of £5,000 or more will remove illegitimate pressure, whether apparent or real, and will lessen any risk of a political party having to return a large donation. If a party becomes over-dependent on a particular source, that is its own affair, provided its dependence is a matter of public knowledge.
- (3) Our other proposals – notably for tax relief – will encourage the political parties to broaden their base of support; it is therefore unnecessary to introduce a new ban designed to produce the same result.
- (4) Our discussion of corporate donations, later in this chapter, sufficiently addresses the concerns over such donations.

**6.8** We have looked at practice overseas to see how far, and how well, limits on donations operate there. The position is described in Appendix I. Most countries which we have surveyed do not have such limits. Of those few which do, the United States of

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<sup>4</sup> Written submission to the Committee from Dr Justin Fisher, Department of Politics and Modern History, London Guildhall University.

<sup>5</sup> Written submission to the Committee from the Liberal Democrat Party. See App V, pp 244-5.

America strikes us as an example of a well-developed system which none the less suffers from frequent incidents of evasion. We would not wish to propose arrangements which could prove disproportionately cumbersome to enforce.

### *Conclusion*

**6.9** A cap on donations would prevent a party being too dependent on particular sources of income, whether individuals or institutions. Such dependence could damage the party by association, or through claims that access or influence to politicians was being bought, or if the source were to dry up suddenly.

**6.10** However, if there were such a cap, say of £50,000 as proposed by the Liberal Democrat Party, the individual or company wanting to give more might consider that the cap infringed a basic right and there would be a strong temptation to seek to evade the limit, perhaps by spreading resources amongst friends and relations or by setting up subsidiary companies in order to legitimise any donation by sub-dividing it. There would be no easy way to detect such a stratagem, nor to enforce the cap. In our view, the panoply of rules and bureaucracy which we believe would be required to enforce such a system would not be justified by the purpose of the cap.

**6.11** Accordingly, we do not recommend that a limit should be introduced on the amount which an individual or an institution may contribute to a political party. We believe that our proposals for disclosure of donations (in Chapter 4) and for limits on campaign expenditure (in Chapter 10), taken together, should remove the need for any cap on donations. These recommendations bring into the open and lay out for public scrutiny every donation of £5,000 and above, and should effectively contain the 'arms race' between the main parties, which has come to characterise the election scene and to impel the search for donations in recent years.

*R32 No limit should be introduced on the amount which an individual, company or institution may contribute to a political party.*

### **Institutional donations**

**6.12** The trade unions' constitutional position within the Labour Party has traditionally been reflected in the payment of affiliation fees. Although both companies and trade unions make donations to political parties, only trade unions have to seek consent from their members before doing so. By contrast the directors of a company have discretion whether to contribute to a political party – or an organisation with political aims – and whether to seek shareholders' consent.

**6.13** The Committee has considered whether the present arrangements for donations to political parties by trade unions allow sufficiently informed consent by the membership, and

whether shareholders should have to give their consent before political donations are made by companies.

### Trade-union political funds<sup>6</sup>

**6.14** The primary function of a trade union is to bring individual workers together to act collectively in a sector of the economy. Some trade unions carry out a secondary function by funding general political activity through a political fund. The distinction between the two functions can be a fine one: is a trade union which campaigns against a Government policy carrying out political activity or simply representing the collective interests of its members? The line has been drawn, none the less, with strict statutory provisions regulating the establishment of a political fund and the definition of political activity.

**6.15** Trade unions have been involved in politics and the lobbying of government from the mid-nineteenth century onwards – initially through support for the Chartist movement. Trade union political activity increased significantly with the establishment of the Trades Union Congress (TUC) and what would become the modern Labour Party. The Labour Party, a far more extensive political operation than the TUC, was initially funded by a compulsory levy on the members of affiliated trade unions. This aggrieved some trade union members who did not wish to fund a political party. One such trade unionist (W. V. Osborne) was heard in the *Amalgamated Society of Railway Servants v. Osborne* case of 1909.<sup>7</sup> in which he protested at the compulsory political levy collected by the trade union of which he had been a member since 1892. The House of Lords held that, having regard to the union's objects as defined by the 1871 and 1876 Trade Union Acts, the defendant trade union had acted beyond its powers in imposing a compulsory political levy on its members. The point of law involved in that case was summarised in the headnote of the report as follows:

There is nothing in the Trade Union Acts from which it can be reasonably inferred that trade unions as defined by Parliament were meant to have the power of collecting and administering funds for political purposes.

Lord Atkinson expressed the merits underlying Mr Osborne's argument as follows:

It is not disputed that up to 1903 ... members of trade unions were not on joining required to subscribe to any political creed, or submit to any political test ... It would be as unjust and oppressive as, in my view, it is illegal to compel ... a member of a trade union, who like the respondent joined in the days when freedom of action was permitted, either to contribute to the promotion of a political policy of which he might possibly disapprove, or be expelled from the union to which he belonged for so many years and forfeit all benefits from the money he had subscribed.<sup>8</sup>

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<sup>6</sup> Much of the material in paragraphs 6.14 to 6.21 and 6.23 to 6.29 is taken from Robert Blackburn, *The Electoral System in Britain*, 1995, and Martin Linton, *Money and Votes*, 1994, and Ken Coates and Tony Topham, *Trade Unions and Politics*, 1986. These sources are gratefully acknowledged.

<sup>7</sup> [1910] A.C. 87.

<sup>8</sup> [1910] A.C.87, p 105.



**6.16** The aftermath of this judgment led to demands for statutory provisions to allow trade unions to fund political activity. The Trade Union Act 1913 (the 1913 Act) subsequently defined political activity as that which benefited a political party. Trade Unions were required to make any political donations through a special political fund (section 3 of the 1913 Act). This was only to be established if a ballot of members was in favour. There was no provision for giving the members control over how the funds were to be spent. The procedure for the ballot was to be established and managed by the Registrar of Friendly Societies, subsequently known as the Certification Officer. The Registrar was also responsible for ensuring that trade unions obeyed all aspects of the legislation regarding political donations, and it was to him that any individual could complain about the maladministration of a political fund.

**6.17** Individual trade-union members were also given the right to 'contract-out' of making a contribution to the political fund (section 5 of the 1913 Act). Further provisions were made to ensure that an individual who contracted out suffered no adverse discrimination. The Trade Union Act 1927, following the 1926 General Strike, changed this provision by enacting that members had to 'contract in' to the political levy. The resultant fall in numbers contributing to trade-union political funds – a fall of over one third – led to the Trade Union Act 1946, which restored the 'contracting-out' procedure.

**6.18** Statutes relating to political donations by trade unions were not significantly changed again until the Trade Union Act 1984 (the 1984 Act), which provided for general reforms to internal trade-union democracy. The 1984 Act reformed both the means by which a trade union could seek consent before funding political activity, and the definition of that political activity.

**6.19** Procedures established by the 1984 Act included a requirement to hold a ballot every ten years to reaffirm the continuation of any political fund. In most trade unions there had been no ballot on the issue since 1913. There was a subsequent flurry of new ballots in 1985-6. Support for the continuance of political funds has been considerable: some 80 per cent of those who have voted (average turnout peaked in 1985-6 at about 50 per cent) favoured the continuance, or establishment, of a political fund. Some trade unions, however, have allowed political fund resolutions to lapse after ten years, and some funds have ceased after members voted against the resolution – for example, as members of the Civil and Public Services Association did in 1997.<sup>9</sup> The 1988 and 1990 Employment Acts further reformed the procedure for ballots, by establishing an Independent Scrutineer to ensure their free and fair operation.

**6.20** The 1984 Act also broadened and re-defined the political objects of trade unions. Trade unions had previously used the political fund only in cases where they supported individual MPs or the national party. Statute law now requires the use of the political fund for any political activity which could influence the vote for or against a party (for example, campaigns against individual policies). This was a significant reform as, for example, prior to the 1983 general election NALGO had opposed government policy without establishing a political fund. Further, trade unions have to use the political fund for any expenses incurred in providing donations in kind (such as the provision of property or equipment).

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<sup>9</sup> Ewing, *The Funding of Political Parties in Britain, 1987*, the *Annual Reports of the Certification Officer 1992-1997* and the written submission to the Committee from the Labour Party, Background Briefing, App V, p 226, para 7.4.



**6.21** The Trade Union and Labour Relations (Consolidation) Act 1992 consolidated the previous decade's wide range of trade-union and employment legislation. Clearer guidelines were provided about the process of 'contracting-out' of the political levy, with a clarification of the roles and powers of the Certification Officer (who regulates the operation of political funds) and the Independent Scrutineer (who regulates the operation of trade-union ballots). Trade unions have to make an annual financial statement, which includes an account of the political fund, to the Certification Officer, who has published an annual report every year since 1992.

**6.22** In 1996, 42 trade unions maintained political funds, to which 4.9 million members contributed. Some 875,000 members, or 18 per cent, contracted out.<sup>10</sup> In their written submission to us, the Labour Party mentioned that only 3.5 million trade unionists paid an affiliation fee.<sup>11</sup> This is because only 26 trade unions were affiliated to the Labour Party in 1996, and only 44 per cent of the expenditure from all political funds went to the Labour Party in the form of affiliation fees.<sup>12</sup> The remainder was spent on lobbying activities or on general political advertising as defined by the 1984 Act, much of which is likely to support the Labour Party.

**6.23** We have received no evidence to suggest that the legislation is not working satisfactorily, and no case has been made out for any reform. We do not propose any change in the law in this respect.

*R33 No change should be made in the law relating to trade unions and their political funds.*

## Political donations by companies

**6.24** The Companies Act 1967 (the 1967 Act)<sup>13</sup> imposes a duty on companies to declare (via the directors' report) any political donations above a certain threshold. Initially the threshold was set at £50, but it was increased to £200 by statutory instrument in 1980.<sup>14</sup> The declaration requirement applies only to monetary donations. It does not apply to donations in kind (for example, the provision of property or equipment) nor to favourable rates on business transactions or loans. It is the only explicit regulation regarding corporate donations to political parties.

**6.25** Monetary political donations greater than £200 must be declared in full and published in the company's directors' report. Small companies are not required to file such reports. Directors' reports of companies which do have to file them are open to scrutiny by shareholders, and the public, but there is no central record of the companies that give

<sup>10</sup> *Annual Report of the Certification Officer, 1997.*

<sup>11</sup> Written submission to the Committee from the Labour Party, Background Briefing, 3, App V, p 229, para 3.2.

<sup>12</sup> Written submission to the Committee from the Labour Party, Background Briefing, App V, p 228, para 2.3; *Annual Report of the Certification Officer, 1997.*

<sup>13</sup> The 1967 Act implemented proposals in the *Report of the Company Law Committee of the Board of Trade*, presented to Parliament in June 1962.

<sup>14</sup> SI 1980/1055.

political donations. That information is held in the reports of over one million registered UK companies. (The extent of political donations set out in these reports has, however, been compiled in part by various organisations, most notably by Pensions and Investment Research Consultants (p IRC), the Labour Research Department<sup>15</sup> and some Internet sites.) Our recommendation (Chapter 4) that any donation at or above £5,000 should be disclosed to the Election Commission, which would subsequently publish all details, will make obsolete this time-consuming compilation for the most significant of company donations. Aggregate donations of less than £5,000 in a year will not be recorded by the Election Commission, and we believe it should be at the discretion of the monitoring bodies involved whether they wish to undertake the task of recording such donations.

**6.26** Company law places the responsibility for all financial decisions ultimately on the Board of Directors, and their authority in acting for the good of the company is usually enough to justify a political donation. Further, the Board of Directors generally has discretion to delegate any decision-making power. The establishment of a company, however, involves drawing up a Memorandum and Articles of Association which state the objects of the company. These must be clearly set out and made public. The Board of Directors is bound by their contents.

**6.27** If the Board of Directors, or indeed any individual director, acts outside the terms of the Memorandum and Articles of Association, the issue can be taken to court by the company, a shareholder or even a member of the public. The 1983 case of *Simmonds v. Heffer and Others*<sup>16</sup> concerned an £80,000 donation from the League Against Cruel Sports to the Labour Party prior to the 1979 General Election. The donation was in fact £50,000 directly for the Labour Party and £30,000 for specific activity related to animal welfare. The former was declared by the courts to be beyond the powers conferred by the Memorandum and Articles of Association of the League Against Cruel Sports, a non-profit-making limited company. The absence of any other cases may be because Memoranda and Articles of Association are usually sufficiently broad to enable political donations to be made legally.

**6.28** Discussion about the legality of corporate political donations has encouraged some companies to change their Memorandum and Articles of Association to include explicit objects authorising the making of political donations. A recent PIRC report<sup>17</sup> identified 42 companies which made political donations in 1996-97, of which 24 per cent had explicit authority within their Memorandum and Articles of Association to make a political donation. The Memorandum and Articles of Association can be amended through a special resolution at the annual general meeting (AGM), for example to require the Board of Directors to ballot shareholders before making political donations. This kind of action is rare, as is any direct challenge to the authority of the Board of Directors.

**6.29** In many companies the ordinary shareholders have little voting strength in comparison with the large institutional shareholders such as pension funds. So it may be

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<sup>15</sup> The Labour Research Department (LRD) is a primarily trade-union funded organisation with around 2,000 affiliates, including 55 national unions representing more than 99 per cent of TUC-affiliated membership. The LRD has no connection with Labour Party. Volume 2 of this report, p 60, opening statement.

<sup>16</sup> [1983] BCLC 298.

<sup>17</sup> *Trends in Political Donations and Shareholder Authorisation*, March 1998, PIRC.

difficult for them to bring about a change in the Articles or in the Board's policy. If a shareholder objects to a political donation his only recourse may be to sell his or her shareholding.

**6.30** Although Boards of Directors are generally not required to seek shareholder approval before making a political donation, some companies now regard it as good practice to do so. Nevertheless, there are no established procedures or rules. Resolutions may be subject to a show of hands or card vote at the AGM or to a postal ballot. The form of resolutions ranges from authorisation for a specific donation to the granting of powers to the Board of Directors to make political donations for the next 3-5 years. The declared votes against political donations have ranged from 6 per cent to 48 per cent, which is significant considering that resolutions at AGMs are carried by an average 98 per cent approval for actions of the Board of Directors.<sup>18</sup>

### Extent of institutional donations

**6.31** In the mid-1980s trade unions provided around 80 per cent of the Labour Party's £5.8 million a year income. By 1996 that proportion had fallen to 35 per cent of the Party's £21 million income,<sup>19</sup> although in absolute terms it had risen from £4.64 million to £7.35 million. It is not so much that trade unions are giving less but that companies are now contributing more to the Labour Party than they used to do. According to the Labour Research Department (LRD) in 1995–96 the Caparo Group gave Labour £47,000, GLC Ltd gave £30,000, and Mirror Group £21,000, while the Political Animal Lobby gave £125,000. Some companies (Pearson, Sun Life, Tate & Lyle) made donations both to Labour and the Conservatives. The LRD told us that in the mid 1980s they would expect to find some 50 per cent of Conservative Party income coming from corporate sources, whereas now the party admits the figure is down to 20 per cent.<sup>20</sup>

#### *Sir Neil Shaw, Chairman, Tate & Lyle*

*"We did not make any donation in 1997 to any political party ... In the previous two years we had ... made donations to all three parties."* (Vol 2, p 129, para 1510.)

#### *Sir Stanley Kalms, Chairman, Dixons Group plc*

*"I have been persuaded by the argument that shareholders who represent a mixed range of views might feel that their views are not represented by a political donation. I have felt up to now that as a steward of my company it was correct to support a political party whose objectives were in the interests of the corporation ... But times move on and with more political awareness by our shareholders and by the institutions I think that phase has passed, so we will no longer make political donations."* (Vol 2, p 31, para 330.)

<sup>18</sup> *Trends in Political Donations and Shareholder Authorisation*, March 1998, PIRC, p 8, para 2.16.

<sup>19</sup> David Hencke, *The Guardian*, 7 September 1996 and Labour Party Annual Reports.

<sup>20</sup> Labour Research Department, Volume 2 of this report, p 60, opening statement.

## The consent of shareholders

**6.32** The Committee wants to ensure first that information about significant donations to political parties by trade unions or companies is publicly available. That objective will be achieved by our general recommendations about disclosure in Chapter 4. Secondly, we want to be satisfied that arrangements exist to confer the authority of trade-union members and company shareholders on expenditure by institutions for political purposes.

**6.33** As we have said above, our view is that the reforms introduced by the 1984 Act are sufficient to secure the assent of trade-union members for donations to political parties. In particular, we support the long-standing arrangements which enable dissenting members to contract out of making contributions. We have considered whether the 10-year interval between ballots about a political fund is too long, but we conclude that the system has settled down well and works satisfactorily.

**6.34** We are less supportive of the present arrangements for company donations. It does not seem satisfactory, in the new era of transparency which we advocate, that companies should have no obligation to obtain shareholders' consent for donations to political parties. In our view, it is time that the obligations on companies were put on a footing comparable with that to which the trade unions have become accustomed. We propose that a company wishing to make a donation to a political party should have to have the prior authority of the shareholders. It would not be necessary to seek such authority annually or before making each donation. A general prior authority would be sufficient, subject to renewal at reasonable intervals, which we suggest should be every four years. We choose that period because it corresponds to the average length of a Parliament. The principle should extend to donations to political organisations other than political parties and to other forms of financial benefits made available to political parties: free services, interest free loans, sponsorship and so forth. The authority granted should specify an upper limit for donations.

**6.35** We recognise that this will still leave a dissenting shareholder with no real remedy other than the sale of his or her shares, but at least such a shareholder will have had an opportunity to vote specifically on the matter, and the company will be more accountable for any political action which it takes in the name of the shareholders.

*R34 Legislative provision should be made to require any company intending to make a donation (whether in cash or in kind, and including any sponsorship, or loans or transactions at a favourable rate) to a political party or organisation to have the prior authority of its shareholders. This authority could be in the form of a broad enabling power, valid for no longer than four years, and typically conferred by a resolution passed at an annual general meeting giving the board of directors discretion about the making of such donations up to a prescribed limit.*

**6.36** We are conscious that this recommendation will, if implemented, seem to put a greater onus on companies wishing to make donations than on trade unions setting up political funds. A distinction has to be drawn, however, between the bureaucracy involved in holding a ballot of trade-union members, and the adding of a single question to the

agenda of an AGM. In any event, trade unions normally have annual conferences which give any member or group of members an opportunity to table motions about any aspect of the use of political funds.

**6.37** It was put to us that dissenting shareholders ought to have some sort of rebate, or augmented dividend. We invited some witnesses with long business experience to give us their view of that proposition. They confirmed our impression that there would be considerable complications in administering any kind of rebate scheme.<sup>21</sup> We have not considered this idea further.

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<sup>21</sup> Sir Neil Shaw, Volume 2, p 132, paras 1540-1; Sir Martin Jacomb, Volume 2, p 302, para 3647.

## PUBLIC FUNDING OF POLITICAL PARTIES

### Background

**7.1** We have already stated our belief that political parties perform functions that are crucial to our parliamentary democracy.<sup>1</sup> In order that they should be able to perform those functions properly, clearly they must be properly funded. By this we mean both that they should have sufficient funds and that the funds should come from appropriate sources. In this chapter we consider the issue which has, hitherto, been at the centre of the debate on the funding of political parties,<sup>2</sup> namely, whether public funding should provide an alternative, or supplement, to private donations to political parties.

**7.2** At present, the limited public subsidy of political parties is either directed to their role in the electoral process or, for those parties successful in the polls in a general election, to their role in the parliamentary process. There is no public funding of political parties for activities other than those related to campaigning or to opposition in Parliament.<sup>3</sup>

**7.3** When considering the arguments for and against public funding of political parties, we believe it is important to distinguish between the different purposes for which the funding is or might be provided. Our support for public funding for one purpose is by no means an indicator of our support for public funding for other purposes. In particular, we believe that a distinction should be drawn between state assistance for those activities undertaken by political parties outside Parliament and those undertaken within Parliament. This chapter is concerned only with the former; in Chapter 9 we shall consider the less controversial issue of the reform of the system of public funding of opposition parties in Parliament.

### Present state assistance to political parties for activities outside Parliament

**7.4** Candidates (including independent candidates) at a parliamentary election or an election to the European Parliament are entitled to free postage for one election communication to every address or elector within the constituency.<sup>4</sup> Each candidate at a parliamentary election, an election to the European Parliament or a local government election is entitled “for the purpose of holding public meetings in furtherance of his candidature” to free rooms in school premises or any other meeting room maintained by public funds.<sup>5</sup> Whilst the provision of free postage is a significant subsidy (the cost of providing the service at the 1997 general election was £20.5 million), the decline in the practice of holding election meetings has greatly reduced the value of free rooms.

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<sup>1</sup> See para 2.1 above

<sup>2</sup> The importance of this issue in the past is illustrated by the terms of reference of the Houghton Committee, set up in 1975, which began: “To consider whether, in the interests of Parliamentary democracy, provision should be made from public funds to assist political parties in carrying out their functions outside Parliament ...”.

<sup>3</sup> The parties are conventionally allowed free broadcasting time at times other than in election periods, but this does not constitute a genuine example of state aid. The time is provided at no cost to the public purse.

<sup>4</sup> Representation of the People Act (RPA) 1983, s91(1) as amended. The entitlement does not extend to local elections.

<sup>5</sup> RPA 1983, s95(1).

**7.5** Political broadcasts are sometimes presented as the most significant form of indirect state assistance, although, as noted under paragraph 7.2 (fn.3) above, the cost of the air-time is not paid for out of public funds. Issues in relation to political broadcasts are considered in detail in Chapter 13 below.

**7.6** We have received no evidence that challenges the present forms of state benefits-in-kind to political parties. Indeed, we believe that they provide a valuable underpinning to the democratic process. For this reason we propose that they should be continued and, further, we would support their extension to elections to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. Consideration will also have to be given to the requirements of London and other elections.

*R35 The provision of free postage (for parliamentary and European elections) and free meeting rooms (for parliamentary, European and local elections) should be continued and be extended to elections to the Scottish Parliament, to the National Assembly for Wales and to the new Northern Ireland Assembly.*

### The views of the political parties on public funding

**7.7** Whereas the Labour Party and the Conservative Party each take the view that there should be no radical departure from the small-scale state funding that is already provided to political parties, the Liberal Democrat Party advocates state provision of core funding.

**7.8** The Labour Party's reasons are practical: in its written submission to this Committee, the Labour Party acknowledged that "there is a case in principle for various forms of state aid", but conceded that "at a time of fiscal prudence ... the needs of political parties are not the greatest priority in terms of public expenditure".<sup>6</sup>

**7.9** Accordingly, the Labour Party today, in contrast to proposals made by the Labour Party to the Home Affairs Committee in 1993, does not advocate an annual subvention to the political parties or reimbursement of election expenses, but proposes only extending the present financial assistance to the opposition parties in Parliament and introducing state aid to assist the parties in their role in citizenship education.

**7.10** The Conservative Party's opposition, by contrast, is more fundamental:

*Forcing taxpayers to contribute to costs of Party political activities of which they do not approve would be a very significant step. It could only be justified if it were believed that it would otherwise be impossible for political parties to operate effectively. We do not believe that this is currently the case and nor do we believe that the public would be prepared to support such expenditure.<sup>7</sup>*

<sup>6</sup> Written submission to the Committee from the Labour Party, App V, p 222, 'Transparency, Participation, Equality', para 5.1.

<sup>7</sup> Written submission to the Committee from the Conservative Party, App V, p 241.



**7.11** Taking the opposite line to the two main political parties, the Liberal Democrats propose a scheme for substantial state funding. They argue that the measures they advocate to control party finances, such as disclosure and contribution limits, would limit a party's ability to raise funds privately. Therefore, they argue, the state should make an annual contribution of £2 million to each party that had gained at least 5 per cent of the vote in a general election, with a further £10 million a year distributed in proportion to the votes cast at the last general election.<sup>8</sup>

**7.12** Plaid Cymru favoured some state aid by way of tax credits, along with an increase in the provision of money paid to opposition parties in Parliament under the Short money scheme.<sup>9</sup> The Scottish National Party, not unlike the Conservative Party, stressed the importance of funding as a participative activity, to be undertaken by the membership, but conceded that there was a case for extending Short money to the Scottish Parliament and for research institutes undertaking activities like those of the *Stiftungen* in Germany.

**7.13** Of the political parties in Northern Ireland, the Social Democratic and Labour Party strongly supported state funding; they urged an extension of state funding for the party's work in political education and research and policy development. The Ulster Unionist Council was, in principle, against state funding on the ground that a party, if popular, should be able to attract funding. However, it conceded that some sort of funding would be appropriate in the context of the establishment of the Northern Ireland Assembly. The UK Unionist Party, although in its original submission against state funding, when giving evidence favoured some state funding of opposition parties to finance research and policy development. Lord Alderdice, of the Alliance Party, argued in favour of more state funding in support of the parliamentary functions of a political party rather than funding the political party itself.

### The arguments for and against state aid

**7.14** In Chapter 3 we gave an overview of the present financial circumstances of the main political parties. We have concluded in Chapters 4 and 5 that, although we could not be certain, it was likely that some of our recommendations would inhibit the parties' ability to raise funds and result in additional pressures on the finances of political parties which were already under strain.

**7.15** We now turn, therefore, to consider whether political parties should be given additional financial help by the state in the form of general subventions.

### *Arguments in favour of increased public funding*

**7.16** The principal argument in favour of increasing the amount of public funding going into political parties is that it would 'purify' the political process. If there were state funding on a substantial scale, the parties would no longer be reliant upon large donors and, being no

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<sup>8</sup> Written submission to the Committee from the Liberal Democrat Party, App V, p 247, para 23.

<sup>9</sup> Described in Chap 9.



longer reliant upon them, would be immune – and would be seen to be immune – from any temptation to grant them privileged access to top politicians or unwarranted influence over policy, contracts or honours. Most of those to whom we spoke in Canada, Germany and Sweden considered that, whatever the disadvantages of state aid, the provision of it had had the effect in their country of making the political process substantially cleaner than it would otherwise have been. In this country, there has been substantial criticism that the Labour Party has been over-reliant on the trade unions (and, more recently, on large individual donors) and that the Conservatives have been over-reliant on ‘big business’ (and also, more recently, on large individual donors).

**7.17** Another argument in favour of increased state funding for the parties is that additional state aid would enable them to perform their essential functions more fully and effectively. In his evidence to the Committee, Mr Martin Linton MP maintained that “the parties are caught in a vice between falling incomes from traditional sources [and the] rising costs of campaigning and the demand for more sophisticated policy research”.<sup>10</sup> He warned that, without reform, we might see the development of either ‘a slum democracy’, in which the parties would be poorly staffed and unable to prepare themselves adequately for the task of running the country, or ‘a sleaze democracy’, in which the parties were “forced into an unhealthy reliance on funding from private individuals”.<sup>11</sup> Some of those to whom we spoke also argued that increased state aid would have the virtue of signalling to the public that political parties are valuable, indeed essential, institutions in a democratic country.

**7.18** A further argument in favour of state funding – or at least of one form of it – is that, paradoxically, state aid can be used as a means of increasing the involvement of private individuals in the political parties and in the financing of them. A number of countries, including Germany and the United States, use systems of ‘matching funding’ under which citizens are encouraged to give money to the parties in the knowledge that their individual contributions will be wholly or partly matched by the state or, alternatively, in which the parties themselves are given an incentive to raise money in the knowledge that whatever they raise will be wholly or partially matched by the state.

### *Arguments against increased public funding*

**7.19** The most straightforward argument of principle against state aid is that taxpayers should not be compelled to contribute to the support of political parties with whose outlook and policies they strongly disagree. This was a view expressed by the Conservative Party in its written evidence to the Committee (to be contrasted with the Conservatives’ support, in the same written evidence, for the idea that both sides in referendum campaigns should receive ‘core funding’). The strength of this argument of principle would be all the greater if, for example, racist or explicitly anti-democratic parties became eligible for state funding.

**7.20** Another argument against state funding is the often expressed fear that it could cause an existing party system – any existing party system – to ossify, with the existing parties handsomely supported out of the public purse but with new parties finding that they

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<sup>10</sup> Volume 2 of this report, p 59, opening statement.

<sup>11</sup> Written submission to the Committee from Mr Martin Linton MP, 27 February 1998, p 10.

had to struggle hard to break in. Certainly, any system of state funding based largely or exclusively on the level of parties' support at previous elections is liable to have that effect. We were told in Sweden of one small party that was still receiving state aid even though it had ceased to be actively engaged in politics.

**7.21** A third argument against state funding raises the question of 'civic engagement', to which we referred in paragraph 2.23 above. If the political parties were to become reliant on state funding, they might be tempted – depending on the system adopted – to abandon the strenuous efforts that some of them now make to raise money at the grassroots (by means of raffles, whist drives, garden fêtes and so on). Fund-raising is one of the most common activities in which local party members engage; if they did not have to engage in it, they might become less active in the party overall. State funding also runs the risk that, since the state's money would almost inevitably be channelled through party headquarters, at whatever level, the power of party headquarters *vis-à-vis* the grassroots might be considerably increased.

**7.22** A fourth argument against increased state funding of the parties is that such a development would make the parties, in effect, part of the state. Instead of representing the citizens *vis-à-vis* the state, the parties would be tempted to represent the state *vis-à-vis* the citizens; they would, in effect, have been 'captured' by the state. At the very least, there would be the danger that that would become the public perception. On the continent of Europe, there is talk of 'cartel parties', which use state funding and the state apparatus increasingly to further their own ends rather than those of the citizens they claim to represent.

**7.23** There are two other arguments against any substantial increase in state funding. One is that the public would be unhappy about the prospect of state funding of the parties (a view unproven but almost certainly true). The other, put by the Labour Party in its evidence and mentioned above in paragraph 7.8, is that "the needs of political parties are not the greatest priority in terms of public expenditure."

## **Conclusion**

**7.24** Many of these arguments have merit, and, taken together, they are finely balanced. We can envisage circumstances in which substantially increased state funding of the political parties – including the funding of their general activities – might become an imperative. But we do not believe that that time has come yet, if it ever will. We believe that our proposals for increased disclosure, set out in Chapter 4, will go a long way to alleviate the public's doubts and suspicions about the sources of party funding. We do not consider that they are likely to reduce the level of donations significantly, while our proposals for limiting the parties' campaign spending, set out in Chapter 10, will curb the parties' need for ever-increasing financial resources. As to the suggestion that the parties are, in some general sense, under-funded, we find that suggestion somewhat implausible in view of the scale of the parties' spending at the 1997 general election. The truly poor cannot afford to put up so many billboards.

*R36 No new system should be introduced whereby the state is obliged for the indefinite future to provide financial support for the political parties.*

### *Policy development*

**7.25** All that said, there is, however, a problem. It is evident that the political parties, hard pressed to meet the mounting costs of election campaigns and also the mounting costs of their day-to-day activities, are driven to concentrate their resources on campaigning and routine administration at the expense of long-term policy development. Perhaps surprisingly, this applies almost as much to the governing party as to the opposition. Ministers become preoccupied with current crises and the sheer volume of government business. They, and the party to which they belong, find it hard to ‘think long’. The opposition parties, for their part, are also in continuous danger of being deflected from one of their principal tasks, which is to prepare for government in policy terms. The political parties themselves should be one of the major sources of ideas in British politics. They are not always so at present.

**7.26** For that reason – and although we are not in favour of public subvention of the parties’ general activities – we propose that a modest Policy Development Fund should be established to enable the parties represented in the House of Commons to fulfil better what is, after all, one of their most vital functions. The fund could be administered by an *ad hoc* body agreed upon among the parties. Failing that, it could be administered by our proposed Election Commission (though that would not be our preferred option, since the fund would not be intended for electoral purposes).

**7.27** Bearing in mind that in 1997 the three main parties appear to have spent less than £1.5 million on research, we propose that the annual amount provided for the Policy Development Fund should be in the order of £2 million, which could in future be up-rated in line with inflation. The political parties would be required not only to account in the normal way for their expenditures from the fund but to certify that the money had not been spent on such objects as routine party administration, electioneering and opinion polling.

*R37 There should be established a Policy Development Fund, initially of no more than £2 million per annum, to enable the political parties to engage more fully in policy development. The fund should be administered by a politically neutral body, to which the parties should be accountable for the monies spent.*

## TAX RELIEF

### Background

**8.1** Tax concessions for political donations are given in several countries, including the United States, Canada and Italy. Indeed, in the United Kingdom donations to political parties are already exempt from inheritance tax.<sup>1</sup>

**8.2** In Chapter 7, we considered the issue of the funding of political parties (either for general purposes or for political research) directly out of public funds. In this chapter, we look at the question of funding political parties through tax concessions, which will divert monies which would otherwise go to the Revenue. The essential difference between direct funding and funding by tax concessions is that, in the latter case, the funding results from the decisions taken by taxpayers to support the political parties and involves a contribution by the taxpayers out of taxed income.

**8.3** We begin by setting out the main systems of tax concession which could in principle be introduced.

### *Systems of tax concession*

**8.4** We have considered three models of tax concession: tax check-offs, tax credits and tax relief by deduction at source.

- The system of *tax check-offs* is used in the United States. It allows individuals to contribute \$3 of their income tax to fund presidential campaigns simply by ticking a box on their tax return. Those using the check-off facility have no say over which political party should be the beneficiary of the donation. Major party presidential nominees and convention committees receive outright grants.<sup>2</sup> We were told during our visit to Washington that the number of taxpayers using the facility is falling.
- *Tax credits* are used in Canada. Taxpayers are given a deduction from their income tax bill for contributions to a registered political party or officially nominated candidate in a Federal election or by-election. The Federal tax credit is 75 per cent on the first C\$100, 50 per cent on the next C\$450, and 33.3 per cent on the next C\$600. The maximum relief is therefore C\$500 on a donation of C\$1,150. (Corresponding reliefs, though of differing amounts, are given for contributions to Provincial political parties or candidates against Provincial income tax). Thus, a taxpayer who makes a single donation of C\$100 to a federal political party during a tax year will receive a tax credit certificate from a party official. The taxpayer then

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<sup>1</sup> Inheritance Tax Act 1984, s24. Exemption can be claimed only if at the last general election two members of the nominated party were elected to the House of Commons, or one member was elected and the party obtained at least 150,000 votes.

<sup>2</sup> The Democratic and Republican Parties each received a grant of \$12.4 million for their respective nominating conventions in 1996.

sends that certificate to the Revenue when he or she receives an income tax demand, and the certificate is treated as payment of C\$75 towards the tax bill.

- A system of *tax relief by deduction at source* for political donations would be similar to the system of tax relief on giving to charities in the United Kingdom, though differing in detail. This system of tax relief also applies to the mortgage interest payment system known as 'MIRAS' (Mortgage Interest Relief At Source). Tax relief on gifts to charities is given for payments made by at least four annual instalments under a deed of covenant (with no minimum payment being required)<sup>3</sup> or for one-off payments of at least £250 under the Gift Aid scheme.<sup>4</sup> A taxpayer who wants to give £500 to a charity, and who is liable to pay tax at or above the basic rate (23 per cent in 1998-99), can achieve that by making a net payment of £385 out of his taxed income. The Inland Revenue treats that as a gross payment of £500 from which £115 has been deducted for basic rate tax, and allows the charity to reclaim the £115. If the taxpayer pays higher rate tax, the Inland Revenue will also reduce the taxpayer's tax bill by £85, representing the difference between basic rate tax and higher rate tax (at 40 per cent) on the sum of £500.

**8.5** Of the three systems, only the last is administratively practicable in the United Kingdom. Unlike the United States and Canada, only a minority (about 8 million) of individual taxpayers in the United Kingdom complete annual tax returns; most taxpayers' liabilities are discharged through the employer-operated PAYE (p ay As You Earn) system. Systems of tax relief, therefore, that depend on a large number of individual claims will not be appropriate in this country because of administrative cost. In a written memorandum from the Inland Revenue,<sup>5</sup> sent in response to a request from the Committee for advice, we were told that "in general ... where there are tax reliefs for expenditure which are likely to be claimed by large numbers of ordinary taxpayers, the UK tax system uses methods other than individually-claimed tax credits for giving the benefit of the relief". According to the Inland Revenue, "the purpose of 'relief at source' schemes of this kind in the UK is that they avoid the need for many ordinary taxpayers to make tax returns to claim their relief; and the Inland Revenue has to deal with perhaps only a few hundred claims from the lenders and charities, instead of having to process possibly millions of claims from individual taxpayers".

## The arguments for and against a system of tax relief

### *Arguments in favour*

**8.6** We have found very widespread support for the view that it is more democratic, and therefore in the public interest, that political parties should be funded by a large number of small donations rather than by a small number of large donations. A system of tax relief which increases the value to political parties of smaller donations is likely to encourage the parties to make greater efforts to obtain them. We were told by Dr Michael

<sup>3</sup> See Income and Corporation Taxes Act 1988, s347A.

<sup>4</sup> Finance Act 1990, s25.

<sup>5</sup> Set out in full in Appendix VI below.

Pinto-Duschinsky that in Germany, where a system of tax relief was introduced in 1974, the pattern of giving to political parties has changed in favour of many small donations and against large donations.<sup>6</sup>

**8.7** Another argument for tax relief on relatively small donations is that this will partially make up for what is likely to be a fall in the amount obtained by way of large donations following the introduction of rules requiring disclosure. Funding through tax relief is regarded by many (though not all) as more acceptable than funding by direct payment of public funds. In particular, it means that the allocation of the relief is in the hands of individual taxpayers and requires a contribution from them.

**8.8** A third, more speculative, argument is that since a system of tax relief on small donations is likely to encourage political parties to seek donations from a larger pool of individuals than previously, so more individuals might be encouraged to participate actively in party politics generally. Lord Parkinson, when asked for his reaction to a tax incentive scheme, said:

I think that is a very attractive idea. I think anything that encourages people to participate in a political process, to get involved in political parties, to broaden the base of their membership is to be welcomed because I think politics is a very honourable profession and supporting a political party is a very worthwhile way of spending one's time and money.<sup>7</sup>

Lord Razzall, Treasurer of the Liberal Democrat Party, also saw this benefit in a tax relief system:

I think that as a weapon for the political parties to build up their membership base in particular ... as part of that armoury as long as it was structured in a way that was designed to benefit the small donations, I wouldn't be against it.<sup>8</sup>

**8.9** Finally, it can be strongly argued that giving to political parties is meritorious and is a contribution to the democratic process. Within limits, therefore, this should be recognised and supported by the state through tax relief, by analogy with the support which the state gives to charitable giving.

### *Arguments against*

**8.10** One argument against a system of tax relief is that it discriminates between income taxpayers and non-taxpayers. A donation by a non-taxpayer would therefore be of less value than a donation by a taxpayer. For example, a membership subscription of £20 paid by a non-taxpayer would be worth that and no more to the party, whereas the same subscription paid by a taxpayer would be worth about £26 to the party after recovery of tax. From the viewpoint of the donor, the unfairness of the system is that it would cost a

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<sup>6</sup> Volume 2 of this report, p 73, paras 831-2.

<sup>7</sup> Volume 2 of this report, p 116, para 1387.

<sup>8</sup> Volume 2 of this report, p 109, para 1294.

non-taxpayer more to provide the same benefit to the party than it would cost a taxpayer. Professor Vernon Bogdanor expressed this point to us as follows: "I believe it would be thought in this country to be inequitable, that people who do not pay tax – for example students – should not get the benefits that taxpayers would."<sup>9</sup>

**8.11** In addition, if higher-rate taxpayers could – as in the case of charitable donations but unlike MIRAS – claim to set their donations against higher rate tax, there would be discrimination in favour of donations by higher-rate taxpayers, who could donate at less net cost to themselves than basic-rate taxpayers giving the same amount.

**8.12** Tax relief would favour parties whose members have higher incomes and can therefore afford larger donations, even if a ceiling were placed (as in Canada) on the size of gift eligible for tax concessions. The Finance Director of the Labour Party, Mr David Pitt-Watson, said to us:

Tax relief is of value only to people who pay tax and where the donations given are of significant size. It would be of little value to the Labour Party, which has 400,000 members who are paying an average £20 each to the Labour Party's coffers. It would be of enormous value to our opponents.<sup>10</sup>

**8.13** A further argument against giving tax relief is that there is an opportunity cost involved in a tax relief system for political donations: the tax which is recovered by political parties as a result of it represents public money denied elsewhere. Therefore, although the individuals using the tax relief scheme would be exercising choice, all other individuals would be forced to suffer the consequences of a reduction in the sum total of public revenue.

**8.14** Finally, the extension of charitable-type tax relief to political parties could lead to increased pressure for similar tax treatment for non-profit organisations such as Amnesty International which do not currently qualify for tax relief on their donations because their objects are regarded as 'political' and therefore not exclusively charitable. In addition, if – as would in practice be inevitable if tax relief were to be given on political donations – relief could be given on one-off donations of less than £250, there might be pressure from charities to lower or eliminate the Gift Aid floor of £250. The strength of this argument, of course, depends on the extent to which it is thought that such extensions of tax relief are undesirable.

## *Conclusion*

**8.15** We do not believe that the arguments against tax relief by deduction at source are very strong, provided that there is an appropriate ceiling on the size of donations which would qualify for tax relief and that relief is not given against higher-rate tax.

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<sup>9</sup> Volume 2 of this report, p 16, para 158.

<sup>10</sup> Volume 2 of this report, p 86, paras 1023-32.



**8.16** The argument that it would discriminate against non-taxpayers is significantly weakened if, as we believe, there are very few non-taxpayers among subscribing party members. The tax-free single personal allowance for 1998-99 is £4,195, or a little over £80 a week. Although statistics are not available, we think it is very unlikely that many people with incomes at that level are subscribing members of political parties, except perhaps for students. Non-taxpaying members are anyway likely to be paying concessionary membership fees at low rates. We do not think, therefore, that the fact that there will be no tax to be reclaimed from donations by non-taxpayers is a reason why tax relief should not be available to others.

**8.17** The argument that tax relief, even if limited to relatively small donations, is likely to give more benefit to those parties whose members are already wealthier needs to be taken more seriously. This certainly justifies putting a fairly low ceiling on donations qualifying for tax relief. However, some at least of the critical comments made to us about tax relief were based on the assumption that there would be no ceiling,<sup>11</sup> or on an underestimate of the cumulative value of tax relief on small donations – 400,000 members paying an average of £20 a year each (the figures given by Mr Pitt-Watson in his evidence quoted at paragraph 8.12 above) would potentially yield tax relief of more than £2 million. In any event, this argument becomes less important if our recommendations are taken as a whole.

**8.18** As regards the opportunity cost argument referred to in paragraph 8.13 above, we do not think that this should stand in the way if the case for tax relief is otherwise a strong one. It is inherent in any tax concession which is made to a limited class of persons or in limited circumstances that the Revenue is to that extent the loser and that there is less money available for other public purposes.

**8.19** As to the resulting pressures referred to in paragraph 8.14 which may arise from other worthy causes, the Government will have to take political decisions whether to extend by analogy the tax relief regime which we advocate or to treat the support of the political parties as a special case.

**8.20** We therefore conclude that the balance of argument is in favour of allowing tax relief on donations to political parties by deduction at source. We think that tax relief should be limited to donations of up to £500 in any one year (or the first £500 of larger donations). This sum is within reach of a moderately well-off party activist, and not just the rich. We believe that it also represents a balance between setting the level so high that it loses its purpose of encouraging parties to seek large numbers of smaller donations or setting it so low that the benefit of tax relief is not worth pursuing.

**8.21** We do not believe that a minimum level of donation should be required to qualify for tax relief. The cost of obtaining the signature by donors of the necessary forms, and the cost of keeping the necessary records will impose an administrative burden on political parties which means that, below some level, it will become uneconomic to claim tax relief on a donation. We think it should be left to the parties to decide what that level is.

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<sup>11</sup> See, e.g., Lord Razzall's oral evidence in Volume 2 of this report, p 109, para 1294.



**8.22** We should add that it is quite uncertain how much benefit will result to the political parties from the tax relief system which we favour. It would be a mistake to indulge in over-optimistic estimates. Nevertheless, we believe that our proposal is sound in principle and should act as a spur to democratic participation in the political process.

*R38 Tax relief by deduction at source should be introduced, limited to the basic rate, on donations of up to £500 a year to 'eligible' registered political parties.*

### ***Should all political parties be entitled to benefit?***

**8.23** We believe that the test of eligibility for relief from inheritance tax (see paragraph 8.1, fn.1) is the correct test for tax relief on donations. We acknowledge that since it requires the election of at least one MP, it would exclude relief on donations to the Green Party and other genuinely active political parties. However, we do not think that it would be right to extend relief to all registered political parties. Registration is intended to be an administrative act which will not require evidence of political activity beyond a declaration that the party intends to have one or more candidates at an election. If tax relief is given to all registered parties, some organisations might register as parties simply to be able to claim tax relief. In our view, the inheritance tax test provides a mechanism for ensuring that a tax relief scheme for political parties is not abused.

*R39 Political parties should be eligible to claim under the tax relief scheme if at the last general election two members of the party were elected to the House of Commons or one member was elected and the party won at least 150,000 votes.*

### ***Restrict relief to subscriptions and cash donations***

**8.24** We envisage that tax relief would be given on membership subscriptions and on cash donations, but not on gifts-in-kind or on payments involving a potential benefit to the donor (such as the purchase of raffle tickets). Details would in any event have to be worked out with the Inland Revenue. We also expect that the Revenue will not be prepared to accept claims from constituency associations, so that claims on donations to such associations will have to be channelled through the central party organisation.

## FINANCING POLITICAL PARTIES IN PARLIAMENT

### Background

**9.1** In this chapter we consider the state aid to political parties which is provided specifically for the purpose of assisting them in their parliamentary activities.

**9.2** Since 1975, opposition parties in Parliament have received public funds under a scheme generally known as 'Short money'. The Rt. Hon. Edward Short (now Lord Glenamara), the then Leader of the House of Commons, in speaking to the motion setting up the scheme, said that its purpose was "to enable Opposition parties more effectively to fulfil their parliamentary duties".<sup>1</sup> Whilst acknowledging that it was a matter for the parties to decide how their share of the funds was to be used ("provided that they were able to certify to the Clerk of the House ... that their allocation had been spent exclusively in relation to their parties' parliamentary business"), it was envisaged that "the principal areas of expenditure would be research assistance for Front Bench spokesmen, assistance in the Opposition Whips' Offices ... and office staff for the Leader of the Opposition".<sup>2</sup> In addition, it was expected that some of the financial assistance would be passed on by the parties to the opposition parties' work in the House of Lords.

**9.3** Short money is paid out of the House of Commons Members' Salaries, etc. Vote following a resolution of the House. The minimum criteria for qualification were (and remain) either the possession of two seats or else one seat and at least 150,000 votes won at the preceding general election. The whole scheme was designed to ensure that the financial assistance went to parties rather than to individual Members of Parliament.

**9.4** When first introduced, the formula for determining the amount of Short money payable was £500 for each seat won by the opposition party concerned, plus £1 for every 200 votes cast for it at the preceding general election, subject to an overall maximum in respect of any one party of £150,000. These figures were periodically updated until, in 1993, they were linked to changes in the retail price index. In 1987 the overall maximum was removed. The rate in the year ending 31 March 1998 was £3,840.65 per seat and £7.67 per 200 votes. The amounts allocated to the political parties in Parliament for the period 1 May 1997 until March 1998 are set out in Table 9.1. The total allocated in respect of this eleven-month period was £1,503,892.

**9.5** In 1993, a travel fund for opposition frontbenchers was set up. Again, the expenditure has to be related to parliamentary business. Initially, £100,000 was provided. This sum was divided between the parties in the same proportion as their share of Short money. Adjusted for inflation, the sum allocated is now £112,000.

**9.6** Although it was the practice for opposition parties in the House of Commons to apportion some of the Short money to their respective teams in the House of Lords,

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<sup>1</sup> *Hansard (HC)*, 20 March 1975, col 1869.

<sup>2</sup> *Ibid.*, col 1871.

in 1996 a scheme, known as ‘Cranborne money’ (after Viscount Cranborne, then Leader of the House of Lords), was introduced which provided funding direct to the first and second opposition parties in the House of Lords. Initially, the first and second opposition parties were able to claim up to £100,000 and £30,000, respectively. Those amounts are annually updated in accordance with the retail price index. The 1997-98 total allocation was £134,000. Cranborne money is paid out of the House of Lords Peers’ Expenses, Administration, etc. Vote following a resolution of the House.

*Table 9.1*

**Allocation of Short money, 1 May 1997 to March 1998**

Conservative	£986,762
Liberal Democrat	£371,997
SNP	£46,167
Plaid Cymru	£21,210
Ulster Unionist	£47,580
Democratic Unionist	£11,618
SDLP	£18,553

Source: Written Answer, *Hansard* (HC), 24 April 1998, col 725.

**9.7** The evidence we received, even from those who disapprove of state funding of political parties generally, was strongly supportive of the continuation of the Short money scheme. When asked about the difference in principle between state funding generally and the use of tax payers’ money to help opposition spokesmen and women in Parliament, the Rt. Hon. Gillian Shephard MP (then Shadow Leader of the House of Commons) said: “I think that you can draw a distinction between the activities of an opposition party in shadowing Government departments and in forming policy”.<sup>3</sup> The Rt. Hon. Ann Taylor MP (then President of the Council and Leader of the House of Commons) similarly distinguished between party activity and activities more directly linked with the parliamentary process.<sup>4</sup>

**9.8** We recognise the force of the contrary argument that the distinction between a Member of Parliament acting in his or her capacity as opposition frontbencher, on the one hand, and as a party activist, on the other hand, is not always readily apparent. None the less, we believe that the Short money scheme is founded on the sound principle that, in a parliamentary democracy, the party in government should be held to account and kept in check by a vigorous and well-prepared opposition. From this it must follow that the system of funding designed to support the parliamentary work of the opposition parties should provide adequate funding. We propose that both the Short money and Cranborne money schemes should be continued. We also believe, however, that they should be brought up to date.

<sup>3</sup> Volume 2 of this report, p 204, para 2483.

<sup>4</sup> Volume 2 of this report, p 288, para 3561.

**9.9** We received evidence calling for two principal changes: first, that the amount of Short money should be increased and, second, that the formula for the allocation of Short money should be revised.

### The amount of Short money

**9.10** The case for considerably increasing the amount of Short money made available to the opposition parties is a strong one. As the Labour Party discovered when it was in opposition, the demands of parliamentary business made on those who have to speak from the Opposition Front Bench, if they are to be able to respond effectively to Government policies and initiatives, are far greater than they once were. Shadow Ministers increasingly need to brief themselves on complex issues, to tour the regions, to meet representatives of business, professional and other organisations and, in some areas of policy, to travel abroad. The amount of written material that they are expected to read and respond to is also much greater than in the past. Many of the activities undertaken by the Shadow Ministers are, of course, connected with their own party and with electioneering, but many of them are concerned with their parliamentary duties and with equipping them for government. Activities in the latter class are simply 'part of the job'.

**9.11** The Rt. Hon. Ann Taylor MP, then the Leader of the House of Commons, said to this Committee, referring to the Short money: "When we were in opposition, which is relatively recently, certainly frontbenchers then never thought it was enough money", and Lord Parkinson, the Chairman of the Conservative Party, made out a powerful case for Short money to be increased. In a memorandum to the Committee, the Rt. Hon. Sir George Young MP, the former Shadow Defence Secretary, with responsibilities for monitoring a defence budget of £20 billion, described how his support staff consisted of one-third of a research assistant and he had a travel allowance that enabled him to pay only one and a half visits a year. On one occasion, the Ministry of Defence (which was "as helpful as could be") flew him to Bosnia to visit Britain's frontline troops there, but could not fly him back. The expense of his return trip, he was told, would have to come from other sources.

**9.12** One of the smaller parties in Parliament, Plaid Cymru, similarly pointed out that its most recent allocation of Short money, £22,293, was inadequate and did not begin to meet even the minimum costs of running an effective parliamentary office. Plaid Cymru's MPs, they reported, had no choice but to supplement the Short money from their constituency allowances.

**9.13** On the basis of what we have heard, we agree that the amount of Short money currently available is insufficient to allow the opposition parties to meet the costs of performing their functions effectively. We did not take detailed evidence on the precise amount of money that should be made available, and in any case this is a matter for the House of Commons and for Ministers, MPs and others with practical experience of running a parliamentary opposition. We propose, therefore, that the parties in the House of Commons should review the present level of Short money with a view to increasing it substantially. In our view such an increase should be in the region of three times its present amount, a sum necessary to reflect the heavy duties and responsibilities that opposition

speakers, and the opposition parties generally, now bear. In case an increase of that order seems unduly large, we should point out that, if the amount of Short money were trebled, the total would be in the region of £4.8 million. That amount does not seem seriously out of line in view of the fact that the salary cost of Ministers' Special Advisers (with their essentially political role) is currently running at £3.6 million.<sup>5</sup>

*R40 The political parties in the House of Commons should review the amount of Short money now made available to the opposition parties, with a view to increasing it substantially, perhaps by as much as three times.*

## The allocation of Short money

**9.14** We also considered the present formula used for allocating Short money among the opposition parties. That formula takes into account, and has done so ever since the Short scheme was first introduced in 1975, the number of seats that a party has in the House of Commons and the number of votes that were cast for it at the previous general election. There is undoubtedly an element of rough justice in such a formula. The larger opposition parties, notably the Official Opposition, receive more; the smaller parties receive less. That is easy to justify. Less easy to justify is the fact that the formula, except in a very indirect way, does not bear on the central issue of the actual demands that are made on the opposition parties in the House.

**9.15** To take the most obvious case, the amount of money paid to the Official Opposition party goes up automatically if that party has done well at the previous general election and goes down if it has done badly (or at least less well). The change of Government that took place in 1997 provides a stark example. In opposition in 1996-97, the Labour Party was in receipt of Short money to the extent of just over £1.5 million; but, in opposition in 1997-98, the Conservative Party was in receipt of an allocation of only about £1 million, a cut of roughly one-third – simply because it had done less well at the 1997 General Election than Labour had at the 1992 election. In our view this cannot be right. The Official Opposition has constitutional functions to perform irrespective of the number of seats it has won at the previous election or the number of votes it has attracted. It has a specific role in the proceedings of the House of Commons. It has the duty to initiate debates on regular occasions ('Opposition days'), and Shadow Ministers have precedence in responding to ministerial speeches and statements. The Leader of the Opposition has special opportunities to question the Prime Minister and to table Motions of Censure which must be debated. The Official Opposition has a general duty to scrutinise the actions and the legislation of the Government. We do not think it appropriate that it should receive a significantly smaller amount of Short money simply because it has recently suffered at the polls. Indeed it can be argued that, if the party in government has an overwhelming majority in the House, it is particularly important that the Official Opposition should be adequately funded and resourced. The Labour Party, in its written submission to this

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<sup>5</sup> Written Answer, *Hansard* (HC) 11 June 1998, col 664.

Committee, agreed, saying that “the need is arguably all the greater where there are fewer elected members than might naturally be expected.”<sup>6</sup>

**9.16** Our conclusion is that the amount of Short money provided to the Official Opposition should be fixed and should be fixed at a sufficiently high level to enable all opposition parties to perform their parliamentary functions adequately irrespective of the number of MPs they have and irrespective of the number of votes received at the previous election.

**9.17** We recognise that, if the total of Short money were fixed irrespective of parliamentary circumstances, the results could on occasion be anomalous. If, for example, the Official Opposition had 300 MPs and there were therefore relatively few MPs from other opposition parties, those parties could find themselves in receipt of very large sums of money, sums wholly unwarranted by their parliamentary role. Equally, if the Official Opposition had, say, only 100 MPs and the other opposition parties had as many more, those parties could find themselves with very little in the way of Short money, even though they would now have a much enlarged parliamentary role. Our view is that, under either of those circumstances, the Official Opposition should continue to receive a fixed sum but that an appropriate adjustment should be made to the total amount of Short money allocated during the Parliament in question.

**9.18** A further concern about the present formula for allocating Short money was voiced by the Liberal Democrat Party, which insisted that “there is little, if any, difference between the parliamentary research requirements of the Official Opposition and the third largest party in the House of Commons.”<sup>7</sup> This is especially true now that the Liberal Democrats, with more than 40 MPs, are expected to function as a fully fledged opposition party, shadowing all Government departments. Nevertheless, despite the fact that both the Conservatives and the Liberal Democrats now perform substantial parliamentary roles, there is now a wide disparity between the Short money granted to the Conservatives and that granted to the Liberal Democrats. In 1997-98, for example, the Liberal Democrats’ entitlement was only about one-third that of the Conservatives. Although we take the view that, because of its particular constitutional role, the Official Opposition party is the only one that should receive a substantial and fixed amount of funding, we are sympathetic to the Liberal Democrats’ complaint. It reflects a general sense on the part of all the opposition parties that the level of Short money is no longer adequate for the purpose for which it was originally intended.

*R41 The political parties in the House of Commons should review the allocation of Short money to ensure that the Official Opposition’s allocation is fixed and does not depend on the outcome of the previous general election and also to ensure that the allocation of Short money to all opposition parties is sufficient to enable them to perform their functions adequately.*

<sup>6</sup> Written submission to this Committee from the Labour Party, App V, p 222, ‘Transparency, Participation, Equality’, para 5.5.

<sup>7</sup> Written submission to this Committee from the Liberal Democrat Party, App V, p 247, para 25.

## The amount of Cranborne money

**9.19** Cranborne money was introduced only in November 1996. At that time, Lord Richard, then Opposition Leader in the House of Lords, supported the scheme, subject to its being reviewed in a more general review of party funding. When giving evidence to us, Lord Richard, speaking as Leader of the Lords, strongly supported a better resourced opposition:<sup>8</sup>

On the amount of money that we got, which was broadly about £100,000, frankly we managed to employ three researchers and that was not only for the whole of the Front Bench, it was also for the whole of the parliamentary party in the Lords. So if I was pressed as to whether the Cranborne money was inadequate for the purposes of the opposition as we used it in the House of Lords, I would be bound to give an unqualified 'Yes' to that, it was not adequate to do the job that we set out to do. Very difficult to put an amount on it because ... the Lords is basically a non-professional House. Lords are not paid, and therefore the amount of effort that frontbenchers have to put in is, I think, frankly at least commensurate with if not greater than an equivalent frontbencher in the Commons; they have the back-up. Any system which would provide a greater degree of back-up to opposition frontbenchers in the Lords, I think, frankly would be a good thing.

**9.20** In contrast, Lord Cranborne, speaking from the Opposition benches, did not suggest to us that the Cranborne money should be increased:<sup>9</sup>

The Conservative Party in the House of Lords is making full use of the money voted. It could always no doubt benefit from further assistance. However, at this juncture we would not make any specific request for an increase in funding in the House of Lords; nor do we believe that peers are unduly influenced by outside interests as a result of a lack of funds.

**9.21** Although the House of Lords faces a period of change, we have no doubt that the duties of the opposition parties will remain the same. Bearing in mind the reasons which led us to recommend an increase in Short money and the evidence of Lord Richard in particular, we take the view that a change in the level of Cranborne money would be appropriate.

*R42 The political parties in the House of Lords should review the amount of money now made available to the opposition parties under the Cranborne money scheme, with a view to increasing it.*

<sup>8</sup> Volume 2 of this report, p 292, para 3600.

<sup>9</sup> Volume 2 of this report, p 220, opening statement.



## Specific allocation to the Leader of the Opposition's Office

**9.22** The Leader of the Opposition plays an important role in our parliamentary democracy. He or she is the 'Prime Minister-in-waiting' and, in performing that function, has many responsibilities to discharge. From the evidence we received, it became clear to us that the adequate funding of the Leader of the Opposition's Office remains a problem and has been a cause of embarrassment and distraction to successive Opposition leaders for some time. Lord Levy, fund-raiser for the Labour Party, told us that he understood that blind trusts existed in the Labour Party under Hugh Gaitskell, who was Leader of the Opposition as long ago as 1955-63.<sup>10</sup>

**9.23** Although access to Short money has always been available, it appears that this has not proved adequate. It is well known that, until the 1997 general election, funds were set up to support the offices of a small number of Labour Party front-bench spokesmen and women. These included the Labour Leader's Office Fund.

**9.24** Blind trusts, although set up as a mechanism for preventing the beneficiary from knowing (and, therefore, from being influenced by) the donors, are clearly flawed in that the confidentiality of the names of the donors cannot be ensured. The Labour Party is now committed to their abolition and no other party favours their use.

**9.25** We agree that there is no place for blind trusts in an environment of party-funding regulation where transparency is a driving force. For this reason, we have recommended in Chapter 4 that blind trusts, either in favour of a political party or of an individual politician, should be prohibited.<sup>11</sup> Yet we acknowledge that the Office of the Leader of the Opposition is a constitutional office which requires special consideration; we therefore propose that the political parties in the House of Commons should consider together the reasonable cost of running the Leader of the Opposition's Office in the House of Commons and that additional provision, over and above our recommendation above, should be made in Short money for adequate funds to be specifically earmarked for the purposes of running that Office. It has not been suggested to us that a similar provision is needed in favour of the Opposition Leader in the House of Lords.

*R43 The political parties in the House of Commons should assess the reasonable cost of running the Leader of the Opposition's Office and then, as part of the review of the Short money scheme, should specifically earmark a portion of the Short money, additional to that in recommendation 40 above, for funding that Office.*

<sup>10</sup> Volume 2 of this report, p 277, para 3407.

<sup>11</sup> See R21 on p 62.



## Government backbenchers

**9.26** The Labour Party suggested in evidence that the Short money scheme should be extended to enable Government backbenchers to receive state money in support of their parliamentary functions.<sup>12</sup> Mr Tom Sawyer, General Secretary, argued: “it would be reasonable to extend Short money to the party in government, so that a small amount of money would be available for servicing the parliamentary party in their work as parliamentarians rather than as the representatives of the Labour Party”.<sup>13</sup> An implication of this proposal is that a similar funding arrangement should be made available to the backbenchers of the opposition parties as well since, at present, Short money is meant primarily to assist the activities of frontbenchers.

**9.27** We do not favour this proposal. The purpose of Short money is to enable the opposition parties to perform their parliamentary functions effectively, their principal parliamentary function being to act as scrutineer of the work of the governing party. It is a payment which is made to support a collective activity of opposition to the Government, by way of the political party system. An extension of Short money to include Government backbenchers would not sit comfortably with that purpose.

**9.28** As to whether Government backbenchers should receive some sort of additional public funding (albeit not under the heading of Short money), we have some difficulty in seeing on what ground backbenchers, including Government backbenchers, should be granted further state aid, given that they already receive an office costs allowance and travel allowances in addition to their salary. It may be the case that the allowances paid to MPs are not adequate; but that is a matter for Parliament.

## Scotland, Wales and Northern Ireland

**9.29** Following referendums in Wales, Scotland and Northern Ireland, power will be devolved from Westminster to the Scottish Parliament and the Welsh and Northern Ireland Assemblies. During the course of visits to Edinburgh, Cardiff and Belfast, witnesses were invited to comment on whether there should be schemes similar to the Short money scheme to operate in each of these bodies. The overwhelming response was that there should.

### *Mike Russell, Chief Executive of the Scottish National Party*

*... we have to find a way that the Short money arrangement – and clearly it will be called something else – strengthens the abilities of the parties to participate in that more consensual [Scottish] Parliament.* (Vol 2, p 419, para 5077)

<sup>12</sup> Plaid Cymru, when asked whether, if there were a scheme like that of Short money operating in the Welsh Assembly, it should also be paid to the party in government in the Assembly, favoured the suggestion (Volume 2 of this report, p 385, para 4808).

<sup>13</sup> Volume 2 of this report, p 84, para 990.

***Raymond Robertson, Chairman of the Scottish Conservative and Unionist Party***

*I hope that the new Scottish Parliament will devise a system of Short money, if one wants to call it that,... It must be to allow the parliamentary parties in Parliament to function as an effective opposition in questioning the Executive and in keeping the Executive on its toes.* (Vol 2, p 444, para 5315)

***National Assembly Advisory Group***

*We have discussed support for opposition party groups in the Assembly. While this cannot be provided out of the Welsh Office budget, it seemed to us that there is a precedent in the so-called Short money arrangements in the House of Commons that can be built on as an additional provision for the National Assembly for Wales.* (Vol 2, p 404, opening statement)

***Russell Deacon, Lecturer in Government and Politics, University of Wales Institute, Cardiff Business School***

*It is my belief that [Welsh] Assembly members should at least have the same support as Westminster members.* (Vol 2, p339, extract from written submission)

***Jack Allen, Honorary Treasurer of the Ulster Unionist Council***

*We hope that there will be a similar system to Short money. We hope that there will be allowances for political parties for research and administration within the new [Northern Ireland] Administration.* (Vol 2, p 546, para 6653)

**9.30** The Committee is aware of the differences which will exist between the forms that the devolved bodies take. It is also aware that the procedures of the UK Parliament – within which Short money operates – may well not be directly appropriate to them, especially the Northern Ireland Assembly, which is designed to have an Executive Committee drawn from all the parties in the Assembly. In all three bodies the political parties may well have functions related to the transaction of business, whether or not some of their members are part of the Executive. The considerations that led us not to favour the extension of Short money to Government backbenchers at Westminster may well not apply therefore. We would, on these grounds, support some sort of funding to political parties within the Scottish Parliament and the two Assemblies for the purpose of the better performance of their parliamentary or assembly functions. It may be that the funding should be made available to all the parties, not just the minority parties; it may also be that the funding should be made available to all the party groups as such, and not just spokesmen and spokeswomen. The detailed formulation must, we think, be a matter for the political parties within the individual assemblies. In the European Parliament, for example, all the political

party groups receive funds to “help with secretarial expenses and administrative expenditure” made up of a fixed minimum amount per group, with a variant depending on the number of members it contains.

*R44 The political parties within the Scottish Parliament and the new national Assemblies should consider making provision for their financial support from the available parliamentary or assembly funds for the purpose of the better performance of their parliamentary or assembly functions.*

## Secondment of Civil Servants

**9.31** Whilst opposing a general extension of state funding, the House of Commons Home Affairs Committee report in 1994 recommended that the Government should consider the feasibility of allowing opposition parties in Parliament one or two civil servants on temporary attachment.<sup>14</sup> The Committee was confident that it would not create difficulties for the seconded civil servants and that it would provide an inexpensive way of providing ring-fenced assistance to opposition parties for research work.

**9.32** In our Issues and Questions paper on party funding, we raised the issue again. In response, the Conservative Party, in its written submission, said that it supported “a limited number of civil servants being seconded to help the major opposition parties develop policy.”<sup>15</sup> In evidence, Lord Parkinson explained the proposal more fully, saying that what he envisaged was an extension of a principle that was already accepted, namely, that in the run-up to an election the party in government allows the opposition parties to make contact with civil servants in the departments.<sup>16</sup>

**9.33** Measures designed to ensure that the civil service is well prepared for a change in government following a general election are remote from our terms of reference and we make no recommendations in respect of them. On the particular issue of secondments, we found persuasive the comments of Lord Rodgers, who told us:

I think that if one works for a political party, one does begin to identify with it, both personally and in terms of ideas. It is one thing to serve Governments as they change, and civil servants are extremely good at doing that, but the technique, style and values of opposition are very different from those of Government.<sup>17</sup>

We do not support the temporary attachment of civil servants to opposition parties, especially in view of our proposal that the existing Short money should be increased.

<sup>14</sup> Report of the House of Commons Affairs Committee, *Funding of Political Parties* [1993-4], p 301, para 57.

<sup>15</sup> Written submission to the Committee from the Conservative Party, App V, p 241.

<sup>16</sup> Volume 2 of this report, p 124, para 1470.

<sup>17</sup> Volume 2 of this report, p 239, para 2951.

## LIMITS ON CAMPAIGN EXPENDITURE

**10.1** Those who are worried about the way in which parties and elections are funded in the United Kingdom are usually worried by one or other of two things: first, that large donors to political parties, whether individuals or organisations, may be able to exercise undue influence over parties and governments; and, secondly, that political parties and other individuals and organisations may seek, whether successfully or not, to ‘buy’ people’s votes at elections. We believe that the first of these two concerns is largely addressed by our recommendations on disclosure. We now turn to the second.

### Limits on candidates’ expenditure

**10.2** Limits on the spending of individual parliamentary candidates – often, but somewhat misleadingly, called ‘local’ spending limits – have been in place in Britain for more than 100 years. Concern about the increase in corruption during election campaigns and about excessive election expenditure led as long ago as 1883 to the passage of the Corrupt and Illegal Practices Act (the 1883 Act). During the passage of the 1883 Act through Parliament, the Earl of Northbrook explained the reasons for its introduction:

Not only could it be said that corrupt practices had increased, but the expenditure incurred at the last Election was excessive. The expenditure was not only detrimental to the public interest by deterring persons who would have been excellent representatives of constituencies in the House of Commons from standing for election, but also had the effect of accustoming those engaged in elections to consider that an election was simply an affair of money, and thus leading to corrupt practices.<sup>1</sup>

The Marquess of Salisbury observed during the same debate: “The motive of the Government was very obvious, and the noble Earl has stated it with fairness and candour; the object was not so much to prevent corrupt practices as to diminish the vast expenses attending elections.”<sup>2</sup>

**10.3** The 1883 Act was passed at a time when general elections were fought mainly at the constituency level; national campaign expenditure was virtually non-existent. At the 1880 general election, for example, the Conservative and Liberal parties together spent, at all levels, a total of about £2.5 million;<sup>3</sup> but, of that sum, no more than about £50,000 – about 2 per cent – was spent by the central party organisations. Regulation of the conduct of campaigns and election expenditure therefore focused naturally on the individual candidate in his constituency, and one of the 1883 Act’s most important provisions was to impose limits on candidates’ election expenditure.

**10.4** The campaigning strategies of the political parties have changed markedly since the late nineteenth century, with a move towards campaigns that are fought more and more at

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<sup>1</sup> *Hansard* (HL) 16 August 1883, col 697.

<sup>2</sup> *Ibid.*, col 706.

<sup>3</sup> *Ibid.*, col 698.

the national level. Yet the present legislation governing campaign expenditure still largely reflects the 1883 legislation, which is now 115 years old.

**10.5** Under the Representation of the People Act 1983 (RPA 1983 or the 1983 Act), candidates are not permitted to spend in excess of a statutory limit in respect of their election expenses; election expenses are defined as expenses incurred, “whether before, during or after the election, on account of or in respect of the conduct or management of the election”.<sup>4</sup> Different limits are set according to whether the candidate is standing for election in a county or borough seat, and whether it is a general or by-election. In the 1997 General Election, candidates in county constituencies were allowed to spend £4,965 with an additional 5.6 pence per elector and in borough constituencies £4,965 plus 4.2 pence per elector.<sup>5</sup> On average, the constituency limit was around £8,000. By contrast, the current base for a by-election is £19,863 to which 16.9 pence per elector will be added in a borough constituency and 22.2 pence will be added for each elector in a county constituency.<sup>6</sup> Assuming a hypothetical county constituency with 75,000 electors the added pence per elector pushes the maximum permissible expenditure upwards by some £16,500, giving an overall spending limit of approximately £36,500 per candidate in a by-election in such a constituency.

**10.6** The 1983 Act also prohibits election expenditure on a candidate by any third party (that is, someone other than the candidate, the election agent or a person authorised by the election agent).<sup>7</sup> This prohibition is subject to two exceptions: (i) the publication of any matter relating to the election in a newspaper or other periodical or in a broadcast made by the BBC or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990; and (ii) expenditure by an individual which does not exceed in aggregate £5. The £5 limit was set by the Representation of the People Act 1985 (RPA 1985 or the 1985 Act), and was the subject of challenge in the *Bowman* case (referred to at paragraphs 10.51 to 10.71 below).

**10.7** The existing limits on candidates’ expenditure at general elections are generally accepted and have, beyond any doubt, had the effect of restraining spending at the strictly local level. Certainly no-one recommended to us that they be abolished. On the contrary, they were supported by all the main political parties and by all the individuals and organisations whose evidence bore on the topic.

### *By-elections*

**10.8** A number of problems have, however, arisen. One concerns by-elections, where it seems to be generally acknowledged that the existing limits are too low and, being too low, are sometimes exceeded. It was put to us, quite plausibly, that the main contenders fighting a by-election, especially in a marginal seat, and especially when the by-election takes place in the months prior to a pending general election, often engage in a tacit

<sup>4</sup> RPA 1983, ss76(1) and 118.

<sup>5</sup> RPA 1983, s76(2)(a).

<sup>6</sup> RPA 1983, s76(2)(aa). The special rate for by-elections was first introduced in 1989.

<sup>7</sup> RPA 1983, s75.

conspiracy to spend above the legal limit. Each party knows the others do it; each makes it clear to the others – more by what it does not say than by what it does – that, provided the other parties' overspending is not too outrageous, no complaint will be made or action taken. We heard evidence from Mr Michael Crick, a journalist who carried out an investigation for the BBC *Newsnight* programme on spending levels in the Wirral South by-election in early 1997; he said that "the two main contenders – Labour and Conservative – had probably spent more than £100,000 on their campaigns, when the official, legal limit was about £31,000. I now suspect Labour may have spent as much as £250,000 on winning the seat".<sup>8</sup>

He suggested that

ironically, despite the intensity with which by-election campaigns are fought, the over-spending is protected by an extraordinary amount of collusion between the parties. No party dares to challenge their opponents, since they all know that, if not in this by-election then in many others, they have all been guilty at some time.<sup>9</sup>

**10.9** Such a situation is patently unsatisfactory. It gives rise to massive expenditures during some by-election campaigns – far in excess of what either the 1883 or the 1983 Acts envisaged – and, more important, it brings the law into contempt. It is undesirable – to put it no higher – that representatives of the political parties in power or seeking power should be seen to be openly flouting legislation which expresses the will of Parliament. We believe that the solution to the problem is that the limits on candidates' expenditure in by-elections should be raised to more realistic levels and that these limits, once raised, should be rigorously enforced.

**10.10** We did not receive much evidence as to what would be a realistic level for the permitted expenditure by a candidate in a by-election, but, bearing in mind the extent of the national attention focused on some by-elections, we believe that the figure should be roughly three times the figure shown at the end of paragraph 10.5 above, that is, approximately £100,000, with the usual distinction between county and borough constituencies (assuming that that classification system is to be retained). We would encourage the Government, after appropriate consultation, to address this issue as a matter of urgency. Power should be taken to set the figure by making an appropriate amendment to section 76(2)(aa) of the 1983 Act.

*R45 Power should be taken to set a higher maximum permitted limit for a parliamentary candidate's expenditure at a by-election. A sum in the order of £100,000 seems appropriate to the Committee, but the Government should establish the figure after appropriate consultation.*

<sup>8</sup> Volume 2 of this report, p 184, opening statement.

<sup>9</sup> Vol 2, p 184, opening statement.

*Items included within the candidates' expenditure limit*

**10.11** Another class of problems in connection with the existing arrangements for limiting candidates' expenditure at the local level concerns precisely what is supposed to be covered by the limits. In the first place, there is considerable doubt among individual candidates and the political parties about when, for purposes of the RPA 1983, a constituency election campaign is to be deemed to have begun. There is only a limited body of case law bearing on the subject, and interpretations of the Act vary considerably from constituency to constituency and from candidate to candidate.

**10.12** In the second place, different candidates have widely differing views on which items of expenditure should count towards their election expenses and which should not; and, again, there has been only limited guidance from the courts on the subject. The relevant schedule in the 1983 Act, Schedule 3, largely reproduces the equivalent schedule in the 1883 Act and, in some instances, is almost comically out of date. It includes, for example, a specific reference to the cost of sending telegrams, but makes no reference to the cost of mobile phones, the cost of telephone canvassing (possibly from outside the constituency), or the many other costs commonly incurred at constituency level in a modern election. We believe that this situation is unsatisfactory and needs to be rectified.

**10.13** The obvious solution is to replace the Schedule to the 1983 Act with a schedule which takes account of the items of expenditure which are actually incurred today. The list should be a full one and the schedule should be designed so as to achieve uniformity between candidates and constituencies. We believe that this is a task which should be undertaken forthwith by the Government, perhaps by way of a Home Office working party with co-opted experts in the field from the major political parties. Once amended, we envisage that it would be a function of the Election Commission to keep the revised schedule under review and to make recommendations to the Government as to changes to ensure that it is kept up to date.

*R46 The Government should undertake the revision of Schedule 3 to the Representation of the People Act 1983 so that it contains a full and up-to-date list of items of expenditure which should be declared by candidates at parliamentary elections. The contents of the schedule should be kept under review by the Election Commission.*

**10.14** Other problems in connection with the interpretation and enforcement of the existing law include such abuses as returning the cost of printing, for example, at well below its true cost, and the issue of whether the costs of equipment in the parties' local headquarters should count towards candidates' election expenses. As to the first point, this is an instance of improper, not to say dishonest, conduct. When detected it should be dealt with by the enforcement machinery which we advise elsewhere. As to the second point, this is an example of a matter that could be addressed by the expert working party referred to in paragraph 10.13 above. (There is a separate issue of whether, as the Labour Party suggested to us in its evidence, the distinction in the 1983 Act between borough and



county constituencies should continue to be maintained. We do not consider this to be within our terms of reference and we express no view on the point.)

### Limits on national spending in elections to the House of Commons

**10.15** As we have said, the issue of limits on candidates' expenditure at the local level is relatively straightforward. Such limits have been in existence and broadly accepted for a very long time. There is a broad political consensus concerning them. By contrast, the issue of national limits on the spending of political parties – whether there should be any and, if there were to be any, what form they should take – is altogether more complicated and contentious.

**10.16** The central fact is, of course, that, whereas in 1883 most general elections campaign expenditure was local, in the late 1990s and for the foreseeable future most such campaign expenditure is and will be national. In 1997 the total expenditure of the Labour and Conservative Parties at local and national level was about £60 million<sup>10</sup> of which nearly 90 per cent was national expenditure. This compares to the 2% of total expenditure spent nationally by the two main political parties in 1880.

**10.17** Most observers seem unaware that, when the original expenditure limits were introduced in 1883, the modern distinction between national and local spending was not envisaged and it was confidently expected, indeed assumed, that the limits being imposed would cover not just campaign expenditure at the local level but the great bulk of all campaign expenditure. The 1883 Act was directed towards limiting expenditure intended to promote the election of *parliamentary candidates*. It was not directed towards limiting local campaign expenditure because it was taken for granted that, as a matter of fact, most campaign expenditure would be local.

**10.18** A later development, however, diverted the intentions of the original Act. This was the outcome of the *Tronoh Mines* case in 1952.<sup>11</sup> Tronoh Mines Ltd had placed an advertisement in a national newspaper shortly before the 1951 General Election condemning the socialist policies being pursued by the then Labour Government and inviting readers of the advertisement to save the country by electing “a new and strong government with ministers who may be relied upon to encourage business enterprise and initiative”.<sup>12</sup>

**10.19** Until that point it had been widely assumed that such advertising would be illegal, first, because it was not authorised by an individual candidate or his agent, contrary to the terms of the 1883 Act, and, second, because it constituted ‘third-party spending’ at a level well in excess of the extremely low limits set by the Act. The judge in the case, however, took a different view. He ruled that the 1883 Act should not be understood to limit the

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<sup>10</sup> Figure derives from the submissions to us by the political parties on their national expenditure and from figures in D. Butler and D. Kavanagh, *The Election of 1997*, 1997, pp 205 and 223 – which gave an average of £5,600 spent by each party at the local level in the 640 constituencies each of the two main parties fought.

<sup>11</sup> *R v. Tronoh Mines Ltd* [1952] 1 All ER 697.

<sup>12</sup> R Blackburn, *The Electoral System in Britain*, 1995, p 285.

conduct of generalised political propaganda, even in the context of a general election campaign, but should be understood instead to limit spending only by or on behalf of individual candidates in individual constituencies. It was the *Tronoh Mines* decision that effectively turned what was widely understood to be a blanket limitation on the great bulk of all campaign spending into a limitation focused specifically and narrowly on local spending.

**10.20** Dr David Butler, the *doyen* of students of British elections, spelt out in his oral evidence to this Committee the long-term consequences of the judge's decision in the *Tronoh Mines* case:

The Tronoh decision ... led, in due course, to the innovation of expensive nation-wide advertising; new interpretations of the law opened up the development of nation-wide poster campaigns; and the unregulated advance of direct mail and telephone banks (together with other high-tech operations in Millbank Tower and Smith Square) made nonsense of laws that were designed to control outlays solely at the constituency level.<sup>13</sup>

**10.21** Whatever the rights and wrongs of the judge's decision in 1952, the view is now widely held that the existing spending limits, which are in effect local spending limits, should be buttressed by the imposition, in one form or another, of limits on the national expenditure of political parties and politically motivated individuals and bodies. Vernon Bogdanor, Professor of Politics at Oxford University, was emphatic on the point when he gave oral evidence:

Today, the regulation of constituency, but not national election spending, perpetuates a nineteenth century view of politics, when the result was assumed to depend on individual candidates rather than upon the still embryonic national party organisations. At the end of the twentieth century, however, the outcome of elections depends, and has long depended, primarily on the national parties rather than on what happens in individual constituencies. Therefore, as well as regulating individual expenditure in constituencies, we should also regulate national expenditure for and by parties.<sup>14</sup>

Others, however, disagree. For example, Mr Peter Riddell said to us:

Fuller disclosure should reduce the need for limits either on levels of donations or restricting central spending by parties. Overseas experience suggests that such limits can easily be evaded. Labour proposals for a national limit of £15 million on election expenses and of a tenth of this amount for national campaign spending by 'third parties' are open to abuse. Trade unions and other Labour allies could easily funnel money via such 'third parties', circumventing the intended national limit.<sup>15</sup>

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<sup>13</sup> Vol 2, p 221, opening statement.

<sup>14</sup> Vol 2, p 26, opening statement, para 11.

<sup>15</sup> Vol 2, p 24, opening statement.

**10.22** Among the political parties, Labour and the Liberal Democrats, in their evidence, were most strongly of the view that such national limits should be imposed. The Labour Party proposed “a limit in the interests of equality on all national campaign expenses incurred by political parties”, with a limit also to be placed on the expenditure of individuals and organisations other than the parties. The Liberal Democrats proposed similar limits, though without going into detail (and in the context of the Liberal Democrats’ preference for a system of state funding of parties).

**10.23** The Conservative Party was less enthusiastic. In its written evidence to the Committee, it did not dismiss the arguments in favour of national spending limits “out of hand”, but it was “cautious about whether limits could be introduced without threatening free speech”. The Conservatives also raised a number of practical objections, which are considered below.

### *Arguments for and against national spending limits*

**10.24** What are the arguments for and against national spending limits? Because the arguments for and against are finely balanced, and because the issues involved are inevitably complex, it is important to set out the considerations on both sides as fully and dispassionately as possible.

**10.25** There are five principal arguments in favour of national spending limits:

- (1) The first is that it is the absence of such limits, rather than their possible presence, that constitutes the anomaly. The original 1883 Act was intended to cover the great bulk of campaign expenditure. Only the *Tronoh Mines* decision of 1952, nearly 70 years later, effectively narrowed its scope. It seems strange on the face of it that, whereas we possess as a country quite an elaborate legal structure to restrict local campaign spending, which in the circumstances of the late twentieth century is relatively unimportant, we have no legal structure at all restricting national campaign spending, which in the circumstances of the late twentieth century is far more important.
- (2) The second argument in favour of national spending limits is related to the first. It simply states that it is absurd to restrict even local campaign spending when so much of the expenditure that actually promotes local candidates and their campaigns takes place at the national level. The 1883 Act and its successor, the 1983 Act, seek to limit campaign spending on behalf of individual candidates. But they signally fail to do so. All they limit is (a) strictly local spending and (b) spending on behalf of individual candidates (in most circumstances, individual candidates who are actually named). The existing limits simply fail to take into account expenditure on such items as the production of nationally televised party election broadcasts, the purchase of sites for national poster campaigns, the services of pollsters and advertising agencies, direct-mail shots, telephone canvassing and so on. But all these promote, and are intended to promote, the causes of individual party candidates in constituencies. Given the British electoral system, what else could they be for? The absence of national

spending limits, so the argument goes, makes a nonsense even of the existing local limits.

- (3) The third argument is of a different character. It states that unlimited national expenditure creates an unlimited demand for funds to pay for the expenditure and that the unlimited demand for funds causes the parties, in practice, to turn for money to wealthy individual donors and wealthy organisations. Further, the fact that the parties turn to such individuals and organisations means that, as in the United States, the suspicion arises that the money is not given without strings and that influence and access can be bought by means of large donations. We believe that this problem is largely addressed by our proposals for full and prompt disclosure of donations. It could still be argued, nevertheless, that, even with full disclosure, the suspicion would still remain, as in the United States, that large cheques purchased large rewards.
- (4) The fourth argument for national limits is, again, of a different character. It asserts simply that extravagant spending by the political parties and their allies during election campaigns has the effect of bringing democracy in general, and the political parties in particular, into disrepute. Large-scale spending, resulting in expensive-looking party election broadcasts and even more expensive-looking poster campaigns, is demeaning to the whole electoral process. The impression is given that the electorate is being asked to choose, not between serious contenders for high political office, but between two or more advertising agencies and the political parties that happen, for the moment, to be their clients. In other words, politics is reduced to – is presented as – a mere matter of consumer preference. It may be no accident that one of the most expensive election campaigns in British history, that of 1997, coincided with the lowest electoral turnout for more than half a century. Not just the behaviour of individual politicians, but the whole business of democratic politics, is made to look sleazy and disreputable.
- (5) The fifth and final argument for national limits concerns the issue of what the Labour Party, in its evidence, calls 'equality' – otherwise known as 'a level playing field'. The argument here is that money (in the form of glossy party election broadcasts, brilliantly crafted poster campaigns, extensive mail shots and so on) is able to buy votes and that it is wrong that one political party, simply because it is wealthier than another, should be advantaged in electoral terms. This argument, it should be noted, contains two separate components, one empirical, the other normative. The empirical component asserts that it is true, as a matter of fact, that campaign expenditure buys votes. The normative component asserts that, if campaign expenditure does buy votes, it should not in future be allowed to. Mr Martin Linton MP expressed this normative component, in his written evidence to us, in the following terms:

The Committee has an opportunity to conceive and create an approach to the funding of political parties almost from first principles. What should the first principle be? I would suggest that it should be that democracy must

treat people as political equals. ... But if people are to be treated as political equals, there must be a clear separation of wealth from power. Indeed, one could argue that the separation of wealth from power is a basic condition of a democratic system.<sup>16</sup>

**10.26** On the other side, there are five cogent arguments against national spending limits.

- (1) The first, an argument of principle, is that limits on national campaign expenditure would constitute an unwarranted restriction on both freedom of speech and freedom of choice. Subject only to the law, political parties and interested individuals and organisations should be free to spend their money as they see fit. National limits would prevent the parties from exercising their rights in this connection. Also, they would have the effect, if they dealt adequately with 'third-party spending', of preventing organisations like *Entrepreneurs for a Booming Britain* and *UNISON* from exercising their right to campaign on behalf of their opinions and interests. Mr Dave Prentis, Deputy General Secretary of *UNISON*, explained in evidence to us why his union campaigned during elections:

Our members expect – and it is a part of our aims and values within the rule book – that we will campaign on behalf of public service provision. When do the issues around public services come to the fore? They mainly come to the fore during an election period. We cannot help that. ...The type of campaigning we do is not primarily geared to supporting one political party. We are attempting to get the debate centre stage.<sup>17</sup>

- (2) The second argument against national limits advances the idea that national limits, whatever their merits in the abstract, are simply unnecessary. It was put to us forcefully by a number of witnesses that, whatever else the 1997 election campaign may have done, it should have put paid to the idea that lavish campaign expenditure determines the outcome of elections. The Conservative Party in 1997 outspent not only its principal rivals, the Labour Party, but any other party in British political history, yet it went down to heavy defeat. Although the Labour Party and others maintained that election expenditure could be decisive in determining election outcomes, there is actually no hard empirical evidence bearing on the point and several of our other witnesses were more sceptical. Mr Peter Riddell of *The Times* observed:

I am not convinced by the evidence that disparities in spending levels have made any real difference in the outcome of elections. Labour did not lose in the 1980s because it was outspent by the Tories. Similarly, the Tories spent a record amount last year and they had the worst result since the franchise began to be extended in the nineteenth century.<sup>18</sup>

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<sup>16</sup> Written evidence by Martin Linton MP, 27 February 1998, p 1.

<sup>17</sup> Vol 2, pp 145-6, paras 1783-4.

<sup>18</sup> Vol 2, p 3, para 13.

- (3) The third argument against national limits also asserts that they are unnecessary, but for a somewhat different reason. The argument here is that, irrespective of anything this Committee may recommend, the 1997 election marked the high-water mark of campaign expenditure in Britain and that very high levels of expenditure are unlikely to be a feature of election campaigns in the future. As the Conservative Party put it in its written evidence, “we suspect that in practice a natural cap will be set at future elections, as parties find it more difficult to raise very large sums of money”.<sup>19</sup> In the first place, the decision of all three major parties to disclose the names of their principal donors is likely to reduce the amount of giving by wealthy individuals. The banning of foreign donations is likely to have the same effect. In the second place, the Conservative Party, in particular, is likely to continue to suffer from the long-term downward trend in corporate donations. In the third, the circumstances of the 1997 election and its aftermath – including the ‘Ecclestone affair’ discussed in paragraph 4.11 above – have probably convinced large numbers of potential donors, both individuals and organisations, that giving to political parties is a waste of money and also that giving money is liable to bring the donor, at least if his or her donation has been on a sufficiently large scale, into disrepute. In addition, it may well be the case that the Labour Party’s current pro-business stance will cause wealthy individuals and companies to feel that giving to the Conservative Party – historically, often a somewhat defensive measure – is no longer necessary. As Sir Stanley Kalms said in evidence to the Committee,

[corporate funding] is in decline and perhaps rightly so ... I have felt, up to now, that as steward of my company it was correct to support a political party whose objectives were in the interests of the corporation, wealth creation, market economy, anti-EMU and with a full social support system. So I was comfortable supporting the Conservative Party. But times move on and with more political awareness by our shareholders and by the institutions I think that phase has passed, so we will no longer make political donations.<sup>20</sup>

- (4) The fourth argument against national limits is more down-to-earth and concerns practical questions of evasion and enforcement. As one retired party official told a member of this Committee privately, “Show me a limit and I’ll show you how to get round it”. A centralised and well-organised national party might be tempted, for example, to create a large number of small ‘front’ organisations through which campaign expenditure above the national limit could be channeled. “For example,” the Conservative Party noted in its written evidence, “groups of businessmen or trade unions may fund billboard or newspaper advertising, opinion polling, research, etc”. Even if none of the parties succumbed to any such temptation, the limits on the political parties, if they were to achieve their desired effect, would have to be extended to cover

<sup>19</sup> Written evidence by the Conservative Party. See App V, p 242.

<sup>20</sup> Vol 2, p 31, para 330.



so-called 'third parties', that is, all other individuals and organisations that might want to campaign on behalf of a political party or parties (or perhaps in opposition to a party or parties). If the national limits were to cover not only the political parties themselves but also this potentially limitless number of 'third parties', the state would have to put in place a vast and complex administrative apparatus. The costs of enforcement would far outweigh any benefits that would accrue (especially if the parties in any case found themselves short of cash and unable to spend up to, or much over, the limit).

- (5) The fifth and final argument in opposition to national limits concerns the precise level at which the limit or 'cap' would be set. Setting the wrong limit might well be worse than setting no limit at all. Too low a figure could easily amount to an unwarranted infringement of free speech. A figure that was slightly too high might encourage the parties to spend more, not less, than they might otherwise have spent. A figure that was far too high would fail to address the problem of excessive expenditure, while imposing on the parties the administrative burden of having to account in detail for their entire expenditure.

**10.27** There are a number of other arguments pro and con national spending limits, but those mentioned above are the main ones. All of them are serious arguments and deserve to be taken seriously. None can be dismissed out of hand.

**10.28** We should perhaps note in passing that not all of us were as persuaded as some of our witnesses were by the 'equality' or 'level playing field' argument. No-one denies that the Conservative Party and its allies have outspent the Labour party and its allies at every general election from 1955 onwards, often by wide margins.<sup>21</sup> The question is whether these discrepancies in expenditure have affected the outcomes of elections. Some of our witnesses, notably Mr Martin Linton MP, argued strongly that the inequality between the parties had enabled the Conservatives to win a number of elections that they would not otherwise have won, while others, notably Mr Peter Riddell, inclined to the view that the disparity in resources, although real, had probably not had a decisive effect on the outcome of any general election. Neither of these cases is proven; it is hard to know what evidence could be adduced to prove either of them. We as a Committee remain agnostic on the point, though we acknowledge that the results of a number of post-war elections – for example, those of 1950, 1951, 1964 and February and October 1974 – have been very close, and common sense suggests that one major party's ability to spend substantially more than the other may well have made a difference to the outcome.

**10.29** We accept that it cannot be proved that high spending buys elections. It is clear, however, that campaign spending by the Conservative and the Labour Parties in recent years has accelerated, particularly in 1997, bringing with it the need to raise even larger funds to pay for the spending. Even if disclosure leads to a temporary fall in donations, the pressure to raise even greater sums will remain if there is no limit on spending. We believe that it is at least probable that limits on campaign spending are necessary to prevent undue concentration on fundraising.

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<sup>21</sup> R Blackburn, *The Electoral System in Britain, 1995*, Table 7.4, p. 354.



**10.30** We should also note that a majority of us are not persuaded that the problem of enforcement would prove as intractable as some of our witnesses suggested. Many of the arguments relating to evasion assume that one or more of the political parties would actively wish to evade any national limit that was imposed. We disagree. We believe that the parties are more honest and law-abiding than that. We also believe that, in the present climate of transparency and openness, any party that sought to evade the legally imposed national limit, would risk paying a very heavy political penalty – and would know in advance that it would. A national spending limit would, of course, be closely monitored by the Election Commission, as well as the media. We note, not least, that limits on candidates' election expenses at general elections have worked reasonably well for more than a century.

**10.31** We have weighed carefully all the arguments for and against national spending limits, and a majority of us have concluded that the imposition of national spending limits on political parties, and on other campaigning individuals and organisations, is justified. We do not believe that national limits, unless they were set too low, would seriously impinge on the right of free speech, and we do believe that it is possible to set national limits at appropriate levels and that such limits could be made effective. That said, we freely acknowledge that the wisdom of such national limits can be evaluated with complete confidence only in the light of experience and we make our recommendation in the expectation that our proposed Election Commission would have among its responsibilities the review of any system of limits in all its aspects, both in its overall effect and in its detailed enforcement.

**10.32** John MacGregor disagrees with the conclusion in the above paragraph. In his view the arguments outlined in paragraph 10.26 outweigh those in paragraph 10.25. For him disclosure is the key, addressing directly the possible abuses and public concerns and dealing with both. He disputes the view that election expenditure is excessive, comparing what is likely to be spent in any one year on promoting washing powders, butter spreads and toilet rolls with what is spent on promoting the policies which will decide the future direction of the country. He is impressed by the practical difficulties of producing a workable system at the national level – noting the comment of Mr Peter Riddell, “I just do not think it would work” (referring to caps on elections spending);<sup>22</sup> constituency limits are much easier, being related to candidates and confined in scope. As for protecting the parties from wasting their money on badly directed or ineffective campaigns, that is their problem; for the state to step in to prevent them from making their own mistakes smacks of nannyism. He is concerned about the implications for freedom of speech and choice. He agrees with Peter Riddell that “the real issue concerns the raising of money rather than its spending”.<sup>23</sup>

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<sup>22</sup> Vol 2, p 3, para 17.

<sup>23</sup> Vol 2, p 24, opening statement.

*R47 A limit should be placed on the campaign spending of political parties in respect of elections to the House of Commons. The operation of this limit, both in principle and in practice, should be kept under review by the Election Commission.*

## Setting the national limit

**10.33** If it is agreed in principle that a national spending limit should be imposed, a number of practical questions need to be answered. What form should the limit take? How high or low should it be? During what period of time should it be in place (that is, what should constitute the period of 'the election' or 'the campaign')? Which items of expenditure should it include? And, finally, in what way should 'third-party' expenditure be controlled?

### *An 'integrated' or 'separated' national limit?*

**10.34** A national limit could, in principle, take one of three forms. Two of these forms might be described as 'integrated', the third as 'separated'. An integrated limit would be one in which the national and constituency limits were combined to produce a single global limit. A separated limit would be one in which some version of the present constituency limits were retained but with a separate national limit imposed in addition.

**10.35** One of the two integrated possibilities would be to assimilate the proposed national limits to the existing constituency-based candidate limits. The amounts of money that the parties were permitted to spend nationally would not be treated, for legal purposes, as a single national pool but would instead be divided up *pro rata* among the parties' candidates in individual constituencies. If, for example, a party fielded 600 candidates nation-wide and spent £k million on producing party election broadcasts, mounting a national poster campaign, organising a centralised scheme of telephone canvassing, and so forth, the total of £k million would simply be divided up among the 600 candidates (whose individual spending limits would, of course, have to be raised substantially to accommodate the additional, national expenditure on their behalf). The effect of an arrangement along these lines would be to reverse the 1952 *Tronoh Mines* decision. National spending, even if not directed towards an individual constituency or towards the election of an individual named candidate, would nevertheless count towards candidates' election expenses.

**10.36** One advantage of this approach is that it would be 'traditional'. It would build on the existing system, modifying it only in order to reverse the modification that was itself introduced by *Tronoh Mines*. The focus would remain, as now, on individual candidates rather than on national political parties. Another advantage is that, because it focuses on individual candidates, it could be adapted relatively easily for use in European Parliament elections, elections to the Scottish Parliament and any other elections in which the first-past-the-post electoral system was not the only system used. In particular, it could be used in connection with party-list systems.

**10.37** This traditional approach, however, suffers from three disadvantages, two of which are relatively minor but one of which is probably fatal. One of the relatively minor disadvantages is that such an arrangement might prove administratively cumbersome, with the national parties having to maintain detailed records of their own expenditure and also having to allocate fractions of their total expenditure to their local or regional candidates. The other is that under a *pro rata* system the national parties might be even more tempted than they are already to concentrate their spending – especially their spending on posters and billboards – in marginal seats. Ambiguities in the law at present deter the parties from too blatant a concentration of their effort in this way.

**10.38** It is, however, the third and final disadvantage that is probably fatal. It relates to the penalties to be imposed for exceeding limits that were organised along these lines. Under the existing candidate- and constituency-centred system, the penalty to be imposed on candidates who exceed their spending limits is straightforward: they can be deprived of their seats. But if large numbers of candidates of a particular political party were found to have exceeded their individual spending limits, not as a result of any action on their part, but as a result of excessive spending by their national party, it would seem Draconian and unjust – and would probably be politically impossible – to deprive all of them, regardless of their individual guilt, of their seats in the House of Commons, the European Parliament or wherever. A government, possibly one with a large majority, could fall as a result of some over-zealous act on the part of a minor party official, an act that might well not be noticed until some considerable time after the election in question had passed.

**10.39** The other integrated possibility would be the obverse of the first. Instead of assimilating national campaign expenditure to local, the idea here would be to assimilate local spending to national. There would be a single, national spending limit for each party, and the focus would therefore be exclusively on the national parties and no longer on the individual candidate and his or her constituency. This approach has the attraction of simplicity – or at least of apparent simplicity – but it would suffer from two very serious drawbacks. First, each of the national political parties, having an expenditure limit, would have to ensure not only that it kept its own central expenditure in check but that its local associations and parties kept theirs in check. The accounting and other administrative burdens on the national parties would be insupportable, especially since they would be at their heaviest during the heat of elections. Secondly, this alternative approach, even more than the other, would more or less guarantee that the parties would pour the whole of their available resources into marginal seats. In the absence of any kind of constituency limit, they would have every incentive to do so.

**10.40** Given the difficulties posed by these two integrated approaches to the creation of national spending limits, our conclusion is that a separated system would, in practice, be the simplest and most straightforward to operate. Constituency limits would remain, as now. New national limits would be introduced.

*R48 The new national spending limits should be separate from, and additional to, those that now apply to candidates in individual constituencies.*

*The level of the limit*

**10.41** What should these limits be? Our view is that a sensible balance needs to be struck. On the one hand, it would not be sensible to attempt to turn the clock back to the 1970s or 1980s (let alone to the 1940s, when Mrs Clement Attlee drove her husband around from town to town in the family saloon). Modern electioneering is professional and costly, and we accept that. On the other hand, many of the reasons that lead us to favour national spending limits are also reasons that cause us to deplore the enormous increase in spending that has taken place during recent general election campaigns, especially, but not only, those of 1992 and 1997.

**10.42** The figures for the Labour and Conservative Parties' campaign expenditures in connection with the 1997 general election are set out in Tables 3.5 and 3.7 above. Our judgment is that the new national spending limits should be set substantially below the total amounts spent by those two parties in 1997. We suggest a figure of £20 million. This figure should be index-linked, but in order to discourage governing parties in the future from altering this figure for reasons of party advantage, we propose that the legislation embodying the limit should require that it not be otherwise raised or lowered except on the specific recommendation of the Election Commission.

*R49 On the assumption that a national spending limit is in place for the next general election, the limit for parties that contest more than 600 seats at that election should be set at £20 million. That limit should then be index-linked. It should not be varied in future except on the recommendation of the Election Commission.*

**10.43** The figure of £20 million for parties that field more than 600 candidates in a general election should not, however, apply to parties that field fewer candidates. A party that contests seats only in Scotland or Wales, for example, should be entitled only to a limit appropriate to that country. We suggest that any party fielding candidates in fewer than 600 seats should have a limit proportional to the number of seats contested. It is unlikely, in practice, that more than a very few of the smaller parties would ever spend up to their limit. There should nevertheless be an agreed formula.

*R50 The limits in a general election for parties that contest fewer than 600 seats should be lower and should be based on a formula taking account of the number of seats they are contesting.*

*The time period*

**10.44** To what period of time should the national limits, whatever their precise amounts, apply? With regard to individual candidates' spending limits, the 1983 Act – on which we seek to build as far as possible – makes no attempt to define the period of the election or the election campaign. It sets out, rather, to cover any expenditure “before, during or after the election” that is “on account of or in respect of the conduct or management of the

election". In other words, the 1983 Act is concerned with the purpose for which any expenditure was incurred rather than the time during which it was incurred. The Act's clear intention is to prevent candidates or agents from circumventing the expenditure limit by incurring election expenses outside any specified time period. That said, the absence of a specified time period in the Act has undoubtedly caused uncertainty and there is no doubt that some candidates evade the Act by stocking up early or paying late.

**10.45** Unfortunately, the difficulty of establishing a definite period of time during which an election is, or is not, taking place has become greater rather than less over recent decades. Electioneering nowadays can go on for years – it certainly did before the 1992 and 1997 elections – and the multiplicity of elections envisaged by recent legislation will make election periods and non-election periods even harder to separate.

**10.46** With this in mind, we considered whether we should recommend limits on the parties' annual expenditure rather than on their election expenditure. The obvious advantage of such a provision is that it would obviate the need to distinguish between campaign and non-campaign spending.

**10.47** We concluded, however, that there would be considerable practical difficulties in imposing annual spending limits; and, equally important, we could see no positive need for them. If the parties are spending too much, then it is not between elections that they are doing so: it is during campaigns (however loosely defined). Moreover, despite the difficulties, we believe that it is possible for the parties, nationally as well as locally, to distinguish in most situations between election and non-election spending.

**10.48** We conclude therefore the precedent established by the 1983 Act should be followed and that the national spending limits, like those relating to individual candidates, should apply "before, during or after the election" and to any expenditure "on account of or in respect of the conduct or management of the election". We are aware that, over the years, the courts have had to construe these words in a variety of instances.<sup>24</sup> We suggest that the opportunity be taken to reconsider the formulation of the definition of 'election expenses', in the light of those cases, so as to ensure that it is drafted in a way that makes clear the intention that the concept is not to be interpreted restrictively. We believe that our concerns about the evasion of spending limits can best be met by our requirement that the parties publish frequent and full accounts and by the involvement of the Election Commission. As we say elsewhere in this report, the enforcement of the existing spending limits on candidates has become rather too lax. The enforcement of the national spending limits will need to be rigorous.

*R51 Expenditure limits should continue to be set in terms of the purposes for which expenditure is incurred rather than in terms of any specified time period.  
Expenditure limits, at both national and local level, should be rigorously enforced.*

<sup>24</sup> The cases are conveniently reviewed in the *Belfast West* case, 1993 (unreported), a decision of the High Court of Northern Ireland.

*Items of expenditure to be covered*

**10.49** Which items of election-related expenditure should be included within the new national limit? The short answer is 'all'. During the course of an election campaign, many political parties receive goods and services either free of charge or at a cost below their real market value. For example, owners of poster sites may rent them to a political party for less than the normal commercial rates; or a trade union may continue to pay the salary of a member of its staff while seconding him or her to a party.

**10.50** There can be no objection to such arrangements, but the true cost of such benefits-in-kind should clearly be included in the accounts of the party in question and should count towards its total expenditure limit. Parties' accounts relating to elections should itemise both expenditure in cash and the true value of benefits-in-kind. The parties should not, however, be required to account for donations of labour that are genuinely voluntary in the sense that neither the party nor another employer is paying the individual to undertake party work. In order to reduce uncertainty as to the sorts of items which should be included within the national expenditure limit, we propose that there should be a schedule, mirroring the function of Schedule 3 to the 1983 Act in respect of candidate expenditure, containing a comprehensive list of types of relevant national expenditure. We believe that the task of creating this schedule could, like the task of amending the present Schedule 3 (proposed in paragraph 10.13 above), be carried out by a Home Office working party with co-opted experts from major political parties. Thereafter, it should be a task for the Election Commission to keep the schedule under review in order to ensure it remains relevant to current practices.

*R52 The national expenditure limits should cover benefits-in-kind as well as cash expenditure. Parties' accounts should itemise benefits-in-kind separately from cash expenditure and should indicate both the nature of each benefit-in-kind and its true market value.*

*R53 Legislation governing national expenditure limits should include a schedule, analogous to our proposed revised Schedule 3 to the Representation of the People Act 1983, setting out a comprehensive list of items of relevant expenditure which should be declared by political parties at parliamentary elections. The contents of the schedule should be kept under review by the Election Commission.*

**Implications of the Bowman judgment**

**10.51** In our deliberations prior to reaching our conclusion in favour of a national campaign expenditure limit, we considered the judgment delivered by the European Court of Human Rights in the case of *Bowman*.<sup>25</sup> This was a case specifically about the limit on third-party election expenditure imposed by section 75 of the 1983 Act. Before, therefore,

<sup>25</sup> Judgment dated 19 February 1998.



setting out the implications of *Bowman* in respect of a national party limit, we turn first to the implications for section 75.

**10.52** In *Bowman*, the European Court of Human Rights had to consider a challenge to the £5 expenditure limit imposed on a third party by section 75 of the 1983 Act. The challenge was based on Article 10 of the European Convention on Human Rights which provides as follows:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

**10.53** Mrs Phyllis Bowman was the executive director of the Society for the Protection of the Unborn Child (SPUC) an organisation with about 50,000 members which is opposed to abortion and human embryo experimentation. In the period immediately prior to the General Election in April 1992, Mrs. Bowman arranged for the distribution of some 1.5 million SPUC leaflets in constituencies throughout the United Kingdom. In particular, she caused to be distributed in the constituency of Halifax 25,000 leaflets. On one side of the Halifax leaflet there was printed a series of facts about the stages by which the human embryo develops in the womb; on the other side of the leaflet were printed the views of the three major party candidates who were contesting the Halifax seat on the issues of abortion and experimentation.

**10.54** Mrs Bowman was later charged with an offence under section 75 of the 1983 Act. This provides:

75 (1) No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account:

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate,



but paragraph (c) of this subsection shall not:

- (i) restrict the publication of any matter relating to the election in a newspaper or other periodical or in a broadcast made by the British Broadcasting Corporation ... [or the Independent Broadcasting Authority];  
or
  - (ii) apply to any expenses not exceeding in aggregate the sum of £5 ....
- (5) If a person:
- (a) incurs, or aids, abets, counsels or procures any other person to incur, any expenses in contravention of this section ...

he shall be guilty of a corrupt practice...

**10.55** The prosecution was dismissed on a technicality (the summons having been issued out of time); whereupon Mrs Bowman took the case to Strasbourg contesting that section 75 violated Article 10 of the Convention and that she should never have been prosecuted in the first place.

**10.56** The European Court of Human Rights upheld her contention. By a majority of 14 to 6 judges it was held that the £5 limitation on third-party expenditure was equivalent to a total ban and constituted an unjustifiable restriction on her freedom of expression.

**10.57** The majority held that the statutory restriction on expenditure contained in section 75 of the 1983 Act pursued the legitimate aim of protecting the rights of others, namely, the candidates for election and the electorate in Halifax.<sup>26</sup>

**10.58** The majority had then to consider whether the restriction of Mrs Bowman's freedom of expression was one which was "necessary in a democratic society" and satisfied one of the interests specified in Article 10(2) of the Convention. At this point the majority made reference to the free election principle enshrined in Article 3 of the First Protocol to the Convention. This states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

**10.59** The judges observed that there may be circumstances in which the right of freedom of expression and the right to enjoy a free election may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the legislature". In striking the balance between these two rights each Contracting State had a

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<sup>26</sup> Para 38 of the judgment.

'margin of appreciation',<sup>27</sup> meaning thereby that each State is (within reasonable limits) entitled to adopt the solution which best suits its circumstances and traditions.

**10.60** The majority concluded that, because the restriction in section 75 was set as low as £5, in practical terms it operated as a total barrier on Mrs Bowman's publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate. It was, therefore, out of proportion to the legitimate aim it sought to achieve. The restriction cut down Mrs. Bowman's freedom of expression during the critical period when the minds of the voters were focused on their choice of representative.<sup>28</sup>

**10.61** The immediate effect of *Bowman* is that it will be necessary for the United Kingdom legislature to amend section 75 of the RPA 1983 so as to raise the limit on expenditure above £5. We note that in connection with the recent election of the Northern Ireland Assembly the Government raised the limit to £100. We do not know what considerations persuaded the Government that £100 was the appropriate figure. It appears to us still to be a very small sum of money to be able to spend on circulating a leaflet within a constituency or on organising meetings during the election period.

**10.62** There is, of course, the problem that, if one third party can come into a constituency and spend much more than £100, say up to £1,000, in seeking to secure the defeat of a candidate, then a second third party or a third or fourth could do likewise. Cumulatively they could spend a significant proportion of the candidate's own spending limit of around £8,000, and, as was argued, in *Bowman*, could force that candidate to devote part of his or her limited resources to rebutting the attacks made by the third parties.

**10.63** In the end a judgement has to be made as to what is a reasonable limit to impose on a third party bearing in mind that the figure selected may well be the subject of challenge in the European Court of Human Rights, or, when the Human Rights Bill receives the Royal Assent, in our own courts. It is relevant to note that section 75 is confined to activities which are intended to promote or prejudice the electoral prospects of "particular candidates in a particular constituency". Leaflets designed merely to bring factual information to the attention of voters or to assist a national campaign without referring to particular candidates fall outside the section.<sup>29</sup>

**10.64** We suggest for consideration by the Government that the amended figure to be inserted in section 75(1)(ii) should be more than £100 and should be of the order of £500. We believe that this would provide an allowance sufficient to cover, for example, the production and distribution of a leaflet throughout a constituency or the publication of an advertisement in a local newspaper.

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<sup>27</sup> *Ibid*, para 43.

<sup>28</sup> *Ibid*, para 46 and 47.

<sup>29</sup> *Ibid*, para 22.

*R54 Section 75(1)(ii) of the Representation of the People Act 1983 should be amended to allow third-party spending in support of (or to the prejudice of) a candidate in a general election to be increased from £5 to £500.*

**10.65** We turn now to the broader question: what are the implications of the *Bowman* judgment as regards a national expenditure on election expenditure? In its simplest form the question comes down to this: would the European Court of Human Rights, or a domestic court after the Human Rights Bill becomes law, strike down a national statutory spending limit on the ground that it constituted an infringement of the right to freedom of expression enshrined in Article 10 of the Convention?

**10.66** Manifestly the question which we have raised is a question of law which may one day have to be authoritatively answered by a court and it forms no part of the functions of this Committee to attempt to give definitive guidance on questions of law. However, it would clearly be an exercise in futility for us to recommend a legislative innovation which we anticipated would be set aside on the first legal challenge.

**10.67** The best view which we are able to form in answering the question posed in paragraph 10.65 above is that there would be powerful arguments for upholding a statutory limit on expenditure. The language of Article 10 of the Convention is quite different from the free speech right laid down in the First Amendment to the United States Constitution. As demonstrated more fully in Appendix II to this Report, the First Amendment has been given an absolutist interpretation. In the context of attempted limitations on election expenditure such restrictions have been repeatedly set aside by the United States Supreme Court.

**10.68** But, as the majority judgment in *Bowman* emphasises, what is, on the face of it, an objectionable fetter on freedom of expression under Article 10(1) of the Convention, may be justifiable on the facts by reference to the more flexible standards introduced by Article 10(2) (for the text see paragraph 10.52 above). In particular the free election principle introduced by the First Protocol to the Convention (see paragraph 10.58 above) may allow a Contracting State, utilising its margin of appreciation, to impose a reasonable limit for a defined period (such as the run-up to a general election) on freedom of expression.

**10.69** Furthermore, the State may legitimately take the view that it needs to protect voters (and thus to protect them in respect of their voting rights) from being subjected to overwhelming election propaganda by a party which has greatly superior financial resources. There are, we consider, clear indications in the *Bowman* judgment, that the European Court of Human Rights would be sympathetic to the 'level playing field' argument.<sup>30</sup> We note too that in the dissenting judgment of Judges Loizou, Baka and Jambrek (who held that the spending limit was not disproportionate) it was stated that "There can be no doubt that limits on election campaign spending maintain equality of arms as between candidates, a most important principle in democratic societies and in the electoral process."<sup>31</sup>

<sup>30</sup> See, e.g., para 38 in the majority judgment in *Bowman* and the whole debate about whether the £5 limit was "disproportionate to the aim pursued" at para 47. There is an assumption that some higher figure would have imposed a reasonable restriction on Mrs. Bowman's freedom of expression.

<sup>31</sup> At para 5.

**10.70** We do not think that the majority would have disagreed with this sentiment. It was the derisory limit of £5 to which they objected.

**10.71** Accordingly, we conclude from our perspective that there is nothing in the Bowman judgments which should deter us from making recommendation 47.

### Third-party spending and a national expenditure limit

**10.72** We have already considered third-party spending at constituency level and recommended that the present expenditure under section 75 of the RPA 1983 should be increased.<sup>32</sup> We now turn to what we see as the most difficult problem associated with placing national limits on the election expenditure of political parties, namely how to place similar limits on expenditures by individuals and organisations which are not parties but which nevertheless play a part in election campaigns. Such limits are obviously needed and obviously need to be enforced. Otherwise, as American experience has shown, there are any number of ways in which the spending limits on the political parties could be evaded. The parties themselves could set up, as we remarked earlier, a wide range of front organisations. Alternatively, even without any collusion between the parties and outsiders, individuals or organisations could engage in large-scale propaganda that was clearly intended either to promote the election of one party or to discourage the election of another.

**10.73** Moreover, the intervention of such non-party organisations or ‘third parties’ in British elections is not just a theoretical possibility. There is a long history of it. The sugar firm, Tate & Lyle, mounted its ‘Mr Cube’ campaign in the late 1940s, in opposition to the Labour Party’s proposals to nationalise sugar refining. Tronoh Mines Ltd placed its famous newspaper advertisement shortly before the 1951 election. Throughout the 1950s, but principally during election campaigns, the privately owned steel industry – both individual firms within the industry and the industry as a whole – campaigned against steel nationalisation, which also formed part of Labour’s programme at that time. In the past, trade unions were more disposed to channel their political efforts, including their cash, directly through the Labour Party; but latterly some unions have operated more in the style of Tate & Lyle and the steel industry in the 1950s. At the 1997 general election, for example, Britain’s largest trade union, UNISON, spent more than £1 million on advertisements promoting the cause of a national minimum wage, a cause supported by the Labour and Liberal Democrat parties but opposed by the Conservatives.<sup>33</sup>

**10.74** All the major parties, in their evidence to this Committee expressed awareness of this third-party problem and concern about it. The Conservatives pointed out that “an expenditure cap, like disclosure, would also be open to abuse”, adding that “if political parties are to limit their spending they may seek to persuade other groups to spend on their behalf”. The Labour Party stated flatly: “it would make no sense to impose a limit on political parties only to see these eclipsed by free-spending pressure groups”. The Liberal Democrats similarly noted that “there must be some restriction on incurring expenditure on

<sup>32</sup> See para 10.64 above.

<sup>33</sup> D Butler and D Kavanagh, *The British General Election of 1997*, 1997, p 242.

behalf of a candidate (or that candidate's opponents) if there are to be any sensible limits to election expenditure".

**10.75** There are, however, two questions that need to be answered by anyone seeking to control third-party spending during elections. The first concerns the definition of 'third parties'. At the moment, third parties, in the sense in which we are using the term, do not have a generic definition. Regulating their spending therefore presents the initial problem of making it clear which non-party individuals and organisations should be subject to any national (or indeed local) expenditure limits.

**10.76** The answer we propose to this question is straightforward. Any individual or organisation that incurs election expenses should be subject to an expenditure limit.

**10.77** For this purpose, and building on the 1983 Act, we define 'election expenses' as any expenditure made with a view to or with the foreseeable consequence of (a) promoting the electoral prospects of any political party or political parties or (b) opposing or damaging the electoral prospects of any political party or parties. If a third party intends to incur election expenses, thus defined, then, subject to a minimum threshold of £25,000, it should be required to register with the Election Commission; and only registered third parties should be permitted to incur election expenses of £25,000 or above. We have decided in favour of a minimum to avoid the administrative burden of catching even relatively small third-party campaigns.

*R55 Individuals and organisations other than political parties that wish to incur 'election expenses' of £25,000 or more should register, like a political party, with the Election Commission. No individual or organisation not so registered may incur election expenses in excess of £25,000.*

**10.78** The second question that needs to be answered in this context concerns what kinds of expenditure are to count as expenditure in favour of, or opposed to, the election of a particular party. Not all political propaganda during election campaigns overtly promotes or opposes the election of particular parties. At the 1959 general election, a privately owned steel firm, Stewarts and Lloyds, ran a series of advertisements in daily and Sunday newspapers, most of which were thought to have large Labour readerships. The advertisements were clearly intended to discourage voters from voting Labour. That is not, however, what they said. On the contrary, the Stewarts and Lloyds slogan insisted: "It's not your vote we ask for, it's your voice. Speak up against state-owned steel." In one advertisement, published in the pro-Labour *Daily Herald*, the firm stated baldly: "This advertisement is not trying to sway votes in any political election."<sup>34</sup> Similarly, UNISON could claim that its 1997 campaign promoting a national minimum wage was intended primarily to focus debate rather than to secure a particular electoral outcome. After all, none of its advertisements mentioned any political party.

<sup>34</sup> D Butler and R Rose, *The British General Election of 1959, 1960*, pp 248-9.

**10.79** It is clear to us that advertising of this kind, whether by Stewarts and Lloyds in the 1950s or by UNISON in the 1990s, has as one of its objects or one of its foreseeable effects, though not necessarily the only one, promoting the electoral prospects of one or more political parties and damaging the electoral prospects of one or more others. It is simply naive to imagine that organisations that send out explicitly political messages in the midst of election campaigns, or shortly in advance of them, are engaged innocently in generalised, nonpartisan promotional propaganda. There is, of course, absolutely nothing wrong with individuals and organisations engaging in such activities. On the contrary, a *free* society demands that they should be able to do so, indeed that they should be encouraged to do so; but, in the context of election campaigns, they should, in doing so, be subject to the same kinds of expenditure limits as the parties themselves.

**10.80** We propose, therefore, that the definition of election expenses in recommendation 55 above should have added to it provisions making it clear that propaganda implicitly in favour of, or hostile to, the election of particular parties should be covered by the provisions relating to third parties in general.

*R56 'Election expenses' should be taken to include expenses that are clearly intended to promote or have the foreseeable effect of promoting some parties or to disparage other parties irrespective of whether such parties are mentioned by name in the individual's or organisation's advertising or other promotional material.*

**10.81** That said, we acknowledge, of course, that in some cases it will be hard to determine whether the advertising and other propaganda undertaken by an individual or organisation other than a political party is, or is not, intended to affect an election outcome. Ultimately it will be up to the courts to decide in such cases; but one role we envisage for the Election Commission is in giving authoritative, but not legally binding, advice on such matters.

**10.82** It is important to note in this overall context that our concerns about third-party expenditure arise from the fact that during election campaigns third parties are liable to exert influence that may well be on a par with that exerted by the political parties. That being so, it also seems to us right that registered third parties should, as regards any funds they use for election expenses, be subject to the same rules and restrictions on donations as political parties are. Otherwise, again, it would be possible for the spirit and the letter of our overall proposals on party funding to be evaded quite easily. Interest groups and other organisations, despite any spending limits imposed on them, could easily become the repository of funds from individuals and organisations that were above the limit set for donations to political parties or were derived from foreign sources.



*R57 Registered third parties should be required, as a condition of continued registration, to set up a separate election fund. They should be required to disclose to the Election Commission (and the Election Commission should publish) the source and amount of any donation of £5,000 or more. They should also be barred from accepting any donations into their political fund from any source other than a permissible source (as defined in Chapter 5 of this report) and be required to make a formal declaration that they have used their best endeavours to determine that they have not accepted any donations from a non-permitted source. The Election Commission should have similar investigatory powers in respect to third parties as it has in respect of political parties.*

**10.83** There remains the question of the precise upper limit that should be placed on third-party expenditure and how that limit should be related to the national limit that we are proposing for political parties. As we noted in paragraphs 10.51-10.71 above, we are conscious that the *Bowman* judgment in the European Court of Human Rights accepts that such limits may be imposed, but also makes it clear that the limit must not be so low that, in effect, it deprives the third party of its right to free expression.

**10.84** Against this background, we propose that registered third parties should be able to spend up to 5 per cent of the permitted maximum for parties contesting more than 600 parliamentary constituencies (see paragraph 10.42). We accept that this creates an anomaly in that third parties in Scotland, Wales and Northern Ireland would be able to spend far more proportionally in those countries than third parties engaged in political activity throughout the United Kingdom; but in our view the chances of any third party in Scotland, Wales or Northern Ireland actually spending grossly excessive amounts at a general election are so small as to render unnecessary any separate provisions relating to them.

**10.85** Five per cent of the permitted maximum for political parties may sound a small figure. The Labour Party in its evidence suggested 10 per cent. Our view, however, is that 5 per cent is actually quite generous. If a trade union, for instance, were to engage in election campaigning out of its political fund, it would be able to spend 5 per cent of £20 million, that is £1 million, a substantial sum of money. (Only one non-party organisation – UNISON – appears to have spent above this limit during the 1997 election).<sup>35</sup> If a number of trade unions say, two or three, were to spend the same amount, the total could be significant.

*R58 There should be a national limit on election spending by 'third parties' set at 5 per cent of the maximum limit set for any political party.*

<sup>35</sup> UNISON spent £1,112,000 on press advertising in 1996-97. Other big spending 'third parties' were Paul Sykes who spent £827,000 and Entrepreneurs for a Booming Britain which spent £868,000: Butler and Kavanagh, *op cit*, p 242.



## The Scottish Parliament and the National Assembly for Wales

### *Election expenditure by candidates and political parties*

**10.86** The legislation in respect of the Scottish Parliament and the National Assembly for Wales includes in each case a power given to the Secretary of State to limit the election expenses of candidates and parties. Section 11(2)(c) of the Government of Wales Act 1998, for example, provides that the Secretary of State may by order make provision as to “the limitation of the election expenses of candidates and registered political parties (and the creation of criminal offences in connection with the limitation of such expenses)”.

**10.87** For the same reasons that led us to conclude that a spending limit should be placed on national party spending in connection with Westminster election campaigns, we believe that limits should also be introduced in the cases of Scotland and Wales. Indeed we think that the ‘equality’ argument set out in paragraph 10.25(5) above is particularly strong in a context where elections will be fought between, on the one hand, parties with support throughout Great Britain, such as Labour, the Conservatives and the Liberal Democrats, and, on the other, parties such as the Scottish National Party and Plaid Cymru whose support is confined to only one part of Great Britain. As George Reid of the SNP put it to us during our visit to Edinburgh: “In a year’s time, we have exclusively Scottish elections. We have seen in the past ... money, resources and people being pumped into Scottish elections by the London offices of the British unionist parties. That creates an imbalance.”<sup>36</sup>

*R59 Limits should be placed on the campaign spending of political parties in respect of elections to the Scottish Parliament and the National Assembly for Wales. How well these limits work, both in principle and in practice, should be kept under review by the Election Commission.*

**10.88** In contrast to the first-past-the-post (FPTP) elections to the House of Commons, elections to the Scottish Parliament and the Welsh Assembly will be by means of the Additional Member System (AMS). Although we believe in principle that the expenditure regimes in Scotland and Wales should as far as possible be assimilated to that of the United Kingdom as a whole, the difference in the electoral systems has some bearing on the formulation of our recommendations in respect of these other regimes. It is hard to quarrel with Professor Peter Pulzer’s observation that, in practice, “how and where parties spend their money is determined by the way votes are turned into seats”.<sup>37</sup>

**10.89** The AMS system is described in more detail in Appendix III to this report. Briefly, members of the Scottish Parliament and the Welsh Assembly will comprise those elected under the FPTP system and those elected under a regional list system. In Wales, 40 of the 60 Assembly members will be elected under the FPTP system; in Scotland 73 of the 129 members will be elected in the same way. The constituencies for these members will be the same as the Westminster constituencies (with the exception that one member each will be

<sup>36</sup> Vol 2, p 415, para 5031.

<sup>37</sup> Written submission of 21 April 1998.

elected from Orkney and Shetland). The 'additional members', elected by means of the regional ballot, will either be drawn from lists of candidates drawn up by the political parties or be individuals independent of the party lists. In Wales, four members will be elected from each of five regions, making up the additional 20 members of the Assembly. In Scotland, seven members will be elected for each of eight regions, making up the additional 56 members. In this connection, it is important to note that an individual may stand for election, whether as a party candidate or as an independent, in both an FPTP constituency and in a region. It is envisaged that some individuals will actually do so.

**10.90** Under the present system of elections to the House of Commons, most party spending takes one or other of two basic forms. There is expenditure by and on behalf of candidates at the local level, and there is expenditure on behalf of the party nationally. Earlier in this chapter, we have made recommendations in respect of both. Under AMS, however, the possible forms of expenditure are more numerous. First, there will be expenditure by and on behalf of candidates standing in the FPTP constituencies. We imagine they will conduct campaigns not unlike those conducted by candidates for the House of Commons. Indeed the Welsh Office, in their written submission to this Committee, said: "We envisage applying the parliamentary practice (or something very like it) to candidates for the Assembly constituencies."

**10.91** Secondly, there will be – in addition to expenditure by and on behalf of constituency candidates – expenditure by and on behalf of regional-list candidates. This could take the form of Scotland-wide or Wales-wide party campaigning on behalf of both constituency and regional candidates; or it could take the form of regional party campaigning, or it could take the form, as in FPTP constituencies, of campaigning by or on behalf of individual candidates, albeit individual candidates standing on regional lists.

**10.92** Thirdly, there will also be expenditure in connection with the campaigns of those individuals who choose to stand as both constituency and regional candidates. A possible form of 'hybrid' campaigning was suggested to us by Mr Henry McLeish, the Scottish Office Minister for Home Affairs, Devolution and Local Government:

I mention the possibility – indeed likelihood – that some individuals may stand for election both as constituency candidates and as part of a list. They may well, for example, wish to draw attention to that fact in their election literature and indeed use a single leaflet to promote both their individual candidacy in a constituency and the party list. Indeed constituency candidates in general may wish to use their own literature to encourage support for their party's list.<sup>38</sup>

**10.93** In considering expenditure limits under AMS, we have taken into account each of these possible forms of spending. Taking the most straightforward type of campaigning first, namely that of candidates standing under the FPTP part of the system only, we believe that expenditure limits identical to those used in connection with the Westminster system should apply, especially as the FPTP constituencies themselves (with the single exception of Orkney and Shetland) will be identical. As in the case of elections to the

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<sup>38</sup> Letter to the Committee dated 21 August 1998.

House of Commons, the constituency candidate and his or her election agent should be responsible for ensuring that the limit is adhered to.

*R60 Candidates for the Scottish Parliament and the National Assembly for Wales who contest an election only as a constituency candidate under the first-past-the-post part of the system should be subject to the same expenditure limits, and the same arrangements for enforcing them, as House of Commons candidates.*

**10.94** In addition to those individuals who stand in FPTP constituencies, whether as party candidates or independents, there will be some individuals who choose to stand as independents in the regions apart from any party list. The Welsh Office suggested in their written submission to the Committee that the question of expenditure limits in respect of those candidates contesting the regional elections as individuals was, as in the case of FPTP constituency candidates, quite straightforward: “Individual candidates in the electoral regions present no problems; an individual limit could be set which takes account of the larger area and the larger electorate to be covered.” We agree, and we propose that those candidates who contest the regional elections as individuals should be set a regional limit determined by combining the candidate constituency limits of those constituencies contained within the region. Again, the candidate and his or her election agent should be responsible for ensuring that this regional limit is not breached.

*R61 Independent regional candidates for election to the Scottish Parliament and the National Assembly for Wales should be subject to an expenditure limit calculated by combining the total constituency limits of those constituencies contained within the region. The limit should be enforced in the same way as the limits for constituency candidates.*

**10.95** Candidates on party lists who are not also constituency candidates will, we imagine, rely substantially on the Scotland-wide or Wales-wide campaigns conducted on their behalf, as well as on behalf of constituency candidates, by the political parties in Edinburgh or Cardiff (possibly, of course, with London involvement, financial and otherwise). We propose that, as in the case of national spending during general election campaigns, spending in Scotland and Wales should be limited.

**10.96** Given the fact that the powers of the Scottish Parliament and the Welsh Assembly will lie somewhere between the powers of the Westminster Parliament and the powers of local authorities, and given the reasonable fears of the SNP and Plaid Cymru, in particular, that their campaign expenditures could be swamped by those of the larger, London-based parties, we propose that the limits in Scotland and Wales should not be the same limits as those for the United Kingdom as a whole, even if the latter were to be adjusted downwards *pro rata* to allow for Scotland’s and Wales’s smaller populations. We propose instead that the limit in Scotland should be two-thirds of the *pro rata* national limit for Scotland and that the limit in Wales should be one-half of the *pro rata* limit for Wales. Scotland has 72 parliamentary constituencies, suggesting a *pro rata* limit, based on our proposed United Kingdom limit of £20 million, of approximately £2.2 million. Two-thirds of that would be

approximately £1.5 million. Wales has 40 parliamentary constituencies, suggesting a *pro rata* limit, also based on our proposed U.K. limit, of approximately £1.2 million. Half of that would be £600,000. We believe that limits of that order of magnitude are appropriate in the light of the specific circumstances of Scotland and Wales.

*R62 Limits should be placed on the campaign expenditures of political parties in respect of elections to the Scottish Parliament and the National Assembly for Wales. On the assumption that such spending limits are in place for the first elections to the Parliament and the Assembly, the limits should initially be set at £1.5 million in Scotland and £600,000 in Wales. The limits should then be index-linked. They should not otherwise be varied in future except on the recommendation of the Election Commission.*

**10.97** We are aware that some candidates on regional party lists may, even though they are on their party's list, wish to engage in a certain amount of personal campaigning. Someone might want to conduct a personal campaign if, for example, he or she were ranked high on his or her party's list and had some personal standing in the region. We have considered whether limits should be placed on such additional, personal campaign expenditure but have concluded that the complexities of administering any such arrangement would far outweigh any possible benefits to be derived, especially since the number of candidates engaging in such campaigning would be likely to be small and the amounts of money involved nugatory.

**10.98** Some candidates are likely, as we have seen, to be both constituency candidates and regional party-list candidates. Some of them may indeed, as Mr McLeish suggested, want to use their own campaign literature to encourage support for their party list. Were this expenditure treated solely as candidate expenditure, then, arguably, this would provide a mechanism – though probably not a significant one – for circumventing the Scottish and Welsh national limits. We considered whether such hybrid expenditure should be divided between the national and local expenditure limits. We decided that it should not. As in the case of personal campaigning by party-list candidates, the administrative costs involved would almost certainly be disproportionate to the harm, if any, prevented.

*R63 Campaign expenditure by constituency candidates which also promotes their party's Scottish or Welsh national campaign should be treated, for purposes of expenditure limits, only as constituency expenditure.*

### **Spending by third parties**

**10.99** We propose that third-party spending in Scotland and Wales should be subject to limits along the same lines as those recommended for Westminster elections in paragraphs 10.83-85. The result will be that, subject to registration, third parties that engage in broad, non-candidate specific campaigning will be able to spend up to 5 per cent of the political parties' limits. We do not at present see any need to propose limits on third-party spending in individual constituencies. Such spending is unlikely to be on a significant scale.

*R64 Limits on third-party campaign spending in connection with elections to the Scottish Parliament and the National Assembly for Wales should be along the same lines as the limits proposed for elections to the House of Commons. Third parties proposing to engage in significant campaign expenditure should, as in the United Kingdom case, be required to register.*

## The Northern Ireland Assembly

### *Election expenditure by candidates and political parties*

**10.100** Elections to the new Northern Ireland Assembly are by means of the Single Transferable Vote (STV). There are 18 constituencies, which are also the Westminster constituencies, and each of them returns six members to the Assembly, which therefore has 108 members. In each of the regions, the parties field candidates and the electors rank as many of them as they want to in order of preference. Unlike in Scotland and Wales, electors may, if they choose, opt for candidates of different parties.

**10.101** The first election to the Assembly took place on 25 June 1998. Candidates in that election were subject to the same candidate expenditure limits as candidates in Westminster elections. We believe that, in addition to the existing candidate limits, there should be a Northern Ireland-wide limit on party spending along the same lines as those we recommend for Scotland and Wales. The amount we envisage for Northern Ireland is £300,000.

*R65 A limit should be placed on the campaign expenditures of political parties in respect of elections to the Northern Ireland Assembly. The limit for the next elections to the Assembly should be set at £300,000. It should then be index-linked. It should not be varied in future except on the recommendation of the Election Commission.*

### *Spending by third parties*

**10.102** The legislation governing elections to the Assembly amended section 75 of the RPA 1983 to enable third parties to spend £100 (as opposed to £5) on expenditure promoting a candidate to the Assembly. We believe that this figure is too low and propose that it should be increased to £500 in line with our recommendations concerning third parties in Scotland, Wales and the United Kingdom as a whole. Third-party spending covering the whole of Northern Ireland should be subject to registration, as elsewhere, and should be limited to a maximum of 5 per cent of the party limit for Northern Ireland as a whole.

*R66 A limit on third-party expenditure in respect of elections to the Northern Ireland Assembly should be along the same lines as the limits proposed for elections to the Scottish Parliament and the National Assembly for Wales. Third parties proposing to engage in significant campaign expenditure should, as in Scotland and Wales, be required to register.*

## The London Mayor and Assembly

**10.103** The new London Mayor will be elected by the Supplementary Vote system under which London electors will be able to express their second as well as their first preference for Mayor, with second preferences coming into play only if no candidate wins 50 per cent of the vote on the first count. The Assembly will be elected by means of an AMS. Of the 25 members of the Assembly, 14 will be elected under a FPTP system from constituencies made up of one or more London boroughs. The other 11 will be elected from London-wide party lists.

**10.104** In its White Paper on London Government, the Government indicated that it envisaged limits being placed on the amount both mayoral candidates and Assembly candidates could spend on their campaigns. We note that any decisions about such limits await the outcome of our present inquiry and will be taken only after consultation with the Association of London Government. Following the endorsement of the Government's proposals for London in the referendum of 7 May 1998, legislation to establish the new Greater London Authority is expected to be introduced in the 1998-99 parliamentary session, with elections for the Mayor and Assembly planned for late 1999 or the spring of 2000.

**10.105** We believe it would be premature at this point to attempt to formulate specific spending limits for the London elections. Nevertheless, our view is that an appropriate regime for London would include constituency limits and a London-wide limit similar to those we have proposed above for Scotland, Wales and Northern Ireland. The London-wide limit would cover all spending by political parties on both mayoral and Assembly elections. Third-party limits of the kind proposed above would also be required.

## Elections to the European Parliament

**10.106** Members of the European Parliament (MEPs) from England, Scotland and Wales have been elected since the first European elections in 1979 under the FPTP system. Elections in Northern Ireland have been conducted under the STV. The statutory provisions in respect of these elections (including those for Northern Ireland) have therefore closely mirrored those that apply to elections to the United Kingdom House of Commons.

**10.107** The 1999 UK elections to the European Parliament will, however, be different. Under legislation currently before Parliament, a Regional List System (RLS) will be used for the first time in England, Scotland and Wales (Northern Ireland will continue to use STV).



Under RLS, Britain will be divided into 11 regions (nine in England, with Scotland and Wales each counting as a separate 'region'); England will have 71 MEPs, Scotland 8 and Wales 5. Each region will constitute a multi-member constituency, with electors able to cast one vote, either for a registered party or for an independent candidate. The party or independent candidate who wins the most votes wins one of the region's seats. The remaining seats are allocated according to an arithmetical formula.

**10.108** Under the legislation currently before Parliament the Secretary of State proposes to take the power to limit election expenses "incurred in relation to a general election as a whole" (that is, a general election of UK members to the European Parliament). Bearing in mind that under RLS the emphasis of campaigning will in the main be on the national rather than the regional elections, we believe it is important that consideration should be given to limiting *national* campaign expenditure by the political parties (and by third parties). We now turn to the specific questions: What should the initial national limit be (that is, the limit for 1999)? Should there be limits on the expenditure of individual candidates as well as on the political parties?

**10.109** Before attempting to answer these questions we should record certain facts: first, those relating to the candidates' limits. In previous elections to the European Parliament, limits have been imposed on spending by candidates in each constituency. In the most recent election, in 1994, the spending limit for each candidate was £13,175 plus 5.7p per registered elector in the constituency. The number of registered voters in Britain in 1994 was, we believe, 42,624,399. Multiplying the basic sum of £13,175 by the number of British constituencies (84), and multiplying the number of registered voters by 5.7 produces an aggregate sum (rounded to the nearest thousand) of £3,536,000. That is the total amount which could have been spent by candidates standing on behalf of a party which nominated candidates in all 84 British constituencies in 1994.<sup>39</sup>

**10.110** We do not have any information as to the extent to which candidates made use of the facility to spend up to the limit. In practice it would have worked out at between £40,000 and £45,000 per candidate per constituency. We suspect that very few, if any, candidates spent anything like this amount of money. The European elections have had a low profile and have produced low turnouts. Our guess is (and it is no more than a guess) that the candidates representing each of the major parties spent in aggregate much less than £3.5 million.

**10.111** The information concerning national spending at the last election to the European Parliament in 1994 is also very meagre. We know that the Conservative Party nationally spent something in the order of £1.5 million on that campaign. We do not know what the Labour Party spent, but it seems inherently unlikely that they spent any more than the Conservatives did.

**10.112** Turning now to address the questions raised at the end of paragraph 10.108 above, we ask, first, what should the national limit be on a party for the 1999 European

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<sup>39</sup> European Parliamentary Election Regs, SI 1986/229, Sched 1, as amended by the European Parliamentary Election (Amendment) Regs, SI 1994/748, para 3.



Parliament election? Our concern in making our earlier recommendations for an expenditure cap on the election to the House of Commons was the 'arms race' which appeared to have developed between the parties in that context. There is no corresponding evidence of an 'arms race' in connection with the election to the European Parliament. It, therefore, seems to the Committee that it would be expedient to move cautiously and to start from the principle that the *overall* permitted expenditure in 1999 by a party and all of its candidates should not exceed £3.5 million. Further investigation of what candidates actually spent in 1994, and more information as to what the Labour Party and the Liberal Democrats spent nationally in 1994, might reveal, for example, that an overall limit of £3.5 million would be more than adequate to cover the probable level of spending by any party and its candidates at the next European election.

**10.113** In the limited time available to us, we have not been able to consider all the possible ramifications of this situation. Under a closed list system such as that which is to be used for the European elections, the chances of success of any candidate on a party list will depend on the number of votes cast for that list in the relevant region. It is therefore likely that spending will shift away from promoting individual candidates and towards the promotion of regional lists or of parties nationally. An overall limit would in effect be a national limit. We do not think it would be necessary to impose a separate limit on candidate and regional spending, since this would involve an additional layer of control and it would often be hard to distinguish between national, regional and candidate expenditure.

*R67 In the light of further information, the Government should place a limit on the campaign expenditure of political parties (and third parties) in respect of elections to the European Parliament. The limit, when established, should be index-linked and should not be varied in future except on the recommendation of the Election Commission.*

## Enforcement and penalties

**10.114** We come now to consider how the recommendations which we have made so far in this chapter can be made to work on the ground and be enforced.

**10.115** We have found it useful in approaching this topic to take note of the manner in which, in a parliamentary election, the expenses of a candidate in a constituency have to be handled and the sanctions which can attach to non-compliance with the statutory limit. The applicable statute is the RPA 1983, as subsequently amended. This Act is to a very large extent derived from provisions contained in a succession of older Acts.

**10.116** As noted in paragraph 10.5 above, the candidate is subject to a statutory limit on what he may spend by way of election expenses. If he exceeds the limit he is guilty of an illegal practice.<sup>40</sup> There is a strict timetable for the rendering of bills for election expenses, for their payment, and for the delivery to the returning officer by the candidate's election

<sup>40</sup> RPA 1983, s76(1).

agent of a return listing the election expenses paid. Starting from the date on which the result of the election is declared, the statutory programme is as follows:

- within 21 days claims in the respect of election expenses to be submitted;<sup>41</sup>
- within 28 days all election expenses to be paid;<sup>42</sup>
- within 35 days a return of expenses paid to be sent to the returning officer.<sup>43</sup>

**10.117** It is an illegal practice for an election agent to pay a claim which is submitted late or to pay outside the 28 day period,<sup>44</sup> although the court can give leave to pay a later claim.<sup>45</sup> There are special provisions concerning disputed claims.<sup>46</sup>

**10.118** The return of expenses paid which has to be sent to the returning officer must be supported by declarations as to its truth. These declarations are made by the election agent and the candidate.<sup>47</sup> It is a corrupt practice knowingly to make a false declaration.<sup>48</sup> Moreover, it is an illegal practice to fail to deliver the return on time or to fail to make the required declaration<sup>49</sup> and the candidate, if the successful candidate in the election, suffers the further disability that he cannot sit or vote in the House of Commons while the return and declarations remain outstanding after the expiry of the 35 day period.<sup>50</sup>

**10.119** In certain circumstances a candidate or his election agent may apply to the court for relief when there has been a failure to deliver the return or a declaration or in respect of an error or false statement in them.<sup>51</sup> The circumstances include ill-health, inadvertence or other reasonable cause. Want of good faith defeats the application.<sup>52</sup>

**10.120** A parliamentary election may be questioned only by an election petition.<sup>53</sup> The only persons eligible to present a petition are voters and candidates.<sup>54</sup> Very short time limits are prescribed for bringing an election petition – normally 21 days from the date when the Clerk of the Crown was informed of the name of the successful candidate.<sup>55</sup> At the end of the hearing of the petition, the court determines whether the Member of Parliament was duly elected or whether the election was void.<sup>56</sup>

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<sup>41</sup> RPA 1983, s78(1) (as amended by para 26 of Sched 4 to the RPA 1985).

<sup>42</sup> RPA 1983, s78(2).

<sup>43</sup> RPA 1983, s81(1).

<sup>44</sup> RPA 1983, s78(3).

<sup>45</sup> RPA 1983, s78(4).

<sup>46</sup> RPA 1983, s79.

<sup>47</sup> RPA 1983, ss82(1) and 82(2) and Sched 3.

<sup>48</sup> RPA 1983, s82(6).

<sup>49</sup> RPA 1983, s84.

<sup>50</sup> RPA 1983, s85(1).

<sup>51</sup> RPA 1983, ss86(1) and 86(2).

<sup>52</sup> RPA 1983, s86(3).

<sup>53</sup> RPA 1983, s120(1).

<sup>54</sup> RPA 1983, s121(1).

<sup>55</sup> RPA 1983, s122(1).

<sup>56</sup> RPA 1983, s144(1).

**10.121** Where it is reported by the election court that a candidate at a parliamentary election has been personally guilty or guilty by his agents of a corrupt or illegal practice, not only is the election void but the candidate is automatically debarred from being elected to and sitting in the House of Commons for the constituency for which the election was held. The period of disqualification varies. The maximum disqualification of 10 years attaches to a finding that the candidate was personally guilty of a corrupt practice.<sup>57</sup> In addition, criminal proceedings may be brought against persons guilty of corrupt or illegal practices and they may be punished by fines and, for corrupt practices, imprisonment.<sup>58</sup>

**10.122** Some assistance as to the correct approach to the enforcement of the expenditure cap which we recommend earlier in this chapter is given by the statutory provisions analysed above. However, the scale of the problem is quite different. Whereas a parliamentary candidate in a general election will be rendering an account of expenditure totalling some £8,000, the major political parties will be required to demonstrate that their national expenditure on the election did not in each case exceed £20 million.

**10.123** Furthermore, the sanctions that can be applied for over-spending will have to be very different. To take a hypothetical case, let it be supposed that one of the major parties spent nationally £22 million on a general election, thereby exceeding the spending limit by £2 million. Let it further be supposed that that party won the election. It seems to us wholly unrealistic to suppose that there could be a statutory provision which in these circumstances required the result of the election to be set aside and the runner-up party to be declared the winner.

**10.124** Some other sanction will have to be provided. The only realistic sanction is the imposition of a heavy financial penalty on the defaulting political party. The scale of the penalty should vary with the circumstances, and the causes of the overspend would have to be examined. The gravest case, calling for the highest penalty, would be one where it was established that there was deliberate and wilful overspending. At the other end of the scale there could be inadvertent over-spending, where the systems in place to control expenditure were lax and where the left hand was unaware of what the right hand was doing.

**10.125** The political parties would of course have to render a detailed account of their expenditure nationally on the general election. Each party would have to designate a responsible reporting officer. The account would be backed by a statutory declaration as to its accuracy made by this officer. Under the regime which we envisage, this account and declaration would be submitted within a prescribed period following polling day to the Election Commission, which would have ample powers to investigate and to call for further information from any political party or from any other source. Where in the opinion of the Election Commission the evidence supported an allegation that a political party had been guilty of over-spending, it would be the duty of the Election Commission to launch proceedings before an election court. The court would decide whether the charge was made out and would decide upon the financial penalty to be imposed. Normally, the

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<sup>57</sup> RPA 1983, ss159(1) and 159(2).

<sup>58</sup> RPA 1983, ss168 and ff (as amended).

penalty would not be less than the amount of the overspend, and in the worst cases it might be thought appropriate to provide for a penalty of up to ten times the overspend.

**10.126** Where the investigations of the Election Commission or the proceedings before the election court brought to light culpable conduct by individuals – such as a deliberate decision to incur expenditure that would result in an overspend or a reckless disregard of the statutory limit or the making of a false declaration – criminal proceedings could also be brought against the persons concerned. Prosecutions should be handled by the Director of Public Prosecutions, not by the Election Commission. The usual penalties of imprisonment and fine would be available.

*R68 Oversight of compliance with the statutory limit on expenditure at general and other elections should be in the hands of the Election Commission.*

*R69 Legislation should provide for:*

- (a) the rendering by each political party of an account of general election expenditure, such account to be submitted within a prescribed period following polling day to the Election Commission supported by a statutory declaration as to its accuracy by a designated party official;*
- (b) the scrutiny by the Election Commission of all such accounts and follow-up investigations as necessary;*
- (c) a duty on the Election Commission to take proceedings before an election court where the facts in its opinion disclosed overspending by a political party;*
- (d) a power in the election court to impose a financial penalty on a political party proved to have been guilty of overspending;*
- (e) criminal sanctions (fines and imprisonment) for individuals guilty of culpable conduct (including deliberate and reckless acts) in relation to over-spending by a political party;*
- (f) other appropriate provisions applying the principles outlined above to the other recommendations in this chapter, such as limits on third-party expenditure and limits on expenditure in the Scottish Parliament, the National Assemblies and so forth.*

## THE ELECTION COMMISSION

**11.1** We stated in Chapter 2 that we intended to recommend the establishment of an Election Commission, and many of our recommendations in subsequent chapters have assumed the existence of such a commission. In this chapter, we consider the role of the Election Commission more broadly and also what its structure and membership should be.

### Background

**11.2** Over the years, a large number of individuals and organisations have advocated the creation of an Election Commission in the United Kingdom. Indeed, there seems to be a virtual consensus that such a commission would be desirable. Even those who are less keen on the idea appear to regard the coming of a commission as more or less inevitable. The trend in other democratic countries is for election commissions or similar bodies to be established and to play a significant role in electoral administration;<sup>1</sup> and in the United Kingdom several non-governmental bodies have advocated the setting up of an Election Commission (see adjacent box).

***Agenda for Change, the Report of the Hansard Society Commission on Election Campaigns (Christopher Chataway), 1991***

*“Under existing arrangements, responsibility for elections is diffused, with deleterious consequences. A single body, an Electoral Commission, should be directly and solely responsible for all aspects of electoral administration. Its brief should be to supervise, streamline and unify arrangements, and to increase public and parliamentary access to information about electoral administration. It should also have responsibility for allocating broadcast time, monitoring party accounts, and should take over responsibility from the Boundary Commissions for drawing constituency and European Parliament boundaries. It should have a full-time Chairman. The Home Secretary should remain the minister responsible to Parliament for all electoral matters.”* (p aragraph 23)

***Report of the Commission on the Conduct of Referendums, Electoral Reform Society and the Constitution Unit (Sir Patrick Nairne), 1996***

*“If an Electoral Commission were established, there would be a cogent case for extending its functions to include the conduct of referendums or for bringing the role of an existing ‘Referendum Commission’ within its ambit. This would facilitate the development over time of experience and expertise relating to the conduct of referendums”.* (p aragraph 50)

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<sup>1</sup> Appendix 1 deals with overseas experience, including a variety of overseas models for an election commission.

***'The Case for an Electoral Commission - Keeping Election Law Up-to-Date', Dr David Butler, Hansard Society, February 1998***

*"This paper argues the case for the establishment of a permanent independent commission, not only to oversee all aspects of electoral administration, but also to suggest reforms whenever they are needed."*

*In addition, in its 1997 paper **Establishing an Electoral Commission**, the **Constitution Unit** made detailed suggestions for the scope and operation of an Election Commission.*

**11.3** Those who have advocated the establishment of an Election Commission have done so on three principal grounds. The first focuses on neutrality; there should exist a body responsible for overseeing the conduct of elections which is entirely independent of the government of the day and the political parties. The second focuses on administration; the various responsibilities for the conduct of elections should be brought together under one roof and should not, as at present, be widely dispersed among different government agencies. The third focuses on modernisation and reform; a new Election Commission is essential both because of the rapid changes in electoral law and in electoral systems that are now taking place and also because of the equally rapid transformation of the electronic media and modern electioneering practices.

**11.4** We agree that a new body is needed not only on the above grounds but also in order to implement many of the specific recommendations of this report. We would only make the obvious point that the Election Commission cannot, as some of our witnesses seemed to believe, solve all problems and be a panacea for all ills. It is tempting, but not sensible, to say whenever in difficulty, "Leave it to the Commission". That is an approach we have sought to avoid in this report. Government, Parliament and others have to accept their responsibilities.

*R70 An Election Commission should be established.*

## The role of the Election Commission

**11.5** We envisage the Commission playing five principal roles, which are separate to some extent from one another but which also overlap.

- (1) One will be its *monitoring and recommending* role. As Dr David Butler and others have pointed out, we lack at the moment in this country a body charged with monitoring the conduct of elections and referendums and with making recommendations concerning their future conduct, including any necessary changes in the law. In this connection, the new Election Commission would play roughly the same role as the existing Law Commission. We envisage the Election Commission publishing a brief report on the conduct of every major election or referendum, preferably within six months of its taking place. The

report would, among other things, draw attention to any novel features of the election and to any deficiencies that have emerged in its administration and in the law governing it. If need be, it would also make recommendations for change. In our view, the Government should be required to consult the Commission before itself bringing forward any proposals for changes in electoral law and administration.

*R71 The Commission should publish a report on the conduct and administration of each major election or referendum within 6 months of its taking place.*

*R72 The Commission should have the duty to advise the Government on the modernisation and revision of electoral law. The Government should consult the Commission before making or proposing any changes relating to electoral law and administration.*

- (2) Another of the Commission's roles will be its *executive* role. We recommend in Chapters 4, 5, 10 and elsewhere, that the Commission will be expected, among other things, to register the third parties which plan to engage in election and referendum campaigns, to receive the audited accounts of political parties, to receive and publish the details of substantial donations to political parties and third parties, to determine which organisations should receive core funding in referendum campaigns, and so on. We also recommend below that the Commission should be the registrar under the Registration of Political Parties Bill.<sup>2</sup> Much of this work will be routine or will quickly become so; but some of it will involve the taking of difficult decisions (for example, concerning which organisations should receive referendum core funding when several organisations have submitted bids).
- (3) A further role for the Commission will be its *investigative* role. As recommended in Chapters 4 and 5, the Commission will have the power, either on its own initiative or in response to complaints, to make enquiries concerning all aspects of the political parties' and third parties' accounts. The Commission would wish to investigate, for example, any allegations or suspicions that a political party or a third party had failed to disclose the names of substantial donors or had illegally accepted foreign donations.

*R73 The Commission should have the executive and investigatory powers detailed in our other recommendations.*

- (4) We also envisage that the Election Commission will come to play an important, if largely informal, *advisory* role. The political parties and others will almost certainly wish to consult it, probably quite frequently, about matters under its

<sup>2</sup> See paragraph 11.26 below and recommendation R82.



jurisdiction, much as Members of Parliament frequently consult the Parliamentary Commissioner for Standards. Although advice given by the Election Commission could never be binding in a court of law, it would have a certain authority and could, of course, be adduced in evidence.

- (5) (5) Finally, we envisage the Commission playing a more narrowly *administrative* role in connection with the conduct of specific elections and referendums, with Acting Returning Officers possibly coming to work under the aegis of the Commission. This is a matter to which we return in paragraphs 11.16 to 11.23 below.

**11.6** We ought perhaps to state explicitly that there is one role which we do *not* envisage the Election Commission playing. A number of our recommendations involve the creation of new criminal and civil penalties, and there already exists, in any case, a substantial body of justiciable electoral law; but we do not envisage the Election Commission in any way functioning as, or substituting itself for, the ordinary courts. The Election Commission should not be, or be thought to be, a judicial body.

*R74 The Commission should not be a court or have any substantial judicial power.*

## The membership of the Election Commission

**11.7** Those who have advocated the establishment of an Election Commission have been emphatic that it should be independent both of the government of the day and of the political parties. We agree. An Election Commission in a democracy like ours could not function properly, or indeed at all, unless it were scrupulously impartial and believed to be so by everyone seriously involved and by the public at large.

**11.8** In our view, a number of important consequences follow. The first is that the members of the Commission should not, in the normal course of events, be people who have previously been involved in any substantial way in party politics. The second is that the UK Election Commission, unlike the US Federal Election Commission, should consist of independent persons and not of party representatives. The third is that the method adopted for choosing the members of the Commission should itself be independent of the parties. The fourth is that, nevertheless, the individual members of the Commission should be acceptable to the leaders of the main parties, who should be consulted in the course of their appointment. The fifth is that, once appointed, the members of the Commission should hold office for a considerable period of years and should enjoy substantial security of tenure.

**11.9** We believe that all of these principles should be incorporated in the procedure adopted for determining the Commission's membership and tenure; but, beyond that, we would not wish to be too prescriptive. There are several ways in which the above objectives might be achieved. The process might be overseen, for example, by the First Civil Service Commissioner or by the Commissioner for Public Appointments. As in the case of

Canada's Chief Electoral Officer, a two-thirds vote in both Houses of Parliament might be required before any member of the Commission could be removed. The Government, in consultation with the opposition parties, will need to address itself to these important matters of procedure before the Commission is established.

*R75 The Commission should be, and be seen to be, an independent and impartial body. Its members should be chosen on a non-partisan basis and by means of a non-partisan procedure. Its members should nevertheless be acceptable to the leaders of the main political parties.*

*R76 The members of the Commission should be given long periods of office and should enjoy substantial security of tenure*

**11.10** As to the size of the Commission, we envisage a membership of five, with all five members serving part-time, although the chairman, in particular, might find him or herself working full-time during election campaigns, especially during the Commission's first few years. We envisage the bulk of the Commission's work being undertaken by a chief executive and a small staff (which, however, would almost certainly have to be larger during the Commission's initial phase, while its administrative arrangements were being put in place, and again during election campaigns).

*R77 The Commission should consist of five part-time members.*

**11.11** One of the main prerequisites of the independence of the Commission would be its independence of budget. A body whose budget was determined through a government department and which consequently had to fight for resources against competing priorities in government could never be perceived as truly independent. We therefore believe it is essential that a mechanism should be developed for setting the Commission's budget which stresses the Commission's independence while at the same time retaining a degree of accountability to Parliament for the proper expenditure of public funds.

**11.12** One model that might be considered is the mechanism for setting the budget for the National Audit Office (NAO). The NAO's budget is proposed by the NAO to the House of Commons Public Accounts Commission (which is distinct from the more familiar Public Accounts Committee). This committee of MPs examines the proposed budget before formally submitting it to the Treasury. By convention, once the Public Accounts Commission has approved the budget, there is no further interference.

*R78 The Commission's budget should be set in such a way as to preserve its impartiality and independence*

## Scotland, Wales and Northern Ireland

**11.13** We have considered whether the Election Commission's remit should cover the whole of the United Kingdom for all purposes or whether, in connection with elections and referendums in Scotland, Wales and Northern Ireland, there should be separate election commissions for those parts of the country. Our view is that the Election Commission should have UK-wide authority especially since all aspects of election law (save for local government elections) are to be reserved for the UK Parliament under devolution legislation.

**11.14** That said, we recognise that the new electoral systems in Scotland, Wales and Northern Ireland require special rules. Members of the Election Commission's staff will obviously have to make themselves expert on the rules and regulations relating to every part of the United Kingdom, and it may be that the Election Commission will want to establish small offices in Edinburgh, Cardiff and Belfast, possibly permanently, or alternatively for the duration of important election or referendum campaigns.

**11.15** As for the members of the Election Commission itself, there appear to be two possibilities. One is for the Commission to have associated with it additional commissioners, probably one for each of Scotland, Wales and Northern Ireland, who would not have a vote on the Commission but would participate in its deliberations on specifically Scottish, Welsh and Northern Ireland matters. The other possibility is for individual members of the Commission to take on responsibility for making themselves familiar with, and taking the lead on, matters affecting Scotland, Wales and Northern Ireland (while not necessarily coming from those countries). We favour (at least initially) the latter approach. It would be simpler and less cumbersome, and it would ensure that the members of Commission did not in any way lose sight of their overall responsibilities for the whole of the United Kingdom.

*R79 The Commission's remit should cover the whole of the United Kingdom, with individual commissioners taking special responsibility for overseeing electoral matters in Scotland, Wales and Northern Ireland.*

## The role of the acting returning officer

**11.16** Rules on the conduct of elections are generally those laid down in the Representation of the People Act 1983, with detailed regulations set out in the Representation of the People Act 1986.

**11.17** These rules and regulations deal in considerable detail with the day-to-day administration of the electoral process. Responsibility for overseeing the whole process is placed on the acting returning officer (ARO) for each constituency. The acting returning officer, usually a senior local government officer in the area, receives his or her authority from the returning officer. This latter office is now mainly ceremonial, though it traces its

history back to the end of the thirteenth century, when royal writs summoning members to serve in Parliament were executed by the local sheriff.

**11.18** The duties of the acting returning officer run from the declaration of the election until well after the count has been completed. They include:

- receiving the writ after it has been formally received by the returning officer from the Clerk of the Crown in Chancery
- publishing a notice of the election
- receiving nomination papers and deposits from candidates
- dealing with withdrawals from and objections to nomination
- arranging the proper conduct of the poll, including polling stations, ballot papers, poll cards, ballot boxes and other equipment, and the postal ballot
- planning the location and conduct of the count
- declaring the result (if not done by the returning officer)
- returning the name of the elected member to the Clerk of the Crown in Chancery immediately after the declaration of the result of the election
- returning deposits to eligible candidates (those that have been lost go to the Treasury)
- publishing details of where the candidates' election expenses may be inspected.

**11.19** For the purpose of our study the most significant of these duties is the last. The "Guidance for Acting Returning Officers" states:<sup>3</sup>

10.20 The acting returning officer must publish in at least two newspapers in the constituency a notice of the time and place at which candidates' returns and declarations as to election expenses which he has received can be inspected. This must be done within ten days after the last time for the delivery of returns and declarations (i.e. 35 days after the result of the election is declared).

10.21 The returns and declarations (including the accompanying documents) must be kept at the office of the acting returning officer (or some other convenient place) for two years after they are received (section 89 of the Act of 1983). At reasonable times during the two years, the returns and declaration must be open to inspection by any person on payment of the prescribed fee...

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<sup>3</sup> Home Office, 1997.

**11.20** It is important to note that the duty of the acting returning officer is limited by legislation to receiving the returns and making them available for inspection. He has no duty to ascertain whether they comply with rules; much less does he have any investigative role or powers to demand additional information from candidates. In practice, therefore, any oversight that is exercised over proper expenditure can only come from the vigilance of the public, other parties or the media.

**11.21** As we saw in Chapter 10, this lack of oversight has inevitably given rise to accusations that expenditure limits are frequently breached, especially at by-elections. Mr Michael Crick referred in his evidence to “persistent and systematic fraud”, while Mr John Bambrook, the secretary of the Association of Electoral Administrators, observed that:

One of the reasons why local expenditure on election campaigns is such an issue at the moment is because there are no adequate controls; there are grey areas ... Therefore the system is seen to be unacceptable and there are attempts to evade controls, to question [them] and so on. If one could revise the system, bring it up to date to make it more current, it would once again become acceptable and one would see the demise of these attempts to evade it and avoid the expenditure [limits].<sup>4</sup>

**11.22** While we recognise that many of the allegations are anecdotal, we are concerned that the structure of the regulations in themselves almost invites evasion by making enforcement so difficult. We believe that the Election Commission should have the power to investigate whether returns have been properly made, both on its own initiative and in response to complaints. Where such investigations provided evidence of a breach of the law, the Election Commission should refer the matter to the Director of Public Prosecutions to consider whether a prosecution should be brought.

**11.23** Given that this is our view, we also believe that the relationship between acting returning officers and the Election Commission should in future be a close one. Acting returning officers, while remaining local officials, could act under the general supervision of the Election Commission. In particular, the Election Commission should have the power to investigate allegations or suspicions that the existing candidate spending limits have been breached. Bringing acting returning officers under the aegis of the Election Commission would enhance their authority. Having such an oversight responsibility would also have the advantage of making the Commission better able to fulfil its general monitoring role (referred to in paragraph 11.5(1) above).

*R80 Election returns should be sent to the Election Commission through the acting returning officers.*

*R81 The Election Commission should have powers to investigate suspected breaches of electoral law.*

<sup>4</sup> Vol 2, p 173, Para 2114.

## Registration of political parties

**11.24** The Registration of Political Parties Bill at present before Parliament proposes for the first time a system of registration of political parties. Under the new electoral arrangements for the Scottish Parliament and the National Assembly for Wales, and for the next elections to the European Parliament, it will be necessary to identify 'registered parties' since only 'registered parties' will be able to put forward lists of candidates for the elections which will be by proportional representation.

**11.25** The Bill also protects registered political parties against those who might wish to use a name deliberately designed to confuse the electorate - 'spoiler' candidates - and allows parties to register an emblem which can be printed on the ballot paper. In the absence of any other suitable body, the Bill proposes that registration should be handled by Companies House.

**11.26** This is clearly a pragmatic interim measure, but we believe that registration should be brought together with other aspects of regulation under the aegis of the Election Commission.

*R82 The Election Commission should assume the role of registrar of political parties.*

## The Boundary Commissions

**11.27** It was suggested to us in evidence that the Election Commission should, among other things, assume the responsibilities of the present Boundary Commissions. This proposal falls outside our terms of reference, and we have neither taken evidence bearing on the point nor considered it in detail. We would only offer the thought that the existing system for the revision of parliamentary boundaries seems to work reasonably well and that to transfer it to the Election Commission might seriously overload that body, whose responsibilities, it seems to us, will be onerous enough as it is. We are not inclined to recommend change.

## REFERENDUMS

### Background

**12.1** Until recently referendums were rarely used in this country. A so-called ‘border poll’ on the future of Northern Ireland took place in 1973 following the introduction of direct rule in that province. Two years later a UK-wide referendum was held to decide whether or not the United Kingdom should remain a member of the then European Community. In 1979 separate referendums were held in Scotland and Wales on the Labour Government’s proposals to devolve power to those two countries. No referendums were held during the 1980s or the early 1990s.

**12.2** Since the last general election, however, referendums have played an increasingly significant role in our political system. In September 1997 referendums were again held in Scotland and Wales to determine the views of the people of those two countries on devolution (and a separate but simultaneous referendum was held in Scotland to decide whether the Scottish people wanted a new parliament in Scotland to have tax-varying powers). In May 1998 one referendum was held to determine whether there should be a directly elected mayor and assembly in London, and another was held in Northern Ireland on the acceptability of the Good Friday Agreement. Furthermore, it now seems generally accepted that during the next few years there will be UK-wide referendums on whether or not the present system of elections to the House of Commons should be replaced or modified and on whether or not Britain should participate in the third stage of Economic and Monetary Union (EMU). Referendums could also be held on whether power should be devolved to the English regions.

**12.3** In our Issues and Questions consultation paper, we mentioned the conduct of referendums as an issue that was relevant but not central to our present study. The responses to that paper, however, and the oral evidence we have received, make clear that the conduct of referendum campaigns is widely seen as an important topic, especially, but not only, in those parts of the United Kingdom with recent experience of referendums.

**12.4** Mr Peter Riddell, of *The Times*, in his oral evidence, underlined the significance of referendums for our present study. He said:

The fact that referendums are now a frequent and regular feature of the political landscape alters the rules and has massive implications, I think, for your exercise, for the way in which the political process operates, for fairness in funding and indeed for fairness in operation. Some things have happened which are already worrying.<sup>1</sup>

Mr Riddell added:

... there should be clear rules over the funding of referendum campaigns. The current procedures are chaotic and unfair, especially when the government is itself a participant.<sup>2</sup>

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<sup>1</sup> Vol 2, p 2, para 1.

<sup>2</sup> Vol 2, p 25, opening statement.



Other witnesses have laid similar stress on the importance of fairness and consistency.

***Vernon Bogdanor, Professor of Government, Oxford University***

*I hope also the Committee will make some suggestions about referendums because one purpose of a referendum ... is to secure legitimacy for decisions where Parliament alone can not secure that legitimacy. For that legitimacy to be secured, the losers have to feel that the fight was fairly conducted.*

(Vol 2, p 10, para 86)

***Magnus Linklater, columnist and former editor of The Scotsman***

*Yet referenda, which usually address issues of constitutional significance, should allow voters to reach well-informed decisions with balanced information on both sides.*

(Vol 2, p 438, opening statement)

***Dr James Mitchell, Department of Government, University of Strathclyde***

*I think one of the things that stand out, looking at the various referendums, is that the rules of the game have differed in each referendum.*

(Vol 2, p 469, para 5816)

***The Institute of Welsh Affairs (in 1996)***

*The evidence of the four referendum experiences in the UK suggests that no coherent, consistent principles were applied in their operation. Rather, successive governments responded to the pressures of political circumstances by doing what was expedient and, if there was a constitutional principle involved it was that the supremacy of Parliament should not be infringed.*

(The Road to the Referendum, Requirements for a Fair Debate, 1996)

***Daran Hill, former National Organiser, Yes for Wales Campaign***

*... there were no clear guidelines on how we might be funded or on when campaigning could begin, nor on the items on which we could spend our money or who we could or could not approach for funding, nor on how much we might spend on the campaign as a whole. We had no legal status as a 'Yes' campaign and there was no legal requirement for us to publish the sources of our funding.*

(Vol 2, p 376, paras 4662-3)

## **The 1975 Referendum**

**12.5** The 1975 referendum on the European Community remains the only nation-wide referendum ever held in this country. Unique arrangements were made for funding the Yes and No campaigns in that referendum. It is, therefore, worth recalling, in the present context, what the legal and administrative arrangements for that referendum were.

**12.6** A White Paper, *Referendum on United Kingdom Membership of the European Community*, outlining the proposed administrative arrangements received a full day's

debate in the House of Commons.<sup>3</sup> The Preface to the White Paper, presented to Parliament on 26 February 1975, said:

The organisation of the referendum must be efficient and fair. Some special arrangements will be necessary, as set out in the White Paper. But wherever appropriate, the Government will use the well-tried machinery which serves for Parliamentary elections. Thus advantage will be taken of procedures and safeguards which long experience has shown to be effective and which are familiar to voters.<sup>4</sup>

### 12.7 The Government proposed:

- that their own recommendation be fully explained to voters by publication of a White Paper and a popular version containing a less technical account;
- to take appropriate steps to publicise the date of the poll and procedures for voting;
- to arrange for the delivery to every household of the popular version of the White Paper and an explanation of the way in which the referendum would be conducted;
- to ensure that a clear statement of both sides of the case was readily available to voters by way of a single document containing a statement of between 1,000 and 2,000 words by each of the opposing views, together with answers given by each side to the same set of questions, which would be delivered to every household at public expense at the same time as the Government's White Paper;
- to establish a special information unit to handle requests for information.

**12.8** The Government also considered whether any special arrangements were needed either to limit or to assist activities by outside bodies and individuals designed to inform the public of their views on the issues involved in the referendum. The Government expressed the hope that the broadcasting authorities would make short periods of broadcasting time available to both campaigns to run a series of short referendum broadcasts in the run up to polling day.

**12.9** The Government also expressed concern that the organisations favouring one course would have greater resources than those favouring another, although it was clear that any imbalance was not preventing either side from obtaining wide coverage of their views. However, the Government was convinced that any attempt to limit total expenditure by the two sides was impracticable, not least because it could apply only after legislation had received the Royal Assent, and that it would limit traditional freedom of speech.

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<sup>3</sup> *Hansard* (HC) 11 March 1975, col 291.

<sup>4</sup> *Referendum on United Kingdom Membership of the European Community*, 26 February 1975, Cmnd 5925.

**12.10** The Government believed, however, that it was a matter of legitimate public interest to know how much money had been spent on the campaign by major individuals and organisations and the sources of their income. Although these details were to be published only after the referendum had taken place, the Government considered that the knowledge that such information would be published in due course would act as a restraining influence on both sides.

**12.11** The Government further believed that the restrictions and requirements which applied to the conduct of a general election campaign could equally apply, as far as practicable, to referendum campaigns. This included a ban on employment of canvassers and a requirement that all campaign literature, posters, and so forth should bear the name and address of the sponsoring organisations.

**12.12** The Government considered that a ban on the publication by newspapers of paid campaign advertisements, except those to publicise campaign meetings, would be an unacceptable restriction on freedom of speech and that it might have an adverse effect on the impact of the campaign.

**12.13** The Government was, however, prepared to consider providing limited financial assistance from public funds, to be divided equally between the two sides, if it were possible to identify two organisations which adequately represented those campaigning for and against continued membership of the European Community. This last proposal required statutory authority.

**12.14** Two umbrella organisations, Britain in Europe (BIE) (the 'Yes' campaigners) and the National Referendum Campaign (NRC) (the 'No' campaigners), were already in existence when they were given legal status under the Referendum Act 1975, which received Royal Assent in May 1975. Section 3 of the Act provided for the Lord President of the Council, with the consent of the Treasury, to make a grant not exceeding £125,000 towards expenses incurred by BIE or NRC or by organisations affiliated to them for the purposes of the Referendum. Those grants were to be subject to such conditions as the Lord President might specify.

**12.15** The conditions which he laid down were that the grant could be used only for purposes connected with the referendum, that the organisations must keep accounts of all sums received or spent (save for receipts and payments of less than £100), and that the accounts must be made available within two months of polling day (5 June 1975) for audit by the Comptroller and Auditor General and made available for publication by the Lord President of the Council.

**12.16** The date from which audited accounts were to be kept by the umbrella organisations was 26 March 1975, the date the Referendum Bill was published. Prior to that date, the umbrella organisations were not publicly accountable for the funds which they received and spent on their respective campaigns. As Dr David Butler and Mr Uwe Kitzinger say in their book *The 1975 Referendum*, "in addition to the forty-three companies listed publicly as making five-figure contributions, more than twenty were as generous

before the [26 March] deadline. Over £400,000 was collected between January and [26 March 1975]”.<sup>5</sup>

**12.17** Britain in Europe was largely based on two long-established pro-Common Market campaign groups and drew support from each of the three main political parties and from business. The NRC sought to co-ordinate the activities of a large number of anti-Common Market groups and received some support from Conservative and Labour MPs (including a group of Cabinet ministers known as the dissenting Ministers) as well as the Scottish National Party, Plaid Cymru and the Ulster Unionists, amongst others. Both groups were “entirely self-appointed federations of activists”.<sup>6</sup> Their claims to be the two sides’ authentic spokesmen were not challenged.

**12.18** The official accounts of the campaigning organisations were published in October 1975.<sup>7</sup> Britain in Europe’s accounts listed the names of 369 individuals and organisations as having donated £100 or more to the funds raised of nearly £1 million. The Government’s grant of £125,000 represented 8 per cent of total income. By contrast the National Referendum Campaign’s accounts listed seven individuals and organisations giving £100 or more. NRC raised only £8,610 in donations, the Government’s grant representing 94 per cent of total income.

**12.19** The experience of the 1975 referendum is instructive and we draw on it in our later discussion and recommendations.

### Issues raised by referendum campaigns

**12.20** Some of the issues raised by referendum campaigns are similar to the issues we have discussed elsewhere in this report. The question arises, for instance, whether there should be limits on the spending of the Yes and No campaigns. For the reasons given in paragraph 12.9 above, the Government in 1975 decided that there should not. The question also arises of whether the main bodies engaged in the campaign on both sides should be required to publish their accounts. The Government in 1975 decided that they should. The conduct of referendum campaigns, like the conduct of election campaigns, raises questions of fairness. Do both sides have adequate opportunities to lay their views before the public?

**12.21** Other issues which arise in connection with referendum campaigns do not arise in connection with ordinary elections. Three, in particular, are worth mentioning:

- (1) The role of the political parties in referendums is much less predictable than it is in ordinary elections. In ordinary elections the parties are normally pitted against one another, but in referendums the political parties may be pitted against one another, or most of the parties may find themselves on the same side (as largely happened in the 1975 Common Market referendum), or one or more of them

<sup>5</sup> D Butler and U Kitzinger, *The 1975 Referendum*, 2nd edn 1996, p 85.

<sup>6</sup> *Op cit*, p 68.

<sup>7</sup> *Accounts of Campaigning Organisations*, Cmnd 6251, October 1975.

may be seriously split (as happened to the Labour Party in both the Scottish and Welsh referendums in 1979). Alternatively, one or more of the parties may simply decide to ignore the referendum and 'sit on its hands' (as the Welsh Conservative Party largely did during the 1997 referendum in Wales, and, to a somewhat lesser extent, four years earlier). Whatever happens in any particular case, it is clear that general rules governing the conduct of referendums cannot be based on predictions about the parties' behaviour or assumptions about their role. The parties should certainly not be assumed to be central to all referendum campaigns.

- (2) The role of the government of the day differs markedly between elections and referendums. In ordinary elections, the governing party is, of course, expected to play a major and highly partisan role and Government ministers are expected to campaign actively as partisans; but the Government as such – ministers in their official capacity and civil servants – is expected to be neutral. It would be thought intolerable if the full weight of the Government machine were cast in the scales against the Opposition; the election would no longer be thought to be fair. But the case of referendums is more complicated. A referendum normally takes place only because the Government *both* believes (for whatever reason) that the people should be consulted *and* has a particular view about the outcome it wants. In referendums Governments are almost never indifferent. It follows that they are expected to play the role, simultaneously, of umpire and active player. As we noted in paragraph 12.7 above, the Government in 1975 sought to square this particular circle by, first, having delivered free of charge to every household a non-technical version of its White Paper explaining its own recommendation of a Yes vote and by, secondly, having delivered, also free of charge, to every household short statements of both the Yes and the No views. Whether this was satisfactory (and views about that are bound to differ), it illustrates the difficulties in which a Government organising a referendum is liable to find itself.
- (3) Referendums also differ from ordinary elections in that the role of the broadcasters is less clear. In ordinary elections, they know what they are supposed to do: that is, to be scrupulously neutral in their news coverage of the various parties' campaigns and to give all the parties a chance to air their views in party election broadcasts. But in referendums the broadcasters' role is not so well defined. They clearly believe it is their duty to cover the Yes and No campaigns impartially, but (despite the then Government's White Paper in 1975) they feel under no such obligation to provide the two sides with the referendum equivalents of party election broadcasts. They did not provide such broadcasts during any of the 1997 and 1998 referendums.

**12.22** In our view, these important differences between election and referendum campaigns call for the devising of rules for referendum campaigns which are different from the rules for ordinary election campaigns but, as far as possible, are based on the same general principles.

## Views of the political parties and others

**12.23** The three main political parties' evidence was clear. The Conservatives were mainly concerned, first, with what later in this chapter we refer to as the issue of 'core funding' for both the Yes and the No campaigns and, secondly, with the issue of the appropriate behaviour of Ministers and civil servants during referendums. The Conservatives said: "If referendums are to be fairly conducted, both sides of the argument should be heard. Since many referendum campaigns will be fought along non-party lines, we believe that the pattern established by the Referendum Act 1975, which saw the payment of equal grants of public money to 'umbrella' campaigning organisations, should be repeated. The same rules which govern the conduct of Ministers and civil servants during general election campaigns should apply during referendum campaigns."<sup>8</sup>

**12.24** The Liberal Democrats, whose principal concern in their main body of evidence had been to establish that there should be a 'level playing field' at ordinary elections, said of referendums that "if the argument is accepted to create a level playing field in elections, then the same arguments of democratic principle must apply to referendum campaigns."<sup>9</sup>

**12.25** The Labour Party's proposals, however, were considerably more elaborate and were focused on two main ideas. The first, developed at some length in Labour's evidence, concerned the role of the political parties. "Experience has shown", the Labour Party argued, "that it is the political parties which have taken the lead in these [referendum] campaigns and which have become the main players in the process. It would be a mistake to impose a structure which bears no relation to this reality of political life" and that "the focus of any regulation should be on the political parties." Labour's second main idea was that "there should be a limit on the permitted spending of those campaigning in the referendum... to ensure that no one has a disproportionate financial influence on the outcome." Labour proposed to establish such limits by limiting the amount that the political parties could spend during referendum campaigns.<sup>10</sup>

**12.26** Professor Peter Pulzer thought that referendums were a separate issue because the antagonists were very rarely political parties. He went on to say that "the whole point about the referendum is to get opinions from people who are organised not along the lines of the established political parties, and very frequently people do not vote in accordance with the advice that is given to them by the parties that they normally support". He continued:

since referendums are government-instituted devices, or state-instituted devices, I think one would have to find a way of getting 'Yes' and 'No' committees to register for this purpose and to find a way of controlling where they get their money from or how much they may spend, or indeed what claims they might have on the public purse and what free services they could claim, such as free postal deliveries or being able to hire schools free of charge and so on. In this respect referendums are not like

<sup>8</sup> Written submission to the Committee from the Conservative Party, App V, p 242.

<sup>9</sup> Written submission to the Committee from the Liberal Democrat Party, App V, p 249, para 39.

<sup>10</sup> Vol 2, p 515, opening statement, paras 3-5.



elections, (a) because they are state sponsored, (b) because they make no sense if they are re-runs of party-competitive elections.<sup>11</sup>

**12.27** While not wishing to be too bureaucratic, Lord McAlpine of West Green, in oral evidence, said, “there are two sides to this argument and we will accept the registration of one group for each side. They form an umbrella group and then the umbrella group registers the people within it.”<sup>12</sup> Later in his evidence he said “I believe that a government subsidy of one party to make up for a government advantage in a referendum is good.”<sup>13</sup>

**12.28** Dr David Butler saw the problem in a different light. In oral evidence he said, “The increasing use of referendums and the increasing recourse to law – over candidates’ labels and other matters – has added greatly to the arguments for transferring some of the jurisdiction over the conduct of elections from the Home and Scottish Offices to an independent Election Commission.”<sup>14</sup>

**12.29** John Osmond, Director of the Institute of Welsh Affairs, suggested there was a case for recommending a Commission to be responsible for undertaking referendums and their conduct, which would include funding. In oral evidence, he said, “insofar as one can legislate, it should be for transparency. That is to say that if a campaign has been donated to, the donations should be made fully public. People are entitled to know that.”<sup>15</sup>

## Core funding

**12.30** We believe that there should be a new regulatory framework for referendums. For the reasons given in paragraph 12.21 above, however, we do not accept that the focus of any regulation should be on the political parties. We believe that experience shows that referendum campaigns may well feature people from all parties, and also people with no party allegiance at all, on both sides of the argument. To represent referendum campaigns as merely another manifestation of the usual party political battle seems to us both misconceived in principle and false to the history of referendums since 1975. We believe that arrangements should indeed be put in place that are specific to referendums but that they should not be based on the idea that parties ‘are the main players in the process’. They may be, but they may not.

**12.31** Against this background, one of the first issues that arises is what we earlier called ‘core funding’. If a referendum is to be fair, is it essential that both sides of the argument should be funded at least well enough to enable them to put their case before the voters? Our answer to that question is an unequivocal ‘yes’. We are particularly concerned that there may be referendums in which all the ‘big battalions’ – the Government, possibly the main opposition parties, possibly the bulk of industry and the trade unions – are on one side while there is only a mass (though it may be a very large mass) of unorganised opinion on the other. In our view, it would be quite wrong if those who were less well funded and

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<sup>11</sup> Vol 2, p 54, para 638.

<sup>12</sup> Vol 2, p 65, para 725.

<sup>13</sup> Vol 2, p 65, para 729.

<sup>14</sup> Vol 2, p 221, opening statement.

<sup>15</sup> Vol 2, p 358, para 4342.



organised did not have a proper chance to make their views known. We were unimpressed by the arguments made to us that, if one side of the campaign could not raise money or rapidly put together an organisation, that merely proved that they had no public support (and, by implication, deserved not to have any).

**12.32** We were disturbed, in particular, by the evidence we heard in Cardiff to the effect that the referendum campaign in Wales in 1997 was very one-sided, with the last-minute No organisation seriously under-funded and having to rely for financial support essentially on a single wealthy donor. The outcome of the Welsh referendum was extremely close, and a fairer campaign might well have resulted in a different outcome.

***Robert Hodge, former Chairman, Just Say No campaign***

*I do not know what the other side spent – I have not seen the accounts – but you can rest assured that we spent just short of £100,000. I am led to believe that the other side, with the booklets and everything else, possibly spent a seven figure sum. That puts it in proportion.* (Vol 2, p 372, para 4565)

***Mrs Carys Pugh, former campaign Leader and Founder, Just Say No campaign***

*Without Robert Hodge, I do not know what we would have done. We could not have carried on and that would have been gravely unjust. We did not thrust our views down the throats of the ‘Yes’ campaigners; but the Welsh people deserved better and all we did was to allow them to make an informed choice.* (Vol 2, p 372, para 4571)

***Robert Hodge, former Chairman, Just Say No campaign***

*I do not think that we were taken seriously at the start and one can expect that, but the television interviewers, before they interviewed us, were able to tell us that we were gathering momentum and that gave us a bit of hope. But did we expect to win? The honest answer is that we did not. Did we expect to get so close? The answer to that must be ‘No’ as well. I did not think it would be 0.6 per cent or whatever it was at the end of the night. It showed what can be done if you apply yourself and your resources effectively. My disappointment in this case was the fact that it was a constitutional issue and there was not enough balanced argument on it.* (Vol 2, p 375, para 4642)

***Professor Nicholas Bourne, Chief Spokesperson, Conservative Party in Wales and member of the Just Say No campaign***

*Particularly given the narrowness of the result in Wales, there is a widespread belief that had a few strategic advertisements been placed towards the end of the campaign, it could have gone the other way.* (Vol 2, p 365, para 4455)

***Daran Hill, former National Organiser, Yes for Wales campaign***

*I should also like to state that before the launch of the ‘No’ campaign, we made several public statements saying that we would welcome a ‘No’ campaign being founded and that we hoped in the interests of democracy this would happen as early as possible.* (Vol 2, p 376, para 4663)

**12.33** If a referendum is worth holding at all – and a large proportion of referendums are on matters of major constitutional significance – then it seems clear to us that neither side should be prevented from expressing its views merely as a consequence of relative poverty. The precedent set by the Government in 1975 seems to us the right one.

**12.34** If there is to be core funding for each of the two sides, who should constitute ‘the two sides’ for these purposes? In some cases, the answer to that question will be obvious, as it was in 1975. In others, however, it will be anything but obvious. It was not obvious, at least as regards the No campaign, in Scotland in 1997. In the case of the 1998 referendum in Northern Ireland, those principally engaged in advocating a Yes vote – the Ulster Unionist Party, the Social Democratic and Labour Party and Sinn Fein – showed no willingness to undertake a joint campaign. Under circumstances like those of Northern Ireland in 1998, judgements will have to be made about which two organisations, if any, should be in receipt of core funding.

**12.35** We believe that the new Election Commission should be the body both to receive applications for core funding from organisations intending to campaign in any referendum and to decide which of the organisations should be in receipt of the core funding. The Commission should be empowered to decide that none of them should. No more than one organisation on each side should be funded. Obviously it would be entirely inappropriate for core funding to be made available for the government. Furthermore, core funding should not be available for disbursement by the Election Commission until after the legislation enacting the referendum receives Royal Assent. It should be made a condition of receipt of funding that the organisation submit to the Election Commission within three months of the holding of the referendum audited accounts in respect of its income and expenditure. Any donation received during the campaign period should be declared within seven days of receipt.

*R83 In any referendum campaign there must be a fair opportunity for each side of the argument to be properly put to the voters.*

*R84 Depending on the circumstances, each side should be given equal access to an amount of core funding sufficient to enable it to mount at least a minimal campaign and to make its views widely known.*

*R85 The Election Commission should decide which organisations, if any, should be in receipt of core funding.*

*R86 A campaign organisation in receipt of core funding should be required to submit its audited accounts to the Election Commission within three months of the referendum.*

**12.36** What should the core funding cover? Obviously, the precise amount will depend on whether the referendum in question is being conducted throughout the United Kingdom or only in part of it (say, in London or Scotland). In our view, the amount of core funding in connection with a UK-wide referendum should be not less than the late-1990s equivalent of the £125,000 provided by the Government to each side in the 1975 referendum. In late 1998 that would amount to approximately £600,000. The core funding should be sufficient to cover minimal office accommodation, the purchase or rental of a quantity of office equipment and supplies, and the salaries of three or four members of staff for the duration of the campaign

**12.37** It would also be right to accord the organisations on each side the same facilities as are granted to candidates in general elections, namely a free mailing of a statement of its views to every household. Similarly, free use of school rooms and other public meeting rooms should be permitted for the holding of meetings.

*R87 The core funding provided to the two sides in a UK-wide referendum should, in real terms, be not less than that provided in connection with the 1975 referendum. It should be enough, in connection with all referendums, to cover the establishment of a campaign headquarters for each side, with basic equipment and staff.*

*R88 Each side should also be provided with the same facilities as parliamentary candidates in general elections, namely a free mailing of a statement of its views to every household and the free use of public premises for the holding of meetings.*

## Broadcasting

**12.38** The broadcasters should also, in our view, reconsider their position with regard to referendums. Although they provided both sides in the 1975 referendum campaign with free air-time, they have been reluctant to do so since. Their reasons are set out in their recent *Consultation Paper on the Reform of Party Political Broadcasts*:

Experience has led the broadcasters to believe that fairness over single issue referendums cannot easily be achieved by a simple application of the rules governing fairness between parties. Bearing in mind the Court's decision at the time of the 1979 Referendum in *Wilson v. IBA*, the difficulty of achieving fairness when parties are unequally balanced between two sides of the question (as in the recent Scottish and Welsh Referendums on devolution), the difficulty of achieving fairness when parties

are internally divided on the issue and the uncertain status of umbrella organisations, we have no plans to introduce a series of Referendum broadcasts.<sup>16</sup>

**12.39** We agree with the broadcasters that “fairness over single issue referendums cannot easily be achieved by a simple application of the rules governing fairness between parties”, but we draw a different conclusion: namely, that the broadcasters should consider allocating free air-time to the two umbrella organisations on each side of a referendum, if two such umbrella organisations exist. There seems no reason on the face of it why the broadcasters should not follow the lead of the Election Commission in this matter (see paragraph 12.35 above). If the Commission designates two such organisations for the purpose of receiving core funding, those could be the organisations given free air-time. If the Commission cannot in any instance identify two organisations as being appropriate recipients of core funding, then the broadcasters would not be under any obligation to provide free air-time to anyone.

**12.40** We should perhaps add that, in terms of their news coverage, the broadcasters fully recognise their obligation to be fair to the various parties participating in referendum campaigns and to be neutral between them. In the case of the 1997 Welsh referendum, we were happy to hear from some of our witnesses that the broadcasters had gone out of their way to cover the No campaign and to give the No campaigners opportunities to make known their views. One Yes campaigner complained that the broadcasters virtually invented the No campaign.

*Russell Deacon, Lecturer in Government and Politics, University of Wales Institute, Cardiff Business School*

*... the media would not broadcast 'Yes' campaign material until they could find somebody who was a 'No' campaigner. I think that problem got easier as the 'No' campaign grew stronger. The media wanted a balance, so although lots of 'Yes' campaign activity was occurring, the media were not recording it because there was no counterbalance of 'No' campaigning. That caused some concern among broadcasters.*

(Vol 2, page 343, para 4130)

## The role of the government

**12.41** Another important question concerns the role of the government of the day during a referendum campaign, especially when it will itself have called the referendum and will

<sup>16</sup> *Consultation Paper on the Reform of Party Political Broadcasts*, 20 January 1998: The case of *Wilson v. IBA* [1979] SC 351; (1979) SLT 279 rested on the requirement placed upon the IBA to ‘ensure that the programmes broadcast maintain ... a proper balance in their subject matter.’ – Independent Broadcasting Authority Act, 1973, Section 2(2)(b). Brian Wilson and others of the “Labour Vote No Campaign Committee” argued that the four planned referendum broadcasts – one for each of the four main Scottish parties – were a breach of this requirement. Three of the broadcasts would have been by parties supporting a ‘Yes’ vote, with only one broadcast (Conservative) against. The Lord Ordinary (Lord Ross) ruled that this was indeed a breach of the provisions of the legislation, and granted an interdict (the equivalent of an injunction) restraining the broadcasting of the planned series of four referendum broadcasts. The Judge said (at p 285 (1979) SLT) that it was up to the IBA to decide what referendum broadcast should take the place of the planned series – ‘It will be necessary however to ensure that the same time is given to the proponents of “Yes” as is given to the proponents of “No”.’

almost certainly have publicly declared a preference regarding the outcome. Our view is straightforward. We believe it is perfectly appropriate for the government of the day to state its views and for members of the Government to campaign vigorously during referendum campaigns, just as they do during general election campaigns. But we also believe that, just as in general election campaigns, neither taxpayers' money nor the permanent government machine – civil servants, official cars, the Government Information Service, and so forth – should be used to promote the interests of the Government side of the argument. In other words, referendum campaigns should be treated for these purposes in every way as though they were general election campaigns.

### ***The Conservative Party in Wales***

*The position was widely felt to be further distorted by the fact that the government itself produced literature distributed to every household in Wales setting out the Government's case for a Welsh Assembly.* (Vol 2, p 389, opening statement)

### ***Mrs Carys Pugh, former campaign leader and founder, Just Say No campaign***

*...they [the Yes campaign] had the benefit of the White Paper being circulated to nearly every household in Wales. We could never have afforded to cover that with our own literature.* (Vol 2, p 373, para 4601)

### ***Mari James, former vice-chair, Yes for Wales campaign***

*There was a very grey area there and I have heard the 'No' campaign say many times that they felt that the White Paper and everything coming out from the Government was opposed to their view and therefore was part of our campaign, but that is an incorrect leap. The 'Yes for Wales' campaign was started by a group of individuals who came together to campaign for a 'Yes' vote. We were not part of the Government by any means and they were not part of us.* (Vol 2, p 377, para 4680)

### ***Alex Rowley, General Secretary, Scottish Labour Party***

*In any referendum the main duty of Government is to ensure that people know exactly what the questions are and are well informed of the issues.* (Vol 2, p 426, para 5171)

### ***Henry McLeish MP, Minister for Home Affairs and Devolution, The Scottish Office***

*We tried very hard indeed to achieve objectivity, in that the words would carry meaning in terms of significance, but no hint of advocacy that "If you do this on 11 September, Scotland will be some nirvana afterwards" ... it is a difficult process.*

(Vol 2, p 432, para 5242)

***Raymond Robertson, Chairman, Scottish Conservative and Unionist Party***

*The Government was a player on one side of the referendum. The Government were campaigning for a Yes vote. The Prime Minister came to Scotland twice. The Secretary for State for Scotland led the Yes campaign. They were able to write the rules and an information leaflet and to send it out to every house. I think that is fundamentally unfair in a free society.*

(Vol 2, p 445, para 5326)

***Denis Robertson Sullivan, Treasurer, Scottish Liberal Democrats***

*I am not against the Government putting out propaganda in favour of its proposition because it is there to govern. But the propaganda should be in the form of a pros and cons paper with a Government view at the bottom of it. But the Government's view should not be longer than the pros and cons cases made above.*

(Vol 2, p 452, para 5648)

***Denis Murray, Ireland Correspondent, BBC***

*I suggest that the Government's – capital "g" – explanation document should not be accompanied by the Government's advocacy of it, because then one is putting the weight of Government, authority and the Crown stamp on the 'Yes' case or 'No' case, as it happens to be, whereas the other one just comes out and lands on your doorstep. I would keep the two separate. By all means, the Government as a party or parties are perfectly free to campaign as hard as they like, but keep Government literature to 'Here's the case' or 'Here are the facts'.*

(Vol 2, p 538, para 6532)

**12.42** During the European Community referendum in 1975, during the Scottish and Welsh referendums in 1997, and again during the referendum on a Greater London Authority in 1998, the Government despatched to every household a document setting out the Government's views. In the case of the European Community referendum, the Government's document straightforwardly advocated the Government's position. In the case of the Scottish referendum, the Government's document claimed to be doing no more than providing the voters with unbiased factual information. The document was nevertheless criticised on the ground that, merely by summarising the Government's White Paper on Scottish devolution, it constituted, in effect, propaganda for the Yes side. In the case of the London referendum, the Government's document was again open to criticism on the same grounds.

**12.43** The referendum on the Good Friday Agreement in Northern Ireland affords a different kind of example. The Government sent copies of the whole agreement to every household, but then, as a Government, confined itself to urging people to turn out to vote. Despite that, the Government made its position perfectly clear. Mr Denis Murray, the BBC's Ireland correspondent, said in his oral evidence:

Mo Mowlam got the tone for the Government absolutely right. Somebody asked her, 'Are you biased in this?' She replied, 'I didn't spend five years on this and a



year at Stormont, hammering it out, not to say I'm going to back this agreement.' She got the public mood exactly right. People said, 'Yes, that's fair enough'.<sup>17</sup>

We agree that this is an entirely appropriate position for a cabinet minister to take, but we note that the Government did circulate the Good Friday Agreement to every household and that it did not make any comparable provision – by way of core funding or anything else – for the opposition side. Lynn Sheriden of the UK Unionist Party, in her oral evidence said:

I myself certainly felt that anyone voting 'No' was made to feel that they were voting for more violence etc., were not looking into the issues and were being emotionally blackmailed.<sup>18</sup>

**12.44** We believe that it is extraordinarily difficult, if not impossible, for the government of the day to offer purely objective and factual information in the course of a referendum campaign, especially when, as will usually be the case, itself it is a party to the campaign. We believe governments should not participate in referendum campaigns in this manner, just as it would be thought to be wholly inappropriate during a general election campaign for the government to print and distribute, at the taxpayers' expense, literature setting out government policy.

*R89 The government of the day in future referendums should, as a government, remain neutral and should not distribute at public expense literature, even purportedly 'factual' literature, setting out or otherwise promoting its case.*

## Spending limits

**12.45** In Chapter 10 above, we rehearsed the arguments for and against the imposing of spending limits on the political parties competing in ordinary elections, and we concluded that, on balance, such limits were appropriate and should be imposed. It goes without saying that some of the same issues arise in connection with referendum campaigns. There is a serious risk of a gross imbalance in resources between one side of a referendum campaign and the other. (In 1975, Britain in Europe vastly outspent the National Referendum Campaign, by a factor of one to 20).<sup>19</sup> There is also the danger, if there is lavish spending on one or more sides, that the impression will be given that the Yes and No campaigns are trying to 'buy' the people's votes. The case, in principle, for imposing spending limits in referendum campaigns is a strong one.

**12.46** We believe, however, that it would be futile and possibly also wrong to attempt to impose such limits in connection with referendums. Ordinary election campaigns bear some resemblance to sporting contests, in the sense that they are fought by competing 'teams' in the form of the political parties. It is known long in advance that such contests

<sup>17</sup> Vol 2, p 538, para 6529.

<sup>18</sup> Vol 2, p 563, para 6885.

<sup>19</sup> D Butler and U Kitzinger, *The 1975 Referendum*, p vii.



will take place (though, in the case of general elections, the precise date may be uncertain). The political parties themselves are, in the great majority of cases, permanent institutions with leaders, members, headquarters and professional staffs. By contrast, a referendum campaign is more like a free-for-all. Anyone can participate. Many do. The political parties may, or may not, be the principal contestants. It is often not known long in advance whether a referendum will take place, let alone when it will take place. Those on the Yes and No sides of the argument may never have worked together before – and may, quite possibly, be unwilling to work together now. It appears to us that under these circumstances it would be impracticable to try to control campaign spending. The number of individuals and organisations involved would often be too large. The time-scale would often be too short. Adequate accounting procedures would often be impossible to put in place. The administrative apparatus required would resemble one of Heath Robinson's most outlandish contraptions – and would almost certainly not work.

**12.47** In addition, there is an argument of principle that arises in connection with referendum campaigns that does not arise – or at least does not arise in the same form – in connection with ordinary election campaigns. In ordinary election campaigns, the political parties are competing for power. The party that wins the election takes power. The parties therefore have an interest in putting forward every argument that may possibly persuade voters to vote for them rather than for someone else. In an ordinary election campaign, it is extremely rare for relevant arguments to go unheard. By contrast, in a referendum campaign the reasons for voting Yes or No may be exceedingly large in number, extremely disparate and possibly even contradictory. The Yes campaign in Northern Ireland, with the Ulster Unionists, the SDLP and Sinn Fein all on one side, and Republican splinter groups and the DUP on the other, provides a vivid illustration. Future referendum campaigns on electoral reform or on joining the European Economic and Monetary Union could easily take the same form (as, to some extent, the European Community referendum campaign did in 1975). Given this possibility, we believe that seeking to impose spending limits in referendums would not only be administratively impracticable but would, or at least might, impose an unwarranted restriction on freedom of speech.

### Disclosure and foreign donations

**12.48** In 1975 the Government required that individuals and organisations campaigning on both sides of the referendum in that year should disclose how much they had spent during the campaign and what their sources of income were (see paragraph 12.10 and 12.18 above). We ourselves are committed to the view that political parties and third parties engaged in political campaigning should have to publish full accounts setting out their sources of income and main headings of expenditure (see Chapter 4). We take the same view with regard to all referendums and believe that campaigning individuals and organisations in referendums should be subject to disclosure rules that are identical to, or that closely resemble, those to be applied to the political parties and third parties.

**12.49** In our view, the amount above which disclosure of donations is made should be set at £5,000, in line with the proposed disclosure threshold for party donations, and should cover cash gifts, gifts in kind, sponsorship, the provision of paid employees' time and free

use of equipment (see paragraphs 4.44 to 4.45 above). Like donations to political parties, candidates or MPs, a *de minimis* exemption should apply to money raised by, for example, raffles and jumble sales where it is unlikely that individuals will be contributing more than a few pounds per event. As we have said in paragraph 4.49, anonymous donations of £50 or more must be refused.

**12.50** As we have already outlined in Chapter 10 with regard to political parties and third parties, if a campaigning individual or organisation intends to incur ‘referendum expenses’ of £25,000 or above, it should be required to register with the Election Commission; and only registered campaigning individuals and organisations should be permitted to incur expenses in a referendum of £25,000 or above.

*R90 Donations to campaigning individuals and organisations in referendums from one source which total £5,000 or more should be publicly disclosed in audited accounts which should be delivered to the Election Commission within three months of the holding of the referendum.*

*R91 Campaigning individuals and organisations other than political parties that wish to incur ‘referendum expenses’ of £25,000 or more should register, like a political party, with the Election Commission. No individual or organisation not so registered may incur expenses in connection with a referendum in excess of £25,000.*

**12.51** We have also set out in Chapter 5 our views about the inappropriateness of foreign donations playing a part in the politics of this country. In that chapter, we discussed the issue in relation to the funding of political parties, but the same arguments apply with equal if not more force to the funding of referendum campaigns, especially since these are likely to be concerned with major constitutional questions. We believe, therefore, that the same rules about ‘permissible sources’ that we recommend should apply to political parties and others in connection with foreign donations should also apply to individuals and organisations, including political parties, taking part in referendum campaigns. Any bodies in receipt of core funding (see paragraphs 12.33 to 12.35 above) should also, of course, be restricted to the receipt of donations from a ‘permissible source’ only.

*R92 Campaigning individuals and organisations taking part in referendum campaigns should be restricted to the receipt of donations only from a ‘permissible source’.*

## Conclusion

**12.52** As we remarked earlier, referendums have come to play an increasingly significant role in our political system. The United Kingdom’s experience of them has, however, been limited, and there are no agreed rules or even common understandings governing the administration and conduct of referendums and referendum campaigns. This being so,

we believe that our proposed Election Commission should, in its advisory capacity, keep under review the law and practice relating to referendums, and should be empowered to issue reports and to make recommendations concerning referendums to Parliament and the Government.

*R93 The Election Commission should have as part of its remit keeping referendums and referendum campaigns under review and making reports and recommendations to Parliament and the Government concerning them.*

## THE MEDIA AND ADVERTISING

### Introduction

**13.1** The political parties and other interest groups spend large sums of money on advertising and in trying to influence the news media. Such money is mainly spent on advertising in the press and on posters and billboards and on producing party political broadcasts (p PBs) and party election broadcasts (p EBs) for television and radio. At the 1997 general election, the three main political parties, the Conservatives, Labour and the Liberal Democrats, spent a total of approximately £21.5 million on various forms of national advertising, including the production of election broadcasts and videos. Although this is a very significant sum, it should be set in context. National advertising, whether through newspapers or posters, is very expensive. The (undiscounted) cost of a page in one of the leading national newspapers is anything from £20,000 to £50,000 for each insert. A two-week nation-wide poster campaign can easily cost £1 million. (Commercial advertisers think nothing of a campaign costing £30 million, although much of this may be spent on television advertising, which is, of course, not open to political parties.)

**13.2** No one knows in what ways, and to what extent, expenditure on advertising by the political parties affects the outcomes of elections. It is all but impossible to disentangle the effects of advertising from the effects of all the other influences that play upon voters during election campaigns. A well-produced television PEB may possibly sway voters; against that, the broadcasters are studiously neutral (and are required to be so) in their coverage of election campaigns – and the way parties get their message across in news coverage may well be more important in determining how people vote than the PEBs. Likewise, a clever newspaper advertisement may sway voters or encourage them to turn out; but, against that, the coverage of the election in the same newspaper's editorial columns is likely to be as, or more, significant. The electoral effect, if any, of poster advertising remains a mystery.

**13.3** What is known is that political parties *believe* that advertising expenditure does have, or may have, an electoral effect. Otherwise they would not spend so much on it. Even if they were convinced intellectually that advertising expenditure actually made little difference, they would still be aware that they might be wrong and, further, that if they did not advertise but the other side did, they might lose the election as a consequence. An important element in the battle is the morale of the party workers nationally. In a world of uncertainty with extremely high stakes (the acquisition or loss of power), to advertise – and to spend as much as possible on advertising – is to play safe. Lavish expenditure is the course of action that prudence dictates. Moreover, the headquarters of all the political parties are sometimes thought to be under pressure from their own activists to be seen to be engaged in high-profile advertising. No party chairman or secretary wants to be accused, after the event, of having lost an election because he or she did not spend 'that extra £500,000' shortly before polling day. Taken together, it is these factors that lead to the political 'arms race' to which we referred in the first chapter.

**13.4** Against that background, this chapter considers three topics:

- party political and election broadcasts
- paid advertising, especially in the national press and on posters
- new developments, for example digital broadcasting and the Internet.

### Party political and election broadcasts

**13.5** Almost everyone who speaks or writes about the role of money in British election campaigns comments favourably on two of its many aspects. The first is the fact that political parties, candidates and interest groups<sup>1</sup> are not permitted to advertise politically on television and radio; they cannot buy air-time to be used for political purposes. The second is that, nevertheless, the broadcasters allocate free air-time to the parties so that they are in a position to present their own case to the public in their own way. The Conservative Party, in its evidence to this Committee, commented:

It is an oddity of our system, albeit a welcome one, that paid-for political advertising on television and radio is banned.<sup>2</sup>

**13.6** The Labour Party similarly supports the prohibition of political advertising on television and on radio, and the Liberal Democrats are of the same view.

**13.7** Preventing the political parties and other politically motivated organisations from buying time on television and radio has the effect of restricting the total amount of money they can spend and also, thereby, of limiting the amounts of money they have to raise. These effects are almost universally agreed to be beneficial. Election campaigns in the United Kingdom are cheaper than in many other countries. During election campaigns, television viewers and radio listeners are not subjected to a continuous barrage of party political propaganda (much of which, if it were permitted here, would undoubtedly be negative). The parties' dependence on wealthy donors is reduced. Political leaders are not forced to spend enormous amounts of time and energy raising money to fund television and radio campaigns. Not least of the benefits is the fact that the broadcasters provide the parties with free air-time. This means that all the major political parties, and not just the richest ones, are given an opportunity to state their views. Almost all those who have observed election campaigns in the United States regard these aspects of the UK system as superior. We believe that the present arrangements have served this country well and should remain in place.

**13.8** We realise that the ban on political advertising on television and radio constitutes a restriction on the right of free expression guaranteed by Article 10 of the European

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<sup>1</sup> The Ban extends to bodies whose objects are wholly or mainly of a political nature – Broadcasting Act 1990, s92(2)(a)(i). The Court of Appeal has held that the Radio Authority correctly applied the statutory provision and acted reasonably in rejecting radio advertisements from Amnesty International (British Section): *R. v. Radio Authority ex parte Bull* [1997] 2 All ER 561.

<sup>2</sup> Written submission to the Committee from the Conservative Party, App V, p 242.

Convention on Human Rights.<sup>3</sup> However, we have already noted in Chapter 10 that the Convention, in Article 10(2), recognises that there are grounds which justify a restriction on that fundamental freedom. Although the European Court on Human Rights has not been asked to decide whether the ban on political advertising is justified under the Convention, some guidance has been provided by the Commission on Human Rights in the 1971 case of *X and the Association of Z v. United Kingdom*.<sup>4</sup> In that case a complaint was made that, contrary to Article 10, the BBC had refused the applicant broadcasting time. The applicants also complained that the legislation governing the independent television network in the United Kingdom prevented the network – specifically, Westward Television Ltd – from accepting advertisements of a political nature, which was also contrary to Article 10. The Commission, in declaring the application inadmissible, took the view that Article 10 could not be taken “to include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio and television in order to forward its opinion”<sup>5</sup> although it suggested that a complaint against the BBC might be founded “for instance, if one political party were excluded from broadcasting facilities at election time while other parties were given broadcasting time”<sup>6</sup>. As for the ban on political advertising, the Commission said that “the notion of licensing implies that, in granting a licence, the State may subject radio and television broadcasting to certain regulations” and found that “the provisions of Article 10(1) should be interpreted as permitting the State, in granting a licence, to exclude ... certain specified categories of advertisements”.<sup>7</sup>

**13.9** Although the European Commission on Human Rights decided in favour of Westward Television on the basis of Article 10(1) of the Convention, it is of interest to note that the relevant Ministry had written to the applicant defending the ban on political advertising on the basis of Article 10(2). In the Ministry’s view the ban served “to prevent the exponents of political views with the largest purse – whoever these may be – from having an advantage in terms of buying time on television to promote their cause”. If the ban did not exist, less well endowed parties or movements would have great difficulty in maintaining their point of view in the face of massive purchase of advertising time by their opponents. In the Ministry’s opinion, this safeguard was covered by Article 10(2) of the Convention as being necessary “for the protection of the ...rights of others”.<sup>8</sup> The Commission expressed no opinion on this contention.

**13.10** In 1990 the European Court of Human Rights held in *Groppera Radio AG v. Switzerland*<sup>9</sup> that Article 10(1) of the Convention could not be invoked to justify a restriction on freedom of expression imposed through a radio or television licensing scheme. Justification for a restriction had to be found, if at all, within the terms of Article 10.2.<sup>10</sup> In short, an affirmative answer is required to each of the following questions: Is the restriction imposed by law? Does it pursue a legitimate aim? Is the restriction necessary

<sup>3</sup> The text of Article 10 is set out in full in para 10.52 above.

<sup>4</sup> Application 4515/70–38CD86 (1971).

<sup>5</sup> At p 88.

<sup>6</sup> At p 88.

<sup>7</sup> At p 89.

<sup>8</sup> 38CD 86 at 87

<sup>9</sup> Series A 173 (judgment of 28 March 1990).

<sup>10</sup> *Ibid*, p 24, para 61 of the judgment.

in a democratic society to achieve that aim?<sup>11</sup> *Groppera* involved, not a ban on political advertising, but a ban on the re-transmission within Switzerland of radio programmes transmitted from just over the border in Italy. Nevertheless, it can be anticipated that the European Court of Human Rights would today approach a ban on political advertising in the same manner and would require a justification to be established in terms of Article 10(2) of the Convention.

**13.11** It is, of course, possible that the legal position under the Convention may one day be tested again in the courts. It is some 27 years since the Human Rights Commission decided the case quoted in paragraph 13.8 above and, as we have said, the European Court of Human Rights in the *Groppera* case has undermined the particular ground on which the Commission there upheld the ban on political advertisements. An additional point to keep in mind is that when the Human Rights Bill receives the Royal Assent the Convention will form part of domestic law, thereby opening up the possibility of direct challenge of the advertising ban in the courts of the United Kingdom. Nevertheless, we take the view that it is perfectly proper for the Government to continue to proceed on the basis that the ban on political advertising on television and radio is legally defensible. We refer in particular to the Ministry's argument recorded in paragraph 13.9 above justifying the outright ban on the basis of protecting the democratic right of UK citizens not to be subjected to a barrage of political propaganda at prime advertising time from the party with the richest backers. If a court were in the future to rule to the contrary, this would potentially have a dramatic effect on the funding of the political parties. If free to do so, the parties would almost certainly feel obliged to make use of the opportunity to advertise themselves (or attack their opponents) on television and radio. In the United States a high percentage of the expenditure by the political parties at election times is devoted to television advertising. It is the pressure to advertise, as much as any other factor, which generates the demand for money and hence the arms race between Democrats and Republicans. On this point we conclude by saying that an adverse legal ruling would necessitate fundamental reappraisal of many aspects of this Report.

**13.12** Another possible future danger, to which reference was made in some of the evidence, is that as advances in technology bring in their train new and varied means of disseminating information (cablevision, multi-channel digital television, the Internet etc.) novel methods may be devised in an attempt to circumvent the current legal restrictions on political advertising. Vigilance will be required to prevent this happening. Existing legislation should be reviewed to ensure that its reach is sufficiently wide.

*R94 The ban on political advertising on television and radio should be maintained. Existing legislation should be reviewed to ensure that its reach is sufficiently wide to block attempts at evasion by new modes of communication.*

**13.13** There is a third feature of the British system that has attracted less attention but is equally important. In many countries, including some on the continent of Europe, the

<sup>11</sup> *Ibid*, p 25, para 64.



government of the day and the political parties have substantial power over some or all of the broadcast media. They either own or control them directly or are in a position to bring effective pressure to bear upon them. The Italian case is the best known, but it is by no means the only one. By contrast, in Britain, while the BBC and other broadcasting organisations are certainly subject to pressures exerted by the Government and the opposition parties, they have, by and large, succeeded in resisting those pressures. They have, in large measure, maintained their editorial independence and autonomy, to the great benefit of British democracy. It is sometimes not appreciated that the broadcasters retain ultimate editorial control even over party political broadcasts. We believe that the broadcasters should not surrender, and should not be asked to surrender, this independence.

*R95 The broadcasters should do all in their power to maintain their established tradition of strict political neutrality.*

**13.14** A little history may be in order here. Political broadcasts on radio were first carried by the BBC, voluntarily, prior to the 1924 general election. The Corporation took the view that the provision of such broadcasts was a direct consequence of its role as a public service broadcaster. These election broadcasts established two conventions. The first was that, while subject to the broadcasters' ultimate editorial control, the parties should be left largely free to present their message as they saw fit. The other was that each party should be allocated a 'fair' amount of broadcasting time. Voluntary rules established in 1928 allocated air-time to the parties, and the number of broadcasts each party was permitted was related to how many candidates it put in the field. To the regular 'party election broadcasts' (p EBs) were subsequently added 'party political broadcasts' (p PBs), aired at times other than during election campaigns.

**13.15** Only Channels 3, 4 and 5 are compelled (under section 36 of the Broadcasting Act 1990) to transmit political broadcasts. The BBC continues to transmit such broadcasts as part of its perceived public service role, although there is no formal requirement in its charter for it to do so; and Sky TV, S4C, Virgin Radio, Talk Radio and Classic FM transmit them voluntarily. To speak of the voluntary nature of the majority of political broadcasts is, however, a little misleading, as to suspend these broadcasts would have serious repercussions, possibly leading to the overturning of the current bar on broadcast political advertising.

**13.16** A crucial element in these arrangements has always been the procedure by which broadcast time was allocated to the parties – a procedure based on tradition and conventions rather than on statutory requirement. The allocation procedure is the responsibility of the broadcasting authorities. In practice the broadcasting authorities have informed us that they consult with the political parties, the public, and each other to establish a fair and acceptable allocation of broadcast time.<sup>12</sup> Until recently, the Committee on Party Political Broadcasting (established in the late 1940s) operated as an informal

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<sup>12</sup> *Consultation Paper on the Reform of Party Political Broadcasting*, 20 January 1998, Foreword.

mediator between the broadcasters and the political parties. The Committee fell out of favour after legal advice taken by the BBC (in June 1997) recommended that it would be more appropriate for the broadcasters to deal directly with the political parties.<sup>13</sup>

**13.17** In 1997 the Conservative and Labour parties each received an allocation of five 10-minute television PEBs. The Liberal Democrats were allocated four of the same length. The SNP and Plaid Cymru also received allocations of air-time, within Scotland and Wales, and allocations of air-time were made to all the parties which fielded 50 or more candidates, including the British National Party, the Referendum Party<sup>14</sup> and the Pro-Life Alliance.

**13.18** These allocations of free air-time are generous and of enormous value to the parties. However, the financial benefit is impossible to calculate with any degree of precision. The BBC does not accept advertising and therefore has no advertising rates. The independent television companies do not regard PEBs and PPBs as advertisements at all and therefore take them out of programme time rather than advertising time. Nevertheless, the Independent Television Association calculates that in 1997 a single five-minute advertisement – longer than anything actually on offer from independent television – would have cost £3.5 million.<sup>15</sup> The ITA's calculations suggest that during the 1997 campaign PEBs were worth approximately £20 million each to the Conservative and Labour parties and approximately £16 million to the Liberal Democrats. (The Committee, however, has noted that, if the parties could buy air-time, they might purchase shorter advertisements – which could be far more cost effective.) The financial value to the smaller parties is considerable, especially as a small party in 1997 could have 'bought' an election broadcast for £25,000, the cost of the election deposits it would have to find in order to field 50 candidates.

**13.19** A rough indication of the sums of money that might be involved if broadcast political advertising were to be allowed in Britain is provided by the United States. During the 1996 Presidential and Congressional elections the total amount spent by the parties, candidates, special interest groups and individuals was \$2.5 billion – which was mostly spent on broadcast political advertising.<sup>16</sup> Even allowing for America's larger and more scattered population, the sums are formidable. It is no wonder that the British parties are unanimous in not wanting to go down that particular road.

**13.20** In January 1998 the broadcasting authorities published a joint consultation paper on the reform of party political broadcasting. The broadcasters accepted the principle that time should continue to be allocated for party election broadcasts. Indeed, they suggested that the number of such broadcasts might be increased. However, amongst other proposals they put forward the idea that routine party political broadcasts, together with the present Budget broadcasts, should be abolished entirely. They argued that, given the

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<sup>13</sup> *Ibid*, Appendix 1.

<sup>14</sup> A legal challenge by the Referendum Party to the reasonableness of the allocation criteria applied by the broadcasters was rejected: *R v. BBC and Independent Television Commission et parte Referendum Party* [1997] COD 459.

<sup>15</sup> Calculated from the cost of five 60-second advertisement slots before the *News at Ten*: written submission to the Committee from the Independent Television Association, 3 February 1998.

<sup>16</sup> Jason F. Kirksey, in G. Peele *et al*, eds, *Developments in American Politics*, 1998, p 308.

rise in current affairs programmes, PPBs are now less useful and would serve a greater purpose in being concentrated at election times.

### *Consultation Paper on the Reform of Party Political Broadcasting*

*“As our democracy changes, with more parties, new electoral arrangements and elections to new bodies – and as broadcasting itself changes – it is right that the broadcasters should review the rules by which such broadcasts are allocated and the guidelines under which they are made – and that these arrangements should be open and transparent... Given the increase in daily analysis and coverage, it may be that party political broadcasting serves a more important role at election times, when broadcasts are aimed specifically at informing the electorate of the choice available in exercising their vote.”*

(Foreword and p 3)

### *The Labour Party, written submission*

*“The Labour Party does not believe that there is a case for moving the focus of broadcasts to election campaigns, at the expense of the party political broadcasts which take place at non-election time. These are different types of broadcast which serve different functions, both of which are equally indispensable for the political parties and for the democratic process.”*

(‘Transparency, Participation, Equality’, App V, p 224, para 6.9)

### *Lord Parkinson, Chairman of the Conservative Party*

*“There is a case for the party political broadcast... But it is traditionally the time when people go and put the kettle on and wait for the thing to end. I think politicians have to recognise that. So I do not think our attitude to the proposals is quite as entrenched and hostile as Labour’s. We think there is a case for giving more exposure and more time at a time when people are really interested in politics, rather than just filling five minute slots at odd times of the year.”*

(Vol 2, p 118, para 1410)

**13.21** We acknowledge the strength of the broadcasters’ case, and we also believe that no one – neither the Government nor any of the political parties let alone this Committee – should be in a position to order the broadcasters to provide time for party political broadcasts. Nevertheless, we have some doubts about the wisdom of the broadcasters’ proposals with regard to PPBs. Party political broadcasts do not, of course, give universal pleasure to members of the viewing and listening audience, and they are undoubtedly something of a nuisance for the broadcasters themselves, but they do afford the parties an opportunity, between elections, to set their views before the public on their own terms, and the fact that such broadcasting opportunities exist may make it somewhat easier for the broadcasters to resist some of the other political pressures to which they are subject. The existence of PPBs also weakens, to some extent, any case that might be made for legitimising paid advertising on the broadcast media. A few PPBs, scattered through the year, seem a small price to pay for keeping open direct lines of communication between political parties and those they claim, or seek, to represent. After all, no political party is obliged to participate. A political party that considered that a PPB at a particular juncture was too expensive to produce or likely to be ineffective could simply abstain. This should

not, we consider, operate as a barrier to PPBs on behalf of those parties which wish to participate.

**13.22** In connection with both the future of party election broadcasts and party political broadcasts (if they continue to exist), and also their allocation among the parties, we believe there may be a role for our proposed Election Commission. The Commission could express non-binding views on such matters as those raised by the broadcasting authorities' consultative document; and the political parties and the broadcasters might find it mutually advantageous if the Election Commission played an 'honest broker' role in connection with the allocation of the available free air-time. Such a role is played in Canada, with considerable success, by a body under the direction of the Chief Electoral Officer.

### *Paid advertising*

**13.23** The scope for non-broadcast political advertising is vast, ranging from locally produced leaflets to national press and poster campaigns. There can scarcely be a person in the United Kingdom who has not been aware of the major parties' advertising campaigns during recent general elections.

**13.24** Non-broadcast advertising raises two kinds of issues for this Committee. The first concerns party funding directly – whether, for example, the parties' spending on such advertising is excessive or causes the parties to become over-reliant on wealthy donors. The second concerns, more generally, 'standards of conduct in public life' – whether, for example, the parties' advertising adheres to the high standards that should be expected in a mature democracy. As to the second concern, the Committee on Advertising Practice pointed out in their oral evidence that the political parties are not required to comply with a substantial number of the clauses within their Code of Advertising Practice. They raise the question of whether a specific code of advertising practice in relation to political advertising should be developed. We have come to the conclusion that this is not an issue with which we can deal in detail in this report. Here the focus is on the funding of political parties. However, given our wider interests in the maintenance of standards in public life, we would welcome any progress which could be made in this direction by the political parties working in association with the advertising industry and we would exhort them to endeavour to formulate an agreed code. Any such code would, of course, have to be robust enough to be effective in the heat of a general election campaign.

*R96 The political parties should seek to agree, in association with the advertising industry, a code of best practice for political advertising in the non-broadcast media.*

**13.25** At recent elections, the sums spent by the parties on non-broadcast advertising have been very large, with the trend of expenditure moving away from newspaper advertising towards poster and billboards. However, although the sums have been large, it has been impossible until recently to say how large. It was not until the main political

parties had made their written submissions to us that confirmed figures for advertising were disclosed. Table 13.1 gives a figure of £21.5 million as having been spent on advertising by the main political parties in 1997. These figures are close to those estimated by David Butler and Dennis Kavanagh,<sup>17</sup> which were compiled from a variety of sources and included an additional estimate of £10 million as having been spent by the Referendum Party and three non-party individuals and organisations.<sup>18</sup> They are considerably less, however, than those given in oral evidence to us by Andrew Brown, Director-General of the Advertising Association, who estimated that in 1997 the Labour and Conservative Parties together spent a total of £30-40 million solely on their poster campaigns.<sup>19</sup>

Table 13.1

**Expenditure by the main political parties during the 1997 general election**

	Conservative	Labour	Liberal Democrat
Newspaper advertising	£3,200,000	£900,000	0
Outdoor advertising	£11,100,000	£4,800,000	£80,000
Other advertising	£100,000	£50,000	0
Party political broadcasts and videos	£500,000	£600,000	£200,000
<b>Total</b>	<b>£14,900,000</b>	<b>£6,350,000</b>	<b>£280,000</b>

**13.26** These large figures naturally give rise to the question whether a legal limit or even a ban should be placed on newspaper and poster advertising analogous to the ban on advertising on television and radio. Any such limit or ban would be in addition to the overall limit on the parties' national campaign expenditures recommended in Chapter 10 above.

**13.27** In considering this question, we feel bound to start from the situation as we find it. The ban on broadcast advertising has existed since the 1920s<sup>20</sup> and is generally accepted by the political parties. As we have said,<sup>21</sup> although it does undoubtedly impose some restriction on freedom of expression, the European Commission of Human Rights in the 1971 case of *X and the Association of Z v. United Kingdom*<sup>22</sup> indicated that it was compatible with Article 10 of the European Convention on Human Rights. A ban on newspaper and poster advertising, or even any substantial restrictions on them, would be entirely novel and, in our view, hard to justify.

**13.28** Political parties set particular store by newspaper advertising, which enables them to communicate directly with voters in language of their own choice. Parties may be especially concerned to address directly the readers of newspapers that are otherwise unsympathetic or even hostile towards them. Moreover, if the parties were not able to advertise by means of the press and posters, they would be largely dependent for putting

<sup>17</sup> D Butler and D Kavanagh, *The British General Election of 1997*, Table 12.3, p 242.

<sup>18</sup> Referendum Party (£7,208,000), Entrepreneurs For A Booming Britain (£868,000), Paul Sykes (£827,000), Unison (£1,112,000)

<sup>19</sup> Volume 2 of this report, p 224, para 2695.

<sup>20</sup> The ban was originally implemented as part of the general ban on the BBC carrying any advertising. The Television Act 1954, Second Schedule (6), extended the ban to the newly created independent television in the 1950s.

<sup>21</sup> See para 13.8

<sup>22</sup> Application 4515/70.

their own message over in their own way on the leaflets of candidates and PEBs. We believe this would be an unwarranted restriction on their freedom of expression and would almost certainly fall foul of the European Convention on Human Rights given the existence of the broadcast ban.

**13.29** The case of poster advertising is perhaps slightly more difficult. Some have advocated a ban or some limitation on poster advertising, especially since it can be very expensive and is almost invariably concerned with transmitting a simple slogan or image rather than with developing any sustained argument. But poster advertising is an established part of the British political scene and, as in the case of newspaper advertising, we are reluctant to impose a new restriction on freedom of expression and freedom of choice, especially one that might also, like any restriction on press advertising, be struck down under Article 10 of the European Convention on Human Rights.<sup>23</sup>

**13.30** Martin Linton MP has put forward a somewhat different proposal by suggesting that non-broadcast advertising – especially poster sites – should be allocated free of charge to the political parties under arrangements similar to those covering party political and election broadcasts.<sup>24</sup> His view is that an arrangement of this kind would not only limit the parties' spending during election campaigns but would make it harder for any party to use either its financial strength or its corporate contacts to monopolise prime advertising sites. Such an arrangement, he argues, would also reduce the advantage that the governing party has in determining the election date and, therefore, in being able to book advertising sites ahead of the Opposition.

**13.31** We considered this proposal but in the end rejected it. Not only would it impose new restrictions on the parties' freedom of expression and freedom of choice, but it would involve a direct interference with the commercial rights of newspaper proprietors and the owners or lessors of hoardings and other billboard space to make available their columns and their sites to whomsoever and at whatever prices they chose. If this acquisition of space were to be carried out on a compulsory basis, not only would issues of compensation arise, but some person or some organisation would have to decide which parties were to be allocated which advertising slots and sites. If the state were to foot the bill or part of it, the cost to the taxpayer could be enormous. In the case of television and radio (p PBs and PEBs), the government does not actually buy broadcast time on the parties' behalf. In the case of press and poster advertising, it would presumably have to do so.

**13.32** We believe that one of the main aims of proposals like Mr Linton's – the limiting of campaign spending – will be better achieved by the imposition of direct limits on national party spending of the kind proposed in Chapter 10.

**13.33** In this connection, as in many others, we also believe that much can be achieved by way of greater openness. The parties' accounts, to be lodged with the Election Commission, should be required to provide details of the parties' expenditures on press and poster advertising.

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<sup>23</sup> For the text of Article 10 see Chap 10 above at para 10.52.

<sup>24</sup> Written submission to the Committee from Mr Martin Linton MP, 27 February 1998, p 13.



## New developments

**13.34** We have focused largely in this chapter on the electronic and print media as they have existed over the past few decades. But, as noted in paragraph 13.12 above, we are conscious that the media, especially the electronic media, are changing rapidly. 'Broadcasting' is gradually giving way to 'narrowcasting', with an increasing fragmentation of television and radio audiences. The advent of satellite and cable television and of digital broadcasting means that the current arrangements governing political broadcasting may soon no longer be relevant. The increasing use of the Internet, and the widespread availability of desktop publishing, raise similar kinds of issues. Indeed, the various technologies are increasingly converging to convey electronic information services into people's homes through a variety of sources. We have no doubt that political parties, special interest groups and others who wish to influence the political process will increasingly be seeking ways to use these technologies.

**13.35** Not the least of our reasons for recommending the creation of an independent Election Commission is the belief that these new developments are likely to render a good deal of our current law out of date. The law will, therefore, have to be kept constantly under review. The Commission will be well placed to undertake such a review on a continuing basis.

*R97 In addition to its overall duty of keeping election and funding arrangements under review, the Election Commission should be specifically charged with monitoring the working of the current arrangements for the provision of party political and election broadcasts and the effect on political advertising generally of developing communications technologies.*



## THE HONOURS SYSTEM

### Background

**14.1** Abuse of the honours system by the promise of an honour in exchange for a contribution to the funds of a political party has undoubtedly occurred in the course of the twentieth century. During the first World War there was already sufficient concern on the matter for a resolution to be moved in the House of Lords on 31 October 1917 in the following terms:

That this House considers that His Majesty's Government ought forthwith to give effect to the following provisions:-

- (1) That when any honour or dignity is conferred upon a British Subject, other than a Member of the Royal Family, or the members of the Naval, Military, or Permanent Civil Service under the Crown, a definite public statement of the reasons for which it has been recommended to the Crown shall accompany the notification of the grant.
- (2) That the Prime Minister, before recommending any person for any such honour or dignity, should satisfy himself that no payment or expectation of payment to any Party or Political Fund is directly or indirectly associated with the grant or promise of such honour or dignity.

**14.2** The Government accepted this resolution on 6 November 1917 but this acceptance failed to stem the tide of abuses. Honours continued to be bought and sold while the Coalition Government under the premiership of Lloyd George remained in power. The Birthday Honours list in the summer of 1922 provoked particular public outrage. Among other suspect names the list included a peerage for a South African magnate who had been found guilty of fraud by the South African Supreme Court and fined £500,000. His appeal against conviction had been dismissed by the Privy Council as recently as November 1921. These facts were suppressed when the list was submitted to King George V for his approval. It emerged that the magnate had paid £50,000 for his peerage.

**14.3** The outcry was such that the magnate had to be persuaded to decline the honour of a peerage. The King wrote a furious letter to Lloyd George and this no doubt led to the appointment of a Royal Commission in September. By October the Government had fallen, the honours scandal being generally regarded as one of the contributory causes. Lord Beaverbrook commented "Without doubt the sale of honours for the benefit of Lloyd George's personal Political Fund had damaged his prestige and injured his standing in Parliament and in the constituencies".<sup>1</sup>

**14.4** On 16 September 1922 the Royal Commission under the Chairmanship of Lord Dunedin was appointed "to advise on the procedure to be adopted in future to assist the

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<sup>1</sup> Beaverbrook, *The Decline and Fall of Lloyd George*, Collins, 1963, p127.

Prime Minister in making recommendations to [the Sovereign] of names of persons deserving special honour”.

**14.5** In general, the Commission found that the honours system had been operating with perfect propriety. There was, however, one class of honours in respect of which this was not the case, namely, honours given for political services.

**14.6** In this field there had been at work persons, stigmatised by the Commission as ‘touts’, who had been in the practice of offering to procure an honour for those who might be deemed eligible (or might deem themselves eligible) for an honour under the heading ‘for political services’. It was a term of the bargain that a contribution should be made to the funds of the appropriate political party.

**14.7** The Commission interviewed the incoming Prime Minister, Bonar Law, and all former holders of the office who were still alive (with the exception of Lord Rosebery, who was too ill to attend). The Commission’s Report states

We put the question to each Prime Minister in turn, whether he had ever been cognisant of any bargain or promise that an honour would be contingent on a contribution to Party funds. We received the answer that we expected, that they had not. Answers to the same effect were given by the Patronage Secretaries and Party Managers.<sup>2</sup>

**14.8** The Commission nevertheless concluded that action was called for. The recommended steps were the appointment of a Committee and the enactment of legislation.

**14.9** On the recommendation of the Commission, the Political Honours Scrutiny Committee (p HSC) was established in 1923, by Order in Council, charged with the task of making enquiries into the background and circumstances of those who were put forward for political honours and with deciding whether the nominees were “fit and proper” persons.

**14.10** Also on the recommendation of the Commission, the Honours (prevention of Abuses) Act 1925 (the 1925 Act) was enacted, making it a criminal offence to deal in honours, either as broker or purchaser. In opening the second reading debate on the Bill, the Lord Privy Seal (The Marquess of Salisbury) said:

A few years ago, public opinion in this country was profoundly concerned at certain scandals which had arisen in connection with the distribution and conferring of honours. It appeared that there were several cases in which insufficient care had been taken in recommending persons for the receipt of honours to His Majesty. There were grounds for thinking that pecuniary considerations entered into the reasons for the conferring of these honours in a way in which they ought not to have done, and the country became convinced that a matter which ought to be above suspicion had

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<sup>2</sup> *Report of Royal Commission on Honours*, 22 December 1922, Cmd 1789, para 19.

become discredited... A Royal Commission, presided over by my noble and learned friend Lord Dunedin, was entrusted with the duty of considering the matter and making recommendations so as to prevent those mischiefs to which I have alluded. That Commission sat and made a series of recommendations. One of them was the appointment by the Privy Council of a Committee of their own body, whose business it should be to examine the names of proposed recipients of honours before they were submitted to His Majesty. That has been done by every Government which has been in office since Lord Dunedin's Commission reported. They also recommended that, in order to deal with these persons who professed that they could manipulate honours for money, the traffic in honours should be made a criminal offence.<sup>3</sup>

**14.11** Notwithstanding the creation of criminal sanctions in the 1925 Act, the trade continued into the 1930s on a certain scale. One notorious tout, Mr Maundy Gregory, continued to operate until he was prosecuted and convicted in 1933.<sup>4</sup>

**14.12** Over the last two decades allegations of a link between honours and donations have re-surfaced. The time may have passed when honours were, in effect, sold at a going rate. The problem today is a more subtle one. One commentator, Mr Robert Blackburn, describes it as follows: "Critics of the operation of the modern-day honours system do not suggest that open arrangements are made for the sale of honours, but it is widely accepted that substantial political donations buy goodwill and substantially enhance the likelihood of being considered for an honour, and the overall prospects of receiving one."<sup>5</sup> Mr Robert Blackburn also said: "Few can doubt that there is indeed a high correlation between those companies that gave large donations to the Conservative Party and honours which are distributed to one or more of the directors of the company".<sup>6</sup>

***Minority Report of the Home Affairs Select Committee on Funding of Political Parties (para 44), published in March 1994***

*"...there is a widespread perception among both recipients and the public at large that there is a connection between financial contributions to Conservative Party funds and the award of honours."*

***David Cracknell and P J Taylor, Sunday Business, 30 August 1998***

*"A number of businessmen who have been given key government roles are on the [Labour] party's list of major financial backers. Major donors included Lord Puttnam, the film producer who has been made head of the National Endowment for Science, Technology and the Arts; Lord Sainsbury, recently appointed a minister at the Department of Trade and Industry; and Christopher Haskins, chairman of Northern Foods and the government's Better Regulation Taskforce. Sainsbury, Haskins and Puttnam, plus other big donors Melvyn Bragg and Ruth Rendell, all owe their peerages to Tony Blair."*

<sup>3</sup> *Hansard* (HL) 29 June 1925, cols 818-819.

<sup>4</sup> See generally, T Cullen, *Maundy Gregory: Purveyor of Honours*, 1974.

<sup>5</sup> R Blackburn, *The Electoral System in Britain*, 1995, p 323.

<sup>6</sup> *Ibid.*

**14.13** Whether or not the perception of a connection is founded in truth, we believe it is important that public disquiet about the abuse of the honours system should be allayed.

### The Political Honours Scrutiny Committee (the PHSC)

**14.14** The PHSC, from whom we received both written and oral evidence, consists of three Privy Counsellors who are not members of the Government. They are appointed by the incoming Prime Minister

to assist him in putting forward to Her Majesty the names of persons for appointment to a dignity or honour on account of political services.

They are expressly appointed “for the period of the duration of office of the present Government”.<sup>7</sup> In practice, the Committee members are drawn from different parties. The Committee told us that it “operates authoritatively and independently, and in confidence, advising the Prime Minister”. The present members are the Rt. Hon. the Lord Pym MC DL (Chairman), the Rt. Hon. the Lord Thomson of Monifieth KT and the Rt. Hon. the Baroness Dean of Thornton-le-Fylde.

**14.15** The Order in Council under which each new PHSC is appointed makes it clear that the assistance to be given to the Prime Minister is by way of response to names submitted to it by the Prime Minister. It has no initiating role to seek out suitable candidates and no right or duty to rank candidates in order of merit. The function is one of scrutiny only.

**14.16** Positively, the PHSC has to report to the Prime Minister “whether, so far as they believe, the persons whose names are submitted to them are fit and proper persons to be recommended”. Negatively, the Committee must report “if the past history or general character of a person rendered him unsuitable to be recommended”.

### Nominations for honours

**14.17** We leave on one side honours awarded to members of the Diplomatic Service, the armed forces and the Civil Service. No issue concerning honours in these categories was brought to the attention of the Dunedin Commission, and none has been brought to the attention of this Committee. Apart from those categories, nominations for honours may be made for “political services” or for some other, non-political reason (such as achievements in industry, the arts, or services to the community or to charity).

**14.18** The substantial majority of honours fall into the non-political category. Under recent Conservative governments, of the 1,000 or so names on the Prime Minister’s lists for the New Year honours and for the Queen’s official Birthday honours, only about 50 (the majority of which were for OBE or MBE) were for political services. According to the PHSC’s evidence to the Committee, those 50 were mainly Conservative names, but they have included individuals suggested by the leaders of other Parties at the invitation of the Prime

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<sup>7</sup> Order in Council of 20 May 1997, as amended on 20 March 1998.

Minister (as contemplated in 1979 by the then Prime Minister, the Rt. Hon. Margaret Thatcher, when she revived the practice of awarding honours for political services).<sup>8</sup> Labour Prime Ministers have not, since the 1960s, recommended people for honours for political services in the New Year and Birthday Honours lists, although Labour Members of Parliament and others do feature in Working Peer and Dissolution Honours lists (and occasionally, for non-Party services, in other lists).

**14.19** All proposals for Life Peerages are also, as a matter of established practice, submitted by the Prime Minister to the PHSC, and the Order in Council procedures referred to in paragraph 14.25 below are followed. It is nonetheless curious that the Orders in Council (20 May 1997 is the latest example) make no reference to Life Peerages, although it has never been in doubt that these, which are directly recommended to The Queen by the Prime Minister, should go to the PHSC. The responsible authorities may wish to consider whether in future the formal written remit of the PHSC should be brought into line with reality.

**14.20** Non- political nominations may be made by major national associations, bodies or businesses (or Government senior staff in the field) to the Government department which sponsors them or their activities; or by members of the public (a) to the Nominations Unit (in the Ceremonial Branch, which administers the honours system, in the Cabinet Office) or (b) to the Prime Minister (who will usually pass the papers to the Nominations Unit). The arrangement at (b) dates from the opening up of the honours system by former Prime Minister, the Rt. Hon. John Major MP in 1993.

**14.21** The nominations are processed through several stages. First they are considered by the relevant Government department, where appropriate, or by the Ceremonial Officer (who heads the Ceremonial Branch in the Cabinet Office, and is also Secretary to the PHSC) with senior colleagues. Those passing the first stage are then assessed by “a central committee of advisers”, which includes experts in the relevant spheres of interest of nominees. Those passing this second stage are considered by a final central honours committee chaired by the Head of the Home Civil Service, which aims to achieve a balance of representation and standards. At this point the Prime Minister scrutinises those recommended to him, and he may delete names. He may also add names, and any names added at this late stage are referred to the PHSC.

### The procedures of the PHSC

**14.22** The PHSC’s prime task is to examine all nominations for honours for ‘political services’ and all proposals for Life Peerages with a view “to protecting the honours system and the Prime Minister against action which might bring the honours system into disrepute, or smack of impropriety.”<sup>9</sup>

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<sup>8</sup> *Hansard* (HC) 26 November 1979, col 880.

<sup>9</sup> Volume 2, p 258, para 2, opening statement.

**14.23** As we have already noted, the PHSC is not normally involved in scrutinising the nominations for the 90 per cent or more of all honours which are granted for other than political services. It does, however, review any names added by the Prime Minister, and these may include names in the non-political honours category. Even if not added to the original list by the Prime Minister, the PHSC have offered to advise the Prime Minister on any particular or highly sensitive case in the non-political category which he may wish to submit to them.

**14.24** The procedures, as we have described them, have the result that non-political honours are not normally scrutinised by the PHSC, even if the nominee happens also to be a contributor to a political party. To illustrate the point, if a prominent industrialist were, through the normal procedures and on the basis of his achievement in that sphere, to be nominated for a knighthood for 'services to industry' and he happened to be chairman of a company which had recently made a large donation to a political party, his case would not in the ordinary way come to the attention of the PHSC. Nor would the expert advisory Committee mentioned in paragraph 14.21 above have any way of knowing about this donation. Yet such a case might subsequently become the subject of public criticism.

**14.25** When submitting to the PHSC the list of proposed Life Peers (all of whom go to the PHSC automatically), together with any political nominations the Prime Minister is also required by the Order in Council to provide information about the nominees. This includes (i) "a statement of the service in respect of which, and the reasons for which, the recommendation is proposed to be made"; (ii) "a statement by an accredited representative nominated by the Prime Minister for the purpose that he has made all necessary enquiries and has satisfied himself that *no payment to any party or political fund [is] directly or indirectly associated with the recommendation*"; and (iii) "the name and address of the person considered by the Prime Minister to be responsible for the original recommendation of the proposed recipient".<sup>10</sup> The Committee will then make enquiries and report to the Prime Minister whether the nominees "are fit and proper persons to be recommended".<sup>11</sup>

**14.26** The 'accredited representative' is, by convenience and practice, the Chief Whip of the relevant party. He/she provides to the PHSC the following information:

- all donations (or services) of £5,000 or more in each of the preceding 5 years (the figure of £5,000 was chosen by the PHSC 5-6 years ago);
- donations both to a party and to funds devoted to the political interests of that party;
- separately, personal donations and those by a company or Trade Union with which the nominee is connected; and
- any important services in kind that have been provided to a political party or to the Prime Minister (the latter mainly in the case of a Resignation List).

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<sup>10</sup> Order in Council of 20 May 1997. Italics added.

<sup>11</sup> Ibid.

## The attitude of the PHSC to political donations

**14.27** The PHSC, following the principles of the Royal Commission report in 1922, subscribes to the following tenets:<sup>12</sup>

- that a donation to a political party should not disqualify the donor from receiving an honour, and
- any individual proposed should be meritorious on the basis of his or her achievements, quite apart from any donation.

**14.28** In its written evidence to this Committee the PHSC expanded on the above summary in terms which warrant quotation:

The PHSC is not required to comment on the merits of those referred to them in terms of their achievement as such, but only in terms of probity. This has been the convention since 1923, when the creation of the Scrutiny Committee anticipated to some extent the work of the Committee on Standards in Public Life some 70 years later. Donations to political parties have not been regarded as a bar to a honour. But advice has been tendered, in confidence to the Prime Minister, on whether the recognition of that individual, or recognition at that particular time, is likely to bring the honours system into disrepute. The advice is particular to each individual's circumstances, eg:

- whether the donation is particularly recent, bearing in mind the individual's history of donations; or is especially large (given the individual's resources); or is especially significant (say, against the individual's wider achievements, including perhaps a longstanding commitment of time and money for charitable causes);
- whether the achievements of the individual overall are meritorious to an extent that make any donation of lesser significance;
- whether there are other factors which bear on the probity of the individual; or
- in terms of a Working Peers' List, whether the individual would be perceived to be a strong contributor to the work of the House of Lords.

## Our approach

**14.29** We share the view of the PHSC and its originator (the Dunedin Commission Report, paragraph 22) that nominees should not be prevented from receiving an honour because they have made political donations. We also believe that the determination of awards should be independent of whether nominees have made a donation to a political party.

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<sup>12</sup> Vol 2, p 258, opening statement.



**14.30** In our view, a person should deserve an honour irrespective of any payments made to a political party or cause. If he or she has made a donation *and* has sufficient merit to attract an honour, then he or she should be regarded as eligible to be accorded the honour but the donation should play no part in reaching a favourable decision; if, on the other hand, he or she has some but not sufficient merit but the merit accorded to a donation creates a sufficiency, then the donation would, in effect, have purchased the honour and this would be inappropriate. In referring to the fact that sufficient merit should make an individual *eligible* to receive an honour although a significant political donation had been made, we have in mind the point made by the PHSC in the quotation set out above that there may be circumstances in which it would be inopportune to award an honour notwithstanding the ample merit of the candidate. The timing of the donation, or its size, or other special factors, may very properly lead the PHSC to advise the Prime Minister against the award at the particular time.

**14.31** Whilst recognising that the decision to award an honour is not a scientific one and that the arguments for and against a nominee cannot be weighed to a nicety, we nonetheless believe it is important that the risk of the *appearance* of a link between donations and honours should be minimised. Hence everything possible should be done to ensure that the honours system is not brought into disrepute.

### Problems with the present system

**14.32** It seems to us that to some extent the PHSC's historic remit no longer covers all areas of public disquiet. The PHSC's primary remit is to look at honours proposed to be awarded for 'political services'. It was given this task in 1923 because, at that time, the Dunedin Commission found that there was, in effect, a sale and a purchase of honours for political services where the recipient of the honour was prepared to pay a donation to the funds of a political party. The scandal at that time was limited to the political services honours.

**14.33** As we have noted earlier, the concern today has ceased to be one about the buying and selling of honours, and is rather now with a perception that a particular donation led on rather rapidly to an honour albeit there was no contract of sale. To allay the current concern it is, in our view, necessary to widen the remit of the PHSC so that the Committee members scrutinise not only the nominations 'for political services' but also all nominations, at the sensitive levels of CBE and above, where there has been a direct or indirect political donation made by the nominee or others closely associated with him or her. To revert to the example of the industrialist given in paragraph 14.24 above, it seems to us to be essential that such a case should be scrutinised by the PHSC just as much as if the honour for him or her had been proposed 'for political services'.

*R98 In future the Political Honours Scrutiny Committee (PHSC) should be requested to scrutinise every case where a nominee for an honour of CBE and above has directly or indirectly donated £5,000 or more to a political party at any time in the preceding five years. The PHSC should satisfy itself that the donation has made no contribution to the nomination for an honour.*

**14.34** A second possible deficiency in the present system is that the PHSC may not be aware of all relevant evidence about the political donations of nominees and those associated with them.

**14.35** In the case of all nominations for honours for 'political services', the Prime Minister, through the Chief Whip (the 'accredited representative') supplies the PHSC with a statement to the effect that no donation has been received which is linked to the nomination. The PHSC itself requires information about all donations of £5,000 or more made by a nominee in any of the preceding five years.

**14.36** Clearly, the system relies on the extent of the Chief Whips' knowledge. We note that, in evidence, the PHSC refers to their requiring information about "donations both to a Party and to funds devoted to the political interests of that Party *insofar as they can be ascertained by the Whip concerned*".<sup>13</sup> Lord Shackleton, a former chairman of the PHSC, expressed his concern in 1993 that the PHSC was not fully informed: "It is highly likely that ... secret donations are bypassing the scrutiny system and that honours are in effect being bought".<sup>14</sup>

**14.37** If, however, the recommendation which we make above is implemented and the remit of the PHSC is extended to cover persons who are not nominated under the rubric 'for political services', the Chief Whip is unlikely to remain the sole person whom the PHSC should consult.

**14.38** Moreover, if the recommendations which we make about disclosure in Chapter 4 above are implemented, there will be an additional source of information concerning all relevant donations. This information will be in the hands of the Election Commission and it would obviously be a simple matter for the PHSC to have direct links with the data base of the Commission. We conclude that, if the PHSC's remit is extended, it will have to ensure that it uses the best means available to keep itself informed about donations made by nominees and donations made by persons, companies or organisations with which the nominee has, or will be perceived to have, close links.

### General oversight of the system

**14.39** We also think it desirable that the functions of the PHSC should be enlarged to enable it to monitor and review the operation of the honours system, in particular with a view to monitoring what proportion of nominations for honours (at CBE level or above) are made in respect of individuals who have been directly or indirectly involved in making a donation to a political party or cause of £5,000 or more.

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<sup>13</sup> Vol 2, p 258, para 8.

<sup>14</sup> David Harrison, "Honours 'being bought'", *Observer*, 27 June 1993.

*R99 In future the PHSC should monitor the relationship between nominations for honours (at CBE level and above) and donations made to political parties or associated organisations in order to ensure that an undue preponderance of honours is not conferred on those who have directly or indirectly made donations.*

**14.40** We recognise that the various recommendations which we have made above significantly alter the role of the PHSC and, in particular, make it inappropriate that it should continue to bear the name *Political Honours Scrutiny Committee*.

*R100 The PHSC should be renamed the 'Honours Scrutiny Committee'.*

## SURVEY OF FOREIGN COUNTRIES

As noted in the report, the Chairman and members of the Committee visited a number of countries early in the study. The advice from academics, the Foreign and Commonwealth Office and others was that in the limited time available, the Committee would be able to obtain a useful insight in to the diversity of systems for regulating elections by visiting Germany, Sweden, Canada and the United States.

After the Committee had taken evidence in Northern Ireland it became clear that it would be helpful to our work to have a greater understanding of the arrangements in the Republic. A visit was therefore made to Dublin by members of the Secretariat. The following table details the dates and personnel involved in each of the visits:

Table A1.1 Visits to foreign countries

Date	Country visited	Committee and Secretariat members attending
8-11 February 1998	Germany (Bonn)	Committee Members: Lord Neill (Chairman), Sir Clifford Boulton, Lord Goodhart, Professor Anthony King and Rt Hon John MacGregor MP. Accompanied by Richard Horsman, Committee Secretariat
11-13 February 1998	Sweden (Stockholm)	Committee Members: Lord Neill (Chairman), Sir Clifford Boulton, Frances Heaton and Professor Anthony King. Accompanied by Richard Horsman, Committee Secretariat
23-25 February 1998	Canada (Ottawa, Quebec City and Toronto)	Committee Members: Lord Neill (Chairman), Lord Goodhart, Frances Heaton, and Rt Hon John MacGregor. Accompanied by Peter Rose, Committee Secretariat
25-27 February 1998	United States (Washington)	Committee Members: Lord Neill (Chairman), Lord Goodhart, Frances Heaton, and Rt Hon John MacGregor. Accompanied by Peter Rose, Committee Secretariat
22-23 July 1998	Republic of Ireland (Dublin)	Peter Rose and Andrew Brewster, Committee Secretariat

Further details of people visited in each of these countries is contained in Volume II of this report.

In addition to those countries which the Committee visited information was sought from a wide variety of other countries, viz:

**Australia; Austria; Belgium; Denmark; France; India; Italy; Luxembourg; New Zealand; Portugal, Spain and the Netherlands.**

This information has been provided both through the embassies of individual countries in London and from British representatives abroad. We have been struck by the generosity with which many people gave both their time and effort in answering our many questions. Their expert knowledge and advice has been of great assistance in compiling much of this section of the report. Inevitably in conducting this sort of paper review over a relatively short time scale the information may be more or less complete. We have, however, included such information as we have, even in the case of those countries where the response was incomplete.

We have also used information from the websites of overseas electoral commissions (for example, the Australian Electoral Commission). We recognise of course that such information may not give a complete picture, but, it is nevertheless very useful.

We have set out the information as we gleaned it, first from our visits and, secondly, from our other researches. In each case, we cover where appropriate:

- the regulation of elections, and the enforcement of election laws,
- state aid to political parties,
- donations to political parties,
- limits on the expenditure of political parties.

A key issue in both Canada and the United States is the question of third party finances. Appendix I draws together some aspects of this issue as far as it affects both countries and highlights relevant judgments.

All references to non-UK currencies have been converted to the Sterling rate as at September 1998.

## Overseas Visits

### Germany

#### *Regulating elections*

The President of the Bundestag (the equivalent, in the UK, of the Speaker) has the tasks each year of determining (within a statutory framework) the amount of funds for each party, auditing the party's accounts, and reporting to the Bundestag on the state of the accounts.

#### *State aid*

State funding is well developed in Germany and entails work by a good number of bodies. It is paid at national, regional and local level, and to political parties, MPs and *Stiftungen* (research foundations directed by each major political party). The parties receive some DM30 million (£77 million) a year; a further DM112 million (£38 million) goes to the *Fractionen* (party groups in the Bundestag); and DM190 (£64 million) to the *Stiftungen* for domestic political research.

An important underlying function of state funding is to ensure the health and vigour of political parties in Germany. The parties are expressly recognised in the Basic Law (Article 21) and in the Election Law (Articles 1 and 2) as bulwarks of democracy. State funding is thought to lessen the risk of political parties becoming dependent on large donations or falling prey to the influence of lobby groups.

In order to attract state funds a party has to achieve 0.5 per cent of the vote in a general election. Then, as a measure of the how far a party is rooted in society, the total of its membership fees and private donations is taken into account. A party is entitled to receive DM1.3 (44p) per vote for its first 5 million votes, and thereafter DM1 (34p) per vote. It is entitled to DM0.5 (17p) for every DM 1 which it receives in subscriptions or donations. If the total of all the parties' entitlements on this basis sums to more than DM230 million (£77 million), the theoretical share of each party is scaled down so that the DM230 million cap is not exceeded.

Critics of the system suggest that the large parties have become, as it were, pillars of the state and almost part of the Government machinery. Each large party has a substantial bureaucracy. Coupled with a system of proportional representation, the state funding of the parties is seen by critics as having the effect of insulating the MPs from their constituents. However, the Committee found that the parties generally welcome the present arrangements and would strongly resist any attempt to make significant cuts in state funding.

#### *Political donations*

There is a requirement to disclose all donations above DM20,000 (£6,700), the previous threshold had been DM40,000 (£13,400). The legislation tackles the problem of 'foreign' donations by providing that donations may be accepted from "a citizen of the European Union, or a business enterprise whose shares are more than 50 per cent owned by Germans"; "a foreigner" may contribute up to DM1,000 (£336).

Tax relief has been restricted since 1994 to donations of up to DM6,000 (£2,000) per individual per year.

Forty-six political parties campaign at national and state levels in Germany. Only five parties have seats in the Bundestag. Eighteen parties are in receipt of public funding. Major corporate donations to political parties are now less significant than previously, possibly because of the lowered disclosure threshold. Small donations now account for 90 per cent of all the SPD's income. In the case of the CDU in 1996 only 40 persons or corporations made donations caught by the DM20,000 (£6,700) disclosure requirement. There were 23 such donors to FDP and 15 to SPD.

Although independent audit certifies that each party's annual accounts are in order, it may happen that a large company keeps below the DM20,000 (£6,700) disclosure threshold by giving to a party via subsidiary companies - each company being legally a separate person. Similarly, wealthy individuals' contributions might be split among friends or family members if the aim were to maximise tax relief or to avoid disclosure. But such practices would attract the media's attention and it is not thought that such evasions are widespread. A party caught failing to disclose its receipts properly could be fined double its entitlement to state funding. The parties spend what appear to be very large sums each year in preparing accounts and having them audited. More than one party mentioned a figure of DM1 million (£336,000) in this connection.

The system is supposed to lessen the dominance of lobby pressure groups and big business, but a party's donations could add up to substantially more than its entitlement to state funding under the DM230 million (£77 million) cap. So the objective of matching private resources with state funds would not be met.

### *Expenditure limits*

There are no restrictions on the amounts which political parties may spend during an election campaign. German practice is to be libertarian on the amount of money which can be raised and spent, while interventionist on transparency and subsidies.

### *Sweden*

#### *Regulating elections*

State funds are determined each year by the Riksdag, as part of the Budget formulation, and then allocated by the Party Subsidy Board/Party Funding Committee, which is appointed for six years and is headed by a retired judge. Its decisions are binding and cannot be appealed.

The Government has appointed a Council for the Evaluation of the 1998 general election, with members chosen from all the major parties in the Riksdag. Its remit is to monitor the new voting arrangements for individual candidates, and to evaluate whether financial factors affect the election.

It is a fundamental principle in Sweden that Government authorities should not interfere in the internal affairs of political parties. There are seven parties in the Riksdag. In effect, Parliament says to the parties: "You have the money. You are responsible for using it to promote democracy." There are no rules at present to prevent an MP using his office and support funds for party purposes; and regional subsidies can be used to pay for services rendered by party headquarters.

#### *State aid*

The present system dates from legislation enacted in 1972. State subsidies are paid only to parties with sufficient support at a general election. Fixed rules allow for no discretion in distribution. There is no official control on how parties use their funds - they are spent as the parties see fit - and no accounting is required.

State support to political parties amounts to SEK141 million (£11 million) a year. The party is assisted directly by funds based on its support at the last two elections. This assistance is given to all parties who receive over 2.5 per cent of the national vote (for parties who have lost their seats in parliament this funding is decreased proportionally each year). Parties which receive over four per cent of the vote, and thus some seats in parliament, are given SEK282,450 (£21,000) annually for each seat won. Those parties which have seats in parliament are also entitled to assistance for the maintenance of an administrative office. Each party receives a basic sum of SEK4.9 million (£363,000) with the governing party receiving an extra SEK13,850 (£1,000), and the opposition parties an extra SEK20,650 (£1,500), per seat won.

Parliament supports party groups, and pays MPs a secretariat grant and members' allowance, to the tune of SEK80 million (£6 million) a year. The governing party receives SEK930,000 (£69,000) with the opposition parties given approximately SEK2.3 million (£173,000). This sum is supplemented by SEK28,000 (£2,000) given for each seat won, regardless of whether the party is in government or opposition. Support to local councils, summing to SEK500 million (£38.5 million), can be used to support those political parties which have seats in local authorities, but those responsible for the allocation must show neither favour nor disfavour.

The Moderate Party wants to reduce state funding. The SDP and Centre Party are agreed that it should continue. The existence of state subsidies lessens parties' dependence on private donations and sponsorship. State subsidies are believed to be the safest way for democracy to avoid bribery. The Swedes are not particularly strongly persuaded that state funding lessens parties' ability to represent the interests of the people to Government; there is greater excitement over individual politicians' misuse of Government credit cards.

Swedish newspapers are heavily subsidised. Even small towns tend to have two local newspapers. They incline to support the Moderate and Centre parties. Every political party has an education department, comparable to the German *Stiftungen*. The present funding arrangements reinforce stability and the status quo: large parties are funded generously; small parties not to a great extent; fledgling parties zero.

In the past 10 years there has been a rapid increase in the amount of public funds given to local levels (national support has not gone up much in real terms). As a result local councillors are perceived by critics to be becoming institutionalised and remote from the voters.

#### *Political donations*

The Social Democrat Party receives each year some SEK5 million (£385,000) from members' subscriptions, SEK19.4 million (£1.5 million) from trade unions; SEK35 million (£2.7 million) from lottery income and SEK41 million (£3.15 million) in the form of state subsidies. (The unions withheld SEK13 million (£1 million) in 1996 because they disliked the SDP's policies. Harmony has now been restored but the incident shows how leverage can be exercised on a

political party.) The SDP employs 70 people at headquarters, rising to 100+ in an election year. A further 60 full-time equivalent staff are employed around the country.

The Moderate (Conservative) Party insist that they no longer receive funds from business. There is no requirement for them to disclose any political donations they receive. But they seem to spend generously on posters, travel, and advertising. They may hold events at which people pay to meet party representatives; they may receive help in kind.

#### *Expenditure limits*

At present there are no restrictions on the amounts political parties may spend during an election campaign.

## **Canada**

### *Regulating elections*

At a federal level, responsibility for the regulation of elections is vested in Canada's Chief Electoral Officer supported by the executive body - Elections Canada. The Chief Electoral Officer has responsibility for all aspects of the conduct of Federal elections; the funding of political parties (including elements of state funding); the registration of political parties; the oversight of disclosure of donations greater than Can\$100 (£40) to political parties; the registration of electors and organisations conducting referendums; and electoral boundaries.

The Chief Electoral Officer appoints a Commissioner of Canada Elections whose role it is to ensure that the legislation relating to the conduct of elections is complied with. The Chief Electoral Officer also appoints a broadcasting arbitrator for the period of a general election to ensure fair play in the allocation of party political broadcasts.

In order to qualify for registration as a political party an organisation must meet a series of criteria including sponsoring candidates in at least 50 electoral districts at a general election. There are also requirements on the registration of those involved in a referendum campaign. A person or group may not incur referendum expenses that in aggregate exceed Can\$5,000 (£2,000) unless they are registered.

### *State aid*

A series of tax credits are available for small donations; 75 per cent of the contribution is provided if the contribution does not exceed Can\$100 (£40); between Can\$100 and Can\$550 (£220) the tax credit is Can\$75 (£30) plus 50 per cent of the amount contributed over Can\$100; above Can\$550 the tax credit is Can\$300 (£120) plus 33½ per cent of the amount over Can\$550, up to Can\$1,150 (£460). No further tax credits are allowed. This results in a maximum tax credit of Can\$500 on a Can\$1,150 contribution.

In addition to the return of a Can\$1,000 deposit subject to certain conditions, a candidate is also entitled to the reimbursement of up to 50 per cent of actual election expenses paid (to a maximum of 50 per cent of the expense limit) provided he or she received at least 15 per cent of the valid votes cast.

### *Political donations*

At Federal level, contributions are not limited in the amount, however the source is regulated.

The Canada Elections Act provides that no person or registered party shall accept or use contributions from:

- a person who is not a Canadian citizen or permanent resident within the meaning of the Immigration Act;
- a corporation or an association that does not carry on business in Canada; a trade union that does not hold bargaining rights for employees in Canada; any foreign political party; or
- a foreign government or an agent of a foreign government.

No registered referendum committee shall accept contributions from:

- an individual who is not a Canadian citizen or a permanent resident;
- a corporation that does not carry on business in Canada;
- a trade union that does not hold bargaining rights for employees in Canada; or
- a foreign government or an agent thereof.

### *Expenditure limits*

The amount that can be spent at an election is limited both for parties (under section 39) and candidates (under sections 208 to 212) of the Canada Elections Act.



The actual election expenses limit for a candidate is based on the number of names on the preliminary list of electors in the electoral district. The 'basic' limit is increased where the number of names in the district is less than the national average and also where the district has a density of less than ten electors per square kilometre.

At the time the election is called, the Chief Electoral Officer gives the registered parties and chief agents an estimated election expenses limit to help them prepare their election budget. The estimated election expenses limit for registered parties is based on the number of electors on the preliminary list of electors in every electoral district multiplied by Can\$0.30 (12p) and indexed by applying the factor published annually by the Chief Electoral Officer.

The actual election expenses limit for a registered party is calculated by a formula of Can\$0.30 multiplied by the number of names on the preliminary list of electors in all the electoral districts in which the party is sponsoring a candidate.

These actual spending limits for both candidates and registered political parties are indexed by applying the factor published annually by the Chief Electoral Officer. The average limit for candidates at the 1997 general election was Can\$62,624 (£25,050). The limit for a registered party that sponsored candidates in all 301 electoral districts at the 1997 general election was Can\$11,358,749 (£4,543,000).

### *Provincial legislatures*

The arrangements at the Provincial level in Canada in most cases mirror those at the federal level, although disclosure and expenditure limits may vary. There are, however, also a number of significant differences in approach. For example, in Quebec, corporate donations of any form are banned and only individuals whose name appears on the electoral role may donate to a political party. Any such donations, including contributions in kind, are limited to Can\$3,000 (£1,200), with any contribution in money over Can\$200 (£80) having to be made by cheque or payment order drawn on a financial institution with a base in Quebec.

Another example of the divergent Provincial approach is in Ontario where instead of a Chief Electoral Officer, the conduct and financing of elections (including contribution to political parties) is overseen by a Commission on Election Finances. The Commission on Election Finances is a committee composed of two members from each of the three main political parties. It does, however, have three 'independent members': the Chief Election Officer; a 'bencher' from the Ottawa Law Society; and the Chair who is appointed by the Provincial Government in consultation with the other parties.

## **United States of America**

### *Regulating elections*

The issue of party funding is virtually unheard of in the United States; it is seen there as an issue of the funding of political campaigns. Various attempts were made to regulate funding, culminating in the Federal Election Campaign Act (FECA) 1971. This dealt specifically with elections to federal office; the Presidency and Vice-Presidency, the Senate and the House of Representatives. The Act sets out limits on contributions and for disclosure (see below) but the effect of the Act has been considerably weakened by a key Supreme Court decision, *Buckley v Valeo* which declared that both contribution and expenditure limits restricted a number of First Amendment rights - relating to freedom of speech and association. It accepted however that reasonable contribution limits could be justified by a countervailing governmental interest in protecting the integrity of the electoral system from real or apparent corruption. The Court ruled unconstitutional the Act's expenditure limitations, including the limitation on a candidate himself or herself to spend his or her own money on an election. The effectiveness of the FECA has been further limited by court decisions widening the scope of activity not covered by the FECA which can be financed using so-called 'soft money'.

The Federal Election Commission (FEC) is the independent regulatory agency charged with administering and endorsing the federal campaign finance law. The FEC has jurisdiction over the financing of campaigns for federal office. The Commission is composed of six Commissioners - no more than three from one political party, in practice three Republicans and three Democrats. In order to reach a decision on any matter the Commission must have four votes in favour. When contentious issues arise, determinations have therefore to be decided by at least one member of the opposing party breaking ranks. As this is an infrequent occurrence the Commission is perceived to be a weak body.

Within the limitations outlined above the Federal Election Commission enforces campaign finance law over three broad areas:

- public disclosure of funds raised and spent to influence federal elections;
- restrictions on contributions and expenditures made to influence federal elections; and
- the public financing of Presidential campaigns.

### State aid

Qualified Presidential candidates receive money from the Presidential Election Campaign Fund, which is financed exclusively by a voluntary tax 'check-off'. By checking a box on their income tax returns, individual taxpayers may direct US\$3 (£1.90) of their tax to the Fund. Checking the box does not increase the amount a taxpayer owes or reduce his or her refund; it merely directs that US\$3 from the US Treasury be used in Presidential elections.

The funds are distributed under three programmes:

- Eligible candidates in the Presidential primaries may, with some limitations, receive public funds to match the private contributions they raise. To participate, a candidate must demonstrate broad-based support by raising more than US\$5,000 (£3,125) in matchable contributions in each of 20 different states. Candidates must agree to use public funds only for campaign expenses, and they must comply with spending limits.
- The Republican and Democratic candidates who win their parties' nominations for the Presidency are each eligible to receive a grant to cover all the expenses of their general election campaigns.<sup>1</sup> The funds are also available to other candidates who subsequently receive 5 per cent of the popular vote. The grant is adjusted for inflation each Presidential election year. In 1996, the grant was US\$61.82 million (£38.65 million). Nominees who accept the funds must agree not to raise private contributions (from individuals, Political Action Committees (PACs)<sup>2</sup> or party committees) and to limit their campaign expenditures to the amount of public funds they receive. They may use the funds only for campaign expenses.
- Each major political party may receive public funds to pay for its national Presidential nominating convention. In 1996, the major parties each received US\$12.36 million (£7.73 million).

### Political donations

The FECA places limits on contributions by individuals and groups to candidates, party committees and PACs. The chart below shows how the limits apply to the various participants in federal elections.

Table A1.2 Contribution Limits

	To a candidate or candidate committee per election	To a party committee per calendar year	To any other political committee per calendar year	Total per year
Individual may give:	US\$1,000 (£625)	US\$20,000 (£12,500)	US\$5,000 (£3,125)	US\$25,000 (£15,625)
Multi candidate committee:	US\$5,000 US\$15,000	US\$5,000	No limit	
Other political committee may give:	US\$1,000	US\$20,000	US\$5,000	No limit

### Disclosure

The FECA requires candidate committees, party committees and PACs to file periodic reports disclosing the money they raise and spend. Candidates must identify, for example, all PACs and party committees that give them contributions, and they must identify individuals who give them more than US\$200 (£125) in a year. Additionally, they must disclose expenditures exceeding US\$200 per year to any individual or supplier.

### Prohibited contributions and expenditures

The FECA places prohibitions on contributions and expenditures by certain individuals and organisations. The following are prohibited from making contributions or expenditures to influence federal elections:

- corporations and labour organisations may not in themselves make contributions or incur expenditure in connection with federal elections, though they may establish PACs.
- Federal government contractors; and
- foreign nationals.

<sup>1</sup> Candidates from other parties can also receive partial funding as Ross Perot could have done in 1996.

<sup>2</sup> Political Action Committee (PAC) is a popular term for a political committee that is neither a party committee nor an authorised committee of a candidate. PACs sponsored by corporations or trade unions are called separate segregated funds; PACs without such sponsorship are called non-connected PACs.

In addition to the prohibitions on contributions and expenditures in federal election campaigns, the FECA also prohibits foreign nationals, national banks and other federally chartered corporations from making contributions or expenditures in connection with state and local elections.

Although the FECA limits contributions to a campaign, an individual or group (such as a PAC) may make unlimited 'independent expenditures' in connection with Federal elections. The source of funds for such expenditure must be disclosed to the FEC and made public.

### *Expenditure limits*

Candidates who accept state aid for Presidential elections are restricted to spending the amount they receive. The overall primary spending limit is adjusted each Presidential election year to reflect inflation. In 1996, the limit was US\$30.91 million (£19.32 million) for each candidate. Therefore, spending limits in primary or general elections apply only to those candidates who opt to receive public funding. There is no spending limit for Presidential candidates who do not participate in the public funding programs or for candidates in Congressional elections.

## **Republic of Ireland**

### *Regulation of elections*

The Public Office Commission was originally established in 1995 to study the issue of ethics in public office. This role was expanded in 1997 to monitoring political parties in relations to the distribution of state aid, the disclosure of political donations and expenditure limits. The Commission offers advice and guidance if it identifies a breach.

### *State aid*

The Public Office Commission monitors the distribution of state aid to political parties - allocated from the 'Central Fund' (the Exchequer) - which must not exceed IRE1,000,000 (£900,000) in any 12 month period. To qualify a registered political party must be contesting a D-il election and its candidates must have achieved more than 2 per cent of the total first preference votes obtained by all candidates in the previous general election. State aid cannot reimburse election expenses as it may only be used for, general administration, research; policy foundation, and the promotion and participation by women and young people in political activity.

Parliamentary parties (including those in government) receive an annual allowance to help with parliamentary activities - including research. The allowance is calculated depending on the size of the parliamentary party:

- IRE25,000 (£22,000) per member for parties with no more than five members,
- IRE20,000 (£17,000) per member for parties with between six and ten members,
- IRE10,000 (£9,000) per member for parties with between 11 and 60 members,
- IRE5,000 (£4,500) per member for parties with more than 60 members.

If the party eligible is in government, then the allowances are reduced by one-third. Whips and certain Chair (and vice-Chair) persons receive a separate allocation of state funds.

### *Political donations*

Candidates for presidential and parliamentary elections must disclose, within 56 days, any donation above IRE500 (£450). Political parties must disclose any annual donation above

IRE4,000 (£3,500) by 31 March. Foreign and institutional donations are permitted. The 'donation statement and statutory declaration' form must give the name, address and description of the donor - as well as an indication of the value and nature of the donation. Anonymous donations over IR £100 (£90) are banned.

### *Expenditure limits*

Expenditure limits are placed on individual candidates who may share this limit with the national party. National and local expenditure is therefore limited and is the responsibility of election agents (each party has a national election agent to complement the work of constituency agents). Ireland operates a system of proportional representation, with different expenditure limits for different sized constituencies; from IRE14,000 (£12,000) per candidate in a three-seat constituency to IRE20,000 (£17,000) in a five-seat constituency.

There are also limits on political broadcasts - primarily a by-product of national expenditure limits - with allocation on a similar basis to that used in the United Kingdom.

## Countries Surveyed

### Australia

#### *Regulating elections*

The Electoral Commission monitors all aspects of election law, publishing a report after each parliamentary election. This report and other information is posted on the Internet. The Commission's responsibilities include the distribution of state aid (reimbursing election expenses to parties and independent candidates), the registering of political parties and the monitoring of the donations they receive.

#### *State aid*

Registered political parties and independent candidates (who obtain at least 4 per cent of the formal first preference votes cast) qualify for a reimbursement of some of their election expenditure. Until the end of 1998 the figure has been set at Aus\$1.6221 (58p) for each vote cast in their favour. This figure is linked to the consumer price index, and is reviewed every six months. Payment is made by cheque to election agents.

There is no specific funding for the parliamentary activities of the political parties. Members of Parliament have their own staff and research support is provided by the Parliamentary library.

#### *Political donations*

Parties are obliged to disclose the details of persons from whom they have received Aus\$1,500 (£550) or more, including items which are not donations. This prevents disclosure being avoided by parties setting up schemes to attract funds which are not strictly seen as being donations, for example, offering 'gold membership' to organisations for large sums of money. There is no limit on the amount which may be given to a political party.

Organisations which are closely associated with registered political parties must also lodge disclosures in the same detail as parties. Such organisations include fund-raising trusts, companies which hold assets of the party and business enterprises of a party. This requirement is designed to prevent political parties avoiding disclosure by channelling their financial affairs through third parties.

Donors to political parties lodge with the Electoral Commission disclosures of donations totalling Aus\$1,500 (£550) or more made to a political party, which include aggregates of donations of less than Aus\$500 (£185). Donor returns serve two purposes. First, it assists disclosure by providing a more comprehensive list of donations than those on party returns. Secondly, it enforces the disclosure threshold of Aus\$1,500 by plugging a potential loophole allowing multiple donations of Aus\$499 to be made to a political party which, of course, do not have to be disclosed by the party itself. Political parties cannot accept anonymous donations in excess of Aus\$1,000 (£370) and if they do the amount is confiscated by the state.

Annual returns are submitted by each State or Territory branch of a registered political party to the Electoral Commission. If returns are filed improperly - which may be revealed by an enforced audit - fines and, at worst, imprisonment may follow.

#### *Expenditure limits*

There are no limits on election expenditure. The political parties, nonetheless, are required to disclose levels and items of expenditure in their annual returns to the Electoral Commission.

### Austria

#### *State aid*

Since 1975 political parties have been given funds to help with their public relations work. Each political party with at least five Members of Parliament (large enough to form a parliamentary group) is entitled to a basic amount of three million Schillings (£150,000) with an additional amount given on the basis of relative political strength - the number of votes cast in the preceding National Council election. In 1998 this amounted to 201,718,700 Schillings (£10 million). Any small political party which has over one per cent of the vote, but does not have five MPs is also entitled to a grant in proportion to its political strength. The parliamentary groups are also entitled to funds for their parliamentary duties.

Election propaganda expenses, since 1989, have also been met by the state. The total amount of funds, which in 1995 amounted to 106,341,470 Schillings (£5 million), is calculated by multiplying 20 Schillings (£1) - as established in 1989 and since linked to the consumer price index - by the total number of persons entitled to vote. After the election the total amount is divided between the parties according to the votes cast for them. This system of state aid was extended to the European Parliament elections of 1996, but with the total amount of state aid reduced by 10 per cent.

Funds are made available for political research institutes and for women's and youth groups affiliated to a political party. In 1996 this state aid amounted to 123 million Schillings (£6 million). The press also receives a subsidy to encourage a diversity of free and open media. Since 1972 magazines and periodicals have received a subsidy - which in 1997 stood at 7.1 million Schillings (£350,000). Since 1975 newspapers have received a subsidy - which in 1997 amounted to 265.8 million Schillings (£12.6 million). To qualify for this state aid the press have to prove they have internal freedom and are not under any undue influence from the Government or from their publishers.

### **Belgium**

#### *Regulating elections*

The only regulation on the funding of political parties, is that they must submit an annual financial report to the Parliamentary Control Committee (see below).

#### *State aid*

Political parties (represented by non-profitmaking bodies as political parties have no legal status) are entitled to annual state aid of 50 million BEF (just under £1 million) with an extra 50 BEF for each vote cast. To qualify for this aid political parties must meet two criteria. First, they must have at least one elected representative in Parliament or the Senate. Second, they must submit an annual financial report to the Parliamentary Control Committee.

#### *Political donations*

The Parliamentary Control Committee has the power to request documents and may list those who have contributed to a political party. Only private individuals are allowed to give to political parties - institutional donations are banned - and there is no distinction between donations from resident or foreign nationals.

A Bill presented to Parliament in April 1998 proposed the registration of any donation exceeding 5,000 BEF (£85). It also proposed a limit - for each individual donor - of 20,000 BEF (£340) on any donation to an individual political party, and 80,000 BEF (£1360) on total donations to all political parties.

### **Denmark**

#### *Regulating elections*

Parliamentary elections are scrutinised through a parliamentary committee.

#### *State aid*

State funding is given to all parties and to independent candidates. Funds depend on the number of votes received and the type of election being fought - each vote is worth (1998): Dkr20.50 (£1.80) for elections to Parliament (Folketinget), Dkr4.25 (38p) for local (kommune) elections and Dkr2.75 (25p) for county (amt) elections. The amounts are increased by approximately 2 per cent each year.

Parliamentary groups receive Dkr210,000 (£19,090) monthly with an extra Dkr33,000 (£3,000) for each MP in the parliamentary group. The aid is provided by the state and is used for general administration and research purposes.

#### *Political donations*

The accounts of each of the parties are made public each year. These have to include any donation - from individuals, companies, organisations or trade unions - in excess of Dkr20,000 (£2,000) in any one year. The donations may be given anonymously. If the donor is unknown to the party a donation may be published as given anonymously. In all other cases names and addresses have to be published.

There is no limit on how much may be given. There is also no legal distinction between donations from foreign or resident nationals: all substantial donations are disclosed. Trade unions and employers associations may give political parties money collected from their members. Any such donation is voluntary and members may opt out of the scheme.

#### *Expenditure limits*

There is no upper limit on spending, although any state aid received by parties and independent candidates must be spent within the financial year.

## France

### *Regulating elections*

In 1990 the Commission nationale des comptes de campagne et des financements politiques (CCFP) - the National Commission for Campaign Accounts and Political Funding - was established to enforce new regulations on political parties. The regulations covered limits on campaign expenditure, political donations and state aid.

### *State aid*

50 per cent of the election spending limit (see below) may be reclaimed (by those who receive at least 5 per cent of the vote) through a system of flat-rate reimbursements. Presidential candidates may only claim back one-third of their spending limit. The candidates have to submit and disclose a 'campaign account' without which no reimbursement is possible. The total amount reimbursed cannot exceed the amount actually spent by the candidate. Established parties receive further state aid, depending on the number of votes received at the last election. New parties may claim two million francs (£200,000) if in a year they raise at least one million francs (£100,000) from 10,000 people (500 of whom must be elected representatives). Political parties have to submit a 'campaign account' after an election. From this account the level of state aid is calculated by the CCFP and any irregularities are acted upon.

### *Political donations*

Companies cannot donate funds to political parties. Donations from individuals are tax-deductible - as are charitable donations. Foreign donations are banned.

### *Expenditure limits*

The expenditure of both candidates and their parties are restricted within these limits:

- Presidential elections - 90 million francs (£9,000,000) per candidate in the first ballot and 120 million francs (£12 million) in the second ballot,
- Parliamentary elections - 250,000 francs (£25,000) plus one franc (10p) for each inhabitant,
- European elections - 56 million francs (£5,600,000),
- Local Elections (municipal, general and regional councillors) - 1.5 francs (15p) to 11 francs (£1.10) for each inhabitant, depending on the type of election and size of population.

The limits are reinforced by a ban on the use of the most expensive forms of advertising.

## India

### *Regulating elections*

The Election Commission of India is a body for which provision is made in the Constitution. It has three members. It is responsible for the rules regarding donations to political parties and for monitoring election expenditure (as there are expenditure limits). Political parties and candidates must submit an account of their expenses after an election.

### *Political donations*

All donations above Rs10,000 (£145) have to be declared in full with the donor's full name and address; both individual and company donations are permitted, but foreign donations are banned. The Election Commission encourages the use of cheques for all political donations, to ensure that they are fully accounted for.

### *Expenditure limits*

In each Parliamentary election candidates are allowed to spend up to Rs450,000 (£6400). A recent Government order has raised this limit to Rs900,000 (£12,800), but it has not yet been implemented.

## Italy

### *Regulating elections*

There is no designated agency charged with the duty of enforcing election law. Although the details of some donations to political parties are recorded by the Presidency of the Chamber of Deputies (see below).

### *State aid*

In April 1993 a referendum was held which recorded a vote of 90.3 per cent against the system of state aid which had been in place since 1974. The scheme was therefore dropped, although a new law reimburses parties for their



campaign expenditure for elections to the legislature, the only remaining form of state aid. State aid in 1996 amounted to 91 billion lira (£30 million).

Internal rules of each of the two Chambers allocate, from the Chamber's budget, funds for parliamentary groups to help them with their duties such as administration and research.

### *Political donations*

Donations to political parties or individual candidates by the following institutional donors are forbidden; public administrative bodies; other public bodies; companies with at least 20 per cent of their capital held by the state, or companies controlled by them; companies which have not sought consent from their management body or reported the donation in their company accounts.

Any political donation exceeding 12,104,415 lira (£4,300) in one financial year may only be accepted if both the donor and the recipient sign a joint statement within three months and deposit it with the Presidency of the Chamber of Deputies. There is a distinction between foreign and resident nationals. Although donations from foreign nations (including EU citizens) are not restricted, the recipient must make a declaration if the donation is over 12,104,415 lira. There is also a system of tax rebates on donations, except for those from companies which have declared negative results in the previous financial year.

There are no restrictions on the amount which may be given to a political party, but only 23,792,462 lira (£8,200) may be given to an individual candidate.

A law passed in 1997 allows taxpayers to donate 0.04 per cent of their income tax to the support of political parties which have at least one member elected to either of the two chambers. The total sum donated is then allocated amongst the parliamentary groups according to a mechanism based on the number of votes obtained in general elections. For the first year of operation (1997) a lump sum of 160 billion lira (£55 million) was voted.

### *Expenditure limits*

There are expenditure limits on both candidates and parties;

- candidate limits  
in Single member districts 95,169,000 lira (£32,800) +  
in PR districts 119 lira (4p) per citizen  
11.89 lira (0.4p) per citizen
- party limits 200 lira (6p) x all inhabitants of the districts contested by the party

## *Luxembourg*

### *Regulating elections*

There is no Election Commission or equivalent regulatory body. Election law is enforced through the ordinary legal system. A review of party funding is in progress.

### *State aid*

Political *parties* currently have no legal status and receive no state funds. A Bill now before the Chamber of Deputies propose to reimburse electoral expenses in national and European elections.

Political *groups* within the Chamber of Deputies are allocated funds to finance their parliamentary activities. There is also provision for free postal services, during elections, for each political group.

### *Political donations*

The accounts of political parties do not have to be published. Donations are not usually disclosed and there is no system of tax relief. Another Bill before the Chamber of Deputies, however, has proposed regulating donations to political parties.

### *Expenditure limits*

There are currently no limits on the amounts which political parties or candidates can spend and such expenditure does not have to be declared. The proposed new legislation to regulate the financing of political parties, however, has also proposed the regulation of the parties' election expenditure.



## ***New Zealand***

### *Regulating elections*

The Electoral Commission has numerous duties ranging from the distribution of state aid to the monitoring of political donations to registered political parties. All registered political parties have to make annual returns listing donations above the threshold levels. The existing legal system enforces all other aspects of election law.

### *State aid*

Most of the state aid given to political parties consists of funds for election broadcasts, which political parties are forbidden to pay for themselves. A sum of public money is appropriated for allocation to eligible parties to fund their election broadcasts from 'writ day' to the day before the election. Parties are not permitted to broadcast election programmes outside that period. The funds are distributed by the Electoral Commission, if the party meets the statutory criteria, and are paid directly to the broadcasters to meet the costs of radio and television broadcasts arranged by the parties. Parliament determines, through legislation, the level of state aid. It has remained unchanged at NZ\$2m (£700,000) since 1990 when the scheme was introduced. In 1986 the Royal Commission on the Electoral System recommended a comprehensive system of state aid for political parties, but the scheme has not been adopted.

There are also funds for the parliamentary duties - administrative and research - of MPs and parliamentary parties.

### *Political donations*

Registered political parties make annual returns to the Electoral Commission. Any gift or series of gifts of money, goods or services which in aggregate during the year are greater than NZ\$1,000 (£350) at the constituency and NZ\$10,000 (£3,500) at the regional or national level must be disclosed, together with the donors name and address. Anonymous donations that exceed the disclosure thresholds must be included on the returns. Foreign donations are permitted. Returns of donations made at the regional or national level must be audited. All returns and auditors' reports must be available for public inspection.

### *Expenditure limits*

A registered political party is limited in the amount it can spend on its election advertising in the 3 months before election day to NZ\$1 million (£350,000) if it nominates a party list plus NZ\$20,000 (£7,000) for each candidate nominated by the party. Election spending by the party's candidates for their personal campaigns is limited to NZ\$20,000 (£7,000) and is not counted as a party expense. A party's broadcasting allocation is also excluded from the party's election expenses.

After a general election, each registered party must provide the Electoral Commission with an audited return of election expenses. All returns and auditors' reports must be available for public inspection.

## ***Portugal***

### *Election regulation*

The National Electoral Committee (CNE) - accountable to the Assembly of the Republic - acts to ensure probity and impartiality within the electoral process. The CNE monitors election expenses, allocates broadcasting time on radio and television, and tries to ensure all candidates have equal access to the media. The actual legal, financial and logistical aspects of elections are the responsibility of the Ministry for Internal Administration (Home Office). The Constitutional Court audits the parties' annual accounts and can issue fines if irregularities are found.

### *State aid*

A party which stands for election to the Assembly of the Republic can subsequently request state aid from the Speaker. This state aid is the equivalent to  $\frac{1}{25}$  of the monthly national minimum wage for each vote cast for the party in the previous general election. The national monthly minimum wage is currently (1998) Esc57,000 (£190), and is expected to rise to around Esc60,000 next year, so, state aid is currently worth Esc253 (84p) per vote cast.

### *Political donations*

Anonymous donations can be made by individuals, if the donation is less than ten times the monthly minimum wage - Esc570,000 (£1,900). If it exceeds this amount the donation has to be made by cheque and is recorded in the party's accounts - which are then presented to the Constitutional Court for auditing. Individual donations cannot exceed thirty times the national minimum wage - Esc1,710,000 (£5,700) and company donations cannot exceed a hundred times the monthly minimum wage - Esc5.7 million (£19,000).

The following are forbidden from making donations to political parties: state-owned companies; companies with state-owned stock; companies having the concession to run public services; charities; charitable foundations; and foreign governments or companies.

There are also limits on how much a party can accept in political donations. A party can only receive a total of 500 times the national minimum wage - Esc28.5 million (£85,000) - in anonymous donations, and 1,000 times the monthly minimum wage - Esc57 million (£190,000) - in total donations from companies.

### *Expenditure limits*

Expenditure is monitored and controlled by the CNE which ensures the following expenditure limits are not breached:

- Presidential candidates: 6,000 times the monthly national minimum wage - Esc342 million (£1.14 million)
- European election candidates: 200 times the monthly national minimum wage - Esc11.4 million (£38,000)
- General election candidates: 50 times the monthly national minimum wage - Esc2.85 million (£9,500)
- Regional (Maderira and Azores) election candidates: 25 times the monthly national minimum wage - Esc1.425 million (£4,750)
- Local election candidates: a quarter of the monthly national minimum wage - Esc14,250 (£47.50)

There are no limits on the expenditure of national political parties during elections, as their expenditure is expected to fall within the limits set for individual candidates.

## **Spain**

### *Election regulation*

The Electoral Commission regulates municipal, regional, national and European elections. At all the various levels it is made up of serving politicians, lawyers and public administrators.

Every political party must present its previous year's accounts to the national Court of Auditors by 30 June. The Court of Auditors then sends a taskforce to each party to check that the accounts are correct and reflect all party income, liabilities assets and expenditure. In this way all donations and expenditure have to be declared.

### *State aid*

There exists a system of state aid for political parties, which can be used for all party expenditure, including electoral expenses and those areas which would be financed by 'Short Money' in the UK.

Each year Parliament sets a budget for the state funding of the parties. One third is then distributed amongst the parties according to how many seats they have in the lower house - the Congress of Deputies. The remaining two thirds is distributed according to each party's share of the popular vote at the last election, but parties which polled less than 3 per cent do not receive this funding.

### *Political donations*

Parties can receive political donations from individuals and companies. Individuals donations may not exceed 10 million pesetas (£40,000) per year and can only be given by Spanish nationals. Spaniards who have dual nationality may not make donations. Companies wishing to donate to parties must have the approval of their shareholders.

These provisions are currently under review, with proposed changes due to be considered during the next session of Parliament. These changes include the raising of the limit on donations to 25 million pesetas (£100,000) and the removal of the requirement on donors to be Spanish nationals.

### *Expenditure limits*

A limit is placed on the amount that a party may spend during an election campaign. Within that ceiling, there are other limits on particular types of expenditure. For example, no more than 25 per cent of the total budget can be used to buy advertising slots on private television and radio stations.

## **The Netherlands**

### *Regulation of elections*

There is no Election Commission or equivalent regulatory body. Election law is enforced by the existing legal system.

### *State aid*

The tradition has been to fund institutions connected to political parties, for example research bodies or youth organisations. This state aid annually costs Dfl8,000,000 (£2,500,000) and is allocated through 'ministerial instruction'. A Bill before the First Chamber now proposes for the first time primary legislation to fund political parties directly. The proposed annual subsidy will cost Dfl10,000,000 (£3,000,000) and will be in addition to the funds raised by the parties

themselves. If the Bill is passed funds will be limited - Df175,000 (£21,000) for each party with Df124,000 (£7,000) for each seat in Parliament.

The funds will not be provided for electioneering purposes. They will only be granted for the following expenditure:

- political training and education,
- providing information to members,
- maintaining contact with foreign sister parties,
- supporting training for officials of foreign sister parties,
- political research activities,
- promotion of political participation by young people,

State aid will only be provided for parties with more than 1,000 paying members with any party able to claim, even if their political views are contentious, unless the party is convicted of a criminal offence. Financial reports will have to be published and relevant papers kept for 10 years, to ensure that state funds have been spent correctly. Applications for state aid will be made prior to the financial year, accompanied by a 'plan of action' and a proposed budget.

Political parties receive funds to help them with their parliamentary duties. This money is usually spent on general administration and research. For each party there is a basic yearly allowance of Df180,000 (£54,000) plus Df180,000 (£24,000) for each seat the party holds in Parliament.

#### *Political donations*

Donations above Df10,000 (£3,000) per year from any organisation or company must be declared and published in the political parties' financial reports. An indication of the type of organisation or company is enough if the donor desires confidentiality. Donations are not limited, and foreign donations are allowed.

#### *Expenditure limits*

There are no limits on expenditure, beyond the limitations placed on the spending of state aid.

## FREEDOM OF EXPRESSION AND ITS LEGAL PROTECTION: A COMPARATIVE REVIEW

### Introduction

1. In many countries legislation which is perceived by political parties, their supporters or independent campaigners as impinging on their freedom of action has been the subject of challenge in the courts. Thus, attacks have been directed at such laws as those which limit the size of contributions to political parties or candidates, or limit campaign expenditure, or ban or limit the right of parties and others to use radio and television for political advertisements, or require parties to disclose donations received and other financial matters.
2. Typically the challenger will seek to strike down the offending legislation by reference to some superior rule of law (such as freedom of expression or freedom of association) – generally, a right guaranteed by a written constitution (e.g. freedom of speech in the USA) or, in some instances, a right recognised by the courts as a necessary implication deriving from other express provisions of the constitution (as in Australia).
3. So far as the United Kingdom is concerned, the major challenges to date have been founded on provisions of the European Convention on Human Rights (ECHR).
4. The main body of this report discusses the potential impact of the ECHR on two aspects of the Committee's recommendations. The first relates to the proposed limit on election expenditure by political parties and by so-called third parties (Chapter 10, paras 10.51–10.71). The second concerns the legal ban on political advertisements on radio and television (Chapter 13, paras 13.8–13.11).
5. For the reasons set out in the report, the Committee has concluded that the recommendations made in Chapters 10 and 13 are in accordance with the law as it now stands and as it will be after the Human Rights Bill is enacted.
6. In order to set the Convention provisions against a wider background, the committee believes that it may be of interest to readers of the report if we direct attention in this Appendix to some leading decisions in a few notable jurisdictions (Australia, Canada, Germany and the USA).
7. The decisions mentioned below are generally those rendered by the highest court in the country concerned. The judgments tend to be closely reasoned and to be spread over many pages in the law reports. In some cases there are dissents or partial dissents. In others, even where all the judges reach substantially the same result, there are separate judgments containing quite distinct legal approaches.
8. It is clearly impossible within the confines of what is intended to be a brief Appendix to do justice to the subtlety of reasoning and the nuances of expression contained in these seminal judgments. For present purposes it must suffice to indicate the main points adjudicated.
9. As a prelude to the discussion of the cases in the four selected countries we will expand a little on what has been set down in the report concerning the ECHR.

### The European Convention on Human Rights (ECHR)

10. It will be convenient first to set out in one place the relevant provisions of the Convention. They are as follows:

#### *Article 10*

##### *Freedom of expression*

**10(1)** Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

**10(2)** The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## Article 11

### *Freedom of assembly and association*

**11(1)** Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

**11(2)** No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

## The First Protocol

### Article 3

#### *Right to free elections*

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

**11.** From the extensive jurisprudence of the European Court of Human Rights (the Court) three cases call for special mention (in addition to those already cited in Chapters 10 and 13 of the main report).

**12.** In *Lingens v. Austria*<sup>1</sup> the Court recalled that freedom of expression, as secured in Article 10(1), constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment.

After referring to the importance of the freedom of the press the Court added:

More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

It followed that a politician (ex-Chancellor Kreisky) could properly be exposed to strong criticism by a journalist (Mr. Lingens) in language which might entitle a private citizen to the protection of a civil or criminal remedy. The criminal penalty imposed on Mr Lingens was held to involve a breach of Article 10.

**13.** In *Matthieu-Mohn v. Belgium*<sup>2</sup> the Court stressed the significance of Article 3 of the First Protocol. It stated:

According to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by "an effective political democracy". Since it enshrines a characteristic principle of democracy Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system.

The Court commented on the language "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" saying that essentially this implied – apart from freedom of expression (already protected under Article 10) – the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election. It did not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. No electoral system could eliminate what the Court called 'wasted votes'. The Court stated:

For the purposes of Article 3 of Protocol No. 1, any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature".

**14.** In *Vogt v. Germany*<sup>3</sup> the Court reiterated that freedom of expression was one of the essential foundations of a democratic society. Although, pursuant to the language of Article 10(2), a number of exceptions were created, the Court said that these had to be narrowly interpreted and the necessity for any restriction had to be "convincingly established". In particular the adjective "necessary" within the meaning of Article 10(2) implied the existence of a "pressing social need". The task of the Court was to look at the case as a whole and to determine whether the interference with freedom of expression was "proportionate to the legitimate aim pursued", and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient".

<sup>1</sup> (1986) 103 Series A. 14. The citations are from paras 41 and 42 of the judgment at p 26.

<sup>2</sup> (1987) 113 Series A. 1. The citations are from paras 47 and 54 of the judgment at pp 22 and 24.

<sup>3</sup> (1996) 21 EHRR 205. The citation is from para 52 of the judgment at pp 234-5.

## Australia

15. The Australian Constitution is not a rights-based document nor does it have any rights-based amendments along the lines of the US Constitution. However, this did not prevent the High Court of Australia (Australia's highest court) from concluding in 1992 that the very nature of democratic, representative government established by the Constitution implied freedom of political communication.<sup>4</sup> The plaintiffs in the case, Australian Capital Television (ACTV), had challenged the Political Broadcast and Political Disclosure Act 1991, which amended the Broadcasting Act 1942 and in particular sought to establish a scheme whereby the broadcasters were prohibited during an election period from broadcasting a 'political advertisement'. The legislature had the commendable motive in the words of Chief Justice Mason, of seeking

to safeguard the integrity of the political system by reducing if not eliminating pressure on political parties and candidates to raise substantial sums of money in order to engage in political campaigning on television and radio, a pressure which renders them vulnerable to corruption and to undue influence by those who donate to political campaign funds. The high costs of broadcast advertising have the effect, so it is said, of exposing political parties and candidates for election to attempts by substantial donors to exert influence. The escalating costs of political campaigning, particularly the costs of advertising on the electronic media, thus increase the risk that corruption and undue influence may affect the integrity of the political process.<sup>5</sup>

16. Notwithstanding the good intentions of the legislature, the majority of the High Court, nevertheless, held that the scheme laid down in the statute went too far and infringed the right to freedom of communication on matters relevant to political discussion that was to be implied in the system of representative government for which the Constitution provided.

17. Subsequently, in *Theophanous v. Herald and Weekly Times Limited*<sup>6</sup> the High Court summarised the reasoning underlying the ACTV case and another decision as follows:

In those cases a majority of the Court distilled from the provisions and structure of the Constitution, particularly from the concept of representative government which is enshrined in the Constitution, an implication of freedom of communication. That implication does not extend to freedom of expression generally. The limited scope of the freedom was expressed in various ways by the members of the Court. It was described as "freedom of communication, at least in relation to public affairs and political discussion", "freedom ... to discuss governments and political matters", "freedom of communication about the government of the Commonwealth" which "extends to all political matters", including "matters relating to other levels of government", "freedom of political discourse" and "freedom of participation, association and communication in relation to federal elections."<sup>7</sup>

18. The *Theophanous* case had to consider the implied freedom in the context of a defamation action brought by a member of the federal parliament against the author of a letter published in the defendant newspaper. A later High Court decision – *Lange v. Australian Broadcasting Corporation*<sup>8</sup> reaffirmed the freedom of communication on matters of government and politics but to some extent qualified the views expressed in the *Theophanous* case.

## Canada

19. In Canada we have the benefit of a very recent judgment which sets out the views of the Supreme Court (the highest court in Canada) on freedom of expression in its political mode.<sup>9</sup> In *Libman* the Court affirmed the core importance of freedom of political expression. The (Quebec) Referendum Act restricted freedom of expression and freedom of association for independent third parties by limiting meaningful participation in referendum campaigns to those in (or affiliated with) a 'national committee'. The Court found the Act's objectives – equality between those promoting the options, informed choice and integrity of the system – "highly laudable". Even so, the restrictions on independent spending were not "demonstrably justified in a free and democratic society." The scheme's downfall was the "minimal impairment" doctrine. The Act effected what was tantamount to a total ban on independent spending even though the Court felt there were alternatives which would have produced a less damaging interference with free speech and freedom of association.

20. The important messages from *Libman* are:

(a) freedom of political speech is a high level right;

4 *Australian Capital Television Pty v. Commonwealth of Australia* (1992) 177 CLR 106; 108ALR 577.

5 177 CLR at page 129; 108 ALR at page 587.

6 (1994) 182 CLR 104; 124 ALR 1.

7 182 CLR at pages 120-121; 124 ALR at page 11.

8 (1997) 145 ALR 96.

9 *Robert Libman and the Equality Party v. A.G. of Quebec* (judgment delivered 9 October 1997).



- (b) an equal voice for different viewpoints, an informed electorate and an electorate with confidence in the system are all worthy objectives for a legislature;
- (c) freedom of expression does not exist in a vacuum but jostles with other rights and must be balanced against the need to ensure equality of opportunity for parties and candidates to get their message across and vote in a free and informed manner;
- (d) great care must be taken when designing any regulation of funding or expenditure to ensure that as far as possible the system of least impact on free expression is selected;
- (e) independent spending for political purposes must not be treated as unworthy of protection; and
- (f) where there are limits on party expenditure, limits on independent expenditure are acceptable provided they permit meaningful not token participation.

## Germany

21. In Appendix I to this report we gave an account of the current system in Germany which is based upon legislation enacted with effect from 1 January 1994.

22. To an outside observer the feature that is most striking in relation to Germany and the rights of the political parties in that country is the dominant role played by the Federal Constitutional Court. The Court has given rulings in a series of cases known as the *Party Finance Cases II to VII* which range in date from 1958 to 1992. The Court appears over the years to have shifted its philosophical stance in relation to the role of the parties vis-à-vis the State. In the latest of the decisions, *Party Finance Case VII*,<sup>10</sup> the Court appears to have been concerned at the extent of the state funding received by the large political parties. Overall some Dm500 million was being paid annually to the parties following the 1990 election. The two largest parties CDU/CSU and the SDP received Dm312 million and the FDP which was in a parliamentary coalition with the CDU/CSU, received Dm46 million. The fear was, perhaps, that the established parties were becoming too entrenched and comfortable and were reinforcing their internal bureaucracies at the state's expense and thus widening the distance between themselves and their voters. This, at least, is the view expounded by Donald P. Kommers.<sup>11</sup> The emphasis in this latest case is on *Staatsfreiheit*, that is to say freedom from the state, the theory being that the parties should be closer to the society which they represent. This leading judgment reversed many rulings given by the Federal Constitutional Court in the earlier series of cases and the effect was that the Bundestag was required to introduce new legislation cutting down the amount of state funding, lowering the limit at which donations had to be declared (a shift downwards from Dm40,000 to Dm20,000) and removing altogether tax relief on political donations by corporations.

23. A Commission of Independent Experts on Party Financing, which sought to translate the principles laid down by the Court into workable legislative proposals, led to the passing by the legislature of a new law by the end of 1993. After some delay the President signed the law and made it operate retrospectively from 1 January 1994. It seems that the Federal Constitutional Court would be able in a subsequent case to review the operation of the law and to decide whether the statutory provisions needed further amendment.

## United States of America

24. Congress was sufficiently concerned about scandals affecting the financing of elections and about the spiralling costs of election campaigns to enact the Federal Election Campaign Act (FECA) of 1971 to which more stringent amendments were added in 1974. Key features of the legislation were the regulation of the amounts contributed to or expended by a candidate for a campaign committee, public disclosure of contributions and expenditures, regulation of the public financing of presidential elections and limitations on broadcasting expenditure. Very swiftly FECA was challenged in the courts, the leading case being *Buckley v. Valeo*.<sup>12</sup> The challenge was based on the right to freedom of speech guaranteed by the First Amendment to the Constitution. The Supreme Court of the USA held that the limitations imposed on contributions were lawful but those related to expenditures were contrary to the First Amendment. The disclosure and reporting requirements were found to be acceptable as necessary for the enforcement of the FECA, while the public financing of election campaigns was upheld as a legitimate exercise of the taxation and spending power of the federal government.

25. The Supreme Court in *Buckley* drew a sharp distinction between campaign contributions and campaign expenditures. The contribution limits had the desirable aim of removing the actuality and appearance of corruption resulting from large individual financial contributions.

<sup>10</sup> 85 BVerfGE 264 1992.

<sup>11</sup> D. P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 2nd Ed, 1997, p 215.

<sup>12</sup> 424 US 1 (1976).



**26.** But the FECA limitations on expenditure were a different matter. According to the Court, “the Act’s expenditure ceilings imposed direct and substantial restraints on the quantity of political speech”. The governmental interest in preventing corruption and the appearance of corruption was inadequate to justify the ceiling placed on independent expenditures. Similarly, the FECA ceiling on *personal* expenditure by candidates on their own behalf imposed a substantial restraint on the ability of such persons to engage in protected First Amendment expression, candidates having a particular need to make their views known.

**27.** Since *Buckley* several other cases have reached the Supreme Court dealing with different legislative restraints, sometimes imposed by federal law, sometimes imposed by the legislature of one of the States. The general approach of *Buckley* has been sustained with the Court showing a marked antipathy to restraints on expenditure.

### ELECTORAL SYSTEMS IN THE UNITED KINGDOM

1. The following is a summary of the electoral systems which will be in operation in the United Kingdom by the beginning of the next century.

#### First Past The Post (FPTP)

2. This system is used in elections to the United Kingdom Parliament and in local elections (except in Northern Ireland).
3. Under FPTP each voter casts a ballot in favour of a candidate (or sometimes in local elections for more than one candidate) who is standing for election in that constituency. The candidate with the most votes (a plurality) becomes the elected representative. There are currently 659 parliamentary constituencies in the United Kingdom, each returning one MP to the House of Commons through FPTP. In 1994 FPTP was used for the last time in elections in Scotland, England and Wales to the European Parliament.
4. Other countries which use FPTP include India, the United States and Canada.

#### The Supplementary Vote

5. This system will be used for the election of the London Mayor.
6. Voters will mark first and second preferences on a ballot paper. If no candidate has an overall majority of first preferences, all candidates except the two with the largest number of first preferences will be eliminated. The vote of a voter whose first choice candidate has been eliminated will be transferred to his or her second choice candidate, if the latter is one of the two candidates remaining in contention.

#### Regional List System (RLS)

7. This system will be used in the 1999 elections to the European Parliament (except in Northern Ireland), replacing the FPTP system used in European elections hitherto.
8. RLS is based on multi-member constituencies. Each party submits a list of candidates, and individuals may stand as independents. Each voter has one vote, which may be cast either for a party list as a whole or for an independent candidate. Seats are then allocated between the parties as nearly as possible in proportion to the votes which they received. Any independent candidate who receives a number of votes which would have entitled a party to at least one seat will also be elected.
9. The RLS to be used in the elections to the European Parliament will be a 'closed' system, under which the order in which the names of candidates appear on a party's list is determined by the party before the election and cannot be altered by voters. The seats allocated to a party are then taken up by those placed highest on the party's list.
10. Other countries which use RLS include South Africa, Israel, Russia and most of continental Europe.

#### Additional Member System (AMS)

11. AMS will be used in elections to the Scottish Parliament and the Assemblies in Wales and London.
12. AMS is a combination of FPTP and RLS. Single-member constituencies will be grouped together into regions. Some members will be elected from the constituencies, and others from regional lists. For example, for elections to the National Assembly for Wales, there will be five regions, from each of which eight members will be elected by constituencies and four from regional lists. Each voter will have two votes – one for a candidate in the constituency, and the other for a regional party list.
13. Votes in the single-member constituencies will be counted and the results declared in the usual way (using FPTP). Seats from the regional list will be allocated between parties so as to make each party's representation from that region (taking into account constituency members) as nearly as possible proportional to its share of the vote in the regional list elections. For example, if, in an election to the National Assembly for Wales, one party won six of the eight constituencies in a region and received 50 per cent of the regional list vote, none of its regional list candidates would be elected because its constituency members would already give it 50 per cent of the total seats from that region. As in the elections to the European Parliament, the lists will be 'closed' (see para 9 above).
14. AMS is used in Germany and New Zealand.

### Single Transferable Vote (STV)

**15.** STV is used in Northern Ireland for elections to the new Assembly, the European Parliament and for local government elections.

**16.** Under STV, constituencies are multi-member and voters number candidates in order of preference. To be elected, a candidate has to obtain a quota of first-preference votes (the quota is the total number of votes cast, divided by a number which is one greater than the number of members to be elected, plus one vote). The surplus votes of a candidate whose votes exceed the quota are transferred to the voters' next-preference candidates. The candidates with the lowest numbers of first preference votes are successively eliminated and their votes transferred to the original voters' next highest preference who has not already reached the quota or been eliminated. The process is continued until all candidates beyond the number required to fill the seats have been eliminated.

**17.** STV is used in elections in the Republic of Ireland, for elections in the Australian Senate, in Tasmania and in Malta.

## QUESTIONS RAISED BY THE COMMITTEE

In our Issues and Questions paper, which we published in December 1997, we set out 39 specific questions which we hoped those submitting evidence would address. We list these questions again here, particularly as the evidence from the Liberal Democrats (contained in Appendix V following) refers to the questions by number.

### Donations

- Q.1* Should political parties be permitted to accept donations at all? In the absence of state funding, is it realistic to expect them to survive on membership and trading income? What would prevent members' subscriptions being a disguised form of donation? Should any restrictions apply to acceptance of gifts in kind and other forms of financial assistance?
- Q.2* Is it the case that an individual or organisation can purchase (or give the appearance of purchasing) access to decision-makers, including Government Ministers? Is this right? Should a donor be able to intervene, formally or informally, in the affairs of a political party?
- Q.3* Is there any reason why donations from institutions (trade unions, companies, pressure groups) should be treated differently from substantial individual donations? If so, why, and how?
- Q.4* Can political parties accept significant donations without creating a conflict of interest with their policy-making role? Are any special arrangements required to avoid conflicts of interest?
- Q.5* Should parties be able to keep such donations when they take decisions in government which directly and immediately affect the interests of such donors?
- Q.6* Once a decision has been taken which is, or which appears to be, of direct financial advantage to a donor or class of donors, can future donations from the same sources be accepted?
- Q.7* Is there a case for limiting the amount which an individual or a corporation may give, in order to prevent access and influence being sold? Could such a rule be enforced? What effect might it have on the formation of new parties?
- Q.8* Do fund-raising events and supporters' clubs create particular problems of conduct?
- Q.9* What rules should be applied to personal political funds? Can the creation of a blind trust for transmitting donations obviate any conflicts of interest, or are there significant drawbacks to this method of accepting donations?
- Q.10* How should a 'foreign' donation be defined? Is it improper for political parties to accept donations from foreign individuals domiciled here or from the United Kingdom subsidiaries of foreign-owned companies? Are there any problems in relation to parties which operate across national borders?

### Openness

- Q.11* Do the present and proposed arrangements for disclosure of donations go far enough to meet the requirements of openness? Should disclosure of precise amounts in excess of a specified figure be required, or of amounts in bands? What should be the figure above which disclosure is required?
- Q.12* How frequently should political parties publish list of donors? Would it suffice if the parties were required to make up-to-date lists of their donors available for public inspection at their headquarters or elsewhere? Should the information be published electronically?
- Q.13* What arrangements should be put in place to permit organisations to make donations? Should they be prohibited altogether, or subject to a limit?
- Q.14* Should shareholders have to give consent to company political donations at given intervals? Would the same apply to donations to pressure groups and organisations which are allied to political parties or ideologies?

- Q.15* Should there be different rules for gifts to a research institute or think-tank, or to an avowedly propagandist organisation, or to one that exists only to channel money to a political party?
- Q.16* Do the present arrangements for trade union donations allow sufficient informed consent by the membership?
- Q.17* Should there be scope for shareholders and trade union members to specify on an individual basis the parties or organisations to which their element of the donations should go?

### Party Funding and the Honours System

- Q.18* Are additional arrangements necessary to prevent the granting of honours and titles for reasons connected with political donations? Are the present safeguards effective and credible?
- Q.19* Should political donations disqualify the donor from receiving an honour? What practice should apply where an individual has given both public service and political donations? Or where donations come not from individuals but from organisations with which they are connected?

### State Funding of Political Parties

- Q.20* Is state funding for political parties justifiable in principle? Would it lessen popular involvement in party politics? Would it improve the quality of political research and debate?
- Q.21* What is the best method for calculating how much a political party should receive from the taxpayer? Should public money be available to parties not represented in Parliament? How would newly-formed parties qualify? Should public money be available, for example, to racist parties, or those linked to paramilitary groups?
- Q.22* Should donations or subscriptions to political parties be encouraged by allowing them to attract tax relief or other financial incentives? Should there be a financial limit on these incentives, and if so, what should it be?
- Q.23* Should there be a cap on the level of state support in absolute terms? How should it be determined?
- Q.24* Is there a case for the state demanding that its support for political parties should be spent on particular activities? What should these areas be?
- Q.25* Are the interests of the public generally better served by improving the parliamentary work of all political parties rather than their campaign or administrative expenditure? Should reform be confined to an extension or increase of 'Short money'?
- Q.26* Rather than financial benefits, should consideration be given to extending benefits in kind, for example research support, or logistical help, or seconding civil servants to opposition parties?

### Accountability and Regulation

- Q.27* How should political parties be regulated? Should there be a regulator to ensure due observance by political parties of any rules attaching to their receipt of public funding? What powers should this person or organisation have?
- Q.28* Is there an existing regulator or regulatory body which could take this on, or does a new organisation have to be created? Is this a function which should be closely tied to the House of Commons, or to a government department, or the courts?
- Q.29* Is there a case for requiring greater disclosure of financial and other information by parties? What sort of information should be disclosed? Should political parties be required to produce accounts and other information in a standard form, and if the consequence of this were to require them to organise themselves in a uniform way, would that be justified?

## Expenditure

- Q.30* Is there an argument for limiting national campaign expenditure to make the election process more evenly balanced? How should such a limit be calculated and enforced?
- Q.31* Should the same limit be applied to every political party without regard to the size of its membership or the number of its Members of Parliament?
- Q.32* Should the restriction on paid-for political advertising on television and radio be lifted? Should arrangements be reviewed in the light of changes in broadcasting and communications in recent years? Or, on the contrary, should the restriction be extended to other media? Should there be additional controls on the use of newspaper advertisements and billboard sites? Or on their content?
- Q.33* If party expenditure were restricted, should measures be taken to restrict election spending by other organisations? Would a restriction be an unacceptable fetter on freedom of speech?
- Q.34* Is the present system of control on constituency expenditure effective?
- Q.35* What sanctions should be available if a political party were to exceed the national expenditure limit? Should the position vary depending on whether the over-spend was substantial or trivial? Who would investigate allegations of over-spending? Who would impose sanctions?

## European Convention on Human Rights

- Q.36* Are any aspects of the European Convention on Human Rights applicable to regulating the funding of political parties?

## Expenditure on other campaigns

- Q.37* Do other forms of election create special problems, or is a common approach possible?
- Q.38* Where elections take place without constituencies, should there be expenditure limits placed on the whole campaign?
- Q.39* Should spending on referendum campaigns be regulated? What effect would cross-party alliances in referendum campaigns have?

## THE LABOUR PARTY'S SUBMISSION

### *Transparency – Participation – Equality: Party Funding for a Modern Democracy*

#### 1. Introduction

**1.1** The Labour Party welcomes the investigation into the funding of political parties now being undertaken by the Committee on Standards in Public Life. This is the third major review of the matter, with the Houghton Committee on Financial Aid to Political Parties having reported in 1976 (Cmd 6601, 1976) and the Home Affairs Committee reporting in 1994 (HC 301, 1993 – 94). The question of political party funding has attracted considerable public interest in recent years, mainly as a result of some of the funding practices of the Conservative Party when it was in government.

**1.2** The Labour Party believes that the time is now ripe for the radical modernisation of the system of party funding which operates in this country. Political parties play an indispensable part at all levels in the democratic process: they structure the framework of political debate and discussion, and it is through parties that citizens play an active role in the policy-making process. The political parties are also the principal vehicle for the representation of electors in government at local and national level – they ultimately form the government, and have the responsibility under our constitution of holding government to account.

**1.3** It is thus essential that the parties are adequately funded in a manner which enjoys public confidence. Yet the law currently in force is a legacy from the Victorian era, before the development of modern political parties. Our arrangements have been overtaken by much of the rest of the democratic world, and it is now clear that the British approach of minimal regulation is not an adequate response to contemporary political problems. The Labour Party believes that the reform of party funding is necessary to restore public confidence in British politics, but also that it is an essential building block in the construction of a new constitution.

#### 2. Principles of party funding reform

**2.1** In embarking upon the process of modernisation, it is important to do so from a basis of principle. The Labour Party is of the view that there are three principles which should underpin any regulatory framework in this field. These are:

- the principle of **openness and transparency** in the financial affairs of political parties
- the principle of **equality of political participation**, whereby all major interests are fairly represented, and no individual is permitted by financial resources to have disproportionate access to or influence over elected officials
- the principle of **equality of electoral opportunity**, whereby those who compete for political office should have a fair opportunity of doing so, and should not be placed at a disadvantage by inadequate financial resources relative to others.

**2.2** But these principles clearly do not operate in a vacuum and cannot be pursued at all costs, insensitive to practical considerations and indifferent to sometimes competing principles. Thus they must be developed in a manner which:

- takes account of the history and structure of the party system as it operates in Britain, respecting the autonomy and pluralism of party organisation
- encourages and does not dissuade electors from joining political parties or making small contributions directly or indirectly to political parties
- does not trespass disproportionately on personal liberty, as protected by the European Convention on Human Rights.

**2.3** Many other countries have encountered difficulties with the funding of political parties and as a result have moved to a framework of legislation which in different ways gives effect to the foregoing or related principles. What the practice of other countries reveals, however, is that there is no single way by which they can best be implemented. Rather, it reveals a range of possible methods for reform, though these may be complementary and are not necessarily mutually inconsistent. The objective must thus be to produce a synthesis of principle and practice, relevant to the culture of British democracy and the institutional structures currently in place in this country.

#### 3. Reporting and disclosure

**3.1** The first aim of reform should be to meet the public interest in transparency, while respecting legitimate concerns about personal privacy. This can best be done by the reporting and disclosure of financial information



relating to the parties. But in order to be effective, reporting and disclosure need to be both contemporaneous and comprehensive; steps must also be taken to anticipate any loopholes which may emerge to allow money to be given by evading the reporting and disclosure obligations. This is a significant regulatory challenge.

### *Party accounts*

**3.2** The Labour Party believes that there is a clear and compelling public interest in the full and frank disclosure of the financial affairs of political parties:

- political parties should be required by law to report annually their audited revenue accounts and balance sheet
- the accounts of political parties should be reported in a manner and form prescribed by law, to ensure consistency between the parties
- the accounts of the parties should be reported to an Electoral Commission (see section 7 below) which should have responsibility for their public disclosure.

### *Reporting of donations*

**3.3** The Labour Party believes that full and frank disclosure means also that the identity of large donors, including sponsors, should be disclosed.

- Political parties should be required to report quarterly to the Electoral Commission the name of any donor and the amount of any donation of £5,000 or more, which should then be disclosed by the commission.
- Political parties should be required to report annually to the Electoral Commission the name of any donor who has contributed £5,000 or more in aggregate in the course of the year, which should then be disclosed by the commission.
- Political parties should be required to report annually to the Electoral Commission the name of all donors who donate annually £50 or more, and the amount of the donation.

### *Reporting of affiliation fees*

**3.4** At least in the case of the Labour Party, fees paid by affiliated members are qualitatively different from donations which may be made to the political parties generally. Unlike a donation, an affiliation fee is the aggregate of small contributions made by a large number of individuals. (The procedure is more fully explained in the accompanying document *The Labour Party: Membership, structures and finances*.) The Labour Party proposes nevertheless that affiliation fees in excess of £50 paid to a political party should be reported annually to the Electoral Commission. The name of each organisation which pays an affiliation fee in excess of £5,000 for the year should be disclosed by the commission. Where affiliation fees and donations in aggregate exceed £5,000, the aggregate should be disclosed.

### *Regional and constituency associations and parties*

**3.5** The Labour Party believes that, in order to ensure that a full and clear picture is obtained about party funds, reporting and disclosure obligations should also apply to all units of party organisation, including regional and constituency parties.

- Regional and constituency parties should be required to report annually to the Electoral Commission their revenue accounts and balance sheet, which should then be disclosed by the commission.
- Regional and constituency parties should be required to report annually to the Electoral Commission the name of any donor or affiliate who contributes £500 or more in aggregate for the year, which should then be disclosed by the commission.
- Regional and constituency parties should be required to report annually to the Electoral Commission the name of all donors and affiliates who contribute annually £50 or more, and the amount of the contributions.

### *Reporting of donations in kind*

**3.6** The Labour Party believes that the reporting and disclosure of donations should also include donations in kind, that is to say:

- the secondment of staff
- the provision by individuals of commercial goods and services to a political party either free of charge or at a cost which is below market value

- the provision of loans by individuals, organisations or institutions if issued interest-free or on a favourable non-commercial basis.

The Labour Party believes that all such 'donations' should be reported. In determining whether a donation of £5,000 or more or £500 or more has been made for the purposes of disclosure, any donations in kind should be taken into account.

### *Fundraising clubs and intermediaries*

**3.7** Apart from donations in kind another potential loophole relates to the donation of money to political parties through intermediaries such as membership clubs. It would be possible to make a donation to the club and for the club to make an aggregate donation to the party – only the latter would be disclosed. In order to close this potential loophole, the Labour Party proposes that where money is donated to a party by a club whose principal purpose is to raise money for a political party, the donation should be accompanied by a schedule of the donors to the club. These should be treated in the same way as donations directly to the party for the purposes of reporting and disclosure. Otherwise, donating money through an intermediary with a view to avoiding the obligation to disclose should be unlawful on the part of all those engaged in the transaction. It is not intended that this should apply to small fundraising schemes such as tates and raffles.

### *The problem of multiple donations*

**3.8** Anticipating problems with donations in kind and donations through intermediaries does not exhaust the problems of evasion which could arise. A third problem is that a single donor could give a large sum to a political party without any of it lawfully having to be disclosed. Thus £4,999 could be given nationally, and £499 to 600 or so to constituency parties or associations. By a process of internal transfers much of this money could in principle be routed to the party nationally so that something in the region of £300,000 could be donated without being disclosed. It is for this reason that the Labour Party proposes that political parties should report to the Electoral Commission the name of any donor or affiliate who is known to have contributed £5,000 or more in the course of the year to any part of the organisation. This information should be disclosed.

### *Private political offices: blind trusts*

**3.9** Although not directly related to the funding of political parties, nevertheless highly relevant and important is the question of the funding of the private offices of politicians. In the past, in order to remove any suggestion of improper influence at a time when the matter was not a subject of regulation, opposition politicians were funded through the medium of a 'blind trust'. But as we move into a new regulatory era, the Labour Party believes that the only way for politicians to protect themselves from the perception of undue influence by others is for the principle of openness and transparency to apply here as well. It would also be another potential loophole, allowing money to be channelled into the political process without any obligation to account. The Labour Party therefore proposes that blind trusts should be phased out. Contributions to Members of Parliament should only be made directly to the MP in question and should then be disclosed in the normal way under the rules relating to the conduct of MPs.

### *The rights of party members*

**3.10** In addition to the obligation of public reporting and disclosure, the members of political parties also have an interest in the financial affairs of their party which should be recognised by law. The Labour Party proposes that members of a political party should be entitled to have access to the accounting records of their party. There can be no justification in withholding such access, which is essential if parties are to be properly accountable to their members. A suitable precedent for this purpose is to be found in the Trade Union & Labour Relations (Consolidation) Act 1992, s 30 which provides that trade union members are entitled to request access to any accounting records of their union. The trade union is required to grant access within 28 days and to allow the member (or former member) to be accompanied by an accountant.

## **4. Donations to political parties**

**4.1** The Labour Party accepts that political parties should be permitted to accept donations from supporters. But questions arise in relation to the source and size of donations, as well as in relation to the fact that company political donations are made without first consulting the shareholders of the companies in question. Restrictions on the financial support for political parties are of course not unknown in this country, with trade unions in particular being heavily regulated. This ensures that financial support for the Labour Party (in the form of affiliation fees and donations alike) takes place only with the consent of trade union members, each of whom may claim exemption from the political contribution of their respective union. This matter is more fully addressed in the accompanying document *The Labour Party: Membership, structure and finances*.

### *Foreign donations*

**4.2** The main concern about the source of political donations relates to foreign contributors. This is why the Labour Party has proposed banning foreign donations to political parties. The case for doing so is self-evident: those who have no stake in the future of the country should have no right to take part in elections here or to seek to influence their outcome. Still less should political parties be seen to be responsive to the interests of foreign nationals who do not live here or foreign companies with no trading interests here. Money from foreign governments or those acting on their behalf should not even need to be contemplated.

**4.3** The Labour Party proposes that political donations should not be permitted by:

- individuals who are not ordinarily resident in this country, or who are not on an electoral register in this country
- companies, unless incorporated under the laws of this country or carrying on substantial business in this country.

**4.4** In the case of donations from British citizens resident abroad, there is the obvious problem of the law being evaded if they contribute as an overseas organisation. It would be difficult to ensure that any sums transferred from an overseas political association were not swollen by the contributions of well-meaning third parties who were not British citizens and therefore a source from which it was not lawful for a political party in this country to receive money. In order to minimise this difficulty the Labour Party proposes that it should be lawful to receive money from a British citizen overseas only directly from the donor: it should not be lawful to receive the money from an intermediary donating on behalf of a number of supporters.<sup>1</sup>

### *The accountability of donors*

**4.5** Under the present law there is no restriction on the amount which any donor may give to a political party. The Labour Party believes that the size as well as the source of political donations gives rise to legitimate public concern both in terms of equality of political participation and equality of electoral opportunity. But comparative experience reveals that there are a number of strategies which may be adopted to address this concern.

**4.6** The Labour Party believes that, in the first instance, public concern can best be met by the radical and far-reaching reporting and disclosure reforms proposed in section 3 above. These will ensure that there is proper transparency in the flow of political money, and remove suspicion of improper access or undue influence. If people give and the parties receive large donations, both donor and recipient will have to account publicly and prepare to be scrutinised closely. Also important in addressing these concerns are the spending limitations proposed in section 6 below: these will significantly reduce the pressure to seek large donations.

**4.7** Comparative experience reveals that another way of addressing public concern about large donations is by limiting the amount which each donor may contribute in a year. Measures of this kind operate in the USA, France, and a number of other jurisdictions. The Labour Party invites the committee to examine the question of contribution limits and to assess their implications for the funding of political parties if they are to be introduced. The Labour Party invites the committee to have regard also to questions which may arise in relation to the enforcement of such limits and to how any difficulties in enforcement might be overcome.

### *Company political donations*

**4.8** The Labour Party believes that the principles underlying trade union political expenditure should apply also to company political expenditure. During the last 13 years companies donated large sums of money for political purposes, although there appears to be a decline recently. From 1985 to 1997 it is known that political contributions from more than 650 companies totalled in aggregate almost £46.5 million. Yet companies are required by the Companies Act 1985 only to disclose political donations in their annual reports.

**4.9** This is not to say that the trade union model in all its detail would be directly applicable to companies, which manifestly perform different functions. But it is to say that the underlying principles are: the principle of consulting members, the requirement of majority support, and the right of exemption are highly relevant and appropriate. The Labour Party therefore proposes that it should be unlawful for a company directly or indirectly to donate to a political party without the approval of the shareholders in a ballot. Political donations would therefore be put to shareholders at a vote at the company annual general meeting, together with other issues requiring shareholder approval.

**4.10** But although important, the balloting of shareholders is not in itself enough to ensure that they are placed in a no less favourable position than trade union members. The Labour Party does not see why companies should be required to suffer the administrative inconvenience of having to establish political funds. But equally we do not see why an investor should be required to sell his or her shares where he or she is opposed to the political donations of

<sup>1</sup> The foregoing proposals apply in respect of British-based political parties. The committee will wish to consider whether separate provision needs to be made for parties in Northern Ireland which are active in more than one jurisdiction.

his or her company. The Labour Party therefore suggests that consideration should be given to a scheme whereby a shareholder may notify the company of his or her objection to the political donation and to be given a rebate which is proportionate to his or her shareholding in the company.

### 5. State funding of political parties

**5.1** The Labour Party acknowledges that there is a case in principle for various forms of state aid, which the practice of other countries shows may take one of a variety of forms. But at a time of fiscal prudence the Labour Party also accepts that the needs of political parties are not the greatest priority in terms of public expenditure. As a result, the Labour Party is not proposing the introduction of an annual subvention to be used for general purposes (as in Germany, France and Sweden), or underwriting election expenditure (as in Australia, Italy and Canada). However, the Labour Party does believe that there is a case for a modest extension of state aid which is focused solely on enhancing the quality of public representation.

#### *Extending existing support*

**5.2** The state has made a number of facilities available to candidates and parties at election time, and at the same time has relieved the parties of costs which they would otherwise have to bear in performing their legislative and executive functions. These include the use of schools for election meetings, the provision of free postage for parliamentary candidates, the payment of salaries to MPs, the payment of a higher salary to the leader of the opposition, and the payment of a subsidy to the opposition parties to assist with their parliamentary work in the Commons (the 'Short' scheme) and the Lords (the 'Cranborne' scheme). This has relieved, but not removed, the need to secure private or party funding for private political offices.

**5.3** The activities of the Parliamentary Labour, Conservative and Liberal Democrat parties are crucial to the workings of Parliament. Parliamentary procedures and arrangements all rely heavily on the existence of cohesive and disciplined political parties in Parliament. Yet under the present arrangements, no money is provided for the administration of the governing political party. Civil servants cannot undertake even administrative tasks that are of a party political nature, even if they relate wholly to the work of the governing party in Parliament. Political advisors, appointed to senior ministers, cannot undertake such work either, because they work for the government, and not the political party.

**5.4** There is a case for a funding formula that recognises the need for core, foundation funding to underpin the administration of the political parties in Parliament. But there is also a case for a second element in the funding formula which relates solely to the work of the opposition parties. (It is this alone for which provision is currently made.) Such funding should be capable of ensuring that the opposition has staff of high calibre, and should in particular serve to ensure that the parliamentary work of the opposition party leaders is properly supported. But the present funding formula does not meet these needs adequately, being directly related to the results of the preceding general election, rather than the constitutional obligations of the parties in Parliament.

**5.5** The Labour Party believes that the funding formula for the opposition parties should more fairly reflect the work which they are expected to do in Parliament, rather than be based on election results. As a method of calculating entitlement to public money, the latter method may be appropriate in some cases, but in this case it produces an outcome which bears no relationship to the needs of the parties: indeed the need is arguably all the greater where there are fewer elected members than might normally be expected. The 'Short' and 'Cranborne' schemes for the support of the parliamentary work of the parties should therefore be reformed in the manner proposed to take account of these considerations. This would mean the revision of the schemes by the introduction of a new funding formula which would: (a) recognise the needs of all parties in Parliament, and (b) recognise more fully the particular needs of the opposition parties.

#### *Public funding for political education and training*

**5.6** In addition to extending the current support for the parliamentary parties there is a second role which the state could play in enhancing the quality of public representation. The Labour Party invites the committee to consider how public money might be used to promote public participation and to enrich the efforts of those who present themselves for public service. In particular the Labour Party invites the committee to consider how this might be done by underwriting the work of political education and training which is undertaken by the parties. Democracy relies on citizens who are prepared to step forward for public office: they need to be trained in the responsibilities of office.

**5.7** The Labour Party believes that the political parties should be active participants rather than mere spectators in the process of education for citizenship. Political education of all kinds is essential for a healthy democracy. This much was recognised by the previous government by the creation of the Westminster Foundation for Democracy in 1992. It provides assistance in building pluralistic institutions overseas, with the three main parties represented on the Board of Governors. There are also representatives from the business world, trade unions, the academic community, and the non-governmental sector. The foundation is fully independent in its decision-making.

**5.8** We thus have a working model for the disbursement of state funds for citizenship education for people abroad. The Labour Party believes that it is important to make an investment for similar purposes for the benefit of political parties and citizens in this country, as is the practice in a number of other European countries. In Germany the government funds programmes of citizenship education provided by the political foundations attached to the main political parties. Although there are close links between the political parties and the research foundations, the latter are nevertheless formally independent of the former. In other countries such autonomy does not appear to be so formally recognised.

**5.9** The Labour Party proposes that public funding should be available to finance education and training conducted by political parties. In the case of the Labour Party (and for the purposes of illustration) the type of educational activity which might be contemplated includes matters such as:

- the provision of training courses for prospective and existing holders of public office, for example local councillors
- training for party workers (who are lay volunteers) on subjects such as electoral law and other relevant legislation.

**5.10** It would be a condition of any money which was made available in this way that it be applied only to education and training, or purposes incidental thereto. An annual budget would need to be set aside for these purposes, with an allocation formula for each party based on the level of its popular support, which would be an appropriate basis for allocation in this context. The scheme would be administered by the Electoral Commission, and money paid only for expenses actually incurred, provided they fell within the scope of the scheme. In this way, the whole community would receive a benefit from public money spent through the enhancement of public service.

## 6. Spending limits

**6.1** It is already the case that various forms of spending limits operate in this country: for example in terms of the permitted expenditure on parliamentary candidates. The Labour Party believes that these should be extended: spending limits are “essential to ensure the primacy of the principle of fairness in democratic elections”, the principle of electoral fairness being said to flow from an even more fundamental constitutional principle, namely “the political equality of the citizens” (*Libman v Attorney General of Quebec (1997) 151 DLR (4th) 385*).

### *Constituency limits*

**6.2** The current law imposes restrictions on the election expenses of individual candidates. The restrictions, which were first introduced in 1883, are now to be found in the Representation of the People Act 1983, s 76. This applies a limit on expenses “incurred by a candidate at an election or his election agent, whether before, during or after an election, on account of or in respect of the conduct or management of the election”. The amount which may be spent depends on the number of electors and on whether the constituency is a county or borough constituency. In 1997 the limit in a typical borough constituency was £7,000, and in a county constituency £8,000.

**6.3** The Labour Party strongly supports the retention of these measures, but is of the view that the present law needs to be reviewed. In particular the Labour Party recommends that:

- the definition of election expenses be amended to exclude capital items such as election headquarters, computers, printing machinery, and telephone equipment
- the distinction in the level of permitted expenditure between borough and county constituencies be abolished, except in remote areas
- the level of permitted expenditure be increased in by-elections.

**6.4** The limits on the election expenses of candidates is complemented by restrictions on election expenditure by others (third parties). Section 75 of the Representation of the People Act 1983 applies to expenses incurred “with a view to promoting or procuring the election of a candidate at an election”, and in particular to those incurred on the holding of public meetings, the issuing of advertisements, circulars or publications, or “otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate”. Such expenditure may be incurred only with the consent of a candidate’s agent, and counts as part of the permitted expenses of the candidate. There is an exemption for very small expenditures.

**6.5** A prosecution under section 75 has recently been held to have violated article 10 of the European Convention on Human Rights. The case in question involved the executive director of SPUC who had distributed leaflets in Halifax during the 1992 general election, setting out the views of the three main candidates on abortion. It is likely that section 75 will now need to be amended, though it does not appear to follow from the decision that it is not possible to regulate third-party spending. The Labour Party believes that it is important that such expenditure should be kept under control to preserve the integrity of the limits on candidates. We therefore propose that, so far as is required by



the SPUC judgment, third parties should be permitted to incur expenditure of a modest amount, sufficient to enable them to present their views about the candidates to the electorate.

### *Broadcasting*

**6.6** A major item of expenditure in some countries is that incurred by parties, candidates and others in buying advertising space on radio and television. In this country such expenditure is not permitted, first because the BBC has no advertising, and secondly because political advertising is prohibited on commercial radio and television. The Broadcasting Act 1990 prohibits any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature, or any advertisement which is directed towards any political end. This restriction is read widely by the broadcasting authorities and by the courts.

**6.7** The Labour Party supports the prohibition of political advertising, for a number of reasons:

- it plays a major part in restricting the cost of election campaigns, which ought to be one of the principal concerns of regulation in this field
- it promotes equality between the parties by ensuring that those with the most money do not monopolise what is a scarce resource.

The last point was acknowledged in *R v Radio Authority, ex parte Bull* [1995] 4 All ER 481 where Kennedy LJ accepted that one justification for the prohibition on political advertising related to “the danger of the wealthy distorting the democratic process”.

**6.8** The Labour Party would thus strongly oppose any attempt to repeal or amend the existing legislation on political advertising, though the case for doing so would be stronger if there was no provision made for party political and party election broadcasts. But the Labour Party regards these as an essential part of the responsibility of broadcasters in a liberal democracy and is deeply disturbed by recent proposals to alter the balance of the present arrangements. Without this broadcasting facility the political parties would be denied access to what arguably is the most important instrument of communication in modern society. The existence of the facility also reinforces the view that broadcasting serves a public as well as a private commercial interest, and that as such broadcasting has many different roles to play.

**6.9** The Labour Party does not believe that there is a case for moving the focus of broadcasts to election campaigns, at the expense of the party political broadcasts which take place at non-election time. These are different types of broadcast which serve different functions, both of which are equally indispensable for the political parties and for the democratic process. This is not to say that the Labour Party does not have concerns about the operation of the procedures which we believe should be modernised in a number of ways:

- the cost of subtitles which are carried on some broadcasts for the benefit of the deaf should be met by the broadcasters who should accept that they have a responsibility to ensure that PPBs and PEBs are accessible to all viewers and listeners
- it should be possible to have much shorter broadcasts than is permitted under the current arrangements. There should also be more flexibility over scheduling, for example to permit broadcasts to be carried at weekends in appropriate cases
- the obligation to carry PPBs and PEBs should be extended by legislation to ensure that it applies to all broadcasters operating in this country, including in particular those operating with the new technology
- the allocation of PPBs and PEBs should be determined by the proposed Electoral Commission in consultation with the political parties and the broadcasters.

### *National campaign spending limits*

#### **6.10** Spending limits and political parties

Although parliamentary candidates are subject to tight limits on their election expenses, there are no corresponding limits on the political parties. An attempt to apply the law to national campaign spending was unsuccessful in the famous *Tronoh Mines* case (*R v Tronoh Mines Ltd* [1952] 1 All ER 697). It was held by the court that what was then the Representation of the People Act 1949 was “not intended to prohibit expenditure incurred on advertisements designed to support, or having the effect of supporting, the interest of a particular political party generally in all constituencies...and not supporting a particular candidate in a particular constituency”. It is for this reason that the Conservatives are able to outspend the other parties in an election without restraint.

**6.11** The Labour Party proposes a limit in the interests of equality on all national campaign election expenses incurred by political parties. The Labour Party is of the view that this could best be done by the introduction of a measure adapted from the Representation of the People Act 1983, s 76, to provide that:

- no sum shall be paid and no expense shall be incurred by a political party at an election whether before, during or after an election, on account of or in respect of the conduct or management of the election, in excess of c. 35p per elector in each of the constituencies in which the party has candidates
- the aim of this formula, which should be index-linked, would be to permit national parties with more candidates to spend more than small parties fielding only a few candidates. The maximum permitted expenditure should be set at £15 million, and the foregoing formula is proposed accordingly.

### 6.12 Spending limits and third parties

If campaign spending limits of this kind are to be imposed on political parties, then the same problem will arise here as in the case of the limits on permitted expenditure by candidates: what should be done about the national election expenses of individuals and organisations other than political parties? It would make no sense to impose a limit on political parties only to see these eclipsed by free-spending pressure groups. There are currently no restrictions on this expenditure, except in the case of trade unions which may only incur election related expenses if they have a political fund.

**6.13** The Labour Party accepts the right of ‘third parties’ to take part in a national campaign, but believes that there may be a case for restricting the amount which any such third party might spend. The Labour Party proposes that it should not be lawful for any individual or organisation to incur expenses in excess of 10 per cent of that permitted to the national parties with a view to promoting or opposing the interests of a political party at an election. The expenses would apply to those incurred on meetings, advertisements, or otherwise presenting to the electors the party or its views; but not to the normal campaigning activities of the organisation in question unrelated to the election, nor to communications between an organisation and its members.<sup>2</sup>

### 6.14 Spending limits: some practical considerations

The Labour Party accepts that a number of practical problems will have to be contemplated if election spending limits are to apply nationally, as well as locally. One difficulty will be to know at what point before an election the limit begins to bite. But this is a problem which is encountered by candidates under the present law, and the answer is that there is no fixed time limit. The existing law and the proposed new law focus not on when, but on the purpose with which the expense was incurred. Another problem is how to distinguish electoral from general organisational expenses of the political parties. But although important, this too should not be exaggerated: inflated organisational expenses would have to be explained and justified to the proposed Electoral Commission (see section 7 below). The commission would also be responsible for giving guidance to the parties as to what should be included as an election expense.

**6.15** But these do not exhaust the questions which will have to be answered. There is also the problem of goods, services and facilities being provided to the parties free of charge. But the Labour Party believes that these should count as ‘expenditures’ of the beneficiary party, as should goods, services and facilities provided at less than their true value. (This would not, of course, apply to volunteer labour provided by members and supporters.) Also to be considered is the related question of the allocation of poster sites during an election. In order to ensure equality of access, the Labour Party believes that all poster sites should be bought directly in the name of a political party. It is unfair that third parties are currently permitted to transfer their options or holdings on poster sites to a political party, and it ought not to be permitted.

## 7. Administration and enforcement

**7.1** The reform of political funding which the Labour Party proposes will require an effective enforcement machinery. There are in fact a number of questions of an administrative and enforcement nature which arise, not the least of which is to determine to whom the proposed legislation applies. What is a political party for these purposes? Other questions relate to the nature and powers of any regulatory agency charged with the responsibility of supervising and enforcing the legislation, and the penalties for breach by the parties or others.

### *The scope of the legislation*

**7.2** The first step to be taken in the context of administration and enforcement is to determine to whom any new legislation is to apply. The government is proposing a system for the registration of political parties, the details of which have not been published at the time of writing. The Labour Party believes that the proposals for reform in this submission should apply at least to registered political parties, though as a matter of principle the proposals for the reform of political party funding ought to apply to all political parties regardless of whether they are registered. That is to say any proposed legislation should apply to a political party by virtue of its status as a political party, rather than its status as a registered political party. Further consideration of this question must await publication of the government’s proposals.

<sup>2</sup> The foregoing (paragraphs 6.10-6.13) are addressed mainly to general elections. They would need to be adapted for application to local elections. The same principles should apply to elections to the Scottish Parliament and Welsh Assembly. Powers to limit the permitted expenses of political parties in European elections are contained in the European Parliamentary Elections Bill.



### *An Electoral Commission*

**7.3** The second step which needs to be taken is the introduction of a regulatory agency to administer and enforce any legislation to implement the foregoing proposals. The Labour Party is in fact committed in principle to the introduction of an Electoral Commission which would have a number of duties to discharge in the conduct of elections.<sup>3</sup> As was explained in the *Report of the Working Party on Electoral Systems* (Labour Party, 1993): “The case for such an electoral commission is that it would provide continuity, a permanent expertise on electoral matters, and ensure that good practice was being followed throughout the country by electoral registration officers and returning officers” (pp 48 – 9).

**7.4** An Electoral Commission is the obvious agency to administer legislation of the kind anticipated by this submission, just as election commissions perform this function in countries such as Australia and Canada. So far as composition is concerned, it is clearly of first importance that any Electoral Commission should be both independent of government and accountable to Parliament. So far as its duties are concerned, in this area it is clear that the commission would have a number of responsibilities. For example, it would:

- receive reports of political party income and expenditure
- ensure that the reports were in order and investigate any suspected non-reporting
- arrange for the disclosure of information required by law
- investigate complaints that a party had received foreign donations
- administer any public funding for political education and training
- supervise, administer and take steps to enforce the proposed spending limits.

**7.5** In performing these tasks the Electoral Commission would also need a number of associated powers to:

- prescribe model accounting procedures for the parties
- prescribe procedures for compliance with statutory obligations
- educate and advise political parties and their officials of statutory obligations
- draft codes of practice and issue guidance to assist in the application of statutory obligations
- compel political parties to produce financial records
- report to the DPP any apparent contravention of statutory obligations.

The commission should also be required to publish an annual report of its activities in this area, and to hold periodic reviews of the legislation, with the power to recommend revisions as the need arises.

### *Liability, penalties and enforcement*

**7.6** The third step which needs to be taken in the context of administration and enforcement relates to the penalties for breach of any law which is introduced. The Labour Party believes that it should be a criminal offence for a political party to:

- refuse or wilfully neglect to report financial information as required by law
- receive a donation which is known to be from a prohibited foreign source
- exceed the maximum permitted campaign and election expenditures.

It should also be an offence for a so-called third party to exceed any limit on election related expenditure permitted by law, should such limits be introduced. It would not normally be appropriate to invalidate a general election because of over-spending by a political party (which in any event may end up on the losing side). But it may be appropriate to impose sanctions in addition to criminal sanctions, such as disqualification from PPBs or PEBs for up to an electoral cycle.

**7.7** In the case of political parties, the Labour Party recommends that the legislation should follow the model of the trade union legislation which not only makes the organisation liable for any failure to comply (for example with reporting obligations), but also fastens liability on “every officer of the trade union who is bound by the rules of the union to discharge on its behalf the duty breach of which constitutes the offence” (Trade Union & Labour Relations (Consolidation) Act 1992, s45). It would be the responsibility of the parties to notify the Electoral Commission proposed above of those officers who have responsibility to discharge whatever obligations were imposed by legislation.

**3** Failing the introduction of an Electoral Commission, a specially designated regulatory agency or commissioner will have to be created to administer the legislation proposed in this submission.

## 8. Summary of principal proposals

### *(i) Disclosure*

**8.1** Political parties should be required by law to publish annually their audited revenue accounts and balance sheet (para 3.2).

**8.2** Political parties should be required to report the name of donors and the amount of donations in excess of £5,000 nationally and £500 locally (paras 3.3 – 3.5).

### *(ii) Foreign donations*

**8.3** Political donations should not be permitted by individuals who are not ordinarily resident in this country, or who are not on the electoral register in this country (para 4.3).

**8.4** Political donations should not be permitted by companies, unless incorporated under the laws of this country or carrying on substantial business in this country (para 4.3).

### *(iii) Company political donations*

**8.5** The principles underlying trade union political expenditure should apply also to company political donations. It should be unlawful for a company to donate to a political party without the approval of the shareholders (para 4.9).

**8.6** Consideration should be given to a scheme whereby a shareholder would be entitled to notify the company of his or her objection to any political donation, and to be given a rebate which is proportionate to his or her shareholding in the company (para 4.10).

### *(iv) State aid*

**8.7** The ‘Short’ and ‘Cranborne’ schemes for assistance to opposition parties should be extended to cover more fully the needs of all parliamentary parties (paras 5.3 – 5.5).

**8.8** The committee should consider how public money might be used to enhance the quality of political representation through education and training undertaken by political parties (para 5.6 – 5.10)

### *(v) Broadcasting*

**8.9** The current restrictions on political advertising on radio and television should be retained, as helping to reduce campaign costs and promoting equality between parties and candidates (para 6.7).

**8.10** The arrangements for PPBs and PEBs should be extended to ensure that they apply to all broadcasters operating in this country. The current provision should not be undermined by moving the focus of PPBs to election times (para 6.9).

### *(vi) National spending limits*

**8.11** The statutory limit on candidates’ election expenses should be extended to political parties. There should be a limit of £15 million on the permitted election expenses of political parties (para 6.11).

**8.12** A limit of 10 per cent of the permitted expenditure of political parties should be imposed on the permitted national campaign election expenditure of ‘third parties’ (para 6.13).

### *(vii) Enforcement and penalties*

**8.13** An Electoral Commission should be established to administer and enforce any legislation which might be introduced to implement the foregoing proposals (para 7.4).

**8.14** It should be a criminal offence for a political party to refuse or wilfully neglect to perform any of its proposed reporting and disclosure duties; or exceed the maximum permitted campaign and election expenditure (para 7.6).

### *(viii) Monitoring and review*

**8.15** It should be the responsibility of the Electoral Commission to keep the legislation on party funding under review and to recommend reforms as the need arises (para 7.5).

## Background Briefing

### The Labour Party: Membership, Structures & Finances

#### 1. Introduction

**1.1** The Labour Party welcomes the opportunity to explain the nature of party organisation and structure. It is proud of its democratic traditions and of the way in which it involves and empowers individual and affiliated members. We seek to draw attention in particular to the federal nature of the party, its changing financial base, and the extent to which it is subject to legal regulation in terms of its relationship with affiliated trade unions. We also welcome the opportunity to give an account of how the legislation operates in practice, ensuring that trade union political activity is undertaken only with the consent of the members.

#### 2. Membership

**2.1** The Labour Party was created in 1900 (as the Labour Representation Committee) by a number of organisations – trade unions and socialist societies – which in turn became affiliated members in their corporate capacity of the new organisation. No provision was made at the time of the party's foundation for individual membership: it was not until constitutional revisions in 1918 that an individual could formally become a member of the Labour Party.

**2.2** The modern constitution of the Labour Party inevitably reflects the party's origins, in the sense that it remains a federation of affiliated organisations. These are:

- affiliated trade unions, through which individual trade unionists participate directly and indirectly in the affairs of the party
- socialist societies and other organisations such as co-operative societies which affiliate to the party on a similar basis as trade unions
- constituency parties which affiliate in accordance with the national rules and which are the principal vehicle for individual membership of the party.

All three categories of affiliated membership must (a) accept the programme, policy and principles of the party; (b) agree to conform to the constitution and standing orders of the party; and (c) submit their political rules to the National Executive Committee.

**2.3** Under the rules of the party, each affiliated trade union pays an annual affiliation fee of £2 per affiliated member from its political fund (see section 6 below). Affiliated socialist societies pay £1.25.

Individual membership is £16 for someone in paid employment; and £5 for those who do not have a wage or already pay the political levy of their union. Since 1990, subscriptions are collected centrally, with a proportion of each subscription sent back to the appropriate CLP. At the present time the Labour Party has the following affiliations:

- 26 trade unions, the largest being GMB, Unison, TGWU, AEEU, Usdaw, CWU, MSF, GPMU, RMT, and ISTC
- 13 socialist societies, including the Co-operative Wholesale Society; the National Union of Labour & Socialist Clubs; the Co-operative Retail Society; the Fabian Society; Poale Zion; and the Society of Labour Lawyers
- 641 CLPs: the Labour Party does not organise in Northern Ireland. The number of members varies enormously, with around 4,000 in the largest CLP.

**2.4** Individual membership has risen steadily since 1992, and at around 400,000, is at its highest level since the current method of calculating membership was adopted in 1990.

Individual members of the Labour Party must (like affiliated organisations) accept and conform to the constitution, programme, principles and policy of the party.

#### 3. The principle and practice of affiliation

**3.1** As we have pointed out, the Labour Party is a federation of affiliated organisations, of which trade unions are the largest. The principle of affiliated membership is a reflection of the fact that in the British political system, as in others, there is no single or one-dimensional view of how a political party should be organised or structured, whether in terms of composition or manner of internal government. In the British system we have accepted a plurality of forms of political party, and have accepted the principle that the members of political parties may properly include both individuals and organisations acting on behalf of their members.

### *Affiliation and political participation*

**3.2** As a form of party organisation, the principle of affiliated membership through membership organisations has a number of virtues. But most importantly it provides the means whereby a large number of people demonstrate a commitment to the democratic process. The political engagement of some three and a half million trade unionists in this way is not to be underestimated, nor is it to be assumed that these people would choose other forms of political participation were this avenue to be closed to them. No other form of engagement with political parties achieves support from such a large number of individuals each contributing small sums of money.

### *Affiliation and the rights of affiliated members*

**3.3** Under the Labour Party constitution, it is the organisation (trade union, socialist society or co-operative society) which is the member of the party, with individual trade unionists, for example, being formally members of an affiliated organisation. It remains the case nevertheless that members of affiliated organisations acquire rights as individuals in internal party affairs. The rights vested in members of affiliated trade unions include, either under the constitution of the party or as a matter of practice, the right to vote for the leader and deputy leader of the party; and the right to vote on the election manifesto of the party. On other matters trade union members will have the right, in accordance with the rules of their union, to participate in decisions relating to Labour Party affiliation.

### *Affiliation and the principle of consent*

**3.4** Underwriting the principle of affiliation as it operates in the Labour Party is the principle of consent. Trade unions participate in political activity (of which Labour Party affiliation plays an important part) only with the consent of their members both collectively and individually:

- Trade unions may establish political funds only after a ballot of their members, and the members must be balloted every 10 years for approval to continue to operate political objects.
- Trade union members who are opposed to the political objects of their union have a statutory right to claim exemption from the obligation to contribute to the political fund. They are under no obligation to support such activity.

These measures are considered more fully in sections 6 and 7 below.

## **4. The structure of the Labour Party**

**4.1** The Labour Party is organised on a national, regional and constituency basis. The structure of the party at all three levels is broadly similar and is based on the same federal principles as the national party, with scope at each level for affiliation by trade unions and socialist societies. There are in fact nine regional parties (Scotland, North & Yorkshire, North West, Central, West Midlands, Wales, London, South East, and South West), and as we have already pointed out, 641 CLPs.

### *National structure and organisation*

**4.2** Under the constitution of the party, an important role is reserved for a number of key party institutions and officers:

- **Officers**, specifically the leader and deputy leader, the chair and vice-chair, the general secretary and treasurer. The leader and the deputy leader are elected from Commons members of the Parliamentary Labour Party (PLP). The general secretary is appointed by Conference on the recommendation of the NEC and acts as secretary to the NEC.

The party leader and deputy leader are elected by an electoral college which gives equal weight to the votes of the PLP, individual members, and members of affiliated organisations. As we have seen, members in the last category vote as individuals and are entitled to vote in leadership elections if they are not members or supporters of any other party.

- **Conference**, which directs and controls the work of the party and decides what “specific proposals of legislative, financial or administrative reform shall be included in the party programme”. This is now to be based on the rolling programme presented to Conference by the newly-created National Policy Forum.

Conference is composed of delegates duly appointed by affiliated organisations and constituency parties. Every delegate must normally be an individual member of the party. Each affiliated organisation is permitted one delegate for each 5,000 members for whom affiliation fees have been paid. CLPs are permitted one delegate for the first 749 individual members and a further delegate for every 250 members or part thereof.

- **National Executive Committee**, which (subject to the control and direction of Conference) is the administrative authority of the party. Consisting of 32 members (including the leader and deputy leader of

the party), the key functions of the NEC are to contribute to the party's electoral strategy, policy development and to maintain a healthy party at all levels. It also issues the manifesto of the party before elections following consultation with the Cabinet/Shadow Cabinet.

The leader, deputy leader and treasurer are members of the NEC ex-officio and one place is reserved for a youth member. From October 1998, the NEC membership will be revised to reflect the 'stakeholders' of the party. The other 27 members will be elected by Conference from six divisions as follows: affiliated trade unions (12); socialist societies (1); CLPs (6); government (3); PLP/EPLP (3) and local government (2). Up to 50 per cent of places in each division must be women. The Leader of the European Parliamentary Labour Party also sits on the NEC ex-officio.

### *Regional structure*

**4.3** Historically the regional and national structures of the party have operated in parallel, drawing membership directly from the constituency parties and the other organisations affiliated to the party. While there are some recent moves to integrate regional structures into the national ones, this is a slow process – though increasingly the parties in the English regions and in Scotland and Wales are being seen as 'stakeholders' in their own right, a view that will probably gain strength with devolved government.

**4.4** The regional parties have essentially the same structure:

- in each of these there is an executive which is elected by a conference composed of delegates sent by constituency parties (and their women's and youth organisations) and also by the other affiliated organisations: trade unions, co-operative and other socialist societies.
- the elected executive which reflects the 'federal' nature of the conference is responsible for the day-to-day administration of the party in between conferences and reports back on its work to the next conference (annually for the Scottish and Welsh parties, biennially in the English regions).
- conferences and the executives were traditionally responsible for determining policy for the appropriate level of party organisation and although the conferences do retain the ultimate say over policy the present reforms of party policy-making processes move the detailed discussion and development of party policy at both the regional and national level to party 'policy forums'.

### *Local organisation*

**4.5** The prime unit of local organisation is the Constituency Labour Party (CLP). This again reflects the federal nature of the party in that its management structure involves representatives from local branches of trade unions and other affiliated organisations. In practice, the constituency party brings together those who wish to be involved in grassroots activity on behalf of the party in the locality; all those concerned with the management of the local party are individual members of the constituency party, regardless of which organisation delegates them to attend.

**4.6** Most CLPs have the following structure, though there is some variation to reflect local circumstances, level of membership and geographical considerations:

- **Branch Labour Parties** in which individual members of the party get together to discuss party matters and organise party activities in a local area – usually based on a local government ward, collection of local government wards or community council areas.
- **Women's sections and Young Labour groups** which will cover a branch or a number of branches and bring together those women members or younger members who wish to involve themselves in party activity specifically related to the interests of women and young people.

**4.7** These, along with the affiliated organisations which have functioning branches in the area, elect delegates to the **Constituency General Committee** which meets on a regular basis to co-ordinate the activities of the party across the constituency and to appoint representatives to other bodies in the party structure. The general committee is responsible for promoting the parliamentary candidate and all other party campaigning activity in the constituency. It will appoint a campaign committee to facilitate this. The general committee will also appoint a **Constituency Executive Committee** to assist the elected officers in the day-to-day administration of party business. However, the exact division of responsibilities between executive, campaign and general committees will vary depending on local circumstances and the authority delegated to the others by the general committee.

## **5. The financing of the Labour Party**

### *Financing the centre*

**5.1** Over the past few years there has been a remarkable increase in the income of the Labour Party. Income and expenditure are cyclical, peaking around election time. However, between the election years of 1992 and 1997, party income grew by some 75 per cent, as shown in Table 1.

Table 1 Net party income

Year	£m
1992	13
1993	13
1994	14
1995	15
1996	21
1997 (Estimates)	24

Source: Labour Party Annual Reports

**5.2** Traditionally the Labour Party was financed mainly from the affiliation fees of trade unions. In the mid-1980s around 80 per cent of funds came from trade unions. By the late 1990s the situation had changed. Trade unions now provide some 35-40 per cent of party income. Individual donations and subscriptions make up over half the income of the party (see Table 2 below).

Table 2 Income by source

%	92	93	94	95	96	97 (Estimated)
Individuals (incl. corporations)	28	38	42	45	53	55
Trade unions	66	55	50	47	35	40
Pressure groups	1	–	–	–	5	–
Commercial	2	3	3	3	3	2
Other	3	4	4	5	4	4
TOTAL	100%	100%	100%	100%	100%	100%

Source: Labour Party Annual Reports

**5.3** In large measure, these changes have been brought about by an increase in individual donations rather than in membership fees, which have been kept low, to ensure that money is not an impediment to joining the party. In 1992, two thirds of party income was received in the form of individual membership fees or affiliations, one third from donations. Over the past five years, fundraising activity has increased: in 1997 donation income was 60 per cent of total net income. Most of this was from small donors, though in the six-year period from 1992-97, around a third by value of individual donations were over £5,000.

**5.4** Since 1995, the Labour Party has published in the annual report of the National Executive Committee the identity of those who have donated more than £5,000. The published figures show an increase in number from 24 in 1995 to 66 in 1996. They will show around 135 in 1997. The increase in the number of large donations also helps to explain the increase in the proportion of party income which has been raised by way of donations in 1996 and 1997.

#### *Financing the regions and the constituencies*

**5.5** The party in the regions is financed from a number of sources, including affiliation fees from members (trade unions, socialist societies and co-operative societies), and CLPs. The level of affiliation fees is laid down in the rules and constitution of each of the regional parties and can only be changed by an amendment to the rules agreed by a recorded vote at their annual or biennial meeting. Although the levels are much the same across the country, there is some variation – particularly in the case of Greater London, where union fees are five times the average.

**5.6** Partly as a result of a decline in the level of regional affiliations, in recent years regional parties have engaged more actively in fundraising ventures, reflecting developments nationally. These initiatives include support from donors, sponsors for meetings and conferences, and the holding of gala dinners. Five of the regions now employ a full-time fundraiser. The regions are supported by head office in a number of ways, which include allocation of funds based on membership in the region, the payment of core staff salaries (normally four), and in some cases local organisers (28 in total) who are distributed on the basis of political need throughout the country. The total income of the regional parties in 1996 (net of head office funding) was under £1 million.

**5.7** So far as constituency party finances are concerned, the Labour Party conducted a survey of 69 constituency parties to provide a snapshot of finances at constituency level. The 69 constituencies listed fall into the following categories of annual income:



£1 – £5,000	32	£40,001 – £50,000	1
£5,001 – £10,000	14	£50,000 – £100,000	3
£10,001 – £20,000	12	£100,001 – £150,000	1
£20,001 – £30,000	4	£150,001+	1
£30,001 – £40,000	1		

Perhaps the most significant feature of the survey is that as many as 46 of the 69 constituencies have an annual income of £10,000 or less.

**5.8** Income from subscriptions range from £1,000 to £5,000. Trade union affiliation fees rarely exceed £400 annually, though trade unions may assist in other ways in some constituencies through Development Plans. CLPs with a high turnover are usually those with a Labour Club or property rented out on a commercial basis. But donations from supporters and various fundraising activities now constitute a significant part of CLP income. Nevertheless, only 12 CLPs received donations in excess of £5,000 in aggregate from all donors, and of these, only one received donations in excess of £10,000 in aggregate from all donors. Many CLPs record all donations received, which are generally very small: donations in excess of £100 are highly unusual, and most are much less.

## 6. The legal regulation of Labour Party financing

**6.1** Trade unions and the Labour Party have a long and historic relationship, with the former supporting the latter in a number of ways. But it is also a relationship regulated by law, with trade union financing of the party the subject of detailed legal control since the famous Osborne judgment in 1909. In that case the House of Lords ruled that trade union political activity was not permitted by the trade union legislation then in force. The decision was partially reversed by the Liberal government in the Trade Union Act 1913, though this has been amended on several occasions since: in 1927, 1946, 1984, 1988 and most recently 1993.

### *Political objects*

**6.2** Under the legislation currently in force (Trade Union & Labour Relations (Consolidation) Act 1992, as amended by the Trade Union Reform & Employment Rights Act 1993) restrictions are imposed on the use of trade union funds in the furtherance of political objects. The political objects to which the Act applies include the expenditure of money on “any contribution to the funds of, or any payment of expenses incurred directly or indirectly by, a political party”. For this purpose a contribution is defined to mean “any fee payable for affiliation to, or membership of, the party and any loan made to the party”.

**6.3** The definition of political objects also applies to expenditure “on the provision of any service or property for use by or on behalf of any political party”, as well as to the registration of electors, the selection of candidates, the “maintenance of any holder of a political office”, and the holding of any meeting by or on behalf of a party. It also applies to expenditure “on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate”.

### *Political fund resolution*

**6.4** A trade union may lawfully apply its funds in furtherance of political objects only if there is in place (i) a political fund resolution, and (ii) political fund rules which have been approved by the Certification Officer. A ballot on a political fund resolution must be conducted in accordance with political fund ballot rules which must also be approved by the Certification Officer who must be satisfied that the rules meet detailed requirements relating to the appointment of an independent scrutineer, entitlement to vote (to be accorded equally to all members of the union), voting procedure (which must be conducted by postal ballot), and the scrutineer’s report.

**6.5** When the legislation was first introduced in 1913 there was a requirement to hold a ballot before the adoption of political objects, but there was no need to hold ballots periodically to renew the approval. In 1984, however, the then government introduced amending legislation which required trade unions to obtain fresh approval for the continuation of political objects and provided that a political fund resolution is valid for only 10 years. Since the legislation was introduced there have thus been two rounds of renewal ballots, the outcomes of which are considered in section 7 below.

### *Political fund rules*

**6.6** Once armed with a political fund resolution, a trade union must then adopt political fund rules which must also be approved by the Certification Officer. The rules must provide that any payment in furtherance of political objects is to be made out of a separate fund (the political fund), and that a member of the union shall have the right to be exempt from any obligation to contribute to the fund.



**6.7** A person who exercises the right of exemption is not by reason of being so exempt to be excluded from any benefits of the union or to be placed directly or indirectly under a disability or disadvantage as compared to other members of the union (except in relation to the control or management of the political fund). The rules must also provide that contribution to the political fund shall not be made a condition of admission to the union. Trade unionists thus have a statutory right not to be discriminated against on political grounds by their union.

## **7. The operation of the legislation**

**7.1** The Labour Party supports the principles which underpin the legislation relating to trade union political funding: it ensures that such activity is conducted only in accordance with the clear wishes of the members, while simultaneously respecting the right of the individual to claim exemption from the obligation to support political objects. The Labour Party can see no reason why the current restraints on trade union political activity should be made even more onerous. The objectives underpinning the legislation now in force work effectively.

### *Transparency and accountability*

**7.2** In assessing the impact and effect of the political fund legislation, it is important to note that it operates in a legal environment of full transparency and accountability of trade union finances generally. Under the law currently in force, trade unions are required to send to the Certification Officer annually a detailed financial report (Trade Union & Labour Relations (Consolidation) Act 1992, s 32). Under the same Act the Certification Officer is required to report annually on his activities to the Secretary of State, and in fact an annual report is made available for publication, containing a considerable volume of detail about political funds.

**7.3** The Certification Officer gives information about all trade unions with political funds. In terms of financial information, the Certification Officer reports details of the annual income and expenditure of each trade union political fund, as well as the balance in the fund at the beginning and end of the year respectively. The information in each of these categories is conveniently aggregated to give a full account of trade union political funds as a whole. But the reports also include details of the number of members contributing to the political fund and the number of members exempt from the obligation to do so, as well as details about political fund ballots.

### *Political fund ballots*

**7.4** In the two rounds of ballots since the obligation of periodic review was introduced in 1984, trade union members have generally endorsed the continuation of political objects by a large margin. Indeed the aggregate vote in favour of the continuation of political objects in 1985/6 was 80 per cent with 20 per cent against. (This includes both the 38 review ballots and the 17 ballots held to establish political objects for the first time.) In the 1990s the aggregate vote in favour was 82 per cent, though on a lower turnout following a change in the system of balloting.

**7.5** These results effectively answer the claim that trade unions engaged in political activity without the consent of their members. No trade union affiliated to the Labour Party has been required to discontinue political objects because of the results of a ballot. Indeed there is only one occasion in which a trade union failed to secure the support of its members to continue political objects. One of the interesting features of the 1984 reforms is that it has paradoxically led to a significant number of trade unions establishing political funds for the first time.

### *Political fund exemption and complaints*

**7.6** The 1984 legislation has had little impact in reducing the number of trade unions with political funds. Also interesting is the fact that the increased publicity generated about trade union political activity (by the legal changes and by the ballots) similarly has not led to an increase in the number of trade union members exercising their right to claim political fund exemption. Indeed the aggregate level of contracting out in 1995 (18 per cent in aggregate) is roughly the same as in 1975 (19 per cent). There has been some fluctuation from this figure in the intervening 20 years or so.

**7.7** Trade union members alleging a breach of the political fund rules may complain to the Certification Officer (with details of the procedure contained in trade union rule books); the number of such complaints is now very small. In the 10 years between 1977 and 1986 there were 231 complaints (only seven of which were eventually upheld). But in the 10 years between 1987 and 1996 there were only 20 in total (with seven of these in 1987 alone), an annual average of only two. Most of the complaints were settled informally, with only four requiring a formal hearing by the Certification Officer, only three of which were upheld.

## **8. Conclusion**

**8.1** The Labour Party has succeeded where other political parties have failed. It has achieved a growing membership and diverse funding base. At the same time its federal structure has involved the participation of millions of citizens, directly and indirectly, in the affairs of the party. The Labour Party as an individual organisation will continue to innovate and involve members. However, it now looks to the Committee on Standards in Public Life to

draw up plans for a regulatory framework which will deliver a modern democracy for all. Indeed, the recent history of the Labour Party is evidence that political parties can live within such a framework and still flourish.

### *Background Briefing*

## A tainted legacy: the Conservative funding record

### Introduction

Under the Tories, public confidence in the political process plumbed new depths. In opposition the Labour Party made clear its determination to set the highest standards, and in government the party is putting that determination into action. But it will not be possible properly to reform the political funding system in Britain without a full understanding of the ways in which the scandals of the past and the Tory legacy of sleaze and distrust have so damaged public confidence.

1. While they remained in office the Tories were determined to maintain the absolute secrecy that traditionally surrounded Conservative Party fundraising. Today they are claiming to have made a 'fresh' start – yet they have still refused Tony Blair's offer to reveal the names of donors, they delayed the publication of their accounts for 1996/97 for six months without adequate explanation, and William Hague has appointed a foreign-based tax-exile as one of his party's key fundraisers.

2. The Conservative legacy has so seriously eroded public confidence in political finance that it is clearer than ever reforms will have to be deep, fundamental and strictly enforced. It is our belief that the fundamental questions are those concerning:

- secret funding of political parties
- the lack of transparency in political funding
- the need to end foreign funding of British political parties
- the need to ensure that politics, rather than access to finance, is what primarily settles the results of UK elections.

### Secrecy

1. Secrecy has been absolutely central to Conservative fundraising. According to Lord McAlpine, a former Conservative Treasurer: "Conservative Central Office is not a charity dedicated to helping the sick and suffering, it is a fighting machine dedicated to winning elections". In his view it is "the height of folly to expose how such a machine manages its resources or, indeed, how large, or how small these resources are at any one time" (A McAlpine, *Once a Jolly Bagman* (1997), p 229). Donors names are one of the party's "most closely guarded secrets", locked in the Treasury Department at Conservative Central Office (*Sunday Times*, 27 September 1992). The information is concealed even from leading party members who have complained about "the inadequacy of membership rights" especially in "the area of financial accountability" (HC 726 (1992 – 3), pp 164 – 5).

2. William Hague has claimed to have made a 'fresh start' in Tory financing, but his appointment of a new Board of Treasurers was not subject to any internal democratic scrutiny. There are no proposals to change this as the recent 'White Paper' on the Conservative Party proposes that the Treasurer be appointed by the party leader. (CCO, *The Fresh Future*, 1998)

3. The Conservative Party's fundraising operations are predicated on secrecy. We are not aware that William Hague intends to reform the secretive system of 'Industrial Liaison Committees' and 'Industrial Councils' that raise money for Central Office (*Financial Times*, 19 December 1994). These bodies operate beyond public scrutiny and are not separately accounted for by Central Office in their annual accounts and appear not even to be under the direct control of the Conservative Treasurer's Department.

### Transparency

1. The Conservative Party's accounts for 1996/97 show that Central Office raised nearly £43 million in that year. No source can be identified for the vast majority of this money. And even this total excludes the £11 million (£7.95 million interest free) of loans the Tories benefited from in the same period. At the end of March 1997 – in the middle of a general election campaign – the Tories report themselves to be in financial surplus by some £7.4 million (CCO, *Conservative Party Annual Report and Accounts*, 1997, p8). Yet only three years previously they were around £20 million in debt. No adequate or convincing explanation has ever been offered for this dramatic turnaround.

2. The first issue of concern relates to allegations that steps have been taken to facilitate the raising of donations from the corporate sector without the companies in question having to disclose the donation to their shareholders. Thus a number of reports have appeared to the effect that “corporate donors are now being canvassed to make loans if they feel worried about being publicly revealed” (*The Independent*, 20 May 1996). Similarly it was reported in *The Observer* (21 July 1996) that company donations were solicited by membership organisations such as the Premier Club with an explanation that they would not have to be disclosed on the ground that the donor gives to the club not to the party: “the Premier Club donates to the party. It’s a membership club. He’s joining the club”.

3. A second and related matter is the use of fundraising events to provide ‘cover’ for donations through sponsorship and non-commercial advertising. A letter from Scottish Conservative Central Office to Sir Malcolm Rifkind (*Letter to Sir Michael Hirst*, 12 November 1993) stated that the Scottish Conservatives raised around 30 per cent of their annual income from the ‘Focus on Scotland’ annual fundraising dinner. Clearly, such funds did not come from selling of ‘plates’ alone. Labour declares all such similar funding where the total for one year is more than £5,000.

4. The other matter which has caused concern in recent years is the question of loans to the Conservative Party. The published accounts of the party show these to have risen sharply since 1992 when the allegations of ‘soft loans’ were first made (*Sunday Times*, 27 September 1992). The total loans in that year amounted to £2,348,000. By 1995 this had risen to £5,915,000 and in the following year to £8,563,000; in 1995 and 1996 many of these loans were made interest-free. Yet in 1984 the Conservative government refused trade unions the power to raise loans for political purposes on the ground that there was “no justification for loans for political funds whose only purpose would be to enable the unions to maintain their party political expenditure at levels above those for which their members have made provision” (*H L Debs*, 25 June, col 762 (Earl of Gowrie)).

5. The Labour Party invites the Committee on Standards in Public Life to consider:

- the extent to which funds are held by intermediaries for the purpose of benefiting the Conservative Party at least in part, who funds these accounts, and how much they hold
- the extent to which companies donate to these funds, in the knowledge that the money is then passed on to the Conservative Party, without disclosing the donation to shareholders
- the nature of loans which have been made to the Conservative Party since 1979: by whom were they made, on what terms, and when were they repaid
- the circumstances in which loans are repaid and in which they are converted to donations (one such conversion, worth £1 million is recorded in the latest set of accounts).

6. The Labour Party also invites the committee to investigate whether the Conservative Party held or holds overseas bank accounts (as alleged in *The Independent*, 18 June 1993), and why a British political party would wish to hold money in this way.

## Foreign donations

1. That the Conservative Party has in the past relied on foreign donations to help fund its campaigns is an established fact, confirmed by John Major while still Prime Minister at press conference at Conservative Central Office on 7 January 1997. Mr Major excused this funding by stating it accounted for only a small proportion of the Tories’ money. Now we know the scale of the Conservative Party’s financial resources at that time it is clear even a small proportion could account for a large amount of money. Indeed a report in the *Melbourne Age* (1 November 1996) quotes a “well-placed source” saying the Australian Liberals’ Treasurer Ron Walker has assisted the Tories in raising “quite a few millions” in that country.

2. Because the Conservative Party refuses to publish adequate accounts, it is impossible to be clear to what extent the party really has relied on foreign donations. Nevertheless, allegations have been made persistently about large scale foreign funding of the party. Indeed it has been suggested by Martin Linton MP that the Conservatives were receiving as much as a fifth of their funding from overseas. There are a number of well documented foreign donations. These include:

- |   |            |
|---|------------|
| ● Sir Y K Pao (Hong Kong)                     | £1,000,000 |
| ● John Latsis (Greece – shipping millionaire) | £1,500,000 |
| ● C K Ma (Hong Kong)                          | £1,000,000 |

(*Daily Mirror*, 4 March 1997 and *Daily Telegraph*, 20 January 1998)

These of course are merely the tip of a very large iceberg, with substantial other donations or other forms of financial support in recent years being reported from Hong Kong, Macao, the United States, and Australia.

3. Other monies have been received from UK residents who subsequently fled from British justice: Asil Nadir who is said to have "used secret offshore accounts to present the [Conservatives] with £365,000 he allegedly stole from Polly Peck" (*Daily Mail*, 21 January 1998). Mr Nadir is now exiled in Northern Cyprus with which there is no extradition treaty.

4. Also of interest are the reported 50 branches (in 18 countries) of Conservatives Abroad (CCO, *Norman Fowler press release*, 137/93). Branches identified by the Labour Party include Malaga, Benidorm, Costa Blanca, Marbella, Brussels, Algarve, Monte Carlo, Nice, Texas, Las Vegas, Australia, Hungary, Switzerland, South Africa, and Israel. It is not known whether money was contributed to the party in this way, nor is it clear who might have contributed to the funds. Is it the case that Conservatives Abroad is open only to people who are registered electors in the UK? Or is it the case that the organisation is open to anyone and/or that contributions are received from people who are neither British citizens nor eligible to vote in British elections?

5. The Labour Party has recently obtained information on a related organisation – the British Conservative Association in France (BCAF) – which clearly shows that membership is open to French nationals (*Letter to BCAF members*, 21 December 1997). The BCAF has been praised by CCO in the past for its financial support of marginal constituencies (CCO, *Conservative Conference Guide*, 1997).

6. The Labour Party considers the present position where the public is kept in the dark about political donations from foreign sources unacceptable. The Labour Party invites the committee to request that the Conservatives:

- disclose the total amount of foreign donations received since 1979
- reveal the identity of the donor and the amount contributed.

We accept that some of these donations may have been given in return for undertakings of confidentiality. But the Labour Party believes that the public interest in revealing the true scale of foreign money in the British political process is sufficiently compelling to justify these undertakings being overridden.

### Equity and fairness in political funding

1. The Conservative Party has, throughout this century, been much better financed than its opponents. As might be expected by a party which has raised so much more money than any other, so it has been able to outspend the others annually as well as during general election campaigns. The Conservatives have been the highest spenders in every election this century, and on some occasions have spent more than all other national parties combined – this appears to be the case in the 12 months preceding 1 May 1997, if not necessarily during the seven weeks of the campaign itself. In some campaigns they have also been heavily supported by the national campaigns conducted by organisations promoting Conservative causes, the most notable being the campaign conducted in 1959 by the iron and steel industry, which alone spent more than the political parties. Again this phenomenon was visible in the 1997 general election when an organisation called 'Businessmen for a Booming Britain' bought newspaper space in support of the Tories.

2. In the 1997 general election it is thought that the Conservatives spent £28 million between April 1996 and May 1997 in contrast to the £26.8 million spent by the Labour Party between January 1996 and May 1997, apparently making it one of the most closely contested in financial terms this century. But despite the apparent equity in funding there remain several important caveats. Labour used £2 million of its general election funding to equip a new campaign headquarters in Westminster as the party's south London head office was not suitable for use in a media-intensive election. Furthermore, the Conservatives appear to have faced an additional £2 million of staffing costs in the year before the election, but have not included that cost under the general election heading. A significant proportion of Labour's spending was on staffing costs. The 1997 election was also one of the most expensive in real terms since 1945, and although the 1997 general election reveals the Labour Party can now begin to compete with the Conservatives on something approaching equal terms, the latter nevertheless continue to enjoy a financial advantage which bears no relationship either to membership or popular support for the party.

4. The Labour Party accepts that political parties and others must have a proper and fair opportunity to communicate with the electorate at an election. But we are also strongly of the view that elections should be won or lost on the basis of the content rather than the volume of the message being projected by the parties. There is a need to address the electoral 'arms race' in which the political parties are now engaged, to remove the pressure to raise vast sums of money to compete with the Conservatives on a level playing field. The fundraising problems which the Conservatives have experienced since 1992 and before provides clear evidence of the dangers to which the democratic process can be exposed by a legal regime that actively encourages the political parties to seek a competitive financial advantage.

5. We believe that any changes will also improve the quality of political debate: with spending limits set only by the availability of cash, the tendency will always be to pump money into the most negative of attacks on the political programme of the opposition. Some regulation, while preserving the essential liberty of the parties to decide their own message, will at least compel an assessment of the essential issues on which the campaign is being contested.

# THE CONSERVATIVE PARTY'S EVIDENCE TO THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

27th February 1998

## 1. Introduction

The Conservative Party welcomes the Committee on Standards in Public Life's investigation into the funding of political parties. This evidence, which sets out the Party's views on the matters raised in the Committee's 'Issues and Questions' document, is offered to the Committee as a constructive contribution to an important debate. The health of our nation's democracy depends upon the success of political parties in attracting broadly based financial support and in ensuring that the public has confidence in the way that parties raise funds.

The Party's evidence to the Committee sets out clearly how we have raised money in the past and how we expect to fund our activities in the future. We hope that the Committee will undertake a thorough review of the way that parties are funded, including all benefits in kind and help from third party organisations. The Committee's enquiry provides an opportunity to examine these issues in a calm and rational manner and to put behind us the political 'slanging matches' of the past. The Conservative Party will co-operate fully with the Committee and offer any assistance which it may require in its important task.

## 2. Financial Information

The Conservative Party has provided the Committee with detailed financial information including a breakdown of the Party's total income since 1992 (up to and including the period of the last General Election). We have also made available copies of the Party's published audited accounts for the same period.

Our published accounts refer only to income received by the Party's central organisation and to expenditure by the central organisation and Area offices. Constituency Associations are independent and raise their own funds. We estimate that in a non-election year total constituency income is around £18 million per annum. This money is raised through the efforts of hundreds of thousands of Conservative supporters: an army of volunteers, raising money to fight constituency campaigns and maintain a Party organisation on the ground.

As the information we have provided to the Committee demonstrates, in recent years the Conservative Party centrally has become more reliant upon larger donations from individuals. We reject any suggestion that such donations are wrong or have bought influence. In a free society it is right that all individuals, including the wealthy, should be free to donate to causes in which they believe.

The Conservative Party recognises the need to broaden the base of its financial support. We have unveiled proposals for a radical restructuring of the Party's organisation which include the introduction of a national membership list and a minimum membership fee. We believe that national membership is an essential step to broadening both our political and financial base.

## 3. Donations to political parties

Political parties are voluntary organisations. No-one is forced to join a Party, but hundreds of thousands of individuals choose to do so for many different reasons and contribute in many different ways. Some pay a small annual subscription, others contribute their time, energy and thought, while others donate larger sums of money. In this way, political parties differ little from charities or other voluntary organisations – individuals give what they can or what they wish to contribute to a cause in which they believe. In the past, all major parties accepted donations on the basis that it was a matter for donors themselves to decide whether or not they wished their support for a party to become public knowledge.

Donating money to a political party should not be a matter of embarrassment, let alone shame. Contributing to the funds of parties adds to the strength of our democracy. We are opposed to measures which create undue obstacles to the giving of donations, but we recognise that in recent years public concern about the identity of donors to the major political parties has been heightened. That is why the Conservative Party adopted the code of practice recommended by the House of Commons Home Affairs Select Committee in 1994. We have made it clear to donors that any donation to the Conservative Party could not buy influence or honours; that illegally obtained money would not be acceptable, and if discovered to be so obtained would be returned; anonymous donations would be refused and that donations from foreign governments and rulers would not be accepted. The Conservative Party offers its donors no special say in policy making, no privileged votes in its leadership elections and no place in the governing bodies of the Party.

We recognise that the code of practice has not fully allayed public concern and so, in one of his first speeches as Party Leader, the Rt Hon William Hague MP announced that in future the Party would publish the names of all the Party's



major donors. We have announced that, with effect from 24th July 1997, we will publish with our annual accounts the names of all those who have given more than £5,000 in any one financial year.

### *Corporate Donations*

Political donations by companies and trade unions are governed by legislation. Under the Companies Act 1985, there is no obligation upon either political parties or charities to publish the names of corporate donors but the legislation requires the disclosure of donations by the companies themselves. We believe that it is right that shareholders should have the opportunity to question directors about any decision to donate money to political parties but we reject the argument that company donations should be treated in the same way as those of trade unions.

Companies are not the same as trade unions and so the relationship between shareholder and the Board is not analogous to that between a trade union and a union member. Furthermore, the scale of the relationship between the trade unions and the Labour Party is entirely different to that between business and political parties. Many people who wish to join a union have a choice of one, or at most two, from which to choose and most large unions are affiliated to the Labour Party. On the other hand, there are a very large number of quoted companies, only a few of which give money to political parties and investors are free to choose whether or not to invest in any company which donates to a political party. We believe that imposing upon business a requirement to seek the specific approval of shareholders or enabling individual shareholders to 'contract out' would be an unjustified and disproportionate burden.

### *Trade Union Funding*

The question of trade union funding of parties is not a matter of direct concern to the Conservative Party. We recognise the historic ties that bind the trade union movement with the Labour Party. The trade unions receive 50% of the votes at Labour's Party conference, 33% of the votes in the election of the Party's Leader and Deputy Leader and 40% of seats on the Party's National Executive Committee. In return, the unions donated more than 45% of the Party's central income recorded in the Party's accounts for the year ending 31st December 1996.

In reality, the trade unions contribute substantially more to the Party's finances than is suggested in the Party's accounts. Donations in kind – in terms of staff, equipment, advertising and campaigning – are worth millions of pounds a year to the Labour Party. According to our estimates, in the six months up to 1st May 1997, the trade unions spent £7.3 million campaigning for Labour yet none of this needs to be declared in Labour's accounts. In 1996, trade unions affiliated to Labour spent over £14 million on political activities – £7.7 million was given directly to Labour but more than £6 million was spent by the unions themselves.

The Trade Union Liaison Committee twinned each of Labour's 90 key seats (which needed a swing of 6% or less to Labour at the May 1997 General Election) with a trade union. Full-time union co-ordinators were moved into each of the 90 seats<sup>1</sup>. Many unions took out advertisements or engaged in direct mail campaigns to support Labour Party policies or to encourage their members to support Labour Party candidates. It has been reported that in the run-up to the General Election UNISON spent over £1 million on press advertising.<sup>2</sup>

Trade unions are also reported to have made substantial donations to the blind trusts that supported senior members of the Party's frontbench team in opposition (including the then Leader of the Opposition).

The unions also made significant contributions to the election expenses of Labour MPs. Members of Parliament are required to register the source of any donation from a single organisation that exceeds 25% of their total election expenses. According to the Register of Members' Interests (as at 31st October 1997) 34 Labour MPs received such assistance at the last election. However, this does not tell the whole story. According to a survey of election expenses, at least 13 Labour MPs received a number of contributions from trade unions which, in total, made up over 25% of the Member's election expenses but which, since they were not from one union, did not have to be declared.

The Conservative Party does not believe that it is illegitimate for the trade union movement to provide support for political parties. We do, however, argue that the true picture of trade union support for the Labour Party in recent years has been deliberately hidden from public view in order to give the misleading impression that Labour's financial ties to the unions have been fundamentally weakened. In fact, the tie is still extremely strong and this puts union donations in a position for which there is no parallel in company donations. The unions remain the dominant source of the Labour Party's income.

### *Foreign Donations*

Foreign donations to political parties, and in particular to the Conservative Party, have been a source of controversy. Although, we have no reason to believe that any money received by the Party in the past should not have been accepted, Mr Hague has made it clear that in the future we will not accept foreign donations. No such donations have been offered or received since the General Election. We have put guidelines in place which the Party's Treasurers are

<sup>1</sup> *Sunday Times*, 20 October 1997

<sup>2</sup> See David Butler and Dennis Kavanagh, *The British General Election of 1997*, p242

following, but we have not published a definition of ‘foreign’ and await the Committee’s view. The definition we are currently using is similar to that used by the Labour Party.

There are serious problems in seeking to define a ‘foreign’ donation. We would not support a blanket ban on all donations from overseas since this would outlaw donations and membership subscriptions from people who live abroad but whom Parliament has specifically enfranchised. The 1985 and 1989 Representation of the People Acts, which first introduced and then extended the overseas franchise, went through Parliament with broad all party support. The Conservative Party has organised those overseas British citizens who support the Party broadly along the same lines as a UK Constituency Association. They have been encouraged to become members of Conservatives Abroad and to register as overseas electors in the last Constituency in which they lived in the UK. We believe that to give people the right to vote but prohibit their right to offer financial support would be unacceptable.

We see some merit in the suggestion that the parties should adopt a ‘can’t vote, can’t give’ rule and would welcome the Committee’s view about its practicality. In a strict sense, such a rule could allow any European Union citizen who is resident in the UK to donate since they are able to vote in local and European elections. It is hard to argue that they have no stake in Britain’s democratic process. But, similarly, it could be argued that a foreign owned business which has invested heavily in this country has a stake in ensuring that the policies which are benefiting the company (and therefore keeping British workers in jobs) should be continued and so should be able to donate money to a British political party. In particular, well established UK subsidiaries of large foreign companies – regardless of whether they are incorporated inside or outside the European Union – which employ many thousands of workers have a very substantial stake in the continuing success of the UK’s economy.

Although the Conservative Party has decided not to accept foreign donations, we hope that the Committee will give serious consideration to the difficulties of both definition and principle which arise.

## 4. Openness

### *Disclosure*

The Conservative Party is committed to publishing, together with our annual accounts, the name of each donor giving in excess of £5,000 in any one financial year.

We believe that tighter rules on disclosure will both discourage giving to the parties and encourage the pursuit of ways to avoid the rules. Although some loopholes will be easy to anticipate, others will be more difficult to counter. For example, supporters of a particular Party might establish an organisation to conduct opinion polling financed solely by individual donations. Since the organisation would be independent of the Party, disclosure rules would not apply but it would be free to give all the polling information to the Party.

Other ways around disclosure could include:

- the making of payments disguised as trading items – eg adverts placed in party publications or the receipt of research papers but paid for at inflated rates;
- donations to ‘independent’ political institutes controlled by the parties (in Germany there is no requirement, for example, to disclose donations to the political foundations (*stiftungen*));
- donations to ‘blind trusts’ to support the work of individual politicians;
- provision of facilities or payments in kind – eg the use of computers, mobile phones, union officials, office space etc;
- the spreading of donations across family members or companies controlled by an individual;
- donations to Constituency Associations or other local bodies connected with national parties.

The Prime Minister has argued that any legislative changes to the way that parties are funded would have to be backed up by ‘measures to counteract loopholes and avoidance’.<sup>3</sup> We agree with him but we doubt that defining all the loopholes will be easy; nor will enforcement of the rules be straightforward. We favour a system which is open and clear but which does not make giving to parties overly complex or bureaucratic.

Although the Conservative Party is committed to disclosure, there is a case to be made against it and we hope that the Committee will give serious consideration to some of the drawbacks, in particular when considering calls for full disclosure of the names of donors and the amounts they give.

We believe that there is a perfectly honourable case to be made for anonymity. Many people choose to give money to charities anonymously, for the simple and honest reason that they do not wish to draw attention to their generosity. The Conservative Party has, in the past, been left legacies on the strict condition of anonymity – no-one could accuse

<sup>3</sup> ‘My plans to clean up party politics’, *The Times*, 17 November 1997.



the donor in such cases of giving money for any purpose other than to support a cause in which they believed. We believe that men and women of modest nature should not be forced to flaunt their wealth, although we accept that for large donations this may be counterbalanced by public concern about impropriety.

Disclosure can actually provoke suspicions about the reasons why companies or individuals give money to political parties rather than help alleviate them. *The Sunday Times* on 16th November 1997 reported:

*'The Labour Party received donations of several million pounds from business tycoons, some linked to companies that stood to make huge profits from ministerial approval of controversial planning decisions. Lord Sainsbury, Chairman of the supermarket chain...is said by Labour sources to have contributed £1 million. His company has been given government approval to build a huge and controversial out-of-town supermarket...'*

The paper made it clear that 'there is no suggestion of impropriety'.

The Prime Minister has recognised this and has rejected the suggestion that the Labour Party should 'unilaterally' name all donors and the amounts they give on the grounds that it would be unfair for 'Labour donors alone' to be 'subject to the kind of grotesque misrepresentation that David Sainsbury...and others have suffered in recent days'<sup>4</sup>. It could be said that the logic of this argument is that disclosure will open up all donors to such misrepresentation. The truth is nearly all companies, large or small, are today affected, in greater or lesser degree, by decisions taken by the Government.

There is also some evidence that disclosure can lead to discrimination. For example, some companies have in the past been reluctant to give money to the Conservative Party for fear of discrimination by Labour controlled local authorities.

### *Blind Trusts*

We believe that there is an argument in favour of a form of blind trust that should be examined by the Committee. We do not put it forward as a fully worked up proposal but offer it as a suggestion for the Committee's consideration.

The disadvantage of disclosure is that wealthy individuals may be put off from giving to political parties for fear of the suspicion that they are seeking to buy influence. There is, therefore, a case for the establishment of an independently administered blind trust – a 'Political Donations Institute'. Donations through the 'PDI' would ensure that parties did not know who funded them and so the allegation of influence would be avoided.

There are a number of ways such a body could operate. It could be that parties would only be able to receive donations above a certain figure through the Institute. Alternatively, all anonymous donations would be routed through the PDI – which would be responsible for ensuring that the money was legitimate and not 'laundered'. Parties would be able to receive other donations but these would have to be fully declared.

We put this idea forward as a constructive suggestion in the hope that it will help to stimulate debate.

Some people have suggested that there is a need for a body that can provide advice to the parties about whether certain donations may lead to conflicts of interest. It has been suggested, for example, that an independent Office of Government Ethics might be established to provide such guidance for ministers and the political parties. We do not propose this, but if the Committee considers there is merit in the suggested Political Donations Institute such a role might be carried out by the Institute.

## 5. State Funding of Political Parties

### *'Short' Money*

The Conservative Party is not opposed to all forms of state support for political parties. The case for providing financial assistance to support the Parliamentary activities of Members of Parliament and of the opposition parties is widely accepted. We agree with the then Shadow Leader of the House of Commons, Peter Shore (now Lord Shore of Stepney and a member of this Committee) who in 1985 argued:

*'The need for the Leader of the Opposition to have an office and a staff, the need for the parliamentary party collectively to have a small staff to service its meetings and its various committees and the need for shadow Ministers to have some assistance in their continued scrutiny of ministerial measures – these needs are not, I think, seriously challenged'.<sup>5</sup>*

<sup>4</sup> 'My plans to clean up party politics', *The Times*, 17 November 1997.

<sup>5</sup> *Hansard* col 1099, 23 January 1985.

As Government becomes more complex, the need for opposition parties to have adequate funds in order to be able to hold the Government properly to account in Parliament becomes ever greater. As well as having exclusive access to the Civil Service, in recent years there has been an increase in the number of political advisers appointed to help Ministers. The current Government has appointed 60 Special Advisers (50% more than were employed by the last Conservative Government). This has had the effect of titling the balance of advantage still further in favour of the Government and against the opposition parties.

As well as there being a good case for an increase in the resources that are made available to the opposition parties, we believe that there could be an argument in favour of a limited number of civil servants being seconded to help the major opposition parties develop policy. We would be very interested to hear the Committee's view.

However, we believe that there is a difference in principle between providing assistance to opposition parties to help them with their Parliamentary duties and providing taxpayer support for the day-to-day campaigning activities of political parties.

#### *Taxpayer support for party political campaigning*

The Conservative Party's position on the general state funding of political parties was set out in our evidence to the Houghton Committee on Financial Aid to Political Parties in 1975 and to the Home Affairs Select Committee in 1993.

In the Party's memorandum to the Select Committee we stated:

*The Conservative Party is opposed to the direct funding of political parties. State funding would either unduly favour established parties or encourage the formation and growth of extremist parties. It would require state regulation of the organisation and management of political parties, and it would undermine the voluntary activity of political parties:*

This remains the Party's position. We do not believe that a convincing case has been made for taxpayers' money to be directed towards the campaigning activities of political parties. We agree with the view expressed by four members of the Houghton Committee in their minority report: 'the injection of large sums of state money into our essentially voluntary system of party politics is so grave a departure from historical practice as to represent, in itself, a threat to that system.'<sup>6</sup>

In a country where voting is not compulsory, it is hard to justify compulsory taxpayer funding for political parties. State funding would reduce the dependence of the parties upon their own activists for fund-raising and would increase the distance between parties and the electorate.

Forcing taxpayers to contribute to the costs of Party political activities of which they do not approve would be a very significant step. It could only be justified if it were believed that it would otherwise be impossible for political parties to operate effectively. We do not believe that this is currently the case and nor do we believe that the public would be prepared to support such expenditure. We believe that public opinion is more likely to favour Thomas Jefferson's view that 'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical' than to support those who argue for state funding for the campaigning of political parties.

We support the voluntary nature of our political system and will oppose any proposals which, in our view, would cause it to be undermined. Rather than call for state funding we would welcome the Committee's views about how more individuals could be encouraged to donate. We note that in some countries individuals are offered tax relief for political donations, elsewhere tax credits or matching grants are provided. We believe that the Committee should give serious consideration to the practicalities of these approaches in the context of the United Kingdom's voluntary system.

The tax status of political parties has not been set down clearly in legislation and there are a number of areas where political parties, which are voluntary and non-profit making bodies, are liable to tax. The Conservative Party would welcome a review of the tax status of political parties with a view to ensuring clarity and consistency of treatment.

## 6. Referendum campaigns

The present Government has introduced legislation for three referendums in less than a year in office. Two referendums have already been held and at least two more have been promised. If, as seems likely, the United Kingdom faces a period of regular referendums, new rules to govern their conduct will be required. Although, the conduct of such campaigns may be outside the remit of the Committee, the funding of referendum campaigns would appear to be a legitimate area for the Committee to examine.

<sup>6</sup> Report of the Committee on Financial Aid to Political Parties, 1976 [the Houghton Committee], p76.

The Conservative Party's position is clear. If referendums are to be fairly conducted both sides of the argument should be heard. Since many referendum campaigns will be fought along non-Party lines, we believe that the pattern established by the Referendum Act 1975, which saw the payment of equal grants of public money to 'umbrella' campaigning organisations, should be repeated. The same rules which govern the conduct of Ministers and Civil Servants during General Election campaigns should apply during referendum campaigns.

### 7. Expenditure

The Conservative Party nationally spent £28.3 million in the 13 months prior to the General Election in 1997. About half of this total was spent on advertising. It is an oddity of our system, albeit a welcome one, that paid-for political advertising on television and radio is banned. We do not, therefore, seek to make the case for lifting the restriction, although we will be interested to hear the arguments. We would not support the extension of the restriction on television and radio advertising to other media (for example, newspapers, magazines or billboards).

The amounts spent by the major parties at recent elections have led to calls for the introduction of expenditure limits. The Conservative Party does not reject such arguments out of hand but we are cautious about whether limits could be introduced without threatening free speech. We suspect that in practice a natural cap will be set at future elections, as parties find it more difficult to raise very large sums of money.

There are both arguments of practicality and principle against election campaign expenditure caps. Defining what should and should not be included as election expenditure will prove a very complex task and will depend upon how the period of the campaign is defined. Without fixed term Parliaments it will be difficult for legislation to define the period that the expenditure cap should apply. Would expenditure limits only apply to the official campaign or to the immediate run-up? How would expenditure be scrutinised? Would there be a distinction allowed between routine spending and campaign expenditure? Or would every penny spent by the parties during a campaign be capped?

There are also considerable difficulties in defining national campaigning. At the last General Election, the Conservative Party refrained from conducting a direct-mail campaign on the basis of legal advice which suggested that the cost of the exercise might have to be included in the election expenses of the candidates in the seats where the mailing took place. The Labour Party clearly received different legal advice since it did conduct a similar direct-mail campaign. The Committee's view on the definition of local and national campaigning would be very welcome to the Conservative Party.

The arguments of principle are, in our view, more difficult to overcome. The limitation by the state of the amount that a party or an individual can spend during an election is a cap on free speech; a barrier to entry to those with alternative viewpoints or who challenge the status quo. There may be occasions, for example, when the major political parties and much of the press are united in their support for a particular cause. If groups of individuals who disagree with the cause were stopped from spending as much money as they could raise to promote their alternative viewpoint, their free speech would have been restricted. The recent decision of the European Court of Human Rights would seem to support the case of those who argue that such restrictions would be unlawful.

An expenditure cap, like disclosure, would also be open to abuse. If political parties have to limit their spending they may seek to persuade other groups to spend on their behalf. For example, groups of businessmen or trade unions may fund billboard or newspaper advertising, opinion polling, research etc.

In order to prevent 'third parties' helping political parties alleviating the effect of expenditure caps upon the parties, some countries have legislated to limit the amounts that individuals or companies can spend during campaigns. The American journalist, David Frum has written about the effect such a law has had in Canada:

*'In the summer of 1996, the government of British Columbia called an election. It argued it deserved to be returned to office because it had balanced the province's budget without harsh cuts in social services. Mr Nixon, a civic minded accountant, believed that the government was fudging its figures. He dug into his own pocket and paid \$6,300 Canadian for a series of small newspaper and local radio ads denouncing the province's budget as a sham. [After the election] it turned out that Mr Nixon had been right: The province was running a big deficit, and the government had been manipulating the numbers to get itself re-elected. Unfortunately being right has not done him any good. The chief electoral officer of the province has hit him with a \$13,000 fine – without trial – for violating the campaign-finance law by speaking up'.<sup>7</sup>*

As Dr Michael Pinto-Duschinsky argued in his evidence to the Home Affairs Select Committee: if 'it is attempted to control all possible channels of political money, it will be necessary to impose such an extensive apparatus of regulation that basic freedoms are likely to be compromised'.<sup>8</sup>

<sup>7</sup> *Weekly Standard*, 17 November 1997.

<sup>8</sup> Report of the Home Affairs Select Committee on the Funding of Political Parties, Vol II, p17.

## 8. Conclusion

The Conservative Party welcomes this opportunity to give evidence to the Committee on Standards in Public Life. The Committee has a very difficult task. Party funding is a very complex issue, changes in one area will have effects elsewhere. We are sure that the Committee will give serious thought to the issues which will be raised. It is vitally important for the health of our nation's democracy that any reforms are thought through and discussed in great detail. We will pay close attention to the arguments that are presented and reserve our right to re-act to arguments as they are made. We look forward to the Committee's report. We will consider its conclusions and will scrutinise any proposals for legislation with great care.

## LIBERAL DEMOCRAT SUBMISSION

24 February 1998

### *Donations to Political Parties*

#### Introduction

The Liberal Democrats welcome the review of the funding of political parties by the Committee on Standards in Public Life.

We believe that the introduction of restrictions on donations as well as mandatory transparency is necessary to restore the public's confidence in the political process. However, the costs of campaigning, in particular the scale of advertising, have increased enormously over the last twenty years. As a result it will no longer be realistic to expect all major parties to compete effectively if they are dependent entirely upon their own resources and some restrictions must be placed on election spending.

In submitting our specific answers to the questions posed to us by the Committee we would emphasise our belief that the issues of restrictions on donations, transparency, state funding and limits on expenditure cannot each be looked at in isolation but only as an integrated whole.

In summary we favour:

1. limits on national expenditure in general elections
2. limited state funding of political parties
3. an annual restriction of £50,000 on the size of any donation by an individual or organisation
4. in the case of organisations specific consent being required from the members or share holders before donations can be made
5. transparency of all donations over £1,000

#### Response to Specific Questions

**1.** The principles of any democratic political system require political parties organising a choice for voters and the preparation and promotion of these choices obviously require funds.

Some of the necessary funds can be provided by voluntary donations, membership subscriptions and fund-raising organised by the parties in the same way as many charitable or voluntary organisations. It would be unrealistic and an undesirable restriction on individual freedom to prohibit donations to political parties. It would be impossible to prevent members' subscriptions being a disguised form of donation; more significantly the only alternative to parties raising their own funds would be for the state to provide all funding. This would be unlikely to find public support and could hardly be an efficient use of taxpayers' money and would lead to an undesirable erosion of branch and constituency activity.

Donations in kind should be treated in the same way as financial donations, if the existing limits on spending are to be extended to national campaigns. At present donations to an individual candidate in the form of paper for printing leaflets must be included in the candidate's election expense returns. The printer may, however, donate his own labour. Similar arrangements should apply to any method of controlling or regulating national party political operations.

**2.** It is clear that individuals or organisations have effectively purchased access to decision-makers as the "cash for questions" affairs in the previous Government showed and was apparent to many in the recent Tobacco sponsorship of Formula One controversy.

Those who give money to political parties should have no more influence over events than those who do not. Whilst donors may seek to influence the policies or organisations of political parties, their influence should not result from their donations.

In practice, the only way of avoiding the apparent or real influence upon parties and decision-makers by large donors is to ban large donations and ensure that records of all but the smallest donations are publicly available.

**3.** The biggest donations to political parties have normally come from organisations, businesses or Trade Unions, who have been able to exercise or appear to exercise influence over public policy as a result of financial contributions in cash or in kind to particular parties.

In many cases they are spending money which properly belongs to their shareholders or members and they have not been spending it in accordance with the individual wishes of their shareholders or members or the prime objectives of their organisation.

Accordingly donations from these sources should both be subject to limits and to the specific approval of individual members or shareholders who must be given a free choice as to where any of their money is donated.

**4.** Whilst members of the public and organisations should be able to contribute to political parties as they do to charities or voluntary organisations, there are important reasons why some controls must apply.

Donations in cash or in kind must not be so large that they could be seen to influence public policy, so there should be a maximum donation. Donations below this level but above say £1,000 must also be transparent in order to avoid any suggestion of undue influence.

**5.** It is not practical to expect political parties to have a general obligation to return donations if they subsequently find themselves responsible for decisions affecting the interests of particular donors.

It would be difficult to determine when this rule should be applied and in any event the party could have had the benefit of the donation during crucial election periods.

The only practical way to avoid the appearance of donations buying access or influence is to ban large donations and to introduce proper transparency.

**6.** The possibility of future donations influencing policy can also only be averted if it is known that future large donations will be illegal.

**7.** Answers to previous questions outline the case for limiting donations from individuals or corporations. There is a need for a body to receive, monitor and publish the records of donations to political parties.

Such rules would make it harder for very wealthy individuals or organisations to “buy” in to the political process (e.g. The Referendum Party) and would make it necessary for newer political parties to have more widespread support (such as the SDP found in 1981).

**8.** There would also need to be regulations governing proceeds from fundraising events and supporters clubs to avoid the problems associated with bodies such as the Political Action Committees in the United States.

Contributions to events or to organisations which make donations to political parties or candidates could be limited in the same way as direct donations.

Ultimately, however, it may prove easier to ensure “a level playing field” between the major parties by introducing maximum national expenditure limits and policing the expenditure than by seeking to control every item of income.

**9.** Personal political funds may be even more dangerous to the process of ensuring that individual politicians are not unduly influenced or appear to be influenced than donations to general party funds.

One reason for a low limit for anonymous donations (we suggest £1,000) is that the proposed higher limit of £5,000 is more than half the maximum permitted expenditure in a parliamentary election.

Political donations should be made directly to political parties and not to individuals. So-called “blind trusts” do little to re-assure the public that influence is not being bought. If a politician requires support in the form of research or provision of office expenditure then this should not depend upon the generosity of a few large donors.

**10.** With the growth in cross party co-operation in the European Union, it will be increasingly difficult to define and prevent foreign donations. Non-UK citizens living here may not be able to vote, but are governed by our laws and should be entitled to contribute to the democratic process by giving to the party of their choice. In the same way, UK citizens living abroad may wish to maintain their interests in UK politics.

Most importantly, donations from foreign governments should be illegal. Donations from non-UK citizens should be subject to the same limits as UK citizens and providing that this limit is sufficiently low (say £50,000) and is transparently given, there should not be a problem with undue influence.

If further, controls were needed there could be a maximum limit (say 10%) of all party income to be from non UK sources.

### Openness

**11.** To avoid real or apparent influence arising from donations there must be a maximum level of donation (say £50,000) in a twelve month period.

The minimum level at which a donation must be made public should be £1,000.

Between these levels, there should be bands in which donations should be included of say £10,000.

12. Donors records should be made available to a suitable national public body, must be kept up-to-date by the parties within a three month period and it should be the duty of this body to make the information available on request including electronically.
13. Organisations should be subject to the same rules as individuals concerning limits.
14. Companies, however, should in addition be required to obtain individual consent from shareholders for any contributions to political organisations and a choice of to whom contributions can be made should be offered.
15. Organisations which offer help (in cash or kind) to political parties should be governed by the same rules concerning donations as the parties themselves. Rules should distinguish between organisations giving overt help to or advocating support for a political party and organisations whose purpose is to generate and disseminate ideas.
16. The present arrangements for Trade Union donations involve many members contributing to a party which they do not support. Aside from issues of influencing public policy, this does not suggest informed consent nor is it consistent with general democratic principles.

Donations from Trade Unions should be subject to the same limits as individual donors (and Companies) and in any event a contracting-in system with a choice about which party receives the contributions is essential if the arrangements for making contributions to political parties are to be seen to be fair and democratic.

17. Answers to earlier questions indicate that shareholders and Trade Union members should have equal rights of determining whether and to whom any of their Company or Trade Union funds should be given.

### Party Funding and the Honours System

18. The clear correlation between Companies giving to the Conservative Party and the directors of these Companies receiving honours during the last Conservative Government has brought the honours system into disrepute.

The above suggestions, however, about maximum donations, transparency for all larger donations and reforms to the way in which Companies and Trade Unions are able to contribute to political parties would largely address concerns about this issue.

However the Scrutiny Committee should extend its remit to any honour where the candidate for honour, or a company with which the candidate is connected, has made a political donation.

19. The introduction of the recommended control would make it unnecessary to consider prohibiting donors to political parties from receiving honours.

If comparison of the honours lists with the lists of donors published in future fails to allay fears about the possibility of buying honours, then the system should be looked at again.

### State Funding of Political Parties

20. The proposals contained in answers to the questions above show that notwithstanding the legitimate need for political parties to have funds in order to offer effective democratic choice, there are good reasons for severely limiting the existing sources of income for the major political parties.

It is generally accepted that people wish to have a multi-party system offering them effective choice at elections. Whilst spending on political parties activities may not be high on the list of taxpayers' priorities, the Houghton Commission found that there was acceptance of the principle of public funding for political parties when the idea was fully and properly explained.

It should be a fundamental principle of a democratic society that people should not be able to either effectively buy an election or buy influence from elected politicians. The corollary of the introduction of rules to ensure that this will not happen is that the political parties will be limited in their ability to put their case to the electorates without the provision of funds from the state. The amounts involved would be small compared to other areas of Government spending or almost negligible compared to major areas of expenditure.

Improving the quality of political research and debate may also depend upon maintaining existing restrictions on broadcast advertising, considering restrictions on newspaper and billboard advertising and ensuring "a level playing field" by a combination of a maximum national expense limit and ensuring that each of the main parties have sufficient funds to campaign effectively.

21. State funding for political parties should reflect the common needs and functions of a national political party and the level of support given to a party on the assumption that people would want to see some of the state money for political parties distributed in proportion to the level of support for the parties.



There should, therefore, be a common amount paid to UK parties which achieve a threshold level of support in a General Election (say 5% as the accepted deposit level in a parliamentary election) with a proportionate amount available to parties which achieve this threshold in either Scotland, Wales or Northern Ireland.

The basic amount should reflect the cost of public information provided by the parties including the cost of Party Political Broadcasts (approximately the same number are produced by each party), responding to requests by organisations and individuals seeking information about the parties and their policy proposals (there are many such requests received by all the main parties) and a contribution to the core costs of maintaining the existence of a political party seeking to win a national election.

Public money should not be distributed to political parties unless or until there has been a demonstrable level of support shown for it in a national election. The Green Party would have clearly qualified for state aid if it had repeated its 1989 Euro-election vote in a General Election and the SDP would obviously have qualified after the 1983 General Election.

The provision of public money to parties achieving the 5% threshold in a General Election would not, therefore, prevent new parties offering a choice. It would be unlikely, however, to lead to public funds going to extremist organisations.

The level of funding to the parties should not be so great that it antagonises the public who will be paying for it.

**22.** Public support for political parties should be distributed in the most cost effective way i.e. by block grant to the parties rather than cumbersome systems of tax relief for individual donations. Such relief without other controls could exacerbate the existing problems connected with the financing of parties.

**23.** A suggested “core” contribution might be £2 million pa for each UK party achieving 5% in a General Election (with proportionate amounts for parties contesting elections in Scotland, Wales and Northern Ireland) with a further £10 million distributed each year in proportion to the votes cast at the previous General Election.

Total costs, therefore, would be little more than the proceeds of 1/100th of a penny on income tax. Together with measures restricting the parties other sources of income, this would give the public much greater assurance that neither elections nor politicians could be bought.

**24.** It runs against the spirit of democratic competition to restrict how the parties can spend their money, but the publication of independently audited party accounts should prevent abuse.

**25.** There is an unfair balance in support for existing parliamentary work between the opposition parties. There is little, if any difference, between the parliamentary research requirements of the Official Opposition and the third largest party in the House of Commons. This imbalance should be rectified since the main parties in the House of Commons are all seeking to offer comprehensive research support to their Members (whether through special advisers or “Short” funded positions). We favour, a core element – reflecting the inevitable basic needs of any UK wide Party – with a formula to add funding in line with electoral support at the previous General Election.

Functions currently paid for through “Short” money, however, do not reflect the core activities of political parties preparing for and fighting elections.

The overall issues of fairness and integrity cannot be addressed through the “Short” mechanism alone.

**26.** Far greater support is given to elected representatives in other legislatures in terms of the number of staff whom they can employ. The issue of proper support to Members of Parliament is not, however, directly central to the issues of ensuring a “level playing field” in elections.

### Accountability and Regulation

**27.** The need to avoid either undue influence of politicians or the appearance of such undue influence together with the potential provision of state funding will make a greater degree of regulation of political parties necessary.

The introduction of proportional representation will itself require registration of political parties.

Rules concerning registration should not be restrictive in terms of discouraging smaller political parties but must prevent either “copycat” parties (such as the Liberal Democrats) or attempts to use the electoral process for blatant advertising purposes (the Buy the Daily Sport Party).

**28.** The basic act of registration could probably be handled by such a body as the Data Protection Registrar’s Office. Any activity beyond registration, however, may require a more specialist body – an Election Commission. This could follow in certain respects the activities of the equivalent body in the United States.

The basic principle of any such body must be that it is able to operate without direct interference from the Government of the day.

**29.** The receipt of state funds must require some degree of accountability for the proper use of those funds without seeking to control the way in which political parties seek to campaign. It can also be strongly argued that members who are also contributing to the funds of a party should be able to see how the money which they contributed is spent.

### Expenditure

**30.** The 1883 legislation has been largely successful in preventing the “buying” of a particular seat in Parliament. The absence of any national limits on expenditure by the political parties make a mockery, however, of the principle that it should not be possible to “buy” an election.

There is no doubt that the Conservatives’ strong financial advantage in the 1980s contributed to their electoral success. These statements, however, do not make much sense given the strenuous efforts employed to raise these funds.

Indeed all the parties must believe that the raising and spending of funds is a key determinant of their electoral fortunes – otherwise it would not be such a high priority for the parties.

The limit on national elections should be related to the total amount of state funding provided to the parties. Given the earlier suggestions limiting contributions to the parties, and the earlier proposals for amounts of state spending, it is unlikely that any party could more than match the level of state funding provided.

A limit set at twice the level of state funding for the party receiving the largest amount of state aid would be unlikely to be exceeded.

The limit could be enforced in similar ways to that for constituency totals but given the difficulties of enforcing those limits, it is an essential part of ensuring a “level playing field” that there are also controls on party fundraising.

**31.** It would seem to be fundamentally undemocratic to enforce a lower limit on spending on parties with lower levels of support. Depending upon the limit, however, these parties would have the greatest difficulty in being able to spend up to the limit.

**32.** Experience of unrestricted advertising in other countries suggests that not only does this strongly favour the wealthiest parties but that it lowers considerably the level of debate. The prevalence of “30 second attack” adverts in the States has contributed to declining turnouts.

The provision of airtime on terrestrial channels is an important way in which the parties receive support at present. Consideration should, however, be given to extending them to satellite/cable channels.

Restrictions on excessive use of other methods of advertising would be unnecessary if proper limits are imposed for national elections.

**33.** Current legislation prohibits expenditure advocating support or opposition to particular candidates during an election campaign. This has caused problems in many elections when organisations such as SPUC have issued their own literature effectively advocating how people should vote. Prosecutions have proved very difficult.

Nevertheless, there must be some restriction on incurring expenditure on behalf of a candidate (or that candidate’s opponents) if there are to be any sensible limits to election expenditure. Otherwise, a candidate or party wishing to get round spending limits could relatively easily campaign through “front” organisations. The same principles should apply if there is a national expenditure limit. This should not prohibit an organisation campaigning in support of their objectives but direct support or opposition to a particular party should be restricted.

**34.** Yes.

**35.** Sanctions including fines and imprisonment can apply to agents (or candidates) convicted of offences such as exceeding election expense limits and submitting false election expense returns.

The introduction of a national limit on expenditure would probably require a named individual to have the powers of a national party operation that an election agent has traditionally had within a constituency. This could be done through the same process as the registration of political parties.

There must be a rigorous system of penalties to enforce the limits with powers of investigation resting either with the police as at present or with a specialist organisation operating as part of an Election Commission. In any event the investigating body must be operationally independent of the Government.

Sanctions could include fines, withholding of state funding (if agreed), and imprisonment of offenders but should be regarded as breaches of the law in the same way as breaches of the Companies Act and offenders should be dealt with through the courts.

## European Convention on Human Rights

**36.** Freedom of expression must be upheld in regulations concerning the funding of political parties but constraining expenditure on one side of an argument does not prevent that argument being made – it merely helps to ensure that different arguments can be made with equal force.

## Expenditure on Other Campaigns

**37.** There does not seem to be a great deal of concern at present about local council election spending limits. Common principles could, however, apply to limits for UK wide, Scottish, Welsh, European elections etc based on linking permitted national totals of expenditure to the existing constituency-based limits, i.e. a flat rate amount and a per elector amount. Referendum spending could be limited in the same way.

The introduction of Proportional Representation would be an important part of ensuring a level playing field in the financing of election campaigns in that parties would not gain an advantage in seats won by concentrating their spending in marginal seats.

**38.** The arguments for national expenditure limits would be strengthened if constituencies were abolished because there would then be no constraints on expenditure at all.

**39.** If the argument is accepted to create a level playing field in elections, then the same arguments of democratic principle must apply to referendum campaigns.

## TAX CREDITS FOR DONATIONS TO POLITICAL PARTIES: NOTE BY THE INLAND REVENUE

21 May 1998

### Introduction

1. In the light of their study of the scheme of tax credits for political donations in Canada, the Committee on Standards in Public Life asked for a note on the principle and mechanics of a tax credit scheme for donations to political parties, from a UK perspective. This note responds to that request.

### Background

2. In Canada, taxpayers get a deduction from their income tax bill for contributions to a registered party or officially nominated candidate (as defined in the Canada Elections Act) in a federal election or by-election. The deduction (or tax credit) is 75% of the first \$100, 50% of the next \$450 and 33.3% of the next \$600. The maximum relief is therefore \$500 where \$1150 has been donated. Relief may not be set against another year's tax and the tax credit cannot be given as a refund where there is no liability. No financial benefit may be received in return for the donation. Tax claims must be supported by official receipts and the recipient organisation must maintain appropriate records for audit.

3. Political donations of a similar kind do not currently qualify for income or corporation tax relief in the UK. The payments could not, for example, satisfy the general tests for deductibility of expenses in calculating the income for tax purposes of an individual's employment, or the taxable profits of a business; and although donations to charity can qualify for tax relief against income in a range of circumstances the promotion of political objects or activities is not a charitable purpose, so donors to political parties cannot obtain tax relief by this means.

4. Donations made to political parties in the UK are, however, exempt from inheritance tax. In order to qualify for relief the donation must be to a party which has won at least two seats at the last general election, or secured one seat and at least 150,000 votes for its candidates (section 24 IHTA 1984). A similar relief is also available for capital gains tax where a person transfers a chargeable asset to a political party instead of a cash donation. The parties which qualify are the same as those for the relief from inheritance tax. The evidence we have is that in practice little use is made of these reliefs.

### Income Tax Relief for Donations to Political Parties

5. The question of principle whether to give tax relief against income for donations to political parties in the UK is, of course, a matter for Treasury Ministers and, ultimately, Parliament to consider and determine. In addition to any wider political aspects that Ministers might want to take into account there would be a number of practical and other issues to consider.

#### *Cost*

6. One aspect that would naturally have to be examined in looking at the case for a relief of this kind would be its Exchequer cost. That would depend on various factors, including the number of people who might be expected to claim the relief (The letter from the Chairman of the Committee to the Financial Secretary indicates that the aim of the scheme in Canada is to encourage many more smaller individual donations to parties.) Another factor would be whether, as in Canada, an overall limit was placed on the amounts that could be claimed. The cost of the existing inheritance and capital gains tax reliefs for donations to political parties is negligible.

#### *Qualifying political parties*

7. Another aspect to be considered would be the scope of the relief in terms of the parties which would qualify. That would depend, in part at least, on any broader objectives which the relief was intended to achieve. But a possible starting point might be the test which applies for the existing inheritance tax and capital gains tax reliefs – see paragraph 4 above.

#### *Operational considerations.*

8. A further aspect which would require study would be the operational systems needed to enable taxpayers to claim the benefit of the relief. The tax credit mechanism in Canada for giving income tax relief for political donations in Canada has to be considered in the context of the administration of the Canadian tax system as a whole. Under the Canadian system all taxpayers are required to make a full return of their income each year. They also make a claim for any specific tax reliefs for which they qualify. They then calculate their tax liability and pay any sums outstanding to the tax authorities (or claim a repayment from them). If a person has made a qualifying donation to a political party they will take any tax credits to which they are entitled into account as part of this self assessment process.

9. In the UK, by contrast, only a minority of individual income-taxpayers are required to fill in a tax return (about 8 million or so, less than a third of individual taxpayers). For the majority of taxpayers, liable only at the basic rate of income tax, the system of PAYE tax deductions by employers from employment income, and deduction of tax at source from, for example, interest on bank and building society deposits, aim to ensure that the right tax is paid without the person having to fill in a tax return each year.

#### *Relief by tax credits*

10. These fundamental differences between the way in which the UK and Canadian tax systems operate mean that the Canadian approach to giving relief for expenditure by means of tax credits is not generally mirrored in similar provisions in the UK. As a result of the structure of the UK tax system, reliefs which require people to make claims individually to the Inland Revenue tend to be expensive to operate, unless the person is likely to be completing a tax return for some other reason, for example because they are a higher rate taxpayer. In the UK the practicality of giving tax relief for expenditure by means of a tax credit along the lines of the Canadian system would be likely to depend crucially on the numbers and status of those who would be claiming the relief. If the relief would be claimed by many ordinary taxpayers, a tax credit arrangement would be relatively expensive both for the Inland Revenue to administer and for taxpayers to comply with.

11. The UK tax system does include some measures where, as with the Canadian tax credit, tax relief is given in terms of an amount of tax which is not linked to the marginal rate of the taxpayer. Two examples are the married couple's allowance (MCA), which is restricted to 15 per cent of the value of the allowance for 1998-99 (10 per cent for 1999-2000); and the relief for investment in Venture Capital Trusts (VCTs) which, subject to certain conditions, qualifies for income tax relief at the rate of 20 per cent.

12. The reason for the particular form of these two reliefs is that, in the case of the MCA, the relief is a standard amount. The relief for investment in VCTs has to be claimed specifically by the taxpayer, depending on the amount of the investment. But because of the nature of investment in VCTs those claiming the relief are relatively small in number and most are higher rate taxpayers who are completing a self assessment tax return in any event. So in this case it is relatively efficient for taxpayers to claim relief in this way.

#### *Giving tax relief by deduction at source*

13. In general, however, where there are tax reliefs for expenditure which are likely to be claimed by large numbers of ordinary taxpayers, the UK tax system uses methods other than individually-claimed tax credits for giving the benefit of the relief. An example is the administration of tax relief for interest on a mortgage for the purchase of an individual's own home. Originally this relief was given directly to the taxpayer, through tax assessments or PAYE codes. Since the mid 1980s, however, the relief has been given in most cases through the so-called "MIRAS" (Mortgage Interest Relief at Source) scheme. Under this scheme the individual gets the benefit of tax relief by reducing the amount of interest which he pays to his lender and the lender recovers the amounts so deducted in bulk from the Inland Revenue.

14. Another, similar example, is the tax relief for large outright gifts to charity – Gift Aid – which was introduced in 1990. The way the relief works is that if an individual decides to give say, £1000 to charity all they in practice have to pay to the charity under the scheme is £770. This sum is treated under the scheme as if it were a sum (£1000) from which basic rate tax (£230) had been deducted. For a basic rate taxpayer this effectively gives full relief on the donation of £1000. The charity claims the tax treated as deducted from the payment (£230) back from the Inland Revenue so it receives the £1000 in full. If the taxpayer is liable to income tax at the higher rate he gets further relief of 17 per cent of £1000 in his self assessment so that the net cost to the donor of the donation of £1000 is £600 (£770 less £170), which again amounts to full tax relief.

15. The purpose of "relief at source" schemes of this kind in the UK is that they avoid the need for many ordinary taxpayers to make tax returns to claim their relief; and the Inland Revenue has to deal with perhaps only a few hundred claims from the lenders and charities, instead of having to process possibly millions of claims from individual taxpayers. This reduces administration costs. All higher rate taxpayers are currently required to make self assessment tax returns so the administrative cost of giving the further higher rate tax relief on Gift Aid direct to the individual is marginal.

## Summary and Conclusion

16. The UK tax system gives inheritance and capital gains tax relief for donations to political parties. The reliefs include a definition of the political parties, donations to which qualify for tax relief. There are no reliefs against income for donations to political parties.

17. Because of differences in the administrative structures for income tax between Canada and the UK a tax credit system for giving tax relief for donations to political parties could be expensive to administer, unless the majority of those claiming the relief were already within self assessment.

## Abbreviations used in this Report

AEEU	Amalgamated Engineering and Electrical Union	EPLP	European Parliamentary Labour Party
AFA	Alliance for an Assembly	Esc	Escudos
AGM	Annual General Meeting	ESRC	Economic and Social Research Council
AMS	Additional Member System	EU	European Union
ANC	African National Congress	FDP	Free Democratic Party of Germany
APF	Affiliated Political Fund	FEC	Federal Election Commission (USA)
ARO	Acting Returning Officer	FECA	Federal Election Campaign Act
ASA	Advertising Standards Authority	FFr	French Franc
BBC	British Broadcasting Corporation	FPTP	First Past The Post
BCAF	British Conservative Association in France	FSA	Financial Services Act
BFr	Belgian Franc	GB	Great Britain
BIE	Britain in Europe	GCB	Knight Grand Cross, Order of the Bath
C&AG	Comptroller and Auditor General	GLC	Greater London Council
CAP	Committee on Advertising Practice	GMB	General Municipal Boilermakers
CB	Order of the Bath	GPF	General Political Fund
CBE	Commander (of the Order) of the British Empire	GPMU	Graphical, Paper and Media Union
CCO	Conservative Central Office	HQ	Headquarters
CDU	Christian Democratic Union of Germany	IBA	Independent Broadcasting Authority
CLP	Constituency Labour Party	IFAW	International Federation of Animal Welfare
CNC	Conservative No Campaign	IHTA	Inheritance Tax Act
CNE	National Electoral Committee (Portugal)	ISTC	Institute of Scientific and Technical Communicators
COHSE	Confederation of Health Service Employees	ILP	Independent Labour Party
CPGB	Communist Party of Great Britain	IRA	Irish Republican Army
CSG	Consultative Steering Group	ISBA	Incorporated Society of British Advertisers
CSU	Christian Social Union (Germany)	ITA	Independent Television Association
CWU	Communication Workers Union	ITC	Independent Television Commission
Dfl	Dutch Florin	ITV	Independent Television
DL	Democratic Left; Deputy Lieutenant	KT	Knight, Order of the Thistle
DM	Deutschmark	L	Lira
DPP	Director of Public Prosecutions	LiNI	Labour in Northern Ireland
DUP	Democratic Unionist Party	LMY	Labour Movement Yes
EC	European Commission or European Community	LRD	Labour Research Department
ECHR	European Commission on Human Rights; European Convention on Human Rights; European Court of Human Rights	LVN	Labour Vote No
ECJ	European Community Journal	MBE	Member of the Order of the British Empire
ECU	European Currency Unit	MC	Military Cross
EEC	European Economic Community	MCA	Married Couples Allowance
EMU	Economic and Monetary Union	MEP	Member of the European Parliament
		MIRAS	Mortgage Interest Relief at Source

MORI	Market & Opinion Research International Ltd	SEK	Swedish Krona
MP	Member of Parliament	SF	Sinn Féin
MSF	Manufacturing Science Finance	SLP	Scottish Labour Party
NAAG	National Assembly Advisory Group	SNP	Scottish National Party
NALGO	National and Local Government Officers' Association	SPD	Social Democratic Party of Germany
NAO	National Audit Office	SPUC	Society for the Protection of the Unborn Child
NATO	North Atlantic Treaty Organisation	SSN	Scotland Says No
NEC	National Executive Committee	SSRB	Review Body on Senior Salaries
NHS	National Health Service	STUC	Scottish Trades Union Congress
NI	Northern Ireland	STV	Single Transferable Vote
NIO	Northern Ireland Office	TD	Teachta Dala (Member of the Dáil Éireann)
NPF	National Political Fund	TGWU	Transport and General Workers Union
NRC	National Referendum Campaign	TUC	Trades Union Congress
OBE	Officer of the Order of the British Empire	UK	United Kingdom
OFLOT	Office of the National Lottery	UKUP	United Kingdom Unionist Party
PAC	Public Accounts Committee, Political Action Committee (USA)	UUC	Ulster Unionist Council
PAYE	Pay As You Earn	UUP	Ulster Unionist Party
PDI	Political Donations Institute	US	United States
PEB	Party Election Broadcast	USA	United States of America
PHSC	Political Honours Scrutiny Committee	VCT	Venture Capital Trust
PIRC	Pensions and Investment Research Consultants Ltd	WP	Workers' Party
PLDP	Liberal Democrat Parliamentary Party	YFS	Yes for Scotland
PLP	Parliamentary Labour Party		
POLD	Parliamentary Office of the Liberal Democrats		
POS LD	Parliamentary Office of the Social and Liberal Democrats		
PPB	Party Political Broadcast		
PPC	Prospective Parliamentary Candidate		
PR	Proportional Representation		
QC	Queen's Counsel		
RLS	Regional List System		
RMT	National Union of Rail Maritime and Transport Workers		
RPA	Representation of the People Act		
RSPCA	Royal Society for the Protection of Cruelty to Animals		
RUC	Royal Ulster Constabulary		
SDLP	Social Democratic and Labour Party		
SDP	Social Democrat Party		



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## Chapter 8 – Tax relief

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## Chapter 9 – Financing Political Parties in Parliament

- 9.1 See 1.6 above

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## ABOUT THE COMMITTEE

### Terms of Reference

The then Prime Minister, the Rt Hon John Major MP, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 25 October, 1994 with the following terms of reference:

"To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

"For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of NHS bodies; non-Ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities." (Hansard 25 October 1994, col 758)

The then Prime Minister made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct.

On 12 November 1997 the terms of reference for the present study on the funding of political parties were announced by the Prime Minister as: "*To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements*".

These terms of reference are in addition to the Committee's core terms of reference as stated above. The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for three years. Lord Neill succeeded Lord Nolan as Chairman on 10 November 1997.

Lord Neill of Bladen QC  
*(Chairman)*

Sir Clifford Boulton GCB  
Sir Anthony Cleaver  
Lord Goodhart QC  
Frances Heaton  
Professor Anthony King

The Rt Hon  
John MacGregor OBE MP  
The Rt Hon The Lord Shore of Stepney  
Sir William Utting CB  
Diana Warwick

The Committee is assisted by a small secretariat:

Richard Horsman (*Secretary*), Martin Le Jeune (*Assistant Secretary* until 19 December 1997), Christine Salmon (*Assistant Secretary* from 9 March 1998), Andrew Brewster, Vance Duhaney (until 19 June 1998), Balbir Deol (from 20 July 1998), Nassar Hameed (from 29 June 1998), Juliet Amarquaye, Sue Carr, Julie Botley, Peter Rose (*Press Secretary*).

Advice and assistance to the Committee for this study was also provided by:

Lisa E Klein, Atlantic Fellow in Public Policy (Assistant General Counsel, US Federal Election Commission) (from 6 January to 3 July 1998); Lew Read, Cabinet Office (from 30 March to 5 June 1998); Steve Pares, Cabinet Office (from 23 June to 31 July 1998); Neil Wholey, Researcher (from 13 July to 30 September 1998); Radio Technical Services Ltd for the provision of sound recording, and Palantype Services Ltd for the provision of transcription services during the public hearings; and Heather Bliss for editing the draft report.

### Expenditure

The estimated gross expenditure of the Committee on this study to the end of September 1998 is £625,520. This includes staff costs; the cost of printing and distributing (in December 1997) 40,000 copies of a paper setting out the key issues and questions which the Committee would address; costs associated with the overseas study tours to Germany, Sweden, Canada, the United States, and the Irish Republic; costs associated with public hearings which were held at Westminster Central Hall, London from 15 April to 14 May, and on 11 June 1998; the Park Hotel, Cardiff on 20 and 21 May 1998; the Hilton National, Edinburgh on 3 and 4 June 1998; and Spires Conference Centre, Belfast on 17 and 18 June 1998; and estimated costs of printing, publishing and distributing this report.