RESEARCH PAPER 08/91
16 DECEMBER 2008

Political Parties and Elections Bill: Committee Stage Report

This is a report on the Committee Stage of the *Political Parties and Elections Bill* 2007-08 produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-06). The Bill has been reintroduced as Bill 4 of 2008-09 and is awaiting a date for report stage in the Commons.

Oonagh Gay

Isobel White

PARLIAMENT AND CONSTITUTION CENTRE

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

08/75	Economic Indicators, October 2008	06.10.08
08/76	Social Indicators	08.10.08
08/77	Banking Bill [Bill 147 of 2007-08]	10.10.08
08/78	Unemployment by Constituency, September 2008	15.10.08
08/79	Climate Change Bill [HL]: Committee Stage Report	22.10.08
08/80	Dormant Bank and Building Society Accounts Bill [HL]: Committee Stage Report	24.10.08
08/81	Employment Bill [HL]: Committee Stage Report	31.10.08
08/82	Economic Indicators, November 2008	04.11.08
08/83	Unemployment by Constituency, October 2008	12.11.08
08/84	US Elections 2008	14.11.08
08/85	Banking Bill: Committee Stage Report	25.11.08
08/86	Interlocking crises in the Horn of Africa	24.11.08
08/87	Small Business, Insolvency and Redundancy	25.11.08
08/88	Parliamentary Approval for Deploying the Armed Forces: An Introduction to the Issues	27.11.08
08/89	Economic Indicators, December 2008	04.12.08
08/90	Turkey today	08.12.08

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site,*
  URL: ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet,*
  URL: ***http://hcl1.hclibrary.parliament.uk***

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our papers; these should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

ISSN 1368-8456

Summary

The Public Bill Committee considered the Bill in 11 sessions but did not complete its scrutiny of Clause 10 which was agreed to at the last sitting. Clauses 11, 14 and 15 were not considered by the Committee and were also agreed to. Four Government new clauses were added to the Bill.

The Committee took evidence from the Lord Chancellor, Jack Straw, Ministry of Justice officials, Sir Hayden Phillips, Sir Christopher Kelly, the Electoral Commission, Professor Keith Ewing, Professor Justin Fisher, Dr Michael Pinto-Duschinsky and representatives of the Labour Party, the Conservative Party and the Liberal Democrats.

The Committee was generally in agreement about the provisions in the Bill to allow politically nominated Electoral Commissioners despite opposition to this from Professor Ewing and Professor Fisher in their evidence. The Electoral Commission also expressed concern about the problems that might arise from having Commissioners who had been politically active only recently. The Conservatives and the Liberal Democrats sought, unsuccessfully, to amend the Bill to require the leaders of the three main parties to nominate Commissioners to prevent a situation occurring where one party might fail to make a nomination.

The Committee considered the compliance role of the Commission and there was a close division on an amendment from the Conservatives to require the Commission to publish guidance on compliance with PPERA. The Conservatives, Liberal Democrats and SNP did not accept the Minister's explanation that the amendment would unnecessarily restrict the Commission's flexibility. The amendment was defeated by 8 votes to 9.

There was concern that the new section 146 and schedule 19A to PPERA inserted by the Bill would give the Commission much wider powers to enter premises and to demand documents from individuals. The Minister acknowledged concerns about the powers and indicated that the Electoral Commission was considering its position on powers to enter premises. The Committee considered several amendments to restrict the Commission's discretion to use its new powers. The Minister set out the safeguards against arbitrary action by the Commission and moved an amendment to make clear that if the Commission suspects an offence or contravention has occurred, and it wishes to enter premises, the application for a warrant must be authorised by the Chief Executive or designated member of staff of the Commission.

There were further Government amendments to require the Electoral Commission to publish guidance on the use of their powers under Schedule 1 and to require the Commission to publish reports on the use of its powers in its annual reports. The Minister also confirmed that the Commission will be required to publish guidance on how it will use the civil sanctions before it is given the power to impose them and that this guidance was expected to be issued at the same time as the guidance on investigatory powers in January 2009.

The Committee considered whether the sanctions which would be made available to the Commission would be proportionate. The Minister said that the Government had decided to use the sanctions set out in the *Regulatory Enforcement and Sanctions Act 2008* in

the Bill and indicated that the offences under PPERA which would attract civil sanctions in lieu of criminal prosecutions would be set out in secondary legislation. The Conservatives sought clarification about the use of 'stop notices' and the Minister said that a very high threshold must be overcome before they were used by the Commission.

An amendment to require the Electoral Commission to publish an annual report on the use of its civil sanction powers was debated. Michael Wills said that the Government had been persuaded by the principles behind these amendments but would consult the Electoral Commission before proposing amendments to the Bill.

The Government introduced a series of amendments to Clause 8, (declarations as to source of donations). Michael Wills said that after listening to concerns about the burden placed on parties by Clause 8 the Government had decided to raise the threshold for such declarations to be completed from £200 to £5,000 for donations to central parties and £1,000 for local accounting units. The Bill was amended accordingly.

Clause 10 on triggering was not reached until 3.15pm on the last sitting day of 20 November 2008. Martin Linton (Labour) introduced amendments to establish a system whereby the candidate expenditure limits should apply from a specific point in the parliamentary cycle. Eleanor Laing (Conservative) expressed some sympathy with this amendment, but concentrated on the uncertainty of the triggering provisions prior to PPERA. David Howarth (Liberal Democrat) argued for a permanent local spending limit. However, the amendment was negatived at 4pm when the committee ran out of time for further debate.

The Committee were in agreement about the provisions of Clause 12 for the administration of the electoral register if a general election fell within the annual canvass period. The Minister announced that the provision relating to the administration of the European parliamentary elections would not come into effect until after the elections on 4 June 2009. He also indicated that the Government was exploring whether it was possible for the European elections in Scotland and Wales in 2009 to be run at a local level by local authority returning officers.

Three new clauses introduced by the Government were added to the Bill. New clause 17 makes provision for the responsibility for the storage of Parliamentary election documents in Scotland to be transferred to the Parliamentary returning officers. New clause 18 reforms the system for filling vacant European Parliament seats in Northern Ireland and new clause 19 relates to the Co-ordinated Online Record of Electors scheme and aims to ensure that the functions of the CORE scheme to prevent electoral fraud work effectively.

The Conservatives introduced a number of new clauses to introduce individual registration of electors; to impose a moratorium on electoral pilot schemes for 5 years; to allow a committee to conduct a review of piloting; to require British citizens living overseas to provide their passport number each year they re-register; to require electors to opt in to the edited version of the electoral register instead of being required to opt out and to require voters to produce an ID document as evidence of identity at the polling station. None of these new clauses were added to the Bill.

CONTENTS

I Provisions of the Bill 7

II Second Reading 8

III Committee Stage 10

A. Evidence sessions 10

1. Electoral fraud 10
2. Hayden Phillips's proposals 11
3. 'Triggering' 11
4. Donations 12
5. Electoral Commission 13

B. Consideration of the Bill by the Committee 13

1. Electoral Commissioners 13
2. Compliance role of the Commission 15
3. Investigatory powers of the Commission 15
4. Civil sanctions 18
5. Other electoral provisions 22
6. Individual voter registration 24
7. Declarations on donations – Government amendments to Clause 8 25
8. Party funding issues 27
9. Triggering - Clause 10 28
10. Other amendments which were not debated 28

C. Operation of the Committee 29

D. Carry over of the bill to session 2008-09 29

Appendix I Members of the Public Bill Committee 31

Appendix II Stages of the Bill 32

I Provisions of the Bill

The Bill takes forward the proposals for immediate legislation in the white paper, *Party finance and expenditure in the UK,* published in June 2008, with some modifications. The following issues are dealt with:

1. **Reforming the governance arrangements of the Electoral Commission.** The minimum number of Electoral Commissioners is increased to nine and four of the Commissioners will be nominated by the political parties. The rules preventing staff with recent political experience from being employed by the Commission are relaxed so that these are reduced to five years for the Chief Executive and one year for all other staff.
2. **Strengthening the Electoral Commission's investigatory powers and sanctions**. In order to carry out its regulatory functions the Commission is given additional powers to require the disclosure of documents relating to the income and expenditure of a party or individual and increased powers to enter the premises of a party or individual to inspect documents. A wider range of civil sanctions is also made available to the Commission if there have been breaches of PPERA. These include fixed monetary penalties, discretionary requirements and stop notices.
3. **Amending the law on candidate spending limits to reintroduce the concept of triggering.** Candidates are subject to individual expense limits in constituencies under the RPA. Prior to PPERA, candidates who began campaigning before the dissolution of Parliament could find that this expenditure counted towards their limit. PPERA made modifications, with the result that, in practice, dissolution became the key point from which expenditure was incurred. The Bill is designed to broadly return the law to the position prior to PPERA, where campaigning by candidates before dissolution will trigger expenditure which will count towards the limit.
4. **Requiring greater transparency about donations through intermediaries and unincorporated associations.** PPERA requires donation to political parties to be registered with the Electoral Commission and disclosed on the Commission's website The Bill is designed to ensure that the original source of donations passed through intermediaries will also be recorded and disclosed to the Commission if required as part of an investigation, and that parties will be required to certify that they have checked the source of donations.
5. **Allowing electors applying to vote on household canvass forms to be registered during the canvass period, so preventing disenfranchisement if an election is called.** This provision is designed to clarify the law on registration of electors in respect of an election held in the autumn annual canvass period.
6. **Allowing for the administration of European Parliament elections by local authority (rather than Parliamentary) returning officers.** This provision is designed to simplify electoral administration.

For further information about the Bill see Library Research Paper 08/74.[1]

[1] Available at http://www.parliament.uk/commons/lib/research/rp2008/rp08-074.pdf

II Second Reading

The Bill received its second reading on 20 October 2008. The Lord Chancellor, Jack Straw, emphasised the need for consensus between the political parties over the issues dealt with by the Bill and expressed regret that the parties had not been able to reach agreement in the Hayden Phillips talks on political funding. However, he noted that there was consensus that there should be reform of the Electoral Commission, in particular that the Commission's regulatory role should be clarified and that individuals with recent political experience should be allowed to serve as Commissioners.

There was a muted welcome for the Bill with many Members arguing that its measures did not go far enough to deal with the problems of party funding; David Heath (Liberal Democrat) described it as a 'pathetic little mouse of a Bill' and Andrew Tyrie (Conservative) said that it was 'a tiny Bill that is designed to deal with major problems, but it does not address them.'[2]

The Conservatives had put down a reasoned amendment for not agreeing to the second reading which suggested that the new rules on the 'triggering' of candidate spending limits at a general election were 'arbitrary and partisan'. The amendment also criticised the new powers given to the Electoral Commission by the Bill and called for additional measures to combat electoral fraud which would include individual voter registration. Francis Maude said that the Conservatives were content with the proposals for the composition of the Electoral Commission but envisaged that the Commissioners appointed with political experience would be 'politicians no longer in the active front line of politics, in order to provide the necessary distance and objectivity, but who were still close enough to be reasonably current with present-day practice.'[3]

There was considerable support from all parties for the politically nominated Commissioners and the relaxation of the rules on the employment by the Commission of staff who have been politically active recently but Sir Peter Viggers put forward the concerns of the Electoral Commission about the proposed changes to the rules. The Commission had suggested that although the Bill would prevent Commissioners appointed from a political background from participating in boundary decisions, there were other areas of the Commission's work where it would also be inappropriate for such Commissioner to take part in discussions, such as those involving criminal sanctions against individuals which could give rise to legal challenges on the grounds of alleged bias.[4] Andrew Turner (Conservative) also noted that 'the Commission must be politically savvy, but not at a cost to its independence or credibility.'[5] However, there was much criticism of the Commission for being out of touch with the political parties that it regulates; the Lord Chancellor himself noted that the Commission 'had failed to recognise that political parties are kept going not by unscrupulous people on the make, but by enormously dedicated volunteers who work all hours, usually for no reward, for

[2] HC Deb 20 October 2008 c42 and c105
[3] HC Deb 20 October 2008 c57
[4] Ibid, c82
[5] Ibid, c89

their values and commitment to their cause and no other reason.'[6] This was echoed in the speeches of Members of all parties; Tony Wright (Labour) said that the Electoral Commission was wrong to object to politically nominated Commissioners because 'it would help to remedy in part the problem that the Commission has been seen to have by those engaged in politics: that it does not understand this world.'[7]

There was much concern about the increased investigatory powers that the Bill would give the Electoral Commission, particularly those to enter and search premises. The Lord Chancellor acknowledged these concerns but said that there were safeguards in the Bill on the use of these powers, including the provision that the power of entry required a warrant from a court on evidence that a criminal offence had been committed.[8] Moreover the Commission already had powers, under Section 146 PPERA, to enter premises although it has only used these powers once.[9] However, some Members, such as Tony Lloyd (Labour), thought that if there was evidence of a serious offence which required entry and search, it should be the police that carry this out, not the Electoral Commission.[10]

David Howarth, for the Liberal Democrats, argued that the new rules to bring back the trigger for candidate's spending would not control targeted campaigning outside elections and that party spending on a national basis needed to be controlled. David Howarth also echoed Francis Maude's comments that the reintroduction of a trigger would be retrospective in that many Parliamentary candidates from all parties were already active across the country and the start of their election expenses would be triggered once the Bill received Royal Assent. Francis Maude said that the Conservatives would be willing to discuss a specific time limit for controls on constituency spending by a candidate; he acknowledged that there were problems in having a time limit because of the uncertainty over when a general election would take place ; he considered that a four month limit (originally proposed by the Electoral Commission and included in, but later dropped from, the *Electoral Administration Bill 2005-06*) should be discussed during committee stage.

Jonathan Djanogly (Conservative) said that the Government had missed an opportunity in the Bill to introduce measures to deal with electoral fraud and called for the introduction of individual voter registration. Fiona MacTaggart (Labour) made reference to the recent case of electoral abuse in her constituency, Slough, and suggested that individual voter registration should be introduced in areas where there was evidence of the registration of fictitious voters. The Minister of State, Michael Wills, said that much of the second reading debate had been about what was not in the Bill rather than what was actually in it and that the Bill was not concerned with electoral fraud, although the Government continued to take this problem seriously.[11]

---

6 Ibid, c46
7 Ibid, c111
8 Ibid, c50
9 Ibid, c50 The Minister, Mr Will, subsequently said in committee that in fact the Commission had not used its powers of entry, but that it had used its powers to request documents. PBC Deb 11 November 2008 c157
10 Ibid, c90
11 Ibid, c119

Other issues that the Bill does not address but which were raised by Members during the debate as possible future amendments included the removal of candidates' full home addresses on ballot papers and the registration of British citizens living overseas. A consultation paper on the former was issued by Mr Wills on 26 November 2008.[12]

The Conservatives' reasoned amendment was defeated on a division (Ayes 196, Noes 290) and the Bill was given a second reading after a division (Ayes 287, Noes 197).

A Programme Motion made provision for the Public Bill Committee proceedings to be brought to a conclusion on 13 November 2008. This was subsequently amended to 20 November 2008.

III Committee Stage

A. Evidence sessions

The Public Bill Committee met on 11 occasions. Evidence was taken from the Ministry of Justice, Sir Hayden Phillips, Sir Christopher Kelly, the Electoral Commission, Professor Keith Ewing, Professor Justin Fisher, Dr Michael Pinto-Duschinsky and representatives of the Labour Party, the Conservative Party and the Liberal Democrats. At the third sitting, there were several points of order in relation to the short timescale for tabling amendments.

1. Electoral fraud

In the first session Jonathan Djanogly (Conservative) again raised the issue of electoral fraud and criticised the Bill for not containing measures to tackle this and to improve confidence in the electoral system. The Lord Chancellor, Jack Straw, replied that the Government has been open to representations about including measures to combat fraud in the Bill but that none had been received; his perception was that incidences of fraud were decreasing.

Sir Christopher Kelly commented during the first sitting that the electoral system was fundamentally flawed because of the combination of household registration and postal voting on demand. Peter Wardle (Chief Executive of the Electoral Commission) agreed and emphasised the Commission's support for individual registration and personal identifiers to ensure the integrity of the electoral system; if provision was in legislation for the introduction of individual registration this could start in the annual canvas of 2010 and would take 2 – 3 years before it was fully complete. Dr Pinto-Duschinsky commented in the third sitting that the Electoral Commission had proved insufficiently vigorous on monitoring electoral fraud, and that the Bill failed to address this issue, or the issue of individual registration.

---

[12] HC Deb 26 November 2008 c105WS. *Publication of candidates' addresses at UK Parliamentary elections* *Consultation Paper CP(L) 30/08*

The Conservatives tabled an amendment to the Bill which would allow for the individual registration of electors as in Northern Ireland.

2. Hayden Phillips's proposals

David Howarth (Liberal Democrat) asked during the first session whether, given the change in present circumstances especially the economic situation and further controversy over donations to political parties, the talks on party finance could be re-opened and called for further consideration of the state funding of parties. The Lord Chancellor suggested that it would be inappropriate, at a time of economic difficulty, to ask for increased funding by the state for political parties. David Howarth also suggested a cap on constituency expenditure that would cover expenditure by the party and not just by the candidate. In the third sitting Professor Fisher expressed concern that this proposal would burden voluntary party workers with over regulation. He also considered that parties would direct expenditure at 150 marginals, ignoring other constituencies. Dr Pinto-Duschinsky thought that a third party loophole would remain, even if national and local expenditure limits were merged, as suggested by Mr Howarth.

The Liberal Democrats tabled a new clause which would restrict the total expenditure by political parties to no more than £100 million in any period of 61 months following a general election.

3. 'Triggering'

The Lord Chancellor acknowledged in the first committee sitting that the return to 'triggering' was not an ideal answer to the problem of uncontrolled expenditure in constituencies before an election but that the system had acted as a dampener in the past. Mrs Eleanor Laing (Conservative) suggested that the provisions of the Bill relating to triggering meant that candidates who had already started to campaign in constituencies could find themselves in the position of having spent up the limit as soon as the Bill received Royal Assent. The Lord Chancellor said that there was no intention for the Bill to be retrospective and that these provisions would not apply to any expenses incurred before Royal Assent. Sub-section (5) of Clause 10 made provision for this. The Government was also considering whether to make provision for the later commencement of this part of the Bill by Order in response to Members' concerns about when the guidance on triggering, to be drawn up by the Electoral Commission, would be published.

Andrew Tyrie (Conservative) asked the Lord Chancellor whether a Member who had been found to have misused the Communications Allowance by the Standards and Privileges Committee would have therefore triggered his election expenses. The Lord Chancellor and the Ministry of Justice officials thought that this would be the case but they would return to this issue.

During the second session Peter Wardle was asked about triggering. Mr Wardle said that the Commission thought that the current triggering point for expenses was too close to the election and that a longer period, such as the four month period which had been introduced in the *Electoral Administration Bill* in 2005-06 but later dropped, would have been more appropriate. Wardle also asked for as much clarity as possible about the new triggering arrangements because as the Bill stood at the moment it would be difficult for

the Commission to be precise about when a person became a candidate in its guidance; this would not just affect candidates and agents and the Commission but would be a problem for the police who would have to deal with complaints about contravention of the law on electoral expenses. Wardle said that the Commission hoped to have a draft of the guidance in the public domain by January 2009.

During a discussion of the return to triggering during the second sitting, David Howarth (Liberal Democrat) suggested that it would be wrong to rely on earlier case law from before 2000 as the law on what constituted an expense had been changed since then, thus wiping out the previous case law on the subject. The Commission agreed that this seemed likely.

The academic witnesses were asked for their views on triggering during the third sitting. Professor Ewing said that there was a problem with spending in local constituencies in the pre-election period, but he doubted that triggering would prove the solution. Professor Fisher considered that the provisions were unworkable, given the 3,500 plus candidates in each election and preferred the option of a four month cut off period, as in the *Electoral Administration Bill 2005-06*. Dr Pinto-Duschinsky said that it should be Parliament rather than the Electoral Commission that should determine the definition of electoral expenditure, instancing the uncertainty of the definition of transport in the Fiona Jones case. The representatives from political parties asked for certainty in the rules, as their volunteer members would have great difficulty in dealing with uncertainty. Eleanor Laing raised the question of retrospection in relation to triggering, and the party representatives agreed that this type of uncertainty would be difficult for voluntary party workers.

4. Donations

During the first sitting Members of the Committee asked whether there was provision in the Bill to disallow donations by foreign parent companies via their subsidiary companies registered in the United Kingdom. The Ministry of Justice confirmed that Clause 8 did not change the law on permissibility of donations, nor did it alter the rules on donations made by UK companies. The Lord Chancellor said that the Government would look at raising the level of donation at which a declaration must be made as to the source of the donation in Clause 8. In the third sitting, Professor Ewing said that loopholes in PPERA remained and that he would like to see further legislation to require unincorporated associations to make returns to the Electoral Commission disclosing the identity of donors, and prohibition of funding by foreign companies. However PPERA had been a consensual piece of legislation which was fundamentally sound. Martin Linton (Labour) asked the Conservative representative about the process by which donations from unincorporated associations were recorded; Mr McIsaac said that if an individual made a donation through an unincorporated association, then that individual name would be recorded as a donor. However, it would be a regulatory burden for all unincorporated associations to list their individual members as donors: Ms Stephenson, from the Liberal Democrats, said that it was important to differentiate between small and large donations.

During the second sitting there was discussion about the administrative burden that would be placed on political parties if every donor of more that £200 had to make a declaration about the permissibility of the donation. Michael Wills said there had to be a balance between increasing transparency, compliance with the law and the

administrative burdens on political parties. In the third sitting, representatives of political parties also asked for an increase in the level from £200 and highlighted the responsibility which would lie with voluntary party treasurers in making judgement calls. Clause 8(6) requires party workers to take 'reasonable steps' to verify declarations made by donors.

5. Electoral Commission

Concerns were expressed in the first sitting about the proposed new powers of the Commission, in particular the power to enter premises to inspect relevant records. Peter Wardle and Lisa Klein of the Commission gave evidence during the second sitting and when asked about unintended errors over reporting of donations said that the new suite of sanctions proposed by the Bill would enable them to apply more appropriate sanctions or require the offender to apply corrective measures in such cases.

Peter Wardle said that the Commission understood the aims in relaxing the ban on its employment of recently politically active people but thought that to go from a ten year ban to one year might be an extreme measure. He pointed out that the changing of the ban of ten years from Commissioners to five years meant that the Commission could be comprised of six Commissioners who had been politically active within the last six years and four politically nominated Commissioners. Although such a scenario was unlikely it was possible and could lead to questions about the Commission's independence. The Bill was also silent about what would happen if one of the political parties did not or was not able to nominate a Commissioner.

Professor Ewing and Professor Fisher argued in written and oral evidence that there were dangers in introducing political Commissioners. Keith Ewing considered that it would be difficult for a politician to put aside long held allegiances when acting as a regulator; Justin Fisher said that the fact that the political Commissioners were to be allocated according to party strengths at Westminster illustrated that party representation was considered important. He also said that Plaid Cymru and the SNP were being treated as minor parties, when they were in Government in Wales and Scotland. The party representatives gave a cautious welcome to political Commissioners.

The academic witnesses were also asked about broader reforms to the Electoral Commission. Dr Pinto-Duschinsky expressed dissatisfaction with its performance, but Professors Fisher and Ewing thought that recent reforms had had an effect in focusing on the regulatory role.

B. Consideration of the Bill by the Committee

There were 11 sittings of the bill where there was formal consideration; 3 were oral evidence sessions and 8 were clause by clause consideration of the Bill. The topics discussed are grouped by subject matter below.

1. Electoral Commissioners

In the fourth sitting on 11 November there was debate about the process of appointing political Commissioners. Eleanor Laing, for the Opposition, spoke to amendments to ensure that the Commissioners were appointed in accordance with the Commissioner for

Public Appointments Code of Practice. These were resisted by Michael Wills on the grounds that the Speaker's Committee would devise procedures enabling candidates for the political Commissioner posts to be selected on merit, but the provisions of the Code would be too prescriptive.[13] The Opposition withdrew the amendment but indicated that they were not satisfied with the Government response.

There was a debate on the question of prohibiting donors to parties from becoming political Commissioners but Mr Wills resisted the amendment as inappropriate. He said:

> We should not proceed on the basis that everyone who gives a donation to a political party- whichever political party it is- is automatically doing it out of some malign motive.[14]

The SNP MP, Pete Wishart, spoke to amendments which would have had the effect of increasing the number of political Commissioners from minority parties; he argued that the SNP and Plaid Cymru would not be effectively represented by the procedures set out in clause 5 of the Bill, whereby the three largest parties could put forward one Commissioner each and the fourth would be chosen by the Electoral Commission following nominations by the other minor parties. In response, both Eleanor Laing and Michael Wills stressed that the political commissioners would be chosen for their experience of the democratic and electoral process, not their party views. The three largest parties had the widest pool of electoral experience to draw upon.[15] Mr Wishart withdrew the amendment.

Eleanor Laing spoke to an amendment designed to deal with the position where one party did not make a nomination; this issue had been highlighted by the Electoral Commission in its evidence to the Committee on 6 November. There was a similar Liberal Democrat amendment. Michael Wills considered the amendments unnecessary, but undertook to seek the advice of parliamentary counsel, following concern from David Howarth that the current drafting of the bill lacked clarity.[16] However, the amendment was pressed to a division and defeated by a vote of 8 to 9.

Pete Wishart proposed an amendment to prevent political Commissioners from participating in any enforcement procedure relating to the party which put forward the nomination. He received support from David Howarth, who stressed the question of public perception, and Jonathan Djanogly pointed out that the *Companies Act 2006* had set out new procedures for dealing with conflicts of interest. The amendment was put to a vote, but was lost by 3 votes to 9.

There was consideration of Clause 7 on the relaxation of political restrictions on Commission staff and Commissioners during the fifth sitting on 11 November. Andrew Tyrie expressed some agreement with the points made in evidence by the Electoral Commission that relaxing the ten year bar on political activities (five years for the

---

13 PBC Deb 11 November 2008 c98
14 PBC Deb 11 November 2008 c104
15 PBC Deb 11 November 2008 c116
16 PBC Deb 11 November 2008 c124

remaining Commissioners) might politicise the Commission.[17] The CSPL review had not recommended this relaxation. Mr Tyrie also queried whether the five year bar for the Chief Executive proposed in the bill should not be extended to other senior staff. As currently drafted clause 7(2) would reduce that period to one year. In response, Mr Wills emphasised that both staff and Commissioners would be selected on merit and would be aware of the need to avoid actual conflicts of interest, whether perceived or real.[18]

2. Compliance role of the Commission

The question of the Electoral Commission's continuing role to promote public awareness of electoral systems was debated on an amendment from Mr Djanogly. He did not press it but there was a close division on an amendment from the Conservatives to require the Commission to publish guidance on compliance with PPERA. The Conservatives, Liberal Democrats and SNP did not accept the explanation of Mr Wills that the amendment would unnecessarily restrict the Commission's flexibility. The amendment was defeated by 8 votes to 9.[19] There was a debate on the value of clause 1 in which Mr Djanogly and Mr Wills discussed the development of the Electoral Commission since 2001. Mr Wills commented that the clause would make clear that a key part of the Commission's monitoring role would be to investigate allegations or suspicions of regulatory failure, and to consider whether to take further action.[20]

3. Investigatory powers of the Commission

Clause 2 was considered in the fifth sitting. There was concern that the new section 146 and schedule 19A to PPERA inserted by this clause would give the Commission much wider powers to enter premises, and to demand documents from individuals (including donors). In response, Mr Wills reminded the Committee that the Commission already had extensive powers under the current drafting of section 146 of PPERA, although they had been used only once in the past eight years. Mr Djanogly spoke to an amendment to omit regulated donees from the list of people or groups to whom the new investigatory powers would apply. The amendment was opposed by the Liberal Democrat, David Howarth, on the grounds that the term regulated donees included members associations, and holders of elective office, and the amendment would reduce existing powers of the Commission. Mr Wills acknowledged concerns about the powers and indicated that the Electoral Commission was considering its position on powers to enter premises.[21] A briefing for the Committee from the Commission noted that it did not consider it essential to enter premises in respect of individuals who are regulated donees, but it would be helpful in the more complex area of members associations which were regulated donees.[22] The amendment was withdrawn.

[17] PBC Deb 11 November 2008 c136
[18] PBC Deb 11 November 2008 c137
[19] PBC Deb 11 November 2008 c146
[20] PBC Deb 11 November 2008 c150
[21] PBC Deb 11 November 2008 c160
[22] Electoral Commission briefings for the Committee are available at http://www.electoralcommission.org.uk/focus-on-items/party-finance-white-paper

The Committee moved on to consider several amendments to restrict the Commission's discretion to use its new powers. In particular, amendments proposed by Mr Djanogly would restrict an investigation by the Commission to a suspected offence, rather than a general contravention of the law. In response Mr Wills set out the safeguards against arbitrary action by the Commission, such as the need for a warrant before a search took place. He considered that restricting these powers to use only in the case of a suspected offence would unnecessarily inhibit the Commission's role. He did not consider that an appeal from a disclosure notice was appropriate, since such a notice was not a sanction.

Mr Wills moved an amendment to Schedule 1(1) adding a new paragraph 1(6).This was to make clear that if the Commission suspects an offence or contravention has occurred, and it wishes to enter the premises, it must apply for a warrant.
He said:

> The power in paragraph 1(5), which restates the existing powers of entry, can be exercised by the commission for the purposes of carrying out its functions and does not require a warrant. That is because the power does not allow force to be used to obtain entry. It can also be exercised only at a reasonable time.
> In addition to the power in paragraph 1(5), the Bill also gives the commission a new range of powers to access information reasonably required for its investigations into suspected offences or contraventions of the 2000 Act from any person who might hold it. Paragraph 3 of proposed new schedule 19A creates a power for the commission to apply for a warrant to enter premises occupied by any person, to search those premises and to seize documents. A warrant may authorise the use of reasonable force for those purposes.
> Consequently, the Bill introduces a high threshold for a warrant to be obtained under paragraph 3. The commission will need a warrant to search premises. To get it, it must satisfy a justice of the peace, on information on oath, that it has "reasonable grounds for believing" that an offence or contravention has been committed and that documents that have been withheld following request, or that are otherwise relevant to the investigation, are on the premises.
> When exercising the warrant, the commission must be accompanied at all times by a constable. Anyone who is to accompany a constable on to the premises can do so only if named in the warrant.
> We believe that those wider powers are necessary to help to ensure that the commission is equipped to conduct effective investigations into suspected breaches of the Act, in conjunction with prosecuting authorities. Nevertheless, we have noted all the concerns raised in the House about possible confusion over the powers of search and entry in paragraphs 1(5) and 3.
> The Government amendment to the schedule makes it clear that if the commission suspects that an offence or contravention has occurred and it wishes to enter premises to continue its investigation, it must use its new powers of search and entry by warrant, which has all the safeguards attached…
> The commission cannot use the power under paragraph 1(5) to conduct a fishing expedition if it thinks that wrongdoing has occurred. We believe that the safeguards on the power to enter premises ensure that use of the power will be proportionate and justified, and for its proper purpose.
> **Nick Ainger:** My right hon. Friend refers to the thresholds that are required and to a warrant that might be granted by a justice of the peace. Is he satisfied that

> the threshold is high enough? Should we be considering a judge in a court issuing an order, rather than a JP in a magistrates court issuing a warrant?
> **Mr. Wills:** My hon. Friend raises an important point, which we will actively consider. [23]

Further detail on the interpretation of the amendment is available in the *Explanatory Notes* to the bill carried over to session 2008-09 (Bill 4).[24]

This amendment went some way to satisfying committee members who were concerned about potential invasions of the privacy of donors. However, Mr Djanogly proposed an amendment to require the request for a warrant to be heard by the High Court, rather than a JP. Mr Wills indicated that the Government would be prepared to look at judicial oversight, but asked Mr Djanogly not to press his amendment.[25] He alluded to another alternative approach floated by the Electoral Commission which would involve a court order for entry, with the sanction being contempt of court. **A Government amendment which was agreed to without a vote, requires the Commission to obtain written authorisation from the Commission chief executive or alternative senior officer, before applying for a warrant.**[26] David Howarth considered that there needed to be greater clarity in drafting with relation to the full separation between the inspection power in paragraph 1 and the investigation power in paragraph 3.[27]

The sixth sitting on 13 November concentrated on the new investigatory powers in Schedule 1. The Conservatives proposed a series of amendments, mainly designed to test the parameters of the powers. Mr Wills promised to consider whether to insert in the Bill a requirement for the Commission to copy and return documents obtained through the use of a warrant and to review the question of requiring the Commission to leave a copy of the warrant.[28] The Labour backbencher, Martin Linton, spoke to an amendment to discuss the issue of unintended breaches of the law. He argued that a provision similar to that in section 167 of the RPA 1983 was needed, where a court could give relief where an act or omission arose from inadvertence. He received support from Conservative and Liberal Democrat spokespeople, but they noted that the Electoral Commission did not support the amendment, noting that para 12(1) of Schedule 1 referred to 'without reasonable excuse'.[29]

Mr Wills responded by commenting that PPERA had used the wording 'without reasonable excuse' and this would be a preferable starting point. He said that it would be a matter for the Commission to use its discretion "and we must trust it to use its judgement appropriately".[30] The Commission produced for the committee a note on the proposed use of investigatory powers on 17 November 2008.[31] This note stressed a risk

---

23 PBC Deb 11 November 2008 c178-9
24 Bill 4 of 2008-09 at http://services.parliament.uk/bills/2008-09/politicalpartiesandelections.html
25 PBC Deb 11 November 2008 c185
26 PBC Deb 11 November 2008 c186
27 PBC Deb 11 November 2008 c172
28 PBC Deb 13 November 2008 c194
29 PBC Deb 13 November 2008 c200
30 PBC Deb 13 November 2008 c201
31 PPE 05 *Memorandum submitted by the Electoral Commission Draft Note to Public Bill Committee: Use of investigative powers*

based approach to investigation and enforcement action. A number of MPs were concerned that an Electoral Commission investigation might take several months, with attendant publicity for the person being investigated.[32] Mr Wills cautioned against creating a charter for widespread avoidance and Mr Linton indicated that he would be prepared to withdraw the amendment, perhaps to return on report, but other MPs objected and the amendment was the subject of a division, being defeated by 7 votes to 10.[33]

A Government amendment to require the Electoral Commission to publish guidance on the use of their powers under Schedule 1 was introduced by Mr Wills and added to the bill. A linked Government amendment to require the Commission to publish reports on the use of its powers in its annual reports was also debated at the sixth sitting. Mr Wills stressed that information which would prejudice a continuing investigation would not be included, but there were concerns that the process might result in 'naming and shaming'.[34] Mr Wills was also pressed about the timing of the guidance, and he stated that to the best of his knowledge, it was expected for January 2009. Finally, there was a short debate on the principles of Schedule 1, where the Opposition spokesman, Jonathan Djanogly, said that the Commission's powers had to be subject to proper judicial control. He instanced the procedures in the *Police and Criminal Evidence Act 1984* as a more appropriate model than those outlined in the Bill. He also raised some concerns about the new powers being used against journalists.[35] In response, Mr Wills stated that the model had been the sanctions given to a series of regulators in the *Regulatory Enforcement and Sanctions Act 2008*.[36]

4. Civil sanctions

During the debate on clause 3, at the end of the sixth sitting, Mr Djanogly spoke to an amendment which offered the opportunity to comment on the civil sanctions regime in the bill. He considered that the discretionary requirements set out in Part 2 of Schedule 2 were too vague and broad. In response, Mr Wills said that the size of a monetary penalty or other sanction would depend on the nature and scale of the offence committed.[37] Mr Djanogly withdrew the amendment after hearing the Minister confirm at the beginning of the seventh sitting that the Electoral Commission will be required to publish guidance on how it will use the civil sanctions before it is given the power to impose them; this guidance is expected to be issued at the same time as the guidance on investigatory powers in January 2009.

Nick Ainger (Labour) moved an amendment about the Bill's provisions for criminal sanctions and expressed concern that the Bill might be introducing penalties and sanctions that are not proportionate. Jonathan Djanogly said there were considerable concerns about the powers that would be given to the Commission in respect of stop notices, in particular the size of the penalty, £20,000, for failure to comply with such a

---

[32] PBC Deb 13 November 2008 c203
[33] PBC Deb 11 November 2008 c206
[34] PBC Deb 13 November 2008 c208
[35] PBC Deb 13 November 2008 c211
[36] PBC Deb 13 November 2008 c221
[37] PBC Deb 13 November 2008 c213

notice. David Howarth (Liberal Democrat) also thought that it was essential for sanctions to be proportionate and asked whether the conditions under which stop notices could be issued were serious enough to justify equivalence with a civil injunction.[38] Michael Wills agreed that the sanction for failing to comply with a stop notice was serious but said that the Electoral Commission must be given the power to stop someone who was breaking the donation rules on a large scale because it could change the outcome of an election. The figure of £20,000 had been imported from the *Regulatory Enforcement and Sanctions Act 2008* and the Government had seen no reason to change it.[39] The sanction would only be used in the most serious cases where the Commission reasonably believed that the activities were 'seriously damaging public confidence in the effectiveness of the controls in this Act on the income and expenditure of registered parties.'[40] Reducing the amount of the fine would mean that it would not be sufficient deterrent. The amendment was withdrawn.

During further debate on clause 3 Jonathan Djanogly asked whether a risk assessment had been undertaken when reviewing the proposed new powers of the Electoral Commission and whether there had been a consultation process undertaken before the powers were included in the Bill. Mr Djanogly also said that the Conservatives would investigate whether there were any safeguards in place to prevent possible abuse of these powers in the future through their amendments to Schedule 2 of the Bill. The Minister said that the Government had decided to use the sanctions set out in the *Regulatory Enforcement and Sanctions Act 2008* in the Bill after deciding that the UK domestic experience was more important than examples of sanctions in other countries. David Howarth supported clause 3 saying that politicians must not give themselves arbitrary exemptions from regimes of the kind that they impose on others.[41] Mr Wills also indicated that the offences under PPERA which would attract civil sanctions in lieu of criminal prosecutions would be set out in secondary legislation.

Clause 3 was agreed to without a division.

Schedule 2, which contains a new Schedule 19B to be inserted into PPERA, was considered. The Schedule specifies the civil sanctions that may be imposed by the Electoral Commission on those who have committees an offence under PPERA or those who have 'contravened a prescribed restriction or requirement imposed by or by virtue of this Act.' The Opposition spokesman, Jonathan Djanogly, spoke to amendments to clarify what was meant by these words, arguing that the drafting was too broad and that the possibility for wider interpretation made the possibility of abuse high.[42] Several members of the committee were concerned about the length of time the processes under Schedule 2 might take. Michael Wills recognised that this was an issue but said that the Commission would produce guidance on the operation of the civil sanction powers and that it must be allowed flexibility in this area and that it was difficult to prescribe time limits. David Kidney (Labour) asked the Minister to consider whether there should be some limitations in the Bill as to how far the Commission could go back and on how long

---

[38] PBC Deb 13 November 2008 c220
[39] PBC Deb 13 November 2008 c221
[40] Schedule 3, *Political Parties and Elections Bill 2007-08*
[41] PBC Deb 13 November 2008 c226
[42] PBC Deb 13 November 2008 c230

it could take to complete an investigation; in response, Mr Wills said that his firm instinct was to avoid setting fixed time scales.[43]

Mr Djanogly had also raised the issue of double jeopardy and the possibility of a person or organisation being subject to both a civil sanction and a criminal prosecution for the same offence under PPERA. The Minister confirmed that double jeopardy would not apply except when a non-monetary penalty is imposed but there is failure to comply. In such circumstances, because the non-monetary penalties would be preventive, the Electoral Commission would be able to punish non-compliance.[44] Mr Djanogy withdrew the amendments but said that there were still issues about the clarity of the Bill relating to sanctions and that the Conservatives would like to see the wording reviewed.

The Conservatives proposed amendments to the Bill which would set a 28 day time period in which a fixed penalty notice must be paid and a 28 day time period in which appeals against a fixed penalty notice must be made. Jonathan Djanogly said that the amendments aimed to clarify the provisions about these sanctions and noted again that many of the people who have to ensure compliance with the requirements of PPERA are likely to be volunteers with little or no legal training; there was a need to ensure that the provisions in the Bill about the sanctions for non-compliance were as clear as possible.[45] The Minister said that the amendments were unnecessary as the Bill already made provision for the Commission to specify the exact period of for payment of the fixed monetary penalty and that this period could not exceed 28 days. Mr Wills also said that this sort of detailed provision was better suited to secondary legislation and that it was not necessary to set statutory time limits of this nature.[46]

The Conservatives had also put forward amendments that would prevent the Electoral Commission reducing the amount of penalty notices for early payment. The Minister said that this provision had been imported from the *Regulatory Enforcement and Sanctions Act 2008* and that the Government saw this as an encouragement to compliance with the sanction which would assist the Commission in ensuring that the penalty was paid.

The amendments were withdrawn.

A further group of Conservative amendments sought to introduce a 28 day time period into the provisions about the appeals procedure against the imposition of sanctions. Another amendment would change the court to which individuals must go to appeal against sanctions; in the Bill this was the county court, but Jonathan Djanogly argued that the High Court would be more appropriate for what might be complex cases with their political background. The Minister disagreed saying that there was a precedent for electoral law appeals to be heard in a county court.[47] With regard to the timing of appeals, Mr Wills said that further consultation was needed to decide on an appropriate timetable for appealing against a decision of the Commission and undertook to come

43 PBC Deb 13 November 2008 c237
44 PBC Deb 13 November 2008 c238
45 PBC Deb 13 November 2008 c242
46 PBC Deb 13 November 2008 c245
47 PBC Deb 13 November 2008 c250

back to the issue at Report stage.[48] Mr Wills also assured the committee that the sanctions in the Bill would be overlaid by a statutory instrument setting out the procedure which would be subject to the affirmative resolution.[49] Jonathan Djanogly withdrew the amendments about appeals after the Minister's comments.

A Conservative amendment to require the Electoral Commission to notify a person immediately of its decision to impose a discretionary requirement under Schedule 2 was withdrawn after the Minister said that the Commission should not be required to act immediately by the new civil sanctions regime; he said that that varying circumstances in different cases would require different approaches.

An amendment by the Conservatives to remove stop notices from the sanctions available to the Electoral Commission was described as a probing amendment by Jonathan Djanogly who sought further clarification of their use. Michael Wills said that a very high threshold must be overcome before the Commission could impose a stop notice and that they 'will be available only in what are likely to be rare cases when the breach or likely breach is such that it is necessary to impose a sanction to preserve the integrity of the controls under the 2000 Act.'[50] Mr Wills also said that the Electoral Commission was clear that if it had information that someone was planning to spend a large sum of money during an election campaign that might determine its outcome decisively, then it needed the power to intervene and impose a stop notice. However the Commission was under an obligation to consider other sanctions before deciding to impose a stop notice. The amendment was withdrawn.

Jonathan Djanogly moved an amendment to leave out the provision giving the Secretary of State powers to make supplementary provisions by order, suggesting that such a provision could give the Electoral Commission further powers that had not received proper Parliamentary consideration. The Minister said that any orders would be subject to full consultation with the Commission and others, and that an order would be subject to the affirmative procedure if it dealt with 'what offences, requirements or restrictions are to be prescribed or if it seeks to amend another Act of Parliament. If it deals solely with other matters, the negative procedure will apply' therefore there would be scrutiny of any such orders.[51] The Conservatives withdrew the amendment.

A Conservative amendment proposed that paragraph 24 of Schedule 2, which requires any fines imposed on an unincorporated association under the Schedule to be paid out of the funds of that association, should be deleted. David Howarth also sought clarification about what would happen if the association did not have the funds to pay the fine. The Minister undertook to come back to the Committee about this point and the amendment was withdrawn.

Conservative amendments about the Electoral Commission's guidance in relation to sanctions sought to give the Commission some leeway to deviate from the guidance

---

48 PBC Deb 13 November 2008 c251
49 PBC Deb 13 November 2008 c251
50 PBC Deb 13 November 2008 c255
51 PBC Deb 13 November 2008 c257

where this was appropriate and proposed that the guidance should be published 28 days after enactment. Michael Wills announced that the Government was making a commitment to commence the provisions making civil sanctions available to the Commission only when it has published its guidance on how it would operate them.[52] The Conservatives welcomed this announcement. The Minister also said that he agreed in principle that the Commission should not have its hands tied by its own guidance but that it was not necessary to put this in the Bill as 'the Commission would be bound only in operating the civil sanctions regime by the law itself.'[53] The amendment was withdrawn.

The Conservatives moved an amendment to delete the provision that any monetary penalties imposed by the Electoral Commission should be paid into the consolidated fund. Michael Wills said that this was a safeguard against regulators seeking to impose monetary penalties for their own financial benefit; if the penalties were retained by the Commission instead of going into the consolidated fund this could undermine the Commission's credibility. Jonathan Djanogly welcomed the Minister's comments and the amendment was withdrawn.

An amendment to require the Electoral Commission to publish an annual report on the use of its civil sanction powers (instead of from time to time as required by the Bill) was moved by the Conservatives. Jonathan Djanogly also proposed that only the most serious cases should be reported. Michael Wills said that the Government had been persuaded by the principles behind the amendments but would consult the Electoral Commission before coming back to the Committee with a proposal to accept them.[54]

The final amendment to Schedule 2 which would insert the Serious Fraud Office into the list of bodies which hold information that may be disclosed to the Electoral Commission was withdrawn after the Minister agreed to give the amendment further consideration.

5. Other electoral provisions

a. Election falling within canvass period

Eleanor Laing said that the Conservatives were not opposed to the clause (12) concerning the arrangements for elections falling within the canvass period but that they were concerned about the clarity of the provisions. Mrs Laing raised the problem of renumbering the electoral register after the issue of polling cards and moved an amendment to ensure that any new additions to the register made during this period would be added to the end of it, thus avoiding the need to renumber the register until the following month after an election. The Minister confirmed that the register would not be renumbered during the month before an election if it fell within the canvass period.[55]

Mrs Laing and Andrew Tyrie (Conservative) also raised the issue of the registration of service voters and the Minister gave assurances that he would continue a dialogue with

---

52 PBC Deb 13 November 2008 c259
53 PBC Deb 13 November 2008 c260
54 PBC Deb 13 November 2008 c263
55 PBC Deb 18 November 2008 c273

those Members who have service personnel in their constituencies about their levels of registration.[56]

The clause was agreed to.

b. Local Returning Officers for elections to the European Parliament

The clause, which makes provision for the local returning officers for the European Parliament elections in England, Scotland and Wales to be the returning officers for local authority elections in future rather than the returning officers for Parliamentary elections, was ordered to stand part of the Bill. In response to concerns raised by Alan Reid (Liberal Democrat), the Minister said that because of the uncertainty as to when the Bill would receive Royal Assent and the lack of time for electoral administrators to implement the changes, the clause would not be come into force until after the 2009 elections. However, the recent Order which moved the date of local elections in England in 2009 to the date of the European elections on 4 June 2009 also made provision for the European elections in England to be administered on local government boundaries.[57] Michael Wills indicated that the Government was exploring whether it was possible within the existing legislative framework for the European elections in Scotland and Wales in 2009 to be run at a local level by local authority returning officers.[58]

c. Disposal of election documents in Scotland: New Clause 17

New Clause 17, which was introduced by the Government, makes provision for the responsibility for the storage of Parliamentary election documents in Scotland to be transferred to the Parliamentary returning officer. Previously election material had been sent to the local sheriff clerk for safe keeping after an election. The overall aim of the new clause is to improve access to the documents and bring Scotland into line with the position in England and Wales. There was no opposition to the clause which was added to the Bill. The Minister also indicated that it was intended to make similar provision for Scottish Parliamentary election records through secondary legislation.[59]

d. Filling vacant European Parliament seats in Northern Ireland: New Clause 18

The new clause introduced by the Government reforms the system for filling vacant European Parliament seats in Northern Ireland. These elections are held under the Single Transferable Vote. At present, vacant seats can only be filled by holding a by-election. The Northern Ireland political parties have expressed concern that the present system could allow the disproportionate representation of certain parties and the Government has introduced the new clause after consultation with all the relevant parties. The new clause makes provision for the nominating officer of the relevant political party to nominate a replacement Member of the European Parliament in the event that a European Parliament seat held by that party becomes vacant. In the case of

---

[56] PBC Deb 18 November 2008 c278

[57] *The Local Elections (Ordinary Day of Elections in 2009) Order 2008*, SI 2008/2857

[58] PBC Deb 18 November 2008 c281

[59] PBC Deb 18 November 2008 c285

independent Members the Government intends to allow them to submit a list of substitutes when they are returned.[60] The clause was added to the Bill.

e. CORE information and action to be taken by Electoral Registration Officers

New Clause 19 introduced by the Government relates to the Co-ordinated Online Record of Electors scheme and aims to ensure that the functions of the CORE scheme to prevent electoral fraud work effectively. The clause expands the circumstances in which the CORE Keeper must inform an electoral registration officer that improprieties involving electoral records have arisen or there is the possibility of absent voter fraud when more than a specified number of postal votes are requested for a single address. The Minister outlined the full aspects of the clause in committee in the morning of 18 November. The clause was added to the Bill.

f. Moratorium on electoral modernisation projects

The Conservatives proposed a new clause (14) which would impose a moratorium on electoral pilot schemes for 5 years and a new clause (15) which would allow a committee to conduct a review of piloting. Eleanor Laing said that it was wrong for the Government to bring forward gimmicks to try to encourage people to register and to vote when reform of the electoral system was needed. The Minister resisted the new clauses, saying that governments must be free to investigate possible innovations and pilots when appropriate, but he added that the Government had no plans to conduct further pilots at this stage.[61] The new clauses were not pressed.

6. Individual voter registration

The Conservatives proposed a new Clause (1) which would introduce individual voter registration. The Committee debated the new clause at the eighth and ninth sittings on 18 November. Eleanor Laing said that the new clause was based on the Northern Ireland legislation and asked why the Government had not used the Bill to introduce individual registration in the rest of the UK. Michael Wills responded that work had begun with the Electoral Commission and electoral administrators to examine how individual registration could be introduced and that some form of consultation or legislative proposals might follow that work. The Minister also noted that such a fundamental change to the electoral system could not be made without care and caution and that individual registration could not be achieved before the next general election.[62]

The committee also considered three other new clauses proposed by the Conservatives. New clause 2 would require British citizens living overseas to provide their passport number each year they re-register; new clause 7 would require electors to opt in to the edited version of the electoral register instead of being required to opt out and new clause 8 would require voters to produce an ID document as evidence of identity at the polling station. The Minister responded that the current regulations for overseas voters ensured that the registration process was secure but simple enough to ensure that

---

60 PBC Deb 18 November 2008 c288

61 PBC Deb 18 November 2008 c344

62 PBC Deb 18 November 2008 c339

people would register. Michael Wills acknowledged the concerns about the sale of the edited version of the register but said that following the recent review of the framework for the use of personal information in the public and private sectors which recommended that the edited version of the register should be abolished, the Government was proposing to hold a consultation on the issue and that it was not minded to introduce any proposals until after that consultation had been completed.[63] In relation to new clause 8 the Minister expressed concern about the practical implications of the proposal and what barriers it might present to voting at elections, but undertook to keep the matter under review.[64]

The Conservatives did not press new clauses 2, 7 and 8 but asked the Committee to divide on new clause 1. The question was negatived by 10 votes to 8.

7. Declarations on donations – Government amendments to Clause 8

During the ninth sitting on 18 November 2008, Mr Wills introduced a series of amendments to Clause 8, which were agreed to. He said:

> The combined effect of Government amendments Nos. 153 and 155 to 157 is as follows. The size of donation that must be accompanied by a declaration will be raised from the current threshold in the Bill of more than £200 to the level at which a central party is required to declare a donation to the Electoral Commission, that is £5,000. Where the donation is to a local accounting unit of such a party, the requirement is for a declaration to accompany donations of more than £1,000. In addition, where such a donation is made to a party's central organisation, a declaration will have to say whether an amount of more than £5,000 has been provided to the donor with a view to, or otherwise in connection with, that donation. Again, the relevant figure is a donation of more than £1,000 if the donation relates to a local accounting unit. If an amount of less than those sums has been provided, the further requirements relating to making a declaration about the impact of sections 54(4) and (6) will fall away.
> In addition, Government amendments Nos. 160, 161, 162, 164, 165, 166, 168, 169 and 170 seek to achieve the same effect for the declaration requirement in schedule 3 with respect to donations to individuals and members' associations, recognised third parties and permitted participants.[65]

Mr Wills said that the Government had listened to concerns about the burden placed on parties by clause 8 and was therefore raising the threshold for such declarations to be completed to £5,000 for donations to central parties and £1,000 for local accounting units. The other Government amendments would raise the threshold to £5,000 for individuals (i.e. regulated donees), members associations, recognised third parties and permitted participants.

A further series of Government amendments would remove the requirement for a registered party to take all reasonable steps to verify a donation. Linked amendments removed this requirement also for individuals (regulated donees),

---

[63] PBC Deb 18 November 2008 c341
[64] PBC Deb 18 November 2008 c342
[65] PBC Deb 18 November 2008 c348

members associations, recognised third parties and permitted participants. Mr Wills stated that the amendments would substantially reduce concerns about overburdening central and local parties and donors.[66]

Jonathan Djanogly spoke to various Opposition amendments to clause 8 in the next sitting on 20 November. These were debated in the same group as both the Government amendments and Labour backbench amendments from Nick Ainger and Martin Linton. Mr Djanogly said that if the £200 limit in the bill as introduced were retained, the Conservative party had estimated that 100,000 declarations would need to be completed each year.[67] He noted that the Electoral Commission briefing for the committee welcomed the Government amendments. However, he considered that the Government amendments did not increase the limits sufficiently. The Opposition amendments inserted a test of reasonableness into the clause and required the Electoral Commission to draft guidance notes for the completion of the declarations. In opposing the clause as a whole, Mr Djanogly considered that it was ill advised and costly.[68] He cited the evidence of witnesses to the Committee, such as the Electoral Commission and party representatives in support of his argument that the clause was ill conceived and that the impact assessment for the Bill had not been the result of detailed research. Mr Djanogly also asked a series of questions about the storage of the declarations.

For the Liberal Democrats, Mr Howarth suggested that the clause would work in tandem with a donations cap. If one were in place, then parties would need to be clear about the source of donations and “declarations to parties would be a way in which parties could effectively protect themselves against the accusation that they had taken a donation above the limit”.[69]

In response Mr Wills argued that the Opposition amendments were unnecessary since there was already sufficient protection in the drafting. In the clause stand part debate he commented upon how the Government had listened to representations from political parties and the Electoral Commission and therefore raised the limits. He drew attention to the fact that the donation disclosure limits in PPERA were set out in the Act and at some point changes in the value of money might need to be dealt with more routinely and suggested if there were consensus the vehicle for amending PPERA might be this bill. He conceded that the Government had made a reasoned guess with respect to the impact assessment and that the Ministry of Justice did not have a full dataset of donations between £200, £1,000 and £5,000 for the political parties.[70]

An amendment from Martin Linton to institute a standard £1000 fine in section 54(5) of PPERA for making a false declaration about the source of a donation provoked some debate. Mr Linton argued that the ability for a person to seek relief from the courts relief in the RPA 1983 would be a more appropriate way of dealing with the question of innocent mistakes than a full Electoral Commission investigation.[71] Mr Wills was resistant

66 PBC Deb 18 November 2008 c348
67 PBC Deb 20 November 2008 c358
68 PBC Deb 20 November 2008 c361
69 PBC Deb 20 November 2008 c369
70 PBC Deb 20 November 2008 c376
71 PBC Deb 20 November 2008 c378

and drew the committee's attention to the Commission draft note to the committee.[72] A breach of the rules on permissible donations was a serious matter.

David Kidney spoke to an amendment to bring forward the ending of the dual registration system, whereby MPs register donations both in the Register of Members Interests and with the Electoral Commission. He received support from the Opposition, but in response Mr Wills reminded the committee that section 59 of the *Electoral Administration Act 2006*, which would end dual registration could not be brought into effect until the Electoral Commission was satisfied that all the information required under PPERA had been collected by the Registrar. Mr Kidney warned that he would return to the matter on report, noting that the delay was causing considerable concern and irritation.[73]

The debate on Schedule 3 offered an opportunity for Nick Ainger and Tony Lloyd to talk to amendments to require all members of unincorporated associations making donations of £1000 to disclose their names and addresses. He acknowledged the concern from the Electoral Commission that this would place a considerable administrative burden on such organisations, but this sparked comments from David Howarth and Martin Linton as to the operations of the Midlands Industrial Council and the alleged naivety of the Commission's investigation into the Council.[74] Conservative MPs disagreed with this assessment. In response, Mr Wills said that the Ministry was continuing to actively examine the question of transparency, but wanted to consider options before coming back to Members.[75]

Martin Linton spoke to an amendment designed to introduce the concept of compliance officers for holders of relevant elective office. Mr Wills expressed some sympathy with the intentions behind the amendment, but wondered whether it would be appropriate for all elective office holders, such as MEPs and local councillors. He also emphasised that the appointment of a compliance officer would not absolve the donee of responsibility, in line with the approach of the RPA 1983 in respect of candidates and agents.[76]There followed a brief debate on the question of extending the definition of regulated donees office to cross bencher peers. Peers who are members of political parties are already included within the definition, as members of political parties.[77]

8. Party funding issues

Mr Djanogly introduced amendments to clause 9 which offers a defence to section 56 of PPERA for party treasurers who took reasonable steps to check the permissibility of a donor. In response Mr Wills commented on the definition of reasonableness in the drafting.[78]

---

[72] *Memorandum submitted by the Electoral Commission: Draft Note to Public Bill Committee: Use of Investigatory powers* PPE05 November 2008
[73] PBC Deb 20 November 2008 c387
[74] PBC Deb 20 November 2008 c390
[75] PBC Deb 20 November 2008 c397
[76] PBC Deb 20 November 2008 c399
[77] PBC Deb 20 November 2008 c400
[78] PBC Deb 20 November 2008 c405

David Howarth introduced new clause (22) which would extend the definition of impermissible donors to Members of the House of Lords, and, as he noted, on one interpretation of the clause, to companies controlled by impermissible donors. This offered an opportunity for the committee to discuss the role of corporate donor and peers in funding British parties.[79] Mr Wills noted that this would represent a significant departure from the PPERA regime, but in response David Howarth protested that politicians needed to reach a position which the public considered fair, rather than allow a veto by a single party.[80]

9. Triggering - Clause 10

Clause 10 was not reached until 3.15pm on the last sitting day of 20 November. Martin Linton introduced amendments to establish a system whereby the candidate expenditure limits should apply from a specific point in the parliamentary cycle; ideally this would be 42 months, but since this point had already been past in this Parliament, the amendment referred to the 50th month i.e. July 2009. There would be one period from July 2009 until dissolution where candidates could spend up to their limits and another regulated period during the campaign itself, effectively doubling the maximum expenditure.[81] Before the first period, candidate expenditure would be unregulated. Eleanor Laing expressed some sympathy with the amendment, but concentrated on the uncertainty of the triggering provisions prior to PPERA. David Howarth argued for a permanent local spending limit, noting that either triggering or fixed month solutions would merely transfer spending at constituency level from candidate to party. Alan Whitehead (Labour) argued that the amendment was preferable to the four month pre-election period proposed by the Electoral Commission and originally included in the Electoral Administration Bill introduced in session 2005-06.There was some discussion about the treatment of newsletters of MPs in respect of candidate expenditure. The amendment was negatived at 4pm when the proceedings of the committee had to be concluded under the terms of the programme motion agreed by the committee on 4 November.[82]

10. Other amendments which were not debated

Some minor and consequential amendments were made to Schedules 4 and 5 without debate. The bill was extended to Gibraltar in respect of sections 1(1) and (3), sections 4-7, and paragraphs 4,5,6 and 16 of Schedule 4, and the entry in Schedule 1 to PPERA. Gibraltar forms part of the South West region for the purposes of European Parliament elections According to the Electoral Commission website, parties who submit a statement of intention to the Commission to contest the combined South West region in the European Parliamentary election can accept donations from permissible donors in Gibraltar.[83] There were also amendments to the commencement provisions in respect of European seats in Northern Ireland and an addition to the long title of the phrase ‘and electoral registration’. Both were Government amendments.[84]

---

79 PBC Deb 20 November 2008 c406-415
80 PBC Deb 20 November 2008 c414
81 PBC Deb 20 November 2008 c418
82 PBC Deb 20 November 2008 c426
83 “Regulated period for European Parliament elections announced” 13 February 2005 Electoral Commission press release
84 PBC Deb 20 November 2008 c428

Government new clause 23 was added to the Bill, which ensures that a person may not be the responsible person for more than one third party. This new clause was supported by the Electoral Commission as a means to ensure that individuals are deterred from evading the limits by creating more than one recognised third party.

C. Operation of the Committee

Unusually, the committee divided on the question of whether the committee should adjourn, at the end of the ninth sitting.[85] Liberal Democrat and SNP MPs argued that the Conservative members of the committee were attempting to ensure LD new clauses on party funding were not debated, as there remained only two more sittings. Mr Howarth expressed concern that clause 10 on triggering election expenses might not be debated, despite evidence from experts on its likely operation in the evidence taking sittings of the committee.[86] Jonathon Djanogly argued that the Opposition did not wish the debate on clause 8 (donations declarations) to begin until the next sitting, to allow more time to table amendments to it. The motion to adjourn the debate was carried by 14 votes to 3.

The committee did not finish the consideration of clause 10 (triggering) when the time allocated in the programme motion was finished. There were no internal knives indicating time by which individual clauses should be debated. Clause 10, 11, 14 and 15 were agreed to on the last 11th sitting without further scrutiny.[87] There were a number of references to the fact that the Liberal Democrat new clauses on broader party funding issues were unlikely to be reached.[88]

D. Carry over of the bill to session 2008-09

The Bill was presented, read the first and second times and ordered to be printed as Bill 4 2008-09, on 4 December 2008.[89] The report stage of the Bill is not expected before the Christmas recess. Press reports following the announcement that no charges would be brought against the former Cabinet Minister, Peter Hain, indicated that broader revisions of the PPERA framework might be in prospect. Mr Hain had been under investigation for the late declaration of donations to his campaign to be selected as deputy leader of the Labour Party.[90] The Crown Prosecution Service press notice stated:

> Stephen O'Doherty, reviewing lawyer from the CPS Special Crime Division said: "Although Mr Hain did not report all regulated donations to the Electoral Commission within the 30 days stipulated by the Political Parties, Elections and Referendums Act 2000, in order to prove a criminal breach of the Act the Crown must first prove that Mr Hain held the position of either a 'regulated donee' or, if

---

85 PBC Deb 18 November 2008 c352

86 PBC Deb 18 November 2008 c349

87 PBC Deb 20 November 2008 c426

88 PBC Deb 20 November 2008 c376

89 HC Deb 4 December 2008 c154

90 "I have lost 10 months of my life' After being cleared over campaign contributions, former Cabinet minister tells Olga Craig how he believes he was made a scapegoat" 7 December 2008 *Sunday Telegraph*

> operating via a 'members association' he was the 'person responsible for dealing with donations to the association'.
>
> "The evidence in this case shows that Mr Hain's campaign was run through an organisation named 'Hain4Labour' which was made up of members of the Labour Party. That organisation had its own bank account and the funds for Mr Hain's campaign were solicited for that account and cheques donated were made out to that account. Those were all characteristics of a 'members association' as defined in the Act. Mr Hain was not a signatory to that account and did not direct where funds should be spent.
>
> "In light of this evidence, I have concluded that Mr Hain was not the 'regulated donee' and nor was he the person responsible for dealing with donations to the association under the terms of the PPERA." [91]

There has also been concern about the Electoral Commission powers to enter the offices of Members, in view of the Damian Green case.[92] There is likely to be increased focus on this question at report stage.[93]

[91] "CPS decides no charges for Peter Hain MP" 5 December 2008 *Crown Prosecution Service Press Release*

[92] See Library Standard Note 4905 *Parliamentary Privilege and individual Members* for details of the case

[93] See "Bill to allow Commons searches with no warrant" 7 December 2008 *Independent on Sunday*

Appendix I Members of the Public Bill Committee

Chairmen:
Sir Nicholas Winterton (Conservative), Frank Cook (Labour), Joe Benton (Labour) and Peter Atkinson (conservative)

Members:
Nick Ainger (Labour)
Brian Binley (Conservative)
David Clelland (Labour)
Jonathan Djanogly (Conservative)
James Duddridge (Conservative)
John Grogan (Labour)
Stephen Hesford (Labour)
David Howarth (Liberal Democrat)
Mrs Eleanor Laing (Conservative)
Martin Linton (Labour)
Tony Lloyd (Labour)
Ian Lucas (Labour)
Alan Reid (Liberal Democrat)
Virendra Sharma (Labour)
Andrew Tyrie (Conservative)
Dr Alan Whitehead (Labour)
Michael Wills (Minister of State, Ministry of Justice)
Pete Wishart (Scottish National Party)

Appendix II Stages of the Bill

- First Reading: 17 July 2008 [Bill 141]

- Second Reading: 20 October 2008
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081020/debtext/81020-0007.htm#0810203000001

- Public Bill Committee:

  1st Session: 4 November 2008
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081104/am/81104s01.htm

  2nd Session: 6 November 2008 (am)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081106/am/81106s01.htm

  3rd Session: 6 November 2008 (pm)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081106/pm/81106s01.htm

  4th Session: 11 November 2008 (am)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081111/am/81111s01.htm

  5th Session: 11 November 2008 (pm)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081111/pm/81111s01.htm

  6th Session: 13 November 2008 (am)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081113/am/81113s01.htm

  7th Session: 13 November 2008 (pm)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081113/pm/81113s01.htm

  8th Session: 18 November 2008 (am)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081118/am/81118s01.htm

  9th Session: 18 November 2008 (pm)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081118/pm/81118s01.htm

  10th Session: 20 November 2008 (am)
  http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081120/am/81120s01.htm

11th Session: 20 November 2008 (pm)
http://www.publications.parliament.uk/pa/cm200708/cmpublic/political/081120/pm/81120s01.htm

The Bill (Bill 165 of 2007-08) as amended in Public Bill Committee is available online at http://www.publications.parliament.uk/pa/cm200708/cmbills/165/2008165.pdf

Bill 4 of 2008-09 is at
http://www.publications.parliament.uk/pa/cm200809/cmbills/004/09004.i-ii.html

The written evidence submitted to the Public Bill Committee is available online at
http://www.publications.parliament.uk/pa/cm/cmpbpolitical.htm#memo

The written evidence has also been printed as PBC (Bill 141) 2007-08.

A Ministry of Justice memorandum for the House of Lords Delegated Powers and Regulatory Reform Committee was issued on 3 December 2008, which considers the powers to make delegated legislation under the bill.