

# POLITICAL PARTIES AND ELECTIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: the Electoral Commission**

##### ***Section 1: Compliance with controls imposed by the 2000 Act etc***

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

##### ***Section 2: Investigatory powers of the Commission***

11. *Subsection (1)* of this section substitutes a new section 146 of the 2000 Act (investigatory powers of the Commission). This new section gives effect to new Schedule 19B which is inserted into the 2000 Act by *subsection (2)*. Schedule 1 to the Act contains new Schedule 19B. Schedule 19B provides the Commission with powers to enable them to require access to information for certain purposes (including where it is conducting an investigation into a potential criminal offence) and, in relation to limited categories of individual or body and only after obtaining a warrant from a magistrate, to enter premises to inspect and make copies of relevant documents in circumstances where they are not conducting any criminal investigation. *Subsection (3)* makes provision as to the penalties for offences under the new Schedule.

##### ***Section 3: Civil sanctions***

12. **Section 3** gives the Electoral Commission new powers to apply a range of civil sanctions to offences and contraventions under the 2000 Act.
13. *Subsection (1)* substitutes a new section 147 of the 2000 Act (civil sanctions). This new section gives effect to new Schedule 19C, which is inserted into the 2000 Act by *subsection (2)*, and is contained in Schedule 2 to the Act. It sets out the range of new civil penalties available to the Commission, including monetary penalties, discretionary requirements, stop notices and enforcement undertakings. The new Schedule also explains how and when the Commission are able to apply these sanctions, who they apply to and what appeal processes are available to an individual or organisation subject to a sanction. *Subsection (3)* of section 3 inserts a new entry into Schedule 20 to the

2000 Act which sets out the penalty for commission of the offence, set out in new Schedule 19C, of failing to comply with a stop notice.

14. *Subsection (4)* inserts new subsection (4A) into section 156 of the 2000 Act. This specifies that an order made under paragraph 16 of new Schedule 19C is subject to the affirmative resolution procedure if it is of the nature of any of the following orders:
- An order prescribing the offences or restrictions and requirements of the 2000 Act in respect of which the Commission can impose a fixed monetary penalty (see paragraphs 1(1) to (4) of Schedule 19C);
  - An order prescribing the level of a fixed monetary penalty (see paragraph 1(5) of Schedule 19C);
  - An order prescribing the offences or restrictions and requirements in respect of which the Commission can impose a discretionary requirement (see paragraphs 5(1) to (4) of Schedule 19C);
  - An order prescribing the offences or restrictions and requirements the occurrence or likely occurrence of which the Commission must hold a reasonable suspicion about in order to consider imposing a stop notice (see paragraphs 10(2)(b) and (3) (b) of Schedule 19C);
  - An order prescribing the offences or restrictions and requirements the occurrence of which the Commission must hold a reasonable suspicion about in order to consider accepting enforcement undertakings (see paragraphs 15 (1)(a) of Schedule 19C); and
  - Any order amending an Act.

#### ***Section 4: Selection of prospective Electoral Commissioners and Commission chairman***

15. **Section 4** amends section 3 of the 2000 Act, which governs the appointment of Electoral Commissioners and the Commission chairman. *Subsection (2)* of the section inserts a new subsection (2) into section 3, which expands the series of requirements which must be met in relation to the appointment procedures. Her Majesty will continue to appoint Commissioners on presentation of an Address from the House of Commons; but, in addition to the existing requirements set out in current subsection (2) that the Speaker agree to the making of the motion and that the leader of each party which has two or more members in the House of Commons be consulted on the motion, paragraph (c) of the substituted subsection (2) requires that each person proposed for appointment must have been selected in accordance with a procedure put in place and overseen by the Speaker's Committee.
16. *Subsection (3)* inserts a subsection (5A) into section 3 of the 2000 Act, providing that a Commissioner may be re-appointed without undergoing a fresh selection procedure if so recommended by the Speaker's Committee.

#### ***Section 5: Four Electoral Commissioners to be put forward by parties***

17. **Section 5** makes provision facilitating the appointment to the Commission of four Commissioners with recent political experience, and provides for the appointment of Electoral Commissioners put forward by the largest political parties ("nominated Commissioners").
18. *Subsection (1)* inserts new subsection (4A) into section 3 of the 2000 Act which disapplies, for the nominated Commissioner positions, the restrictions which would normally prevent a person who belongs to a political party or has been engaged in recent political activity from being appointed. Subsection (4A) does not alter the prohibition

on appointing a serving officer or employee of a political party or the holder of a relevant elected office.

19. *Subsection (2)* inserts new section 3A into the 2000 Act, which makes provision about the appointment of nominated Commissioners. Subsections (1) and (2) of the new section provide that there shall be four nominated Commissioners, each of whom shall be nominated by the leader of a party with two or more representatives in the House of Commons (“a qualifying party”). Subsections (3) and (4) provide that, of those four Commissioners, three must be selected from the three largest parties (measured according to the criteria set out in subsection (8) of new section 3A) that have nominated three candidates each for consideration for appointment or that have previously nominated individuals, one of whom was appointed and is expected to continue to hold office.
20. Subsection (5) of the new section prevents the appointment of two or more nominated Commissioners from the same political party. The effect of this provision is to ensure that the fourth nominated Commissioner must be nominated by the leader of a party which is not one of the three largest parties. Subsection (7) prevents a nominated Commissioner from being appointed as Chair of the Electoral Commission. Subsection (8) provides that Members of the House of Commons who have not sworn the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation) or who have been disqualified from sitting and voting in the House are not counted for the purposes of the new section.
21. *Subsection (3)* of section 5 amends section 14 of the 2000 Act which sets out the Commission’s boundary functions, to prevent a nominated Commissioner from being appointed to a Boundary Committee.

### ***Section 6: Number of Electoral Commissioners***

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

### ***Section 7: Political restrictions on Electoral Commissioners and staff***

23. **Section 7** relaxes the restrictions that apply to the political activities of Electoral Commissioners (other than nominated Commissioners) and Electoral Commission staff.
24. *Subsection (1)* of section 7 amends section 3 of the 2000 Act so that a person will only be prohibited from appointment as an Electoral Commissioner if they have engaged in certain political activities within the past five years, rather than the past 10 years as is currently the case.
25. *Subsection (2)* inserts a new paragraph 11A in Schedule 1 to the 2000 Act which reduces the restrictions which currently apply to the political activities of Electoral Commission staff, both on appointment and while they hold office. Sub-paragraph (1) of paragraph 11A specifies that staff cannot be appointed to the Electoral Commission if they have been engaged in certain political activities within the “relevant period”. Sub-paragraph (2) defines this period (which was previously the last 10 years for all staff) as the last five years for the post of chief executive of the Commission and the last 12 months for all other members of staff.
26. Sub-paragraph (3) of the new paragraph 11A provides that the chief executive of the Commission cannot be a member of a registered party. Sub-paragraph (4) provides that the appointment of a member of staff shall be terminated if, after appointment, they

*These notes refer to the Political Parties and Elections Act  
2009 (c.12) which received Royal Assent on 21 July 2009*

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

27. Some of the provisions of the new paragraph 11A restate sub-paragraphs (2) and (4) of paragraph 11 of Schedule 1 to the 2000 Act, and these sub-paragraphs are accordingly repealed (in Schedule 7).
28. *Subsection (2)* also inserts a new paragraph 11B in Schedule 1 to the 2000 Act which provides the Chief Executive with the power to designate certain other Commission posts as being subject to a longer restriction period of between two and five years, if he or she reasonably believes that it is necessary to do so in order to maintain public confidence in the effectiveness of the Commission in carrying out their functions. In determining the length of the period to be specified by the designation the Chief Executive is required to take into account the seniority of the post to be designated and the likelihood of the post-holder being required to deal with politically sensitive matters. The Chief Executive is required to consult the Speaker's Committee on the posts that he or she intends to designate. Such a designation would take effect from the day it was received by the Speaker's Committee and expire at the end of three years (unless the Chief Executive gives a cancellation notice in the interim).
29. *Subsection (3)* of section 7 excludes all Commission staff dealing with electoral boundary work from the reduced restrictions (from ten years to one) in section 7 of the Act, as the Government envisages that they will eventually transfer to the independent Local Government Boundary Committee to be established by the Local Democracy, Economic Development and Construction Bill. Under these arrangements staff employed by the new Committee will be subject to a ten year restriction that mirrors that currently in the 2000 Act. This is intended to ensure that the level of political restriction on the appointment of boundary staff remains consistent in the intervening period between the commencement of section 7 and the creation of the new Committee.

***Section 8: Education about systems of Government and EU institutions***

30. **Section 8** amends section 13 of the 2000 Act to remove the obligation imposed on the Electoral Commission to promote awareness of current and pending systems of local and national government and the institutions of the European Union. The removal of that obligation does not prevent the Commission from continuing to provide information about systems of government and EU institutions insofar as it is needed to help promote understanding of electoral systems in the United Kingdom.