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On 21 April 2020 we submitted two codes of practice to the Minister for the Constitution and Devolution to approve and lay before Parliament. They are about election spending: one on spending by candidates and one on spending by parties. Between September and December 2018 we carried out a consultation on the codes. We wanted views from a wide range of stakeholders, and we recognised how important it was that people who will use the codes support them. This paper sets out the feedback we received and how we responded to it. We've used the feedback to make sure the codes are right and clear. In some cases we were not able to make the amendments suggested because the law would need to be changed to allow us to do this. Or because proposed changes were inconsistent with what is in the law. Overview A code of practice is a legal guidance document. The Representation of the People Act 1983 and the Political Parties Elections and Referendums Act 2000 allow us to draft codes giving guidance on candidate and party spending. The Government now needs to ask Parliament to approve the codes. The legislation uses general categories such as 'advertising' and 'unsolicited material to electors' to identify costs that should be included in each category. The codes set out detailed guidance on what is and is not included in these different categories of spending. The codes relate to elections that the UK Parliament is responsible for, i.e. UK Parliamentary, Northern Ireland Assembly and local government elections. In some circumstances they will apply to other elections as well. They will improve transparency, fairness and consistency in reporting for candidates, agents and parties. They will make it clearer to voters and observers what was spent on different activities during campaigns. We're grateful to the many stakeholders who provided feedback on the codes. Overall, people were supportive of our aim for the codes to make it clearer what should be reported as party and candidate spending. Key themes in the feedback focused on: Language and structure of the codes Transparency for spending on digital campaigning Splitting spending between party and candidate Treatment of overheads Treatment of costs of items used at several elections Treatment of material featuring a prominent party member Treatment of legal costs Interaction of the codes with other guidance we issue Why we wrote the codes The codes are written to help parties, candidates and agents meet their legal obligations and improve transparency for voters. Election legislation allows us to prepare legal guidance on what is and is not included in categories of spending listed in the legislation. When in force parties and candidates will need to take the codes into account when they campaign and report spending after an election. If enacted the codes will give clarity to candidates, agents and parties about what items count towards spending and whether spending should be reported in a candidate return or a party return. They also set out how to report spending on digital campaigning. Electoral law is in need of reform to make it clear and easy to understand. In the absence of reform, the codes allow us to provide clarity and consistency in reporting election spending. We therefore urge Parliament to approve the codes. What elections the codes apply to The codes will apply to elections to: the UK Parliament, Northern Ireland Assembly and local Councils in England. In some circumstances the codes will apply to other elections. We're working on separate codes for elections that the Scottish Parliament and National Assembly

for Wales are responsible for – i.e. Scottish Parliamentary, Scottish local government, National Assembly for Wales and Welsh local government elections. The consultation for the Welsh Codes has closed, and the consultation for the Scottish Codes began on 15 April 2020. We are working with the Scottish and Welsh Governments on ensuring these codes are ready for the next set of scheduled elections in 2021.

**How we developed the codes** We used our experience regulating elections and reviewing financial returns to draw up the codes. We wanted to work collaboratively with people who would either use the codes or had expertise in particular areas. We consulted key stakeholders early in the project. For example, we spoke to parties at meetings of the Parliamentary Parties Panel and the panels for Northern Ireland, Scotland and Wales. We also got feedback from experts in digital campaigning and the Information Commissioner's Office. As well as inviting written and verbal feedback, during the formal consultation period we: held meetings with parties, and held drop-in sessions in Parliament for MPs. This ensured we received views from a wide range of people. We received 42 responses to the consultation. All the feedback was logged and sorted into key themes. We then started to redraft elements of the codes. While doing this, we met with parties to gather more detail and discuss the key themes. We shared updated drafts of the codes and held a round table with parties of the Westminster Parliamentary Parties Panel. This was very helpful as we were able to talk through the changes in the updated drafts and decide how we could improve the final codes. Following further feedback from Cabinet Office and political parties we have increased the number of examples and confirmed that these examples will form part of the statutory codes. The additional examples cover: when spending counts towards the candidate or party spending limit campaign material that is distributed across a number of electoral areas situations when party staff are paid to promote particular candidates when costs associated with mobile phones will count towards a limit. We have also added clarity to the examples of 'notional spending' where a candidate or agent makes use of items provided by someone else. Key themes identified from the consultation responses

**Language and structure** We thought carefully about language use and the structure of the codes. We worked to strike a balance between the codes being easy to understand and sufficiently formal to secure the required approval from the UK Parliament for a legal document. Respondents generally thought the codes were too technical, especially for volunteers who may not have a deep understanding of the law. We revised the overall structure of the codes and simplified the language, while maintaining the precision and accuracy a legal document needs. We shortened sentences and used bulleted lists to make the codes easier to read. We changed the introductory sections to help readers understand the legal context of the codes. We also made it clear how the codes will sit with our other guidance.

**Transparency for spending on digital campaigning** The campaign spending rules apply to all activities, including digital. More information on this can be found in our report 'Digital Campaigning: Increasing transparency for voters'. Election legislation does not have a separate category for reporting spending on digital campaigning. This means spending on digital campaigning has to be reported under existing categories. For example, spending to increase the visibility of an online advert would be reported under advertising. Most feedback recognised that the codes explained how the rules apply to digital activity. When we drafted the codes we included examples of different types of digital campaigning to explain when and under which category they should be reported. We received mixed comments about our approach to this. Some people said more specific examples should be used. A similar number of comments acknowledged that in order to future proof the codes we needed to use more generic examples. People

also said that codes should focus equally on digital and non-digital campaigning techniques. We've included references to data analytics and photo licensing. We did this because the feedback said these were relevant and should be included. We also included additional non-digital examples to reflect more traditional methods of campaigning that are still used at elections. Splitting party and candidate spending

The codes make clearer what is to be reported as candidate or party spending. The law only allows us to address this in the candidate code. The majority of feedback was supportive of our aim to clarify what should be reported as candidate and party spending. Most responses also set out the practical challenges faced by parties in splitting spending. Other comments related to the principle we adopted. The principle we adopted is, where the candidate or constituency can be identified the spending has to be reported in the candidate return. We received four types of responses on the principle we used: the principle should be expanded to include other types of activity where targeting of material occurs in a constituency asking for more clarification on how the split works in practice and how spending is split across multiple candidates and elections the principle could result in a wide interpretation of what counts as candidate spending how the principle works with the rules on notional spending The codes are based on the definitions of party and candidate spending set out in the law. We are content our drafting in the codes reflects this. We are not able to extend these definitions to include, for example, how adverts are targeted. However, we thought adding more examples would help others understand our position. The additional examples show how the principles in the code apply to splitting spending in different cases. In future we will look at providing further guidance on how to split spending across a number of candidates and elections in other guidance we produce. The large number of possible scenarios mean it's not possible to address all of these in the codes. Notional spending occurs where a candidate or party is given goods or services, towards their campaign, free of charge or at lower cost than their commercial value by supporters. The full value of the notional spending counts towards the spending limit in the same way as actual spending on the campaign. During meetings with respondents we were able to provide clarity about how the principle of splitting spending works with the rules on notional spending. In 2018 there was a criminal case about candidate election spending at the 2015 UK Parliamentary election. During this case, in July 2018 the Supreme Court considered the law on notional spending. Some of the respondents referred to the Supreme Court judgement, concerned that it had changed the interpretation of how notional spending is incurred. We welcome this opportunity to reassure them that this is not the case: the Judgement did not change the law or introduce any new requirements about what candidates and agents must report. Nonetheless, we have produced new guidance on notional spending to further explain how the rules work in practice. And while we don't have the power to add further clarity to this decision in the codes, we are confident that the codes will support candidates and agents in understanding what costs they need to report. We asked people if the codes could have any other consequences for the candidate and party spending rules. A small number of responses referred to the existing spending limits at elections. One comment was that if more types of spending had to be reported in candidates' returns the current spending limit was too low. At this time we do not think the codes will have a big impact on spending limits. We will keep this issue under review. Treatment of overheads The codes give examples of overhead costs directly connected to campaigning such as electricity, phone and accommodation costs. The candidate code has a separate heading for these types of costs. This is because

the law has a specific category, called 'accommodation and administration'. The law on party spending does not have this category. Overheads form part of the spending in each category in the legislation, and the codes reflect this. We recognise however that these costs may be reported as a lump sum. There were two main types of feedback on overheads: which overhead costs should be included; and how to apportion these costs. The majority of responses talked about the practical difficulties of apportioning overhead costs and asked why certain types of overhead costs were included or excluded. The types of overhead costs we used were based on the types of costs that had been reported at previous elections and referendums. We have now included business rates in the list of items included in overheads in both codes. We've made it clearer in the party code that it is costs over and above usual overhead costs for the campaign period that need to be reported. We have included an example to help explain this. Treatment of costs of items used at several elections The codes set out how costs of items bought and used at one election and re-used at another election are to be reported. Our view is that the full cost of items that may be reused at another election count towards the spending limit at the first election they are used at. This position has been included in our guidance for some time. Some respondents didn't appear to consider that, in some circumstances, re-use of items by different people is actually notional spending. For example if a candidate is using something that was used by another candidate this is likely to be a donation and notional spending. This is also the case where a party gives a candidate items that have been used at previous elections. We recognise this part of the code gives some advantage to candidates who stood at previous elections. So we've made this principle as narrow as possible. We have limited it to items actually owned by candidates and have excluded notional spending and items previously hired by candidates. Most respondents thought this principle was more problematic for political parties who purchase capital items rather than for candidates. We discussed this at the round-table with the Parties Panel. Some responses said that parties will often buy high value capital items during a campaign period, for example a van or computer system, which are intended to be used at future elections. They said that it did not seem appropriate to account for the full cost of such items only once. In response to this we amended the wording in both codes. They now explain that where an item is bought and used for purposes other than use at an election, the cost of the portion used at the election must be reported. We also added a range of examples to illustrate how this principle applies to different situations including physical items and computer software. Treatment of material featuring a prominent party member When we first drafted the codes we wanted to explain how spending on material that promotes well known members of the party should be reported. We were thinking about situations where, for example, material featuring the party leader is distributed in the area where they are standing for election. The same material might also be distributed outside that constituency, to promote the party more generally. In the codes we used the phrase 'prominent party member' to refer to this type of party member. Our view is that in most cases where material featuring a 'prominent party member' is distributed outside the area in which they are standing, the spending should be reported in the party return. But we also thought that some part of the cost of the material distributed in the constituency in which the prominent party member is standing should be in their candidate return. The majority of the feedback commented on the phrase 'prominent party member' and how it could be open to different interpretations. People asked for clarification on what we meant by the phrase. It was clear it was confusing. We therefore redrafted the wording to make it clearer

that this part of the codes deals with situations where material is distributed outside the constituency in which the person featured in it is standing. We also included some examples to demonstrate the principle. The examples address physical and digital distribution of such material. The costs to be included are limited to the cost of distributing the material in the constituency. Our examples recognise that with digital material these costs may not be quantifiable and therefore may not appear in the candidate return.

**Treatment of legal costs** The consultation draft of the codes set out that the cost of legal advice could be included under a number of different categories of campaign spending in both the candidate and party codes. During meetings with parties we received very helpful feedback on this. It gave us a better understanding of types of legal costs that parties and candidates can incur. It also explained the type and frequency of litigation that candidates can face. Some respondents were concerned that reference to legal costs in the codes could encourage litigation. It could be used as a way of exhausting an opponent's spending limit. We do not want to encourage this type of litigation, and have redrafted this part of the codes to recognise that in most cases the cost of legal advice will not be an election expense, but there may be some circumstances where it might be.

**Interaction of the codes with other guidance we issue** We used the introduction to the codes to explain their purpose and their legal background. Some people said that they found the technical wording and legal references hard to understand. People also wanted more information on how the codes were different to other types of guidance we publish. The codes give detailed guidance on the types of spending that have to be reported in spending returns. They do this by listing what should be reported under each kind of expense. Once approved, the codes will be part of the law. Candidates and parties must have regard to them. If a person is charged with breaking the law on campaign spending, and they can show that they followed the code, this will be a defence in any court case. In this way they are different to other guidance we produce. We have changed the introduction to the codes to make it clear how they differ to other guidance we publish. We have had to keep some of the technical language to reflect the legal nature of the codes and the fact that they will be laid before Parliament. The codes will be supported by other guidance we publish which set out the rules that apply at each election.

**Conclusion** We are grateful for all the feedback we received and support for our aim of the codes to improve consistency and transparency in reporting of party and candidate spending. In response to the feedback we've updated the codes. Where we've not been able to make changes, we've explained why. We've addressed some of the feedback by including additional examples in the codes. These examples show how the principles in the code apply to different scenarios. We're also updating other guidance we produce to cover some areas of feedback that we can't deal with in the codes. This guidance supports the codes. The codes have been submitted to the Minister for the Constitution and Devolution to approve and lay before Parliament.

**Further information** What elections do the codes apply to? The code of practice on candidate spending applies to the following elections: United Kingdom Parliamentary General elections (UKPGE) Northern Ireland Assembly elections Combined Authority Mayoral elections Greater London Authority elections Mayoral elections in England Local elections in England By-elections in any of the above The code of practice on expenses for political parties applies at the following elections: United Kingdom Parliamentary General elections (UKPGE) Northern Ireland Assembly elections Spending by political parties is also regulated in relation to other elections taking place at the same time as the above categories of elections. Where there is a regulated period in force for a UKPGE relevant elections

are: Combined Authority Mayoral elections Greater London Authority elections Mayoral elections in England Police and Crime Commissioner elections Local elections in England Local elections in Scotland Local elections in Wales Local elections in Northern Ireland Any by-election Where there is a regulated period in force for a Northern Ireland Assembly election, local elections in Northern Ireland are relevant elections. Where there is a combined regulated period in operation under Part III of Schedule 9 of the Political Parties Elections and Referendums Act 2000 elections to the following are also relevant: Scottish Parliament National Assembly for Wales Stakeholders providing feedback We received 42 responses to the consultation. Respondents included: Representatives of political parties (22) MPs (9) Others (11) Others: representatives from local and devolved Government, s, academics, policy institutes and the Information Commissioner's Office The codes Draft Code of Practice for Candidates UK April 2020 (PDF) Draft Code of Practice for Political Parties UK, April 2020 (PDF)