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Important recommendations to modernise electoral law have already been made in government-commissioned reports, by parliamentary select committees and by the Commission. Accordingly there are opportunities for governments to achieve a more transparent, fair and sustainable regime that is clearer and more consistent for different campaigners, to support the democratic system across the UK. The current dual jurisdiction for the party and campaigner regime offences between the Commission and the police has created some uncertainties for those we regulate, and for voters. This can be readily addressed by the police and the Commission, with the CPS, bringing more transparency and clarity on which body will lead on the different prosecutory aspects of the offences regime. This would be a normal and common step for regulation and retain the most serious matters still being taken before the courts by the police and the CPS. The civil fines system administered by the Commission has supported compliance by parties and campaigners and has improved transparency of political finance. A similar regime across election finance laws for candidates and agents would be fairer to them and can equally be administered by the Commission.

Rationalising the current regulatory framework This section responds to the Committee's questions 1, 4, 5 and 6 Question 1: What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability. Political finance regulation in the UK is underpinned by transparency. The law requires timely and accurate reporting of information about campaigner funding and spending, to give voters confidence that funding comes from permissible sources and spending does not exceed the limits agreed by Parliament. We publish this information and use it to identify whether we need to take enforcement action against those who may have broken the law. There is still scope to improve transparency about the money that is spent on campaigning by political parties, candidates and other campaigners, particularly in relation to digital campaign activity. The UK regime currently reflects two important principles less effectively: proportionality and enforceability. Political finance laws should be easy to understand and apply without imposing unnecessary bureaucracy on those involved. Enforcement tools should also be proportionate and unambiguous, with clear and

effective sanctions for any breaches. Our response explains how and why this should be improved. The law and the approach to regulation should also promote sustainability and fairness for campaigners. s need to be financially viable, so that parties can function effectively in government or in opposition, and so that voters can continue to receive relevant information and arguments from a broad range of perspectives. Future reforms should recognise the different types of campaigners and should not unduly restrict particular candidates, political parties or other campaigners from participating.

Question 4: Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance? The Commission has two main statutory roles: overseeing the delivery of elections and electoral registration (and directly delivering most UK referendums); and regulating political finance. This dual role enhances our institutional knowledge, and how we act as a regulator. We are able to regulate political finance more effectively because of our wider knowledge and experience of how elections are run. The UK's model is admired internationally and reflected in similar ways in certain countries, including Australia and Canada for example, as best fits their particular needs. We also have a responsibility to advise the UK's governments and legislatures on improvements to the system, and importantly our dual role enables us to do this effectively.

Question 5: Are there aspects of the rules which affect or detract from effective regulation of election finance? The rules for regulating candidate spending and donations in the Representation of the People Act 1983 (RPA) are little changed from the late nineteenth century. The additional regime established by the Political Parties, Elections and Referendums Act 2000 (PPERA) regulates the funding and spending of political parties and others, and has broadly worked well to improve transparency of political finance in the UK. Rationalising these two separate legal frameworks, including considering the balance between different spending limits and controls, would achieve a regime that is clearer and more consistent for different campaigners. Based on our experience of monitoring compliance and enforcing the PERA rules since 2000, we have identified a number of areas where the framework could be improved. This includes recommendations from a wide-ranging regulatory review that we published in 2013, and a focused review of digital campaign regulation in 2018. Other reviews have also identified significant areas for improvement, including Lord Hodgson's third party election campaigning review in 2016, the Law Commissions' recent review of electoral law and Parliamentary select committee reports on disinformation and 'fake news' and democracy and digital technologies . Our key recommendations are highlighted below in response to the Committee's questions.

Question 6: What are the Electoral Commission's strengths and weaknesses as a regulator of election finance? The fact that the UK has an independent Electoral Commission that is accountable to legislators in all three Parliaments of the UK is a significant strength. A genuinely independent regulator is an essential element to ensure confidence in the integrity of the political finance regime. We have been accountable to the Speaker's Committee of the UK Parliament since 2000, and we are now also becoming accountable to the Scottish Parliament and the Senedd Cymru/Welsh Parliament. The Northern Ireland Assembly does not have legislative responsibility for political finance regulation. Another strength is our decision to approach regulation by working to ensure compliance before an electoral event rather than having to take enforcement action afterwards. Our guidance on the law is welcomed by candidates and agents as clear and helpful, parties rely on it, and its value and authority has also been recognised by the courts. We are currently developing new ways of supporting regulated entities, which we explain below. We have established

our role as a specialist expert regulator, and also developed strong relationships with other regulators that work across the wider area of democracy and public life. We also use our expertise to work constructively with Ministers and civil servants from all of the UK's governments to ensure their policy priorities are effective and workable. The Commission has 20 years' worth of knowledge and experience of election law and regulating the UK's political finance regime. We have ten years' experience of investigating and applying civil sanctions to offences under that regime. But the regime is still being tested, by digital and other new campaign techniques, by cases brought before the courts, and by the growing consequences of the historic development, outlined above and expanded below, of multiple regimes and dual regulatory responsibilities. Our regulated community generally has a culture of compliance, and works with us to find a way through these challenges. But with complex and out of date rules, not all those regulated welcome or accept the way the regime works or our application of it, and translate that view into criticism of us as the regulator. Improving regulation and enforcement of PPERA This section responds to the Committee's questions 2, 3, 7, 8 and 9 Question 2: Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates. There are several areas where improved powers would help the Commission to ensure compliance with political finance law. Our previous reviews of the regulatory framework identified a range of recommendations, and we highlight two priority areas below. We would welcome the ability to resolve regulatory matters swiftly and effectively outside a formal investigation where one is not warranted. If we were able to obtain information outside a formal investigation (from social media companies or other suppliers to campaigners, for example), we could assess allegations more quickly and determine whether an investigation is in fact necessary. We would also welcome explicit powers to share information with the police or other regulators such as the Information Commissioner, for example. We currently rely on general powers and data protection law which makes working with partner agencies complex and, at times, slow. These improvements would help the Commission to respond more quickly and proportionately when dealing with allegations. This would be better for anyone who could be subject to investigation, for anyone making an allegation, and for the wider public in terms of reaching swift conclusions and providing timely reassurances. Question 3: What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively? We believe that a successful regulator should be able to rely more heavily on encouraging compliance to prevent wrong-doing than on taking enforcement action after wrong-doing has occurred. We support those who wish to comply, but there should be effective deterrent sanctions for those who do not. Our current corporate plan, which was approved by the UK Parliament Speaker's Committee earlier this year, sets out two new actions to further develop our approach. First, we are investing in supporting compliance through a user-friendly online tool and a more responsive regulatory service. We will bring the high quality advice and guidance we already produce for parties, candidates and campaigners under a new strategy that offers new and impactful tools to support compliance with the law. Second, to deter people from deliberately committing offences, and to make sure we can respond proportionately if they do, we will build the capacity to prosecute lower order suspected offences, while more serious offences will still be a matter for the police. We say more on this below. Question 7: Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate? The

current maximum fine that has been available since 2009 as a civil penalty for offences under PPERA is not proportionate for the most serious instances. A maximum fine of £20,000 is unlikely to act as a deterrent for inadequate compliance by campaigners dealing with donations and spending which can involve tens of millions of pounds. The maximum fine should be raised to give greater flexibility to respond proportionately to the range of offences we regulate. We only impose the maximum fine in serious cases that would impact on public confidence, such as a breach of spending limit or omissions of tens or hundreds of thousands of pounds of spending from a campaigner's report. But a maximum £20,000 fine is not a proportionate deterrent for serious offences, and does not incentivise all campaigners to invest in robust compliance procedures. Recent research indicates that the public believe that fines for breaking political finance laws are too lenient, given the amount of money that could be spent on campaigning. More than half of the respondents (52%) in our regular tracking research carried out in early 2020 said that a £20,000 maximum fine was not high enough. Only 27% felt that it was about the right amount. The maximum fine should be set at a credible level for all elections and referendums across the UK, as has been recommended by several Parliamentary select committees. The Scottish Parliament recently raised the maximum fine to £500,000 for Scottish referendums, and we believe this would be a reasonable benchmark for the maximum fine in relation to the other parts of the UK's political finance regulations.

Question 8: Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws? The civil sanctions regime works well, but it doesn't interact with the criminal prosecution regime. In practice the two regimes function separately. The civil sanctions regime is only in place for certain legal requirements and offences that apply to political parties, non-party campaigners and referendum campaigners. The police and criminal prosecution regime can be used for all election offences, and is the only enforcement option for offences involving deliberate dishonesty. This means it is a shared jurisdiction system between the Commission and the police, working with the existing prosecution authorities: the Crown Prosecution Service (CPS) in England and Wales; the Crown Office and Procurator Fiscal Service in Scotland; and the Public Prosecution Service in Northern Ireland. We can ask the police to consider evidence we hold, or any police force can decide to investigate of its own accord most often following complaint by anyone to them. We maintain good working relationships with the main police bodies, the National Police Chiefs' Council (NPCC), the Metropolitan Police Service and the prosecution authorities. We also work with the NPCC and the City of London Police to provide support and training to a network of police specialists in election crimes. In practice, however, the overall system is not coherent and does not provide an effective deterrent. For offences which involve intent or recklessness, the only option is police investigation and then criminal prosecution. This means there is still an 'enforcement gap' for cases which are intentional but which are not, from a police perspective, in the public interest to take forward. Police forces' pressured resources are understandably commonly prioritised to both more traditional police work and importantly serious victim-based crimes. The PPERA regime includes over 100 offences. To our knowledge, no prosecutions have been brought forward by the police or the CPS during the twenty years since 2000. Voters and campaigners should be able to know that non-compliance will be identified and dealt with proportionately and swiftly. The absence of any criminal prosecutions undermines the ability to deter or punish offences.

Question 9: In what circumstances would the regulatory regime be

strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws? The UK Parliament gave the Commission powers to investigate breaches of PPERA in 2009 via the Political Parties and Elections Act. The civil sanctions regime was created in 2010 as an alternative to criminal prosecution. Ten years on, we are building a prosecution function to address a remaining gap between the civil sanctions regime and the current criminal investigation and prosecution regime of the police. We will consult on the factors we would consider when deciding whether to prosecute, and it will be a limited aspect of our future regulatory work. We will continue to use civil sanctions to deal with the vast majority of the offences that we find, and that were not reckless or deliberate. Putting prosecutions before the court would enable us to deal with lower complexity offences that involve recklessness or deliberate dishonesty and cannot be subject to the civil sanctions regime. For example, where a campaigner knowingly does not comply with an order for disclosure, or where repeated failures which have been dealt with using civil sanctions have not led to compliance. These cases would typically be brought before a magistrate's court rather than at crown court level. It is normal and common for specialist regulators to bring prosecutions. They bring expertise to the subject matter; and having the power to prosecute enables the regulator to demonstrate the consequences of non-compliance. It also relieves police and public prosecutors of the burden of bringing offences to court which do not necessarily have identifiable victims and which understandably may not be a priority for them. Where more significant or complex criminal offences are suspected, prosecutions will rightly continue to be a matter for the police and the prosecution authorities.

Improving regulation and enforcement of the RPA Question 10: Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws? Expanding our role to include enforcement of candidate finance laws would bring more proportionate enforcement to this half of the political finance system, with benefits for campaigners, voters and public confidence. We have seen that the prospect of a swift civil fine has incentivised compliance by parties and campaigners and been a success in delivering transparency of political finance since 2010. The current rules for candidates and agents do not offer any flexibility or any alternative from police investigation and criminal prosecution. Criminal investigation is a significant step and is disproportionate for many breaches such as late delivery of a spending return or minor missing items. This can be described as an 'enforcement gap' for administrative or careless breaches, and introducing a civil sanctions regime for candidates would address that gap. Police investigation and criminal prosecution would still be the only route for dealing with serious breaches with intent to break the rules. Criminal prosecutions for serious breaches committed by candidates and agents would be out of scope for the Commission, with these powers reserved to the Director of Public Prosecutions. If the Commission had powers to investigate both halves of the party and candidate regime, we could provide more joined-up oversight over the co-existing regimes in the RPA and PPERA. We could look in more detail at whether campaigners correctly allocate spending according to the key test of whose electoral success is being promoted, and ensure that spending limits serve their purpose. The police could focus on the most serious breaches that involve intent to break the law, and we could ensure that there is a proportionate deterrent for all other breaches. The overall result would be a simpler system to explain to voters and campaigners. It would still be a shared jurisdiction system between the regulator and the police, but the factors that determine who has the power or responsibility to address allegations would be much clearer than at present.