

Summary: Intervention & Options

Department/Agency:
Ministry of Justice

Title: Impact Assessment of civil sanction powers of the Electoral Commission

Stage: Royal

Version: Final

Date: January 2010

Related Publications: Political Parties and Elections Act 2009
Impact Assessment of PPE Bill – Reform of the Electoral Commission – 3 December 2008

Available to view or download at: <http://www.ialibrary.berr.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

The Electoral Commission's investigatory powers and the enforcement actions available to it have been criticised by several independent reviews as insufficient for a regulator of party and election finance. In particular, its ability to take action in relation to breaches of legislation is considered inadequate, which limits the extent to which the Commission can enforce the law. Further, its current powers are considered too narrow to allow any flexibility of approach when dealing with breaches.

What are the policy objectives and the intended effects?

One of the main policy objectives of the Political Parties and Elections Act 2009 (the "PPE Act") was to improve public confidence in the political process by aiding the effective regulation of political parties, and to put in place arrangements to improve the transparency of donations to political parties and other entities.

The PPE Act contained an enabling power to provide a wider range of civil sanctions to the Electoral Commission to equip it to operate as a more effective regulator of the offences and requirements that were provided for in the Political Parties, Elections and Referendums Act 2000. This Impact Assessment concerns the secondary legislation (referred to as the "Order") which sets out the detail of how the civil sanctions will operate.

What policy options have been considered? Please justify any preferred option.

Option 0: no secondary legislation (base case)

Option 1: secondary legislation is brought forward to provide the Electoral Commission with a new suite of civil sanctions

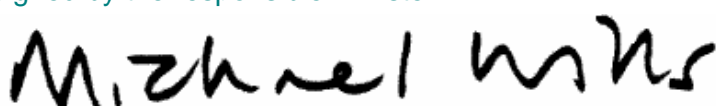
Option 1 has been chosen - Parliament has approved primary legislation to clarify the Commission's regulatory role, which includes providing it with a wider range of civil sanctions, to enable it to become a more effective regulator. The Order provides additional necessary detail that enables these powers to become operational.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed after 3 years to ensure that the new regime is functioning as intended.

Ministerial Sign-off For final proposal Impact Assessments:

I have read the Impact Assessment and I am satisfied that (i) it represents a fair and reasonable view of the expected costs, benefits and impacts of the policy and (ii) the benefits justify the costs.

Signed by the responsible Minister:



Date: 30 March 2010

Summary: Analysis & Evidence

Policy Option: 1

Description: Secondary legislation to provide Electoral Commission with new civil sanctioning powers

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off	Yrs	
	£		<p>There are likely to be minor one-off adjustment costs for all parties. Further, all parties will face additional ongoing compliance costs as a result of the new civil sanctions. However, these costs are not expected to be significant. Any monetary penalty imposed would generate financial costs for the party being fined.</p> <p>The EC has suggested that there will be an increase in their costs given the number of cases being investigated and sanctions imposed is likely to increase. It has not been possible to estimate the likely magnitude of these costs.</p>
	Average Annual Cost (excluding one-off)		
£		Total Cost (PV)	£

Other **key non-monetised costs** by 'main affected groups'

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		<p>The increase in sanctions available to the EC should provide an additional deterrent effect, increasing compliance with the PPERA. Any increase in compliance with PPERA will provide benefits for society e.g. society may value political party funding being transparent and more effectively regulated.</p> <p>Any fine income received would be scored as a benefit to the Consolidated Fund</p>
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£

Other **key non-monetised benefits** by 'main affected groups'

Key Assumptions/Sensitivities/Risks

It is assumed that there will be no impact on the volume of (serious) cases being referred to the CPS nor to the level or volume of donations received by parties as a result of this legislation.

Price Base Year	Time Period Years	Net Benefit Range (NPV)		NET BENEFIT (NPV Best estimate)	
		£		£	
What is the geographic coverage of the policy/option?			UK-wide		
On what date will the policy be implemented?			1 December 2010		
Which organisation(s) will enforce the policy?			Electoral Commission		
What is the total annual cost of enforcement for these organisations?			£ N/A		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		N/A	N/A	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)					(Increase -
Increase of	£	Decrease of	£	Net Impact	£ N/A
Key: Annual costs and benefits: Constant Prices					(Net) Present Value

Introduction and Background

- 1.1 The Committee on Standards in Public Life (CSPL) conducted a review of the Electoral Commission's effectiveness in fulfilling its statutory duties, which reported in January 2007. The CSPL concluded that, in the main, the Commission had been effective in its administration of the regulations on party finance and expenditure – that is, the collection and publication of information for the use of parties and the public. However, the Committee concluded that the Commission had been less successful in acting as a proactive regulator of party funding. The Committee made a number of recommendations for refocusing the Commission's mandate on its core functions as a regulator and enhancing the Commission's effectiveness in investigating and applying sanctions for breaches of the rules on party funding and campaign expenditure.
- 1.2 Reform of the Electoral Commission was also recommended by the Constitutional Affairs Committee (CASC) report, *Party Funding*, published in December 2006, the final report of the independent review into party funding by Sir Hayden Phillips, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, published in March 2007, and the Public Administration Select Committee (PASC) report, *Propriety and Peerages*, published in December 2007.
- 1.3 The outcomes of those reviews have informed policy formulation at every stage. The Ministry of Justice used the Political Parties and Elections Act 2009 to implement many of the recommendations in these reports which required legislative change. The detail of the civil sanctions regime is contained in the Order to which this Impact Assessment relates.
- 1.4 The Regulatory Enforcement and Sanctions (RES) Act 2008 extended to other regulators a range of civil sanctions – in line with the Macrory recommendations and Hampton Review principles. The reforms to the Electoral Commission mirror that approach to a significant degree.
- 1.5 While some of the recommendations from the above reviews could be effected without legislation; the key driver for implementing any changes - that the Electoral Commission becomes a more effective regulator - would not be realised. To deliver the step change necessary in the Electoral Commission's performance would require legislative change, and this approach was agreed during the passage of the Political Parties and Elections Act 2009, which set the primary legislation upon which the Order is based.

Scope of the Impact Assessment

Scope of the proposals

- 2.1 The PPE Act sets the framework for the civil sanctions regime, which is supplemented by the Order. In particular the Order prescribes the offences and requirements which are punishable by civil sanctions, as well as prescribing certain additional matters (such as the level of monetary penalties, time limits for appeals or other procedures and other supplementary matters). The Order will be subject to affirmative resolution in both Houses of Parliament.
- 2.2 For the majority of breaches of PPERA, criminal prosecution of the registered party treasurer (or other individuals with statutory responsibilities) is the sole existing enforcement route. While the Commission may alert the police or the Crown Prosecution Service to the possibility that an offence has been committed following its own investigations, the Commission does not have any formal role in the decision as to whether to prosecute or in any subsequent prosecution. It has no flexible powers of its own to impose sanctions for breaches of the rules. Between 2000 and 2006 29 people were proceeded against in magistrates' courts in England and Wales for criminal offences under PERA, resulting in 23 convictions. Criminal prosecution is considered to be

- 2.3 CASC recommended that the Electoral Commission be given appropriate powers of enforcement to help it become “an effective watchdog”. The CSPL said that the Government should consider introducing a system of financial penalties that could be applied by the Electoral Commission for non-compliance with the regulatory requirements. Whilst prosecution for criminal offences would continue where appropriate, access to a new, more proportionate range of sanctions to penalise breaches as a more graduated system of fines would provide a more effective deterrent. The Commission, in its March 2007 response to the CSPL review, said it would welcome consideration by the Government of additional financial penalties for non-compliance.
- 2.4 The PPE Act seeks to provide the Commission with a widened range of sanctions to enable it to become a more robust regulator. These sanctions are based closely on the range of sanctions recently included in the RES Act for other regulators, with appropriate adaptations to reflect the Commission’s specific monitoring role.

Civil Sanctions

- 2.5 The new range of flexible civil sanctions that the PPE Act puts in place would give the Commission the ability to impose either fixed or variable monetary penalties, and to use new approaches to secure compliance with the law where appropriate, rather than the more limited options of a fine or referring a case for criminal investigations. The Commission’s consultation ‘*Better Regulation of political party and elections finance*’ ended on 1 December 2009, with the findings contributing to the development of the civil sanctions policy.
- 2.6 These new civil sanctions include Fixed Monetary Penalties, Discretionary requirements (including compliance and restoration notices, and variable penalties), Stop Notices and Enforcement Undertakings.
- 2.7 Fixed Monetary Penalties (FMPs) are intended for use in relation to relatively low level breaches, and will be set at a level of £200. A single level for this penalty is intended to provide simplicity and reflects the fact that providing for differential penalties according to the type of regulated entity would result in a very complex system (given the variety of potential recipients of an FMP).
- 2.8 Discretionary Requirements have three components. The detail of the *compliance notices* (steps to ensure that cease an action) and *restoration notices* (steps to return a situation to how it was previously), are largely contained within the 2009 legislation, and so have already undergone legislative scrutiny in both Houses. These notices may be applied on their own or in conjunction with a *Variable Monetary Penalty* (VMP), which will be used in response to relatively serious breaches of the legislation.
- 2.9 The EC consultation did not specify the level of VMP that could be imposed. The Order will apply a cap of £20,000 as the maximum VMP the Commission can impose. This level is intended to strike a balance between providing the Commission with the flexibility to apply a proportionate sanction on a case by case basis, whilst providing reassurance that the penalty imposed will not be disproportionately punitive.
- 2.10 For Stop Notices, much of the detail is again contained within the primary legislation, but the Order will specify that appeals against the imposition of a Stop Notice will not automatically suspend the notice, as is standard for other notices. However, a notice can be suspended or varied if a court considers it appropriate. This approach has been taken given that stop notices are time-critical and such an automatic suspension would significantly undermine their effectiveness.
- 2.11 On Enforcement Undertakings, which are a voluntary agreement between a person and the Commission to facilitate compliance with PPERA, the Order specifies various procedural matters such as the terms which an undertaking must include and how and when a person is considered to have discharged the undertaking.

Other matters

2.12 Aside from the detail of the civil sanctions of the Order also deals with supplemental procedural matters.

Stakeholder groups and Organisations in the scope of the proposal

2.13 The groups that will be affected by the introduction of the civil sanctions will primarily be the Electoral Commission as regulator and those entities that are regulated by PPERA as donees or donors, irrespective of their size or nature: for example, all political parties, individual regulated donees, companies, trade unions, and limited liability partnerships, and unincorporated associations.

2.14 However, these entities will only be affected by the sanctions if they fail to comply with the legislation

Rationale for intervention

Overall policy intention

3.1 The Order works in parallel with a range of complementary proposals designed to achieve the main policy objective of building public confidence in the political process by enabling the effective regulation of political parties, and other political entities. It is intended that the Commission should focus on its regulatory role and that it should have a wider range of investigatory powers and civil sanctions to pursue and punish breaches of PPERA.

3.2 The impact of these changes will primarily depend upon how the Electoral Commission decides to implement the changes to its role. The Commission has indicated that it intends to employ a higher number of staff to fulfil its changed role, with wider investigatory and advisory powers and a range of civil sanctions at its disposal.

3.3 This wider range of powers is intended to increase the regulatory effectiveness of the Electoral Commission, ultimately leading to fewer breaches of the PPE Act and to increased public confidence in the political process.

ECONOMIC RATIONALE

3.4 The conventional economic approach to Government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way a market operates (“market failures”) or if it would like to correct existing institutional distortions (“government failures”). Government also intervenes for equity (fairness) reasons. In this case, intervention would be justified on efficiency grounds.

3.5 Breaches of PPERA generate costs for society. The Electoral Commission is the regulatory body responsible for preventing these breaches, but does not currently have an appropriate set of powers to properly enforce the relevant legislation. The Order provides the Electoral Commission with an appropriate set of sanctioning powers which should increase the efficiency of the regulatory system. The new powers should provide an increased deterrent effect, which should result in a lower number of PPERA breaches. This will generate welfare gains for society, which should outweigh any additional compliance costs, which are expected to be minimal.

Cost Benefit Analysis

Option 0: no secondary legislation (base case)

4.1 The Electoral Commission can currently only rely upon criminal prosecution by the Crown Prosecution Service (CPS) and police, and therefore largely only pursues this course of action for the most serious breaches. Without the use of the new range of civil penalties, available only through the Order, the Commission will not be able to act directly to enforce the 2000 Act in a proportionate, timely and economic way.

4.2 There are no costs or benefits associated with the base case.

Option 1: secondary legislation to provide new civil sanctions

Description

4.3 This option will provide the Electoral Commission with a new suite of civil sanctions as set out above. Secondary legislation is required for these powers to be used.

Costs

4.4 There are likely to be minor one-off adjustment costs for all parties and other stakeholders (see 2.13) as a result of a need to familiarise themselves with the proposed changes. As a result of the increased sanctions, all parties are likely to face additional ongoing compliance costs to better ensure that compliance with PPERA is achieved. These costs are not expected to be significant, given the majority of affected parties already have such compliance systems in place, and that the most serious offences are already punished through criminal penalties.

4.5 The Electoral Commission has suggested that there will be an increase in their costs as a result of the primary legislation as it strengthens their investigatory powers, which may in turn increase the number of instances that require a civil sanction to be imposed. However, the cost of any additional staff required will be spread across the investigatory and enforcement areas, and is as yet unknown. As instances that require civil sanctions are not expected to require judicial involvement, the policy should have little impact on judicial resources. There are therefore no anticipated costs (apart from the costs to the EC identified above) associated with the higher volume of sanctions being imposed.

4.6 The new sanctions allow the potential for monetary penalties to be imposed for breaches of PPERA. It has not been possible to quantify the likely magnitude of financial penalties, but such penalties would represent additional costs for any party which incurred a fine.

4.7 A Legal Aid and Justice Impact Test has been completed and it was found that the new scheme should have a minimal impact on legal aid.

Benefits

4.8 As a result of the secondary legislation the Electoral Commission will be able to impose a sanction in cases where previously one would not have been available. Therefore, it is likely that the level of compliance will increase, due to the new deterrent effect of the sanctions. It has not been possible to estimate the strength of the deterrent effect, but any increase in compliance with PPERA will provide benefits for society e.g. society may value political party funding being transparent and more effectively regulated. Note that it is not considered that the new system will have any effect on the volume or level of donations that are received.

4.9 The EC are likely to receive income from any financial penalty it imposes. It has not been possible to estimate the likely magnitude of this income, which would be scored as a benefit to the Consolidated Fund.

4.10 The number of serious (criminal) cases that are referred by the EC to the CPS for consideration is very small and this is not considered likely to change as a result of this legislation. Further, as set out above, less serious cases are not expected to require judicial resources to resolve. Therefore, while there should be fewer breaches of PPERA overall, any impact on the justice system is not expected to be significant.

Net Impact

4.11 It has not been possible to quantify the costs and benefits associated with the proposed policy. However, the impacts as set out above suggest that the benefits of implementing the policy are greater than the costs of doing so. The net present value of the policy is expected to be positive.

Enforcement and Implementation

5.1 The Order will come in to force on 1 December 2010, with only those acts that have occurred on or after that date being affected.

5.2 Those who have a sanction imposed upon them have the right to appeal to a county court (or sheriff in Scotland) to have the sanction removed or amended. In addition, the Electoral Commission will be able to apply to the civil courts to have a sanction enforced if a monetary penalty is not paid to them according to the terms stated by them. It is unclear at this stage the likely levels of appeals or enforcement but it is expected to be minimal.

Specific Impact Tests

Competition Assessment

6.1 A preliminary competition filter was undertaken and this revealed that there are no impacts on competition; therefore a full assessment was not necessary.

Small Firms Impact Assessment

6.2 We have approached non-parliamentary parties for discussion on the development of the project, but have as yet to receive a response.

Legal Aid and Justice Impact Test

6.3 There should be no affect on legal aid or justice as a result of the implementation of this legislation.

Race / Disability / Gender Equality

6.4 Neither of the options considered have any impact on Race, Disability or Gender of individuals.

Human Rights

6.5 The proposals are compliant with the Human Rights Act

Rural proofing

6.6 There are no specific rural impacts from the proposals.

Health Impact Assessment

6.7 There are no expected health impacts from the proposals.

Environmental Impacts

6.8 There are no expected environmental impacts from the proposals.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No