

# **The Political Parties, Elections and Referendums Act 2000**

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## **Introduction**

British political finance has, hitherto, been remarkably unregulated. However, following the Neill Committee's recommendations in 1998, the *Political Parties, Elections and Referendums Act 2000* came into force on 16<sup>th</sup> February 2001. In the context of previous attempts to reform political finance, the act is very radical. It signals a huge sea change in terms of regulation and established practice. In addition to party finance reforms, the Act also extends into other areas. It establishes an Electoral Commission and provides a new regulatory framework for the conduct of elections and referendums.

## **Previous Attempts to Reform British Political Finance**

Since the 1970s, political finance has been subject to periodic examination. With the exception of the introduction of financial aid for opposition parties in parliament, what distinguishes these previous attempts from the new Act is their failure to reform a system of political finance based largely upon the 1883 *Corrupt and Illegal Practices Act* (Fisher, 2000a). These previous attempts and the reasons for their failure are summarised below.

In 1975, financial assistance for parliamentary opposition parties was introduced. Named Short Money, this was (and continues to be) a sum allocated according to the number of seats in the House of Commons, together with a calculation linked to inflation of a sum relative to votes won at the preceding General Election. This form of assistance was enhanced subsequent to the Neill

Committee's report and was increased by a factor of 2.7 in 1999. In addition, since 1996 small sums have also been payable to opposition parties working in the House of Lords. This is known as Cranborne money.

A desire to examine the possibilities for the state funding of political parties was announced soon after the February 1974 general election. The new Labour government announced that it was to appoint an independent committee with Lord Houghton, a former Labour cabinet minister, as chair. The Committee on Financial Aid to Political Parties (generally known as the Houghton Committee) reported in 1976. The report favoured state subsidies to parties as a means of halting what it saw as the decline in parties' contribution to public life. It argued that membership fees and traditional fundraising methods were inadequate and meant that parties were frequently operating below minimum levels of required activities and efficiency. Moreover, traditional fundraising created an unhealthy reliance upon trade union and business support. To counter these problems, the Committee proposed annual grants to central party organisations based upon popular electoral support as well as limited reimbursement at local level of candidates' election expenses for both parliamentary and local elections. Labour supported the principle of state subsidy whilst the Conservatives rejected it. However, Labour failed to do this before its election defeat in 1979 and the new Conservative government continued the party's opposition to subsidies. The Houghton recommendations were effectively buried.

A series of high profile but non-official reports followed over the next decade. In 1981 *Paying for Politics* (Hansard Society, 1981) proposed state aid on a matching funds basis from a maximum available sum and sought to limit the size of individual donations in the hope that this would encourage a larger number of small donors. There were also proposals to limit campaign

expenditure, disclose donations over a certain size and oblige parties to publish full accounts. In 1985, *Company Donations to Political Parties* (Constitutional Reform Centre/Hansard Society, 1985) recommended that whilst corporate donations should continue, they should be subject to shareholder approval at least once in the lifetime of each parliament and in advance for specific donations. In 1992, *Agenda for Change* (Hansard Society, 1992) was divided over support for the principles outlined in the Houghton report and recommended only that a tax ‘check off’ be introduced to encourage small donations. None of the recommendations from any of these reports were implemented.

In 1993, the Select Committee on Home Affairs examined party finance. The terms of reference were to examine the case for and against the state funding of political parties, the methods by which parties are financed and the desirability of controls both on income and expenditure. The committee divided along party lines regarding the final report with the (Conservative) Chair exercising his casting vote. The subsequent report was very limited in its recommendations. It rejected the extension of state funding, any further disclosure regulation or contribution limits. The only possible changes recommended were the requirement that party accounts contain reasonable levels of detail, including payments in kind together with the consideration of Civil Service secondment to parties as a form of in kind state funding. Beyond that, the report gave a clean bill of health to British party finance. Nothing was implemented.

## **The Neill Committee**

However, the election of a Labour government in 1997 meant that some reform was possible, the party having promised to re-examine the issue of party finance in its manifesto. The hand of the new government was forced however, by the Ecclestone affair. In late 1997, it was revealed that the Labour Party had received a donation of £1 million from the Head of Formula 1 Racing, Bernie Ecclestone. The reason this donation was problematic was that the government had excluded Formula 1 from its proposed ban upon tobacco advertising in sport. There were suggestions therefore that the donation, whilst not unique in size, had been reciprocated with a change in policy. Labour immediately sought to limit the political damage by declaring the matter to the chair of the House of Commons Standards Committee and returning the donation to Mr. Ecclestone. The Prime Minister then instructed the Committee on Standards in Public Life (the Neill Committee) to examine the whole issue of party finance.

The committee investigated the issue in the context of three further important developments, which were to guide their thinking. The government's constitutional reforms had led to two new sets of circumstances. First, there was the increased use of referendums. Secondly, the new government had introduced alternative electoral systems for non-Westminster elections. Indeed, the electoral systems adopted necessitated the registration of political parties (for the allocation of vote share and top up seats) and thus, one of the potential obstacles to reform, the legal status of political parties, had already been addressed. Finally, the whole question of regulation was thrown into some doubt by the Bowman ruling in the European Court. This ruling had stated that the maximum sum permitted for 'third parties'<sup>1</sup> in constituency elections (£5) was so low as to

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<sup>1</sup> Individuals or groups not contesting an election

constitute an effective restriction of freedom of expression. Critically, however, the court stated that it was the maximum sum that was restrictive, rather than the principle of a maximum sum, itself, thereby avoiding the potentially damaging growth of ‘third party’ campaigns that occurred in the United States following *Buckley vs. Valeo*. (Details of the Bowman case can be found in the Neill report).

The Neill Committee reported in October 1998. Given the nature of the Home Affairs Committee report, the new electoral landscape and the Bowman case, there were fears that the report would not recommend a great deal of reform. Hitherto, those who had emphasised legal loopholes rather than political principles had held sway in the ongoing debate. The Neill report was radical, however and represented proposals for the most fundamental reform in British party finance since the *Corrupt and Illegal Practices Act 1883*. It was a wide ranging report which made no less than 100 proposals for reform. Critically, the report was supported by all parties and was supported almost in entirety by the government when it published its response in July 1999. The government, however, rejected the recommendation that tax relief be provided for donations of up to £500 as a form of quasi-state funding, since these taxes would normally go to the Treasury. However, the rejection was not especially significant. First, it relied on a somewhat forlorn hope that this would promote many small donations. Secondly, by building in a tax relief element, it assumed that submission of tax returns was the norm, rather than taxation via PAYE. Subsequently, the proposals were put to parliament in the 1999-2000 session and passed on 30<sup>th</sup> November 2000.

## **The Act – Key Provisions**

### *Electoral Commission*

An electoral commission has been established to oversee the implementation of the law relevant to party finance as well as for other electoral matters. Its remit is wide. The commission is to oversee electoral boundaries, the registration of parties and designated organisations, the regulations pertaining to elections and the use of advertising in electoral contests. In addition to these roles, it must be consulted on any changes to electoral law or issues concerned with election and referendum broadcasts. Furthermore, any actions arising from the *Representation of the People Act* must now be recommended by the Commission. It will serve as a body to provide advice on electoral matters and importantly is also charged with promoting public awareness of the political process to the extent that it can award grants to bodies that seek to become involved in this promotion. As far as party finance is concerned, parties will now be required to submit audited accounts to the Commission based upon identical time periods in a standard format. Such accounts will be required within three months of the accounting year end and will be subsequently be made available for public inspection.

### *Donations*

First, donations in excess of £5,000 nationally and £1,000 locally are to be publicly declared. Importantly, this includes ‘in kind’ payments. The declaration of such donations is quarterly during non-election periods and weekly during general elections. Secondly, anonymous donations to parties in excess of £50 are now prohibited. Thirdly, there will be an end to ‘blind trusts’. These are trusts set up where the donor’s identity is not known to the recipient. Fourthly, shareholders are to be balloted prior to political donations being made by companies. This

authority will be valid for four years and will provide the board of directors with discretion during that period to make donations up to a prescribed limit. This compares with the ten yearly ballots required of trade unions holding a political fund. Finally, foreign donations are banned, or rather donations are only be permitted from permissible sources, those being individuals entitled to be registered as UK voters; companies incorporated in the United Kingdom; partnerships based in the United Kingdom or who operate principally in the United Kingdom; registered trade unions and other organisations based in the United Kingdom or those parts of organisations whose principal spheres of operation are based in the United Kingdom.

### *Campaign Spending*

One of act's most radical clauses is the limit upon campaign spending at a national level in general elections. Hitherto, only local campaign expenditure has been regulated. One of the problems in imposing a national limit is the definition of when a campaign begins. For the purposes of the Act, the period has been defined as the 365 days preceding polling day in a general election. The ceiling is set at £30,000 per contested constituency. Thus, if a party contests all seats in Britain (641), the ceiling will be £19,230,000. This cap was a surprise move given that of all the regulations, this was most likely to attract loophole seeking. However, the Neill Committee's justification was one similar to that imposed at local level. The analogy was with speed limits. A 30mph speed limit will not prevent drivers travelling at 35mph, but it is likely to prevent speeds of 50mph. Secondly, it worth noting that the cap of nearly £20 million is actually very high. Given that parties are now campaigning even more regularly, they may face some difficulty actually spending up to the new ceiling, particularly since the Act has continued with the ban on political advertising on television and radio. In the case of the probable election in 2001, however, the cap will be set at a lower figure of £14.4 million, since the act came into

force on 16<sup>th</sup> February 2001, and the definition of the campaign period (365 days) cannot be applied retrospectively.

Spending limits will also apply to non-Westminster elections, though the definition of campaign periods differ. In European elections, this will be £45,000 per MEP in a region; in Scotland, £12,000 per constituency contested plus £80,000 per contested region; in Wales, £10,000 per contested constituency plus £40,000 per contested region; and in Northern Ireland, £17,000 per contested constituency

### *Third Parties*

The Act avoided the potential problem of the Bowman case by proposing an increase in the sum permitted for 'third party' expenditure to £500 - a one hundred fold increase on the previous level. The report has also imposed a ceiling of £25,000 (£10,00 in England, £5,000 each in Scotland, Wales and Northern Ireland) on general political campaigns undertaken by non-registered 'third parties' during an election campaign. 'Third parties' registering their campaigns will be permitted to spend up to 5 per cent of the maximum limit set for any political party - in effect nearly £1 million. This restriction goes well beyond what was permissible beforehand and given the prominence of non-party campaigns during this parliament on subjects such as fox-hunting and Clause 28, we may see significant activity in this area. Interestingly, it is unclear as to whether the national/local split occurs in expenditure applies as it does with parties. In other words, do the ceilings imposed upon national 'third party' expenditure include that which is undertaken at constituency level? The forthcoming election should clarify this point, and, if it held in 2001, the ceilings will be reduced to reflect the 16<sup>th</sup> February enactment as is the case with parties.



### *State Funding*

Although there are no proposals to extend state funding to levels that are comparable with other West European nations, there are two provisions, which do indicate that the principle of increased public funding has been more readily accepted. Firstly, following the recommendations of Neill, 'Short' money was increased by a factor of 2.7 in 1999. Secondly, a Policy Development Fund is to be established, initially cash limited to £2 million per annum, to assist parties to engage more fully on policy development. This will be administered by the Electoral Commission. As a consequence of these provisions, there will in effect, be an extension of public funding of parties, though those sums still fall short of state subventions provided in many other nations.

### *Referendums*

Firstly, the desire to regulate as in elections is maintained such that campaign groups are to be registered, disclosure limits are to be set and campaigning by 'third parties' is to be restricted. More important is the fact that in order that referendum campaigns are fair, registered campaigns may apply for core public funding up to a limit of £600,000. The implication here is that the market is insufficient to provide an even political contest - a principle, which could theoretically be applied to elections. In addition, as with elections, referendum campaigns are to be provided with free mailshots of referendum addresses, free use of public rooms for meetings and free broadcasts. The most radical provision, however, is that governments should remain neutral in a referendum and not distribute any literature at the public expense - even factual literature. This is potentially very significant, since in a referendum on a relatively complex issue such as membership of the EURO, where some campaigns are likely to be more emotive than

informative, governments may struggle to present reasoned cases for either side. This will also be pertinent in any possible referendum on alternative electoral systems for Westminster.

### **Questions and Implications**

A number of questions arise from the act: whether it has gone far enough, why this radical shake-up has succeeded in being implemented where others like Jenkins and Wakeham have seemingly failed and the implications of the legislation.

#### *Has the Act Gone Far Enough?*

Given the radicalism of the legislation, it might seem churlish to consider this point. Yet, for all that, the option of comprehensive state funding was rejected in spite, some might argue, of the atmosphere being ripe for wholesale reform. And ironically, just prior to the Act's coming into force, the issue of state funding came onto the political agenda following the revelation that both main parties had received large individual donations.

Neill rejected state funding, in part because the committee felt that the case in favour was insufficiently compelling. Instead, they proposed the capping of national expenditure limits at general elections. The likely outcome was predicted to be twofold. First, a cap would make the electoral playing field at least a little more even – especially with the retention of the ban on advertising on broadcast media and the continuation of party election broadcasts. Secondly, the restriction would limit the 'arms race' that had been developing between the two main parties. However, there is reason to argue that these two assumptions are flawed. First, the argument of a more even electoral campaign playing field makes the assumption that money is a constant sum. In other words there is an assumption that increased spending will result in greater electoral

payoffs, regardless of the fact that some parties may use their campaign expenditure more efficiently than others. Notwithstanding that point, the evidence for the putative electoral payoffs is mixed. Whilst Johnston & Pattie (1995) consistently demonstrate a link between spending at constituency level on electoral success, Fisher (1999) demonstrates that at national level the link between spending and electoral payoffs is anything but conclusive. The only circumstances where there is a link is in the case of Conservative incumbents, where an annual increase of £1,000 expenditure at 1963 prices, produces a 0.004% increase in Conservative poll ratings – a minute amount.

The second flaw in the argument is the focus on election campaigns. Studies of party finance (e.g. Fisher, 2000b) consistently demonstrate that most party expenditure is not spent on campaigns – rather it is spent on routine maintenance of the parties' infrastructure. Since parties are competing continually throughout the electoral cycle, limits on one area of expenditure are perhaps ineffective. In any case, the question must surely be raised as to whether it is desirable to restrict campaigning, since this is a device of political communication and at a time when there are concerns regarding levels of political engagement, there is a case to be made that political communication should not be restricted.

A second argument suggesting that more comprehensive state funding should be introduced concerns the ability of parties to raise money. Party expenditure, whilst peaking at the times of general elections, is nevertheless something of a constant. Party income, on the other hand, follows the general election cycle, leading (especially in the case of the Conservatives) to parties struggling to fulfil their financial obligations and routinely finding themselves in deficit. Worse, parties cannot enhance their income via good performance. No matter how well or badly parties

perform, their finances are unaffected - it is the general election cycle that determines their income (Fisher, 2000b).

A final consideration concerns recent revelations that both principal parties had been in receipt of very large donations. In the case of Labour, these were three separate donations of £2 million, for the Conservatives, £5 million. The ensuing controversy provoked calls for a capping of donations. Yet, such an act would create a dilemma. To be sure, donations of such magnitude can create unease. However, if parties have no other sources of income on which they can rely, the capping of such payments could leave them in financial difficulties. Thus, there is a case to be made that capping should only be introduced if state funding were to be extended. Only then could parties effectively be compelled to seek many smaller donations without the risk of financial ruin.

*What explains the successful passage of the Neill proposals?*

An important question to consider, especially where radical reform is concerned, is how such proposals were enacted (albeit without state funding) when other proposals for reform, such as those from Jenkins and Wakeham Commissions have seemingly failed. There are two possible explanations. First, the Neill proposals produced an all-party consensus, and arguably this might not have held had proposals for extensive state funding been introduced. By way of contrast, both Jenkins and Wakeham divided the parties. Secondly, the structure of the commissions or committees is important. When Wakeham and Jenkins' proposals were published, their respective commissions were disbanded. The Committee on Standards in Public Life, however, is a standing committee. Consequently, it can answer queries regarding past reports and pressurise governments into keeping proposals on the political agenda. Unlike special

commissions, a standing committee ‘does not go away quietly.’

### *Implications*

There are several implications arising from the Act. First, national parties will be forced to be more open about their finances. Not only will their accounts be drafted in a format that provides sufficient detail, but the short reporting periods for donations will mean that parties cannot shield information from the public as they currently can by providing only scant details up to nine months after their financial year end. The increased transparency, of course, may deter some donors, but more seriously for those parties that receive corporate income, the imposition of compulsory shareholder ballots will force companies to consider the business implications of making donations. There are rarely PR benefits to be made from corporate donations, and political activity can be conducted more efficiently via lobbyists.

For local parties, the implications are also important. Standards of accounting vary considerably across constituency parties (Fisher, 2000c). This is hardly surprising since the task is a voluntary one. Yet local parties will now be required to complete detailed accounts to a standard that they were only previously obliged to do at elections. The extent to which they will cope with this (necessary) burden remains unclear.

In the case of referendums, the prohibition of government factual literature being distributed is potentially problematic, especially since the press will not be similarly restrained. On the other hand advocates of this clause will point to the supposed abuse of referendums by governments as a good reason to prohibit government involvement.

For ‘third parties’, whilst the principle of non-partisan activity is legitimised by the Act, there has, nevertheless, been a deliberate attempt to exert the supremacy of conventional electoral contests over the freedom of ‘third parties’ to campaign to the extent that they might wish. And in doing so, the Act has gone some way to prevent the kind of ‘arms race’ that the Neill committee was so keen to avoid.

Since the spur for many of these reforms was a perceived decline in public confidence concerning political finance, the question must be asked as to whether the Act will address such concerns. In theory, it should. Parties will be required to reveal details of their income and expenditure and it has long been argued that transparency is an excellent tool with which to fight wrongdoing. Yet, whilst the increased transparency can only be welcomed, it should be pointed out that knowledge of sources of income alone will not necessarily allay fears. The best example of this is trade unions, where the size of their payments to the Labour Party had long been public knowledge, but did nothing to allay fears that the relationship might well be reciprocal.

The provisions pertaining to the Electoral Commission are indications of its likely success. On the one hand, it will bring together all the various arms of electoral law and will provide a permanent and independent overseer of the democratic process. However, the restriction of membership of the commission, such that no one who has been actively involved in party politics during the previous ten years, may lead to a Commission that is relatively ill-informed about the parties, or worse, may be more exposed to pressure from government.

Finally, whilst the Act has avoided the introduction of comprehensive state funding in the short term, its long-term introduction appears to be inevitable. The principle that parties require

additional finance has already been accepted, whilst the provisions for referendums suggest that there is an acknowledgement that voluntary income may not guarantee a basis for an even political contest. Finally, the parties themselves are likely to struggle financially – not because of the Act – but simply because of the increasing cost of modern political life combined with multiple elections. Since both the Neill committee and the government accept that parties are at the heart of democracy, simple practicality may well usher in state funding.

## **Conclusions**

Unlike most significant institutional change, there has not been one single incident which has produced the kind of reform now occurring. The Act represents a huge break from the past. Notwithstanding the success of the 1883 Act, previous attempts at reform have failed due to the interests and ideology of governments. But these radical proposals have succeeded because of cross-party support and the continued existence of the proposing committee. Whilst extensive state funding might appear on democrats' wish-list, it is arguable that its inclusion would have threatened the consensus surrounding the proposals. That said, we are still left with a very radical act. British political finance is about to become modern and regulated in ways more akin to most other democracies.

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