

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

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

142. *Section 72* defines the terms “campaign expenditure”, “election campaign” and “for election purposes” for the purposes of the controls on registered political parties’ election expenditure as provided for in this Part of the Act. *Subsection (2)* defines “campaign expenditure” by reference to the list of qualifying expenses set out in Part I of *Schedule 8*. Any expenditure on a matter set out in this list during the relevant period for an election (as defined in *Schedule 9*) will need to be accounted for as campaign expenditure. Thus, for example, the full production costs of all party political broadcasts screened in the 365 days before a parliamentary general election would count as campaign expenditure. To assist parties with identifying what does or does not constitute campaign expenditure, *paragraph 3* of *Schedule 8* provides for the Electoral Commission to prepare a code of practice giving guidance on such matters. Before a code of practice comes into effect it must be approved by the Secretary of State (in this case, the Home Secretary) and laid before Parliament. Although the code of practice is not made by statutory instrument, an equivalent of the negative resolution procedure applies so that either House of Parliament may resolve not to approve the draft code.
143. *Paragraph 4* of *Schedule 8* empowers the Secretary of State to amend Part I of the *Schedule* by order. An order made under this provision must either give effect to a recommendation of the Commission or be made after consultation with the Commission.
144. The definition of the term “for election purposes” is cast in broad terms so as to capture all expenditure by a party that is incurred in order to promote its electoral success or more generally enhance the standing of the party or any of its candidates. However, excluded from the definition is any expenditure incurred with a view to enhancing the prospects of a particular candidate. Such expenditure is already subject to separate controls under the provisions of enactments relating to elections. The relevant enactments are:
- a) in the case of parliamentary and local government elections (including elections to the Greater London Authority), the Representation of the People Act 1983;
  - b) in the case of Scottish Parliamentary elections, the Scottish Parliament (Elections etc.) Order 1999 (SI 1999/787);
  - c) in the case of elections to the National Assembly for Wales, the National Assembly for Wales (Representation of the People) Order 1999 (SI 1999/450);

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

- d) in the case of elections to the Northern Ireland Assembly, an order made under section 34 of the Northern Ireland Act 1998;
- e) in the case of elections to the European Parliament, the European Parliamentary Regulations 1999 (SI 1999/1214).

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

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

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

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

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

147. In order to ensure proper observance of the limits on campaign expenditure by parties, *sections 75 and 76* require that all such expenditure, and any payment in respect of such expenditure, must be authorised or made by the registered treasurer, a deputy treasurer or a person authorised in writing by either the treasurer or a deputy treasurer. But *section 75(3)* provides that where campaign expenditure is incurred without the necessary authorisation, the expenses shall not count towards the party's expenditure limit and do not have to be included in the party's return under *section 80*. *Section 77* requires that any claim for payment in respect of campaign expenditure must be sent to the treasurer or a deputy treasurer or other authorised person. These provisions (and *section 78*, which provides for disputed claims) are broadly similar to the provisions in Part II of the Representation of the People Act 1983 concerning election expenditure by candidates and their agents.

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

148. *Section 79 and Schedule 9* set out the financial limits on campaign expenditure. The limits apply to the following elections: a parliamentary general election; a European Parliamentary general election; a Scottish Parliamentary general election; an ordinary election to the National Assembly for Wales; and a general election to the Northern Ireland Assembly. No limits are, as such, imposed on campaign expenditure by political parties in connection with local government elections, although any such expenditure

which is incurred during the relevant campaign period for one of the above elections would count towards the expenditure limit for the election in question.

149. The scheme provides for expenditure to be apportioned between England, Scotland, Wales and Northern Ireland. The reason for apportioning campaign expenditure to each part of the United Kingdom is that the campaign periods for parliamentary or European Parliamentary general elections and elections to the devolved legislatures may overlap and, without provisions for apportioning expenditure, an expenditure limit for elections to the devolved legislatures could, in such circumstances, be avoided.
150. *Subsections (4) and (5) of section 79* are intended to avoid parties circumventing the expenditure limits by incurring campaign expenditure in advance of the period during which restrictions apply. Any expenditure on property, services or facilities (for example billboard advertisements) purchased in advance of a relevant period, but for use during that period, will nonetheless count towards the limit on campaign expenditure for that period. If the use made of any property, services or facilities is over a period of time which straddles the start of a relevant period an appropriate proportion of its cost counts as campaign expenditure.

### **Parliamentary general elections**

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

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

152. The minimum expenditure limit is set at 5 per cent of the maximum limit rounded up to the nearest multiple of £30,000 (*paragraph 3(3)*). This minimum expenditure limit is intended to ensure that a party which campaigns primarily in local government elections, but also puts up a handful of candidates in a parliamentary general election, does not inadvertently breach the expenditure limits for that election. For example, a party that spent £200,000 in England campaigning in advance of local elections in May, but subsequently put up only three candidates at a parliamentary general election the following October would, but for the minimum expenditure limit (of £810,000), have committed the offence in *section 79(2)* of incurring campaign expenditure in excess of the limit in *paragraph 3* of Schedule 9.
153. Where a candidate in a constituency stands in the name of more than one registered party, the £30,000 allowance per constituency is divided equally between the parties concerned (*paragraph 3(5) and (6)*).
154. The campaign expenditure limits for parliamentary general elections ordinarily apply to the 'relevant period' of 365 days ending with the date of the election (*paragraph 3(7)(a)*). When one general election follows within a year of another, however, the relevant period for the second of these elections begins the day after the first general election

and ends with the date of the second election. To take the example of 1974, the ‘relevant period’ for the October general election would have been the 224 days from 1 March 1974 (the day after the first general election in that year) to 10 October 1974 (the date of the second election).

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

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

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

156. These limits on campaign expenditure by parties in European Parliamentary elections will replace those contained in regulation 15 of the European Parliamentary Elections Regulations 1999 (SI 1999/1214). The Regulations apply only to the elections in Great Britain; the equivalent regulations for Northern Ireland impose expenditure limits on candidates and not on parties (these limits will be retained).
157. *Paragraph 4(5)* provides that the relevant period during which the campaign expenditure limits will apply is the period of four months ending with the date of the poll. The dates of elections to the European Parliament are by and large fixed. The date is governed by Article 10(2) of the Community Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to the decision of the Council of the European Communities dated 20 September 1976. Under that Article, elections take place every five years in the period corresponding to the first elections to the Parliament in 1979 unless the Council of Ministers acting unanimously

determine otherwise; they have not done so. Article 9 of the Community Act provides that the elections to the European Parliament must for all Member States fall within the same period starting on a Thursday morning and ending on the following Sunday. The precise date of the poll is set by the Secretary of State by order under section 3D of the European Parliamentary Elections Act 1978 (as substituted by section 1 of the European Parliamentary Elections Act 1999). Subject to any determination by the Council of Ministers under Article 10(2), the next European Parliamentary Election will therefore be held within the period Thursday 10 to Sunday 13 June 2004. If, as previously has been the case, the election is held on the Thursday, the relevant period for the election will be four months commencing on 11 February 2004 and ending on 10 June 2004.

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

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

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

162. *Paragraph 6* of Schedule 9 sets out the campaign expenditure limits for ordinary elections to the Welsh Assembly (the Government of Wales Act 1998 makes no provision for extraordinary elections). The expenditure limits are calculated by reference to the number of constituencies and/or regions contested by a party. A party receives an allowance of £10,000 for each constituency contested and of £40,000 for each region contested. Under the provisions of paragraphs 1 and 2 of Schedule 1 to the Government of Wales Act there are 40 Assembly constituencies each returning one AM and five Assembly electoral regions each returning four regional AMs. Accordingly, the

maximum amount of campaign expenditure a party could incur if it stood for election in all constituencies and regions is £600,000.

163. These limits on campaign expenditure by parties in ordinary elections to the Welsh Assembly will replace those contained in Article 47 of the National Assembly for Wales (Representation of the People) Order 1999 (SI 1999/450).
164. *Paragraph 6(3)* provides that the relevant period during which the campaign expenditure limits will normally apply is the four-month period before the date of the poll. Section 3(2) of the Government of Wales Act provides (subject to section 3(3)) that ordinary elections are held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary election was held. Section 3(3) of the 1998 Act makes provision for the date of the poll to be brought forward or moved back by no more than one month. Subject to the exercise of the power in section 3(3), the next ordinary election to the National Assembly will therefore be held on Thursday 1 May 2003 and the relevant period for that election will commence on 2 January 2003.

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

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

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

168. The definition of campaign expenditure in *section 72* is such that campaign expenditure incurred with one particular election in mind cannot be readily delineated from campaign expenditure incurred with a second election in mind. Indeed, an advertisement placed in a newspaper promoting a registered party in general terms may be intended by that party to enhance their electoral prospects at all elections in the coming weeks or months. In recognition of this, Part III of Schedule 9 provides for alternative campaign expenditure limits to apply when the relevant periods for different elections overlap. In most cases, the limits for individual elections are aggregated and applied to a new relevant period which is the aggregate of the relevant periods for the two or more overlapping elections.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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