

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

POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000

EXPLANATORY NOTES

BACKGROUND

13. The Prime Minister announced, on 12 November 1997, extended terms of reference for the Committee on Standards in Public Life, chaired by Lord Neill of Bladen QC (the 'Neill Committee'), to enable the Committee to study the funding of political parties. These additional terms of reference were:

"To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements."
14. In a submission from the Home Office dated 6 March 1998, the Government sought the Neill Committee's advice on the following specific topics:
 - a) 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?
 - b) 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?
 - c) 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 promoting a particular cause during election campaigns.)
 - d) What new rules on limits on election expenditure should be introduced to accommodate the new electoral systems?
 - e) How should the future financial arrangements for the political parties be linked with the Government's proposed legislation on the registration of political parties (which became the Registration of Political Parties Act 1998)?
15. The Neill Committee addressed these points, and others, in their Fifth Report on the Funding of Political Parties in the United Kingdom published in October 1998 (Cm 4057). Altogether the report contained one hundred recommendations dealing with the reporting of donations, the banning of foreign donations, shareholder approval for donations by companies, financing political parties in Parliament, limits on election campaign expenditure, the conduct of referendums, media and advertising, and the Honours system.
16. The Government's response to the Neill Committee's report was set out in a White Paper (Cm 4413) published on 27 July 1999. The White Paper included a draft Political Parties, Elections and Referendums Bill which set out legislative proposals for giving effect to the Neill Committee's recommendations.

Overview of the Neill Committee report and the Government's response

The role of political parties

17. Electoral procedures are described in considerable detail in legislation. The principal legislation is the Representation of the People Act 1983 together with regulations made under that Act. The 1983 Act is a consolidation of legislation dating back to the nineteenth century. Its general thrust, and a good deal of the detail, date from 1883. The legislation contains extensive provisions concerning candidates' election expenses. These provisions limit the maximum levels of expenditure by or on behalf of candidates at parliamentary elections and require detailed returns to be delivered to the returning officer. They also control, very tightly, expenditure by "third parties" (that is, people or organisations other than candidates) who wish to issue material which bears on a particular person's candidature. But there is currently no legislation or other legal requirement relating to the funding of political parties generally. Nor is there any limit on the expenditure which political parties may incur in connection with elections otherwise than on behalf of candidates in constituencies. The 1983 Act simply does not recognise the role of political parties in elections.
18. The situation now is very different from what it was in 1883. The political parties, operating at national level, play a much larger role. It is the national party as well as the local organisation which assumes the responsibility for getting its candidates elected. Above all, spending by or on behalf of candidates now forms only a proportion of what a party spends on contesting an election. Restrictions on candidates' expenses at a constituency level no longer serve as an effective control of what the political parties as a whole spend on fighting elections.
19. The Neill Committee's report addressed this point by recommending limits on what political parties can spend in connection with elections, additional to the amounts spent by or on behalf of candidates themselves. To enforce this control, they proposed a detailed set of requirements, along similar lines to those already in operation at constituency level, on the political parties.

Donations to political parties

20. The Committee's report endorsed and developed the Government's proposals for a ban on foreign donations to political parties and for open declaration of donations at the level of £5,000 or above. The Act follows the Neill Committee report in using the concept of a "permissible donor". The principal target is to require political parties to reject donations which are anonymous or which do not appear to be either from a person registered to vote in the United Kingdom or from a company incorporated in a member state of the European Union and carrying on business in the United Kingdom or from an unincorporated association having its main office and its principal sphere of operation in the United Kingdom.
21. The Neill Committee recommended, in general, against attracting any form of liability to donors or would-be donors themselves, except to the extent that they conspire with recipients to evade the recommended restrictions on receipts. There is, however, one significant exception to this general rule. The Committee recommended that, before a company makes a donation, it should be required to obtain the approval of its shareholders. The Government announced its general acceptance of this recommendation, but sought comment on how it should be implemented, in a separate consultation document published by the Department of Trade and Industry in March 1999 (DTI reference URN 99/757). This matter is now dealt with in Part IX of the Act. One further provision relating to donors is also now to be found in section 68 of the Act. This is to deal with a situation in which a donor makes a large number of donations at a level below that at which the recipient has to record and check them.

Third parties

22. Some organisations which are not political parties in the sense of sponsoring candidates nevertheless incur expenditure directly on advertising etc., in connection with elections. The Neill report made recommendations for regulating the expenditure of such organisations and donations to them on a similar basis as for political parties. Organisations of this kind are referred to in the Neill report and in the Act as “third parties”.

An Electoral Commission

23. To supervise the restrictions on spending by and donations to the political parties (and third parties), the Neill Committee proposed the establishment of an independent Electoral Commission. The provisions of the Act give the Electoral Commission a somewhat broader remit than the one proposed by the Neill Committee, to include a responsibility for promoting participation in the democratic process and to assume, after an interval, the functions of the Parliamentary and Local Government Boundary Commissions. The Electoral Commission is also, as recommended by the Neill Committee, to assume the role of registrar of political parties. It is to have the function of receiving accounts, reports of disclosable donations and returns as to election expenses from political parties (and third parties), and a duty to monitor compliance (but not to mount criminal prosecutions). But it is also to have the wider role of reporting on the conduct of elections and referendums and of advising the Government on any necessary changes to the law. It will take over a number of functions from the Home Office and act as a general reference point for advice for the parties, the broadcasting organisations and others on the conduct of elections and referendums.

Referendums

24. The Neill Committee’s report extended beyond the funding of political parties and spending in election campaign and made a number of recommendations concerning referendums. These recommendations were directed principally at ensuring that the two sides in a referendum campaign each have a fair opportunity to put their views to the public and that referendum campaigns are not skewed by the intervention of the government of the day. Hitherto there have been no standing statutory arrangements for the conduct of referendums.