

HOUSE OF LORDS

Delegated Powers & Regulatory Reform Committee

6th Report of Session 2008-09

Business Rate Supplements Bill Political Parties and Elections Bill

Government response:

Health Bill [HL]

Legislative reform order:

**Draft Legislative Reform (Local Government)(Animal Health
Functions) Order 2009**

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The Delegated Powers and Regulatory Reform Committee

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Contacts for the Delegated Powers and Regulatory Reform Committee

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History

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended setting up a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. After the enactment of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee now scrutinises legislative reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.

Sixth Report

BUSINESS RATE SUPPLEMENTS BILL

1. This Bill provides for a new local authority levy, business rate supplement (BRS). A memorandum from the Department for Communities and Local Government explaining the delegated legislative powers in the Bill is printed at Appendix 1. There are no delegated powers to which the Committee wishes to draw the special attention of the House.

POLITICAL PARTIES AND ELECTIONS BILL

2. This Bill includes various provisions about the Electoral Commission, political funds and elections. Its main elements are listed in paragraph 4 of the Explanatory Notes to the Bill. The delegations of legislative power conferred in, or by virtue of amendments made by, the Bill are described in a memorandum prepared for the Committee by the Ministry of Justice, printed at Appendix 2.
3. The Bill confers delegated powers, or amends existing delegated powers, exercisable by statutory instrument, at clauses 8, 16, 19, 21, 22 and 29, extensively at Schedule 2, at paragraphs 1, 4 and 7 of Schedule 3, and at the end of Schedule 4. These powers include three Henry VIII powers (clauses 8(9) and 12(4), and in paragraph 16 of the new Schedule inserted by Schedule 2), all subject to the affirmative procedure. There is also a new power at clause 15 to supplement a definition by guidance in a code of practice.

Schedule 2: sanctions

4. Schedule 2 to the Bill sets out the new Schedule 19C which is inserted into the Political Parties, Elections and Referendums Act 2000, introducing revised arrangements for civil sanctions. These are to be applied by the Electoral Commission in the case of such contraventions of restrictions or requirements imposed by that Act as are prescribed by affirmative orders under the new Schedule. The sanctions include a fixed monetary penalty of an amount prescribed by negative order under paragraph 1(5) of the Schedule, and a variable monetary penalty of an amount to be determined by the Commission.
5. Where a monetary penalty relates to a contravention which amounts to the commission of an offence under the Act, its amount must, under paragraphs 1(6) and 5(8), be no more than the maximum fine that may be imposed on summary conviction for the offence. But where the contravention does not involve the commission of an offence, the amount of the fixed penalty that may be prescribed under paragraph 1(5), and the amount of the variable penalty that may be determined by the Commission, appear to be subject to no maximum limit in the new Schedule.
6. We draw to the attention of the House the absence of any limit in the Bill itself on the penalties that may be prescribed or imposed for these other contraventions, an absence which we find the more surprising given that a limit is provided for contraventions which amount to offences (and which

might therefore have been expected to involve more serious cases). **Unless the Bill is amended to provide for such a limit, we recommend that the exercise of the power in paragraph 1(5) of Schedule 19C should require an affirmative resolution.**

HEALTH BILL [HL] — GOVERNMENT RESPONSE

7. We reported on this bill in our Third Report (HL Paper 29) and the Government have now responded by way of a letter to the Chairman from Lord Darzi of Denham, Parliamentary Under-Secretary of State at the Department of Health, printed at Appendix 3.

LEGISLATIVE REFORM (LOCAL GOVERNMENT) (ANIMAL HEALTH FUNCTIONS) ORDER 2009

8. This Legislative Reform Order (LRO) has been laid under the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”), together with an Explanatory Document¹ by the Department for Environment, Food and Rural Affairs. The purpose of the LRO is to repeal section 101(7) of the Local Government Act 1972 (“the 1972 Act”), so as to allow local authorities in England to arrange for animal health functions to be carried out by other local authorities, in the same way that they currently do for other functions. (In Scotland, Wales and Northern Ireland local authorities already have this ability.)
9. As required by the 2006 Act the Department has consulted on the proposal: all 10 substantive respondents agreed with it. Further information is given in Chapter 3 of the Explanatory Document.
10. **The Committee is satisfied that the Order meets the tests set out in the 2006 Act and is not otherwise inappropriate for the LRO procedure. As the change appears exceptionally modest, the Committee is also content with the Department’s proposal that the negative procedure should apply.**

¹ http://www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111476833_en_1

APPENDIX 1: BUSINESS RATE SUPPLEMENTS BILL

Memorandum by the Department for Communities and Local Government

1. This memorandum identifies delegated powers under the Business Rate Supplements Bill (“the Bill”). The Bill gives effect to the Government’s proposals, as set out in *Business rate supplements: a White Paper*². In England, the Bill provides county councils, unitary district councils and the Greater London Authority with a new power to levy a supplement on the national non-domestic rate (NNDR). In Wales, the power extends to county borough councils and county councils. Authorities will be able to retain the proceeds to invest in projects aimed at promoting the economic development of local areas.
2. The Bill contains ten provisions for delegated powers. Five of the provisions contain powers to amend primary legislation, all of which will be subject to approval by resolution of each House of Parliament when exercised by the Secretary of State and the National Assembly for Wales when exercised by the Welsh Ministers.
3. For each delegated power, the memorandum explains:
 - the purpose of the delegated power;
 - why matters have been left to delegated legislation;
 - the way in which the power is expected to be used; and
 - the procedure selected for each power and why it has been chosen.
 - Background to Business Rate Supplements (BRS)
4. The *Lyons Inquiry into Local Government*³, published in March 2007, identified the need for local authorities to have greater flexibility to raise revenue to invest in their local areas. In his final report, Sir Michael Lyons recommended introducing a new local flexibility to set a supplement on the current NNDR, or business rate.
5. The Government responded to Sir Michael Lyons’ recommendation in Budget 2007, stating that “a local government supplement has the potential to support local economic development, but would need to be subject to credible accountability to rate payers and real protection for businesses – particularly [Small to Medium Sized Enterprises] – that might be disproportionately affected”.
6. Following this, in July 2007, the Government published the *Review of sub-national economic development and regeneration*⁴ (known as the sub-national review (SNR)). The SNR stated that “[BRS] have the potential to provide a powerful new tool for local authorities to invest in infrastructure to support long-term economic growth in their areas, backed by mechanisms to ensure that there is a strong voice for business and supplements are introduced only where they can command support from all those affected”.

² Business rate supplements: a White Paper, HM Treasury & Communities and Local Government, October 2007.

³ The Lyons Inquiry into Local Government, Place-shaping: a shared ambition for the future of local government, Sir Michael Lyons, March 2007.

⁴ Review of sub-national economic development and regeneration, HM Treasury, Department for Business Enterprise and Regulatory Reform and Communities and Local Government, July 2007.

7. In October 2007, alongside the 2007 Pre-Budget Report and Comprehensive Spending Review, the Government published *Business rate supplements: a White Paper*.

The Delegation of Powers

8. In deciding whether subordinate legislation is the appropriate vehicle for any particular provision, DCLG has been guided by the following criteria:
- the desirability of not putting detailed provisions on the face of the Bill;
 - the need to ensure flexibility in responding to changing circumstances; and
 - delegating power to the most appropriate level.

Overview of the Bill

9. The Bill consists of 32 clauses and two Schedules. It is a single subject Bill, which makes only those provisions needed to establish BRS.
10. The provisions in the Bill are set out under the following headings.
- Power to impose business rate supplements
 - Involvement of ratepayers, etc
 - Liability to business rate supplements
 - Administration of business rate supplements
 - Intervention by appropriate national authority
 - Supplementary (including provision for special introductory arrangements)
 - General
11. With the exception of clause 27 (which makes special introductory provision), all of the provisions in the Bill apply to both England and Wales, with the various powers exercisable by the Secretary of State being exercisable by the Welsh Ministers in Wales.
12. Further descriptions of the provisions are given in the commentary on delegated powers below, and also in the Explanatory Notes that accompany the Bill.

The Bill and commentary on delegated powers

The power to impose business rate supplements

13. Clause 1 confers on levying authorities (defined in clause 2(1)) a new power to levy a BRS on national non-domestic ratepayers for the purpose of raising money for expenditure on projects intended to promote the economic development of the authority's area.
14. Clause 3 deals with how the revenue collected from a BRS can be spent. Subsection (3) prohibits the use of BRS revenues to fund certain services that levying authorities have existing obligations to provide. Subsection (4) provides for the Secretary of State and the Welsh Ministers by regulations to add, vary or omit services from this list. This provision is required to ensure that the list of services can be altered to reflect the current duties of levying authorities, because it is important ratepayers can have continued confidence that BRS will only be used to

promote the economic development of local areas. Since this is a power to amend primary legislation, its exercise will be subject to the affirmative procedure.

Involvement of ratepayers, etc

15. Clauses 4 to 9 set out the actions a levying authority must take before a BRS can be levied.

Prospectus (clause 5)

16. Under clause 5, for every BRS, an initial and final prospectus must be published setting out the information listed in Schedule 1 of the Bill. The initial prospectus will be the basis for the levying authority's consultation and, where it is required, ballot on its proposal to introduce the BRS. The information required is intended to assist consultees in understanding the practical arrangements for the BRS – in particular its level and duration – and the arrangements for the project it will fund. The final prospectus will be produced after consultation (and, where required by the Bill, a ballot) and will contain the details of the BRS which will actually be imposed and the project it will fund.
17. Subsection (5) of clause 5 provides that the Secretary of State and the Welsh Ministers may by regulations add to, vary or omit items from the list of information in Schedule 1. This power is required to enable the Secretary of State and the Welsh Ministers to ensure that prospectuses continue to provide the key information ratepayers need in deciding whether or not to support a BRS. Since this is a power to amend primary legislation, its exercise will be subject to the affirmative procedure.

Regulations about ballots (clause 9)

18. Clause 9(1) empowers the Secretary of State and the Welsh Ministers to make regulations about the procedure for ballots held on the question of whether a proposed BRS should be levied.
19. Subsection (2) sets out particular topics the regulations may cover (the timing of the ballot; the form the ballot may take; the conduct of the ballot; and who is to hold the ballot). Subject to the outcome of consultation on the arrangements for ballots, in England the Government may want to provide levying authorities with some flexibility over who runs the ballot and counts the votes, to ensure that this task is undertaken by the authority and individuals with the relevant expertise. As such, subsection (3) allows regulations on ballots to make provision in relation to the delegation of functions.
20. Subsection (4) enables the Secretary of State and the Welsh Ministers to include in regulations on ballots provision dealing with who may cast a vote where the person eligible to vote in a ballot is not a natural person. This will ensure that within a company or partnership, for example, the right to vote is not lost because an individual cannot be identified to exercise that right and will also ensure that the company or partnership does not vote more than once where it is not entitled to.
21. The provisions in subsections (2) to (4) encompass the key areas the Government envisages regulations on ballots will cover.
22. These will be technical and detailed regulations which will ensure that all levying authorities operate within the same procedures so that those voting can have confidence that the process is robust and delivers an accurate result. The level of detail required means that it is appropriate for these provisions to be included in secondary legislation. Subject to the outcome of consultation, it is anticipated that

the regulations will be based on existing regulations for Business Improvement Districts, which are made under Part 4 of the Local Government Act 2003. The content of these regulations is very unlikely to be controversial and as such will be subject to the negative procedure.

Liability to business rate supplements

23. Clauses 11 to 17 set out provisions for determining which persons are liable for BRS.

Rateable value condition (clause 12)

24. Clause 12(1) provides that a non-domestic ratepayer is only liable for a BRS if the rateable value of their property exceeds the amount prescribed in regulations made by the Secretary of State in respect of England and the Welsh Ministers in respect of Wales.
25. As set out in the White Paper, the Government plans that non-domestic properties in England with a rateable value of £50,000 or less will not generate any liability to pay the supplement. The Welsh Assembly Government will consider and set a threshold that is appropriate for Wales.
26. A power to set this rateable value threshold in secondary legislation is being taken as it is possible the threshold will need to be revised in the future so that it continues to provide protection for smaller businesses. This is particularly relevant in the light of five yearly revaluations of non-domestic properties. The Department considers that for the purposes of setting a threshold of this type, which does not involve any amendment of primary legislation and which could be subject to reasonably regular uprating, the negative resolution procedure is appropriate. This is consistent with the position for setting rateable value thresholds for reliefs from NNDR under Part 3 of the Local Government Finance Act 1988 (see for example section 43 read with section 143).
27. Clause 12(1), (2) and (3) provides that where the levying authority has, under clause 11, exempted the owners of empty properties from paying a BRS, in cases where a property is only partially occupied, the occupier will be liable for a BRS based on the rateable value of the portion of the property they are occupying. The rateable value of that portion is to be determined by the valuation officer for the NNDR billing authority area in which it is situated.
28. Clause 12(6) empowers the Secretary of State and the Welsh Ministers to make regulations giving occupiers of partially empty properties the right to challenge the portion of total rateable value attributed to so much of their property as they are occupying, to the extent this is relevant to their BRS liability. These regulations may include provision that can be made under section 55 of the Local Government Finance Act 1988, which gives the power to make regulations dealing with challenges to the assessment of a property's rateable value for the purposes of NNDR. Alternatively, regulations under clause 12(6) may amend or apply (with or without modifications) the regulations made under section 55 of that Act. Clause 12(6) therefore confers a power to make provision dealing with the day from which a change to an apportionment is to take effect, following a challenge, including provision that it is to have retrospective effect. This is necessary because an apportionment is directly relevant to the taxpayer's daily liability to a BRS and so if it is wrong, it must be possible to correct it for every day it has been wrong.
29. The regulations will be technical in nature – setting out the process for challenging the apportionment of rateable value for the purposes of BRS – and the detail is unlikely to be controversial. As such, it is appropriate that the provision is included

in secondary legislation and that the regulations are subject to the negative procedure. This is consistent with the procedure for making regulations under section 55 of the Local Government Finance Act 1988.

BRS relief (clause 15)

30. Clause 15(1) enables levying authorities to grant relief from liability to a BRS, subject to the conditions in subsection (3). These include a requirement that any relief scheme operates with reference to the rateable value of properties and does not distinguish between different types of properties or owners or occupiers. This is intended to ensure that local relief schemes operate consistently for all BRS payers across the whole authority area.
31. Subsection (4) empowers the Secretary of State and the Welsh Ministers by regulations to add to, vary or omit the conditions in subsection (3). This might be necessary, for example, if there were changes to the NNDR system affecting BRS. Since this is a power to amend primary legislation, its exercise will be subject to the affirmative procedure

Regulations to deal with joint ownership, joint occupation or death (clause 17)

32. Clause 17(1) provides for the Secretary of State and the Welsh Ministers to make regulations dealing with liability to BRS in cases where a property is jointly owned or occupied. These regulations may make the same provision that may be made under section 50 of the Local Government Finance Act 1988 in relation to NNDR, or amend or apply (with or without modification) regulations made under that section.
33. Clause 17(3) enables the Secretary of State and the Welsh Ministers to make regulations dealing with liability to BRS which was unpaid at the time of a person's death. These regulations may make the same provision that may be made under section 63 of the Local Government Finance Act 1988 in relation to NNDR, or amend or apply (with or without modification) regulations made under that section.
34. These provisions will be technical and designed to ensure that it is clear where liability for BRS falls in specific circumstances; it is therefore appropriate they should be dealt with in secondary legislation. They will not affect the level of the liability due in respect of a property and as such are not expected to be controversial. The Department therefore considers that the negative procedure is appropriate. This is consistent with the position for regulations made under sections 50 and 63 of the Local Government Finance Act 1988.

Administration of business rate supplements

Collection and enforcement (clause 21) and Administrative expenses (clause 22)

35. Clause 21(1) empowers the Secretary of State and the Welsh Ministers to make regulations dealing with the collection and enforcement of BRS. These regulations will deal with the practical arrangements for the collection and enforcement of BRS and the form and contents of bills. By virtue of clause 22(1), these regulations may also allow BRS billing authorities (in two tier local government areas, the billing authority and the levying authority will not be the same) to retain a prescribed proportion of BRS receipts. This could only be used to cover the administrative costs of collection and enforcement, provided that the BRS is chargeable (or any variation to it under clause 10 takes effect) from 1 April in the financial year so that BRS and NNDR bills can be sent out alongside each other. Under clause 22(2), this can be achieved by amending section 90 of the Local Government Finance Act

1988, which deals with the funds in which local authorities hold their money. If the BRS is chargeable from a different date, the levying authority will have to meet the administrative costs of collection and enforcement from its own resources.

36. So far as collection and enforcement is concerned, clause 21(2) provides that the regulations may include the same provision that may be included in regulations made under paragraphs 1-4A of Schedule 9 to the Local Government Finance Act 1988 – which deal with the collection and enforcement of NNDR – or amend or apply (with or without modification) the regulations made under those provisions. The regulations may also confer on levying authorities an equivalent power to that in section 62A of the Local Government Finance Act 1988 in relation to NNDR – that is to take control of goods under the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.
37. Clause 21(3) allows collection and enforcement of a BRS to continue after the supplement has come to an end, to the extent that sums fell due before that time. Subsection (4) enables regulations to be made that provide that, if a BRS is abandoned, the supplement may be treated as having come to an end, either at the time the supplement is abandoned, or at another point set out in the regulations. As such, the regulations will be able to deal with when collection and enforcement must stop as a result of the project being funded by the BRS being abandoned.
38. It is appropriate that detailed provisions of this type are included in secondary legislation. They will be technical and are not expected to be controversial and so it is considered that the negative procedure is appropriate. However, if the regulations amend the Local Government Finance Act 1988 under clause 22(2), they will be subject to the affirmative procedure.

Intervention by the appropriate national authority

Power to cancel a BRS (clause 24)

39. Clause 24 enables the Secretary of State or the Welsh Ministers to direct a levying authority to cancel a BRS, to direct that the revenue received be refunded, or to take other appropriate steps, if it is considered that the levying authority has acted in a way that is inconsistent with the final prospectus for the BRS, the information set out for the consultation and, in relevant cases, the ballot on a proposal to impose the BRS, or information provided in relation to a variation to the BRS.
40. In cases where the levying authority is not a billing authority, the Secretary of State (there are no two tier local government areas in Wales) may direct the levying authority to return the sums received to billing authorities so that refunds can be made. It also empowers the Secretary of State to direct billing authorities to refund the sums it has collected in respect of the BRS but has not yet transferred to the levying authority. Where the GLA has entered into arrangements with one or more of its functional bodies, the Secretary of State may direct the functional body or bodies to transfer sums kept for the purposes of the project to which the BRS relates to the GLA so that refunds can be made.
41. Subsection (4) provides that where the Secretary of State gives a direction to a billing authority which is not a levying authority, a direction may be given to the levying authority to meet the expenses incurred by the billing authority in complying with the direction.
42. The Government intends that these powers will only be used in exceptional circumstances. Because of their nature, and the need to address specific individual circumstances that may arise, it is appropriate that they should be exercised by way of direction. The powers will provide an important reassurance to business that

there are protections in place if a levying authority acts in a way that is materially inconsistent with the information it has provided on the supplement.

Supplementary

Special introductory provision (clause 27)

43. Clause 27 makes provision in relation to BRS which are levied in the period 1 April 2010 to 1 April 2012 inclusive. In particular, during this period, it enables BRS to be levied in respect of projects that are under way before the commencement of clause 1 (the basic power to levy a BRS).
44. Subsection (6) enables the Secretary of State to make regulations on the operation of the Bill in relation to a BRS levied by the GLA on or before 1 April 2012. This will allow special provision to be made in relation to the establishment and operation of BRS by the GLA in that period.
45. Subsection (7) provides that regulations made under subsection (6) may in particular confer a function on the GLA, a functional body or a London billing authority (the London boroughs), disapply a specified provision of the Bill, or apply a specified provision of the Bill subject to modifications. The purpose of this power is to allow the Secretary of State to make provision phasing in the requirements for a GLA BRS – making it easier for the GLA to levy one in the early stages – if appropriate.
46. The provisions that can be included in regulations under clause 27 will, in practice, apply for a short period only, making particular arrangements for specific circumstances. As such, it is appropriate that such provision should be made by secondary legislation. A power to modify or disapply provisions of the Bill is akin to a power to amend it and so it is appropriate that this should be subject to the affirmative resolution procedure. Regulations that do not amend the Bill will be subject to the negative resolution procedure as these will be more technical or deal only with points of detail.

Power to make consequential provision (clause 28)

47. Clause 28 enables the Secretary of State and the Welsh Ministers to make regulations amending existing primary and secondary legislation for the purposes of giving full effect to any provision of the Bill. This includes a power to repeal provisions in primary legislation. The power relates to primary legislation passed before, or in the same session, as the Bill and secondary legislation made before its passing.
48. This provision will allow any amendments required as a consequence of the Bill to be made. Provision is included in the Bill making the amendments to primary legislation which have been identified as necessary. Therefore it is anticipated that the power will need only to be exercised in relation to secondary legislation. It cannot be ruled out, however, that there may be provisions of primary legislation which may need amending later.
49. Any regulations made under clause 28 amending primary legislation will be subject to the affirmative procedure. Regulations amending secondary legislation only will be subject to the negative procedure.

Regulations etc (clause 29)

50. Clause 29 applies for the purposes of all the secondary legislation making powers in the Bill (all of which are exercisable by the making of regulations, apart from the

power to make a commencement order under clause 32). In particular, subsection (3) provides that provision may be made generally or only for specified cases, that different provision for different cases or areas may be made and that secondary legislation under the Bill may make incidental, supplementary, consequential, transitional, transitory or saving provision.

51. The breadth of this power is required to ensure that secondary legislation under the Bill can make all the provision required. As a revenue raising power, it is essential that there are no gaps in the regime regulating BRS and this power will assist in achieving that. The reference to transitory provision reflects, in particular, the fact that regulations made under clause 27 will be short term in their nature.
52. Subsection (4) provides that regulations may include provision subject to the affirmative and negative procedure and that in such cases, the whole instrument will be subject to the affirmative procedure. This will help minimise the number of instruments that have to be made under the Bill whilst ensuring an appropriate level of Parliamentary scrutiny.

Commencement (clause 32)

53. Subsection (2) provides that the provisions of the Bill will come into force on the day to be appointed by the Secretary of State and, in Wales, the Welsh Ministers, by order. As is usual for commencement orders, these will be subject to no procedure, including commencement orders that make provision permitted by clause 29(3). It may be necessary for commencement orders to include such provision to ensure that adequate arrangements for commencement can be made, in particular in circumstances where some but not all of the Bill will come into force at the same time. It is not envisaged that the power to include such additional provision in commencement orders will be used other than where strictly necessary for those purposes.

Schedule 2 – Accounting

54. Schedule 2 makes provision in relation to how BRS are to be accounted for.
55. Paragraph 2(1) makes provision for regulations to deal with the transfer of sums received by a levying authority or, where appropriate, lower tier billing authorities into the levying authority's BRS revenue account. Paragraph 2(2) provides for either the making of separate regulations relating specifically to the accounting arrangements for BRS, which may include such provision as may be made in relation to local authority funds under section 89 or 99 of the Local Government Finance Act 1988, or for the existing regulations governing local authority funds under those provisions to be amended or applied (with or without modifications) so that they apply to BRS.
56. Paragraph 3 empowers the Secretary of State and the Welsh Ministers to make regulations to provide for refunds or credits in cases where the BRS has come to an end and the BRS revenue account is in credit.
57. Paragraph 5 allows further provision to be made in regulations in relation to BRS revenue accounts to ensure that any necessary further bespoke provision in relation to BRS can be made.
58. Subject to the outcome of consultation, in England the Government envisages that the accounting arrangements for BRS will to a large extent follow those already in place for Business Improvement Districts, although extra provision will be required in relation to the transfer of funds between authorities. These provisions are technical in nature and are required to ensure that BRS revenues are properly

accounted for; given the level of detail needed, it is appropriate that they are included in secondary legislation. It is not expected that these technical provisions will give rise to any controversy and it is therefore appropriate that they are subject to the negative procedure.

Department for Communities and Local Government

March 2009

APPENDIX 2: POLITICAL PARTIES AND ELECTIONS BILL

Memorandum by the Ministry of Justice

Introduction

1. This Memorandum describes the purpose and the content of the Political Parties and Elections Bill; identifies the provisions of the Bill which confer powers to make delegated legislation; and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

Background and purpose of the Bill

2. On 16 June 2008, the Justice Secretary announced the publication of a Government White Paper on *Party Finance and Expenditure in the United Kingdom*. This White Paper set out the Government's broad support for long term, fundamental reform of party finance and expenditure based on the framework put forward by Sir Hayden Phillips' independent review of party funding in 2007. It also signalled the Government's intention to bring forward immediate legislation to improve the regulation of political party finance. The Political Parties and Elections Bill delivers this legislation.
3. The main features of the Bill:
 - strengthen the regulatory role of the Electoral Commission by making available to it a wider range of investigatory powers and sanctions, by clarifying its advisory role and by reforming its governance arrangements;
 - change the arrangements for regulating candidate expenditure before an election to better ensure that relevant expenditure is caught; and
 - put in place arrangements to improve the transparency of donations to political parties and other donees.
4. The Bill also makes reforms to the current system for administering elections in the United Kingdom, which are designed to ensure the successful delivery of elections in the future. These will:
 - enable electoral registration officers, in the event of an election, to make amendments to the electoral register in response to applications for registration made on annual canvass forms, before the register is republished at the conclusion of the canvass;
 - enable the Secretary of State to create data sharing schemes which permit or require specified public authorities to supply specified registration officers with information people which can be used to improve the accuracy and comprehensiveness of electoral registers;
 - provide for European Parliamentary elections in England, Wales and Scotland to be administered at a local level by local authority returning officers, rather than Parliamentary returning officers;
 - transfer responsibility for the retention and provision of copies of election documents produced at Parliamentary elections in Scotland from Sheriff Clerks to returning officers;

- provide a power for the Secretary of State to make regulations allowing a vacant seat in the European Parliament for Northern Ireland to be filled in a new way;
- extend the Secretary of State’s power under Part 1 of the Electoral Administration Act 2006 to allow him to include additional provisions in an order establishing a CORE (Co-ordinated Online Record of Electors) scheme; and
- allow candidates at a parliamentary election to choose that their home address does not appear on publicly available documents at the election.

Clause 3, Schedule 2 and paragraph 16 of new Schedule 19C

Power conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument following consultation with the Electoral Commission

Parliamentary procedure: affirmative or negative depending on content

i) Background

5. Schedule 19C is inserted by clause 3 of and Schedule 2 to the Bill. Broadly put, paragraphs 1 to 15 of the Schedule provide the Electoral Commission with the power to impose certain civil sanctions where it is satisfied beyond reasonable doubt that a prescribed offence under the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) has been committed or that a contravention of a requirement/restriction contained in the same Act has taken place. “Prescribed” for these purposes (and where used elsewhere in the following paragraphs discussing this Schedule) means prescribed in an order made under paragraph 16 of the Schedule, which is described in more detail below. These civil sanctions that can be imposed are fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings.
6. Under paragraphs 1 to 4 of Schedule 19C, a fixed monetary penalty may be imposed by the Commission following service of a notice of intention to impose it. On receipt of the notice an individual may elect to discharge liability by making early payment of a specified fee. Alternatively, the person on whom that notice is served may submit objections and representations against the proposed penalty. After consideration of any representations or objections received the Commission may serve another notice imposing the penalty. Further amounts may be payable if payment is late. The person on who the penalty is imposed may appeal to a county court on grounds specified in paragraph 2(6). Where a penalty of this type is imposed no criminal proceedings may be taken in respect of the behaviour that formed the basis of the decision to impose the penalty.
7. Under paragraphs 5 to 9 of Schedule 19C a discretionary requirement may be imposed by the Commission using a procedure very similar to that described above for fixed monetary penalties. A discretionary requirement is one that requires the person made subject to it to pay a monetary penalty of an amount determined by the Commission, to take steps to ensure that the prescribed offence or contravention of the Act does not occur or to take steps to restore the position to what it had been before the offence or contravention occurred. Failure to comply with a discretionary requirement may lead to the imposition of a monetary non-compliance penalty by

the Commission. As above, it is possible to make representations and objections following receipt of a notice setting out the Commission's intention and to appeal on grounds specified in the Schedule against a subsequent decision to impose the penalty. Again criminal proceedings may not be pursued against anyone who is subject to such a penalty, with the exception of a person who has been made subject to a non-monetary discretionary requirement and who fails to comply with it.

8. Under paragraphs 10 to 14 of Schedule 19C, the Commission may impose a stop notice. The test for doing so is slightly different from the test for imposing fixed monetary penalties or discretionary requirements and is worth describing separately. A stop notice may be imposed where the Commission has a reasonable belief that a prescribed offence has been committed or a prescribed contravention has occurred and the result is serious damage (or a significant risk of it) to public confidence in the 2000 Act controls. Alternatively, the Commission may also impose a stop notice where the Commission reasonably believes that a person is likely to commit a prescribed offence or contravene a prescribed restriction or requirement of the Act and that the result will be serious damage (or a significant risk of it) of the type already described.
9. A stop notice prohibits further activity of the type causing the relevant harm until steps specified in the notice have been taken. The stop notice subsists until the Commission issues a certificate, which it is able to do when satisfied that the steps specified in the notice have been taken. A person can appeal on grounds specified in the Schedule against a stop notice or any decision taken by the Commission not to discharge it. It is a criminal offence to fail to comply with a stop notice.
10. Under paragraph 15 of Schedule 19C, the Commission is empowered to accept an enforcement undertaking where it has reasonable grounds to suspect that a person has committed a prescribed offence or contravened a prescribed requirement or restriction in the Act. An undertaking of this type may be accepted if the person offers to take preventative action, restorative action or action of a prescribed type. There is no right of appeal here, as an undertaking is something offered voluntarily, rather than being imposed. Complying with the undertaking protects the person from criminal or civil sanctions in respect of the undertaking, but the protection falls away if the undertaking is still in force and the person subject to it fails to comply.
11. In addition to creating the above sanctioning powers, the Schedule also makes substantive provision in relation to the procedures to be followed by the Commission when seeking to impose any of the various penalties and the grounds on which appeals may be pursued. The structure of this Schedule and its content are based on the scheme put in place for other regulators by the Regulatory Enforcement and Sanctions Act. It departs from that scheme only where changes were considered necessary in order for the scheme to operate properly within the context in which the Commission does its work.
12. A general order-making power for various purposes under Schedule 19C is provided at paragraph 16. The broad power is to make supplemental and consequential or incidental provision. In doing so an order may make provision amending, repealing or revoking an enactment. It may also make provision along the lines set out in paragraphs 18 to 21 of the Schedule. Whether an order-making power under Schedule 19C is subject to the negative or affirmative procedure is determined by reference to section 156 of the 2000 Act, as amended by clause 3(4) of the Bill. Given the breadth of the power and of the provision that may be included within an order made under it, this Memorandum first describes the matters that may be dealt with only in an order subject to the affirmative resolution procedure. It then proceeds to deal with those subject to the negative resolution procedure.

ii) Affirmative resolution orders

13. It is considered that the matters mentioned in paragraphs 14 to 21 below raise issues of such importance that the affirmative resolution procedure is necessary in respect of an order made under paragraph 16, so as to ensure adequate parliamentary scrutiny.
14. As referred to in paragraph 12 above, paragraph 16 of Schedule 19C itself, by virtue of sub-paragraph (3), enables an order, in making supplemental, incidental or consequential provision, to amend, repeal or revoke an enactment, whenever passed or made. Where such provision seeks to amend an Act of Parliament, the affirmative resolution procedure will apply.
15. Under paragraph 1(1) to (4) of Schedule 19C, the Commission may impose a fixed monetary penalty in respect of a prescribed offence or a prescribed requirement or restriction. The effect of prescribing an offence or requirement or restriction in this way is to bring the matter prescribed within the civil sanctioning powers given to the Commission by Schedule 19C. It should be noted that prescription in this way does not prevent criminal proceedings being taken in respect of something that is an offence under the 2000 Act. So, when an offence appears to have been committed either civil or criminal proceedings (but not both in light of the “no double penalty” provisions) may follow.
16. It is considered that offences should be prescribed in secondary legislation for this purpose as it may not be appropriate that all offences under the 2000 Act should be subject to the Commission’s new powers from the outset. For example, the Secretary of State may decide that certain offences should remain solely within the criminal sphere in order to ensure that especially culpable behaviour may only attract the most serious consequences i.e. a criminal charge. However, this sort of approach may be reviewed in time depending on the effectiveness of the civil sanctions created by Schedule 19C and the seriousness with which they are viewed by those who may be subject to them. As a result the Secretary of State may wish to increase the number of offences that are prescribed for this purpose. Alternatively, there may be reasons why that number should be decreased over time. The Secretary of State intends to indicate during the passage of the Bill which categories of offence he initially considers to be appropriate for prescription.
17. In addition to a power to prescribe offences for the purpose of the civil sanctions provisions, an order may also prescribe that requirements and restrictions in the 2000 Act (breach of which is not a criminal offence) will be liable for the imposition of a civil penalty by the Electoral Commission. It is not intended that every restriction or requirement be made subject to civil sanctions as the consequences of breach of some of these may be relatively innocuous. Consequently, it might be thought to be disproportionate at the outset to make breach of certain restrictions amenable to the imposition of civil sanctions. However, practice (or malpractice) may lead to a need for the sanctions regime to be strengthened or relaxed depending on the effect of sanctions and the level of compliance with the requirements and restrictions imposed by the 2000 Act. Therefore, creating an ability to distinguish between the various requirements and restrictions in secondary legislation is a sensible and flexible way of achieving this goal.
18. In the case of prescribing both offences and restrictions or requirements the effect will be to expand the reach of the Commission’s new powers where new offences or restrictions or requirements are to be prescribed. Because the effect of prescribing offences, or restrictions or requirements, is to strengthen the Commission’s role and to expand the reach of its powers it is considered that prescription in this way is

particularly worthy of the detailed scrutiny afforded by the affirmative resolution procedure.

19. Leading on from the above, an offence or requirement or restriction may be prescribed by an order of this type for the purposes of paragraph 5(1) to (4). The effect of that is to enable the Commission to impose a discretionary requirement (which include variable monetary penalties and non-monetary requirements) in respect of those matters prescribed.
20. Once more, an order may prescribe those offences or requirements/restrictions for the purposes of paragraphs 10(2)(b) and (3)(b) the suspected occurrence of which may enable the Commission to impose a stop notice.
21. Finally, offences or requirements/restrictions under the 2000 Act may be prescribed for the purposes of paragraph 15(1)(a) in order that an enforcement undertaking may be accepted by the Commission in respect of those matters so prescribed.

iii) Negative resolution orders

22. By contrast with the above provisions it is considered that an order under paragraph 16 of Schedule 19C making provision solely in respect of any of the matters referred to in paragraphs 23 to 31 below is afforded an adequate level of scrutiny by the negative resolution procedure. The reasons for our having reached that conclusion are set out below. In reaching that conclusion we have taken into account that any order made under paragraph 16 is subject to the important additional safeguard contained in paragraph 17. Under that paragraph the Commission, and other appropriate persons, must be consulted by the Secretary of State before any order using the power is made. If substantial changes to any proposed order are considered to be necessary as a result of that consultation the Secretary of State must undertake further appropriate consultation. Also, the effect of the provisions discussed at 13 to 21 above is that, in practice, the first exercise of the power to make a paragraph 16 order will necessarily attract the affirmative resolution procedure as it will deal with matters subject to both the negative and affirmative resolution procedures.
23. Under paragraph 18 of Schedule 19C, a paragraph 16 order may provide for the making of early payment discounts, payment of interest or financial penalties for late payments or for enforcement of payments in respect of any financial penalty imposed by the Commission under Schedule 19C. Any provision regarding payment of interest or penalties for late payment must ensure that any amount levied for late payment does not exceed the amount of the original penalty. Under this paragraph a paragraph 16 order may also make provision that enforcement action may enable a late payment to be recovered as a civil debt or as if it were payable under a court order. Finally, an order made under paragraph 18 powers may determine how late payment penalties are to be calculated. This may include calculating such penalties by reference to the time that has elapsed between the deadline for payment and the time of eventual compliance and providing that successive penalties for continued failure to comply may apply.
24. It is considered that an enabling power is appropriate for this sort of provision, as the precise manner in which financial penalties are handled in practice will be a matter for the Commission and Secretary of State to consider in due course and develop over time in light of practical experience of what is fairest and most efficient. Accordingly, the flexibility provided by this power will be an important component in ensuring that the sanctions regime put in place by Schedule 19C is fully effective.

25. Paragraph 19 of Schedule 19C enables an order made under paragraph 16 to include provision about the procedure and content of enforcement undertakings. Paragraph 15 of Schedule 19C sets out the framework within which undertakings can be agreed with the Commission. In addition to the provision made by paragraph 15 a supplementary order may provide for:
- the procedure for entering into an undertaking;
 - the terms to be contained in an undertaking;
 - publication of an undertaking by the Commission;
 - variation of an undertaking;
 - circumstances in which a person will be regarded as having complied with an undertaking;
 - the monitoring by the Commission of compliance with an undertaking;
 - certification by the Commission that an undertaking has been complied with;
 - the making of appeals against a refusal to provide certification;
 - the consequences of not providing accurate or complete information in relation to an undertaking; and
 - part-compliance with an undertaking to be taken into account in the imposition of a civil or criminal sanction in respect of the behaviour that led to the undertaking being offered.
26. As with the provision relating to the procedure for collecting financial penalties, it is considered that an enabling power is appropriate for this sort of provision as the precise manner in which enforcement undertakings might be accepted and dealt with in practice will be a matter for the Commission and Secretary of State to consider in due course and develop over time in light of practical experience of what is fairest and most efficient. Accordingly the flexibility provided by this power will be an important component in ensuring that the sanctions regime put in place by Schedule 19C is fully effective.
27. Paragraph 20 of Schedule 19C enables an order made under paragraph 16 to extend any limitation period for criminal proceedings to be extended in two specified cases. The first case is where a person has failed to comply with a non-monetary discretionary requirement, with the result that the person who failed to comply is exposed to criminal proceedings in respect of the behaviour or omission that led to the imposition of the requirement in the first place.
28. As with the provision relating to the procedure for collecting financial penalties, it is considered that an enabling power is appropriate for this sort of provision as it deals with a primarily procedural matter in respect of which maximum flexibility is desirable. To limit the way in which time limits might be extended in primary legislation could enable a person to commit initially to complying with the requirement in order to avoid the time limit as extended by the Bill. If that approach is taken, an inflexible rule that is difficult to change in legislation may allow discretionary requirements or enforcement undertakings to be abused and undermined in this way on a widespread basis. By contrast, having available a power in secondary legislation to vary how those time limits might apply will enable the Secretary of State to ensure that the rules are both flexible and comprehensive enough to avoid this sort of effect. Accordingly, the flexibility provided by this

power will be an important component in ensuring that the sanctions regime put in place by Schedule 19C is fully effective.

29. Paragraph 21 of Schedule 19C enables an order made under paragraph 16 to make provision in relation to any of the rights of appeal against the service of notice or imposition of a requirement under any of the preceding civil sanctions provisions. In making this provision the order may make provision relating to the suspension of the requirement or notice pending determination of the appeal, provision about the powers of the court to which the appeal is made, and provision as to how a sum is to be paid following a decision of that court.
30. In relation to the powers that may be conferred on a court under such an order, paragraph 21(2) enables powers to be given allowing a notice or requirement to be withdrawn or confirmed, allowing the Court to take steps that could be taken by the Commission with regard to the behaviour which led to the requirement or notice being imposed, allowing a decision whether to confirm the requirement or notice to be remitted to the Commission, and allowing costs to be awarded.
31. The following further matters may also be prescribed in an order subject to the negative resolution procedure made under paragraph 16:
 - the amount to be paid as a fixed monetary penalty (paragraph 1(5));
 - the amount that may be paid to discharge liability following receipt of a notice of the Commission's intention to impose a fixed monetary penalty (paragraph 2(2));
 - the circumstances in which a fixed monetary penalty may not be imposed following the expiry of the time for making representations and objections (paragraph 2(5)(b));
 - further grounds of appeal against a decision to impose a fixed monetary penalty (paragraph 2(6));
 - the circumstances in which a discretionary requirement may not be imposed following the expiry of the time for making representations and objections (paragraph 6(4)(b));
 - further grounds of appeal against a decision to impose a discretionary requirement or against the content of the requirement (paragraph 6(6));
 - criteria for determining the amount of a non-compliance penalty imposed in the event of a person failing to comply with a discretionary requirement and the minimum or maximum amount of such a penalty (paragraph 9(2));
 - further grounds of appeal against a non-compliance penalty for failure to comply with a discretionary requirement (paragraph 9(3));
 - further grounds of appeal against a decision to impose a stop notice or against any step it requires (paragraph 13(1)); and
 - action that may be specified in an enforcement undertaking and accepted by the Commission (paragraph 15(1)(c)(iii)).
32. None of the matters mentioned in paragraph 31 above have the effect of increasing the reach of the civil sanctions so as to increase, in effect, the Commission's powers. Instead, provision made in an order about these matters will provide precise detail about the framework within which the Commission is able to exercise its powers (e.g. the power to prescribe the amount to be paid as a fixed monetary penalty). Alternatively, these matters concern procedural details about how sanctions will

work in practice (e.g. the power to provide a county court with powers for dealing with appeals). In both types of case, it is anticipated that changes to these matters may be required from time to time. On that basis it is anticipated that all of the above provisions will benefit from the ability of the Secretary of State to take a flexible approach in order that they work fairly and effectively. For this reason it is considered that a delegated power to make the above provision through secondary legislation is the most appropriate way of enacting the necessary requirements.

33. In all of the cases discussed in paragraphs 23 to 31 of this Memorandum, it is our view that it would be disproportionate to require each and every change of this nature to require debate in both Houses when set against the clear need for a flexible approach. The negative procedure in these cases strikes the right balance between the need for flexibility and the opportunity for very detailed scrutiny and debate in individual cases where it is considered necessary. Accordingly, in our view the negative resolution procedure provides an adequate level of parliamentary scrutiny for an order-making provision of this kind.

Clause 8 (new section 54A(7)) and Schedule 3: Declaration as to source of donation

Powers conferred on: Secretary of State

Powers exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative resolution

34. Clause 8 inserts new section 54A into the 2000 Act, and amends sections 54, 56 and Schedule 6 of that Act. New section 54A requires that, where a donor makes a donation of over £7,500 to a political party (or over £1,500 in the case of donations to accounting units of registered parties), they must make a declaration to the recipient of the donation. The declaration must state whether, to the best of their knowledge or belief, the donation was made using money or a benefit to the value of more than £7,500 (or £1,500 in the case of donations to accounting units of registered parties) given to the donor by another person with a view to, or otherwise in connection with, the donation being made. Schedule 3 makes consequential amendments to schedule 7, 11 and 15 of the 2000 Act so that the declaration requirement applies to donations of over £1,500 to individual regulated donees and over £7,500 to members associations, recognised third parties and permitted participants. It is an offence for a person knowingly or recklessly to make a false declaration.
35. Section 54 is amended so that a party is prevented from accepting a donation that is not accompanied by a declaration. Section 56 is amended so that the obligation to return a donation is triggered where, having taken reasonable steps, a party is unable to obtain the details of any other person on whose behalf the donation has been made. Schedule 6 is amended to require the recipient party to confirm, in a donation report that it is required to make, that it has received the declaration. Schedule 3 of the Bill makes changes to schedules 7, 11 and 15 to extend these provisions to regulated donees, recognised third parties and permitted participants.
36. Subsection (7) of new section 54A gives the Secretary of State a power to make regulations to determine how the value of benefits referred to in clause 54A(2) is calculated. It is considered that a delegated power of this sort may be necessary if the practical operation of the clause reveals difficulties in valuing benefits which cannot at this stage be foreseen. This possibility arises because the concept of a

“benefit” in subsection (2) is potentially wider than that of a “donation” in section 50 in respect of which the 2000 Act already contains detailed valuation provisions. Although our expectation is that there will be an overlap in the vast majority of cases, so that the valuation provisions in section 50 will provide a useful guide, it is considered that ensuring that a level of flexibility is preserved by enabling specific provision to be made if necessary in order to ensure that the provisions work properly in practice justifies the creation of this power.

37. In our view, the negative resolution procedure provides an appropriate level of scrutiny for regulations made under this power. We do not consider that it would be proportionate to subject the matters dealt with by these regulations to the highest degree of parliamentary scrutiny. However, it is right that there should be the opportunity to debate regulations in full should either House so wish.
38. Schedule 3 makes a number of amendments to the 2000 Act in order to replicate the above changes for regulated donees, recognised third parties and permitted participants. In respect of each, there is an equivalent power to make regulations to determine the value of benefits as is provided in new section 54A(7). These powers appear as follows in Schedule 3:
- for regulated donees, at paragraph 1(2) (inserting a new paragraph 6A(6) into Schedule 7 to the 2000 Act;
 - for recognised third parties, at paragraph 4(2) (inserting a new paragraph 6A(6) into Schedule 11 to the 2000 Act; and
 - for permitted participants, at paragraph 7(2) (inserting a new paragraph 6A(6) into Schedule 15 to the 2000 Act.
39. Once again as with section 54A(7) it is considered that the taking of a delegated power is justified here, for the reasons given in paragraph 36 above. Also as with the power in new section 54A(7), each of these powers is subject to the negative resolution procedure. That provides adequate scrutiny for the same reasons as set out in paragraph 37 above.

Clause 8(9) and Schedule 3: Declaration as to source of donation

Powers conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument following consultation with the Electoral Commission

Parliamentary procedure: affirmative resolution

40. Subsection (9) of clause 8 gives the Secretary of State a power to make an order to modify new section 54A and the provisions inserted into the 2000 Act by Schedule 3 as they apply in Northern Ireland and to make consequential or supplementary provision (including amending any provision of the 2000 Act) flowing from this. The provisions in Part 4 of the 2000 Act are amended for Northern Ireland to enable Irish citizens and bodies which meet prescribed criteria to be permissible donors in relation to Northern Ireland parties; and to require that details of Northern Ireland donation reports be held confidentially by the Electoral Commission.
41. In light of these different arrangements, new section 54A and the associated amendments of the 2000 Act inserted by clause 8 (and the new provisions set out in Schedule 3) would require modifications in order to work effectively in Northern

Ireland. In order to enable us to make such modifications, and to thereby ensure that the final modifications will result in a scheme which works effectively on the ground in Northern Ireland, a power to make provision in secondary legislation is necessary. This power has a precedent which can be found in section 15 of the Northern Ireland (Miscellaneous Provisions) Act 2006.

42. We are satisfied that this power, which enables the modification of primary legislation by secondary legislation, requires full parliamentary scrutiny and should be subject to the affirmative resolution procedure. Clause 8(11) provides for this result. In addition, under clause 8(9), the Secretary of State may only exercise these powers following consultation with the Electoral Commission. This will provide an important additional check to ensure that the Secretary of State's proposals are appropriate.

Clause 12(4) and Schedule 4: Reports of gifts received by unincorporated associations making donations

Powers conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument following consultation with the Electoral Commission

Parliamentary procedure: affirmative (clause 12(4)) and negative (paragraph 9(3) of Schedule 19A)

43. Clause 12 inserts a new section 140A into the 2000 Act. That section introduces a Schedule 19A, which sets out details of a new reporting regime which will apply to unincorporated associations (UIAs) donating more than £25,000 in a calendar year to any individual or entity subject to the donations reporting rules set out in PPERA (including political parties). This requirement would include UIAs who donate in excess of £25,000 as a result of aggregation of more than one donation of more than £500 to different donees (e.g. an MP and a political party).
44. Paragraph 1 of Schedule 19A provides that unincorporated associations making donations in excess of £25,000 to regulated individuals or entities in a calendar year are required to notify the Electoral Commission of that fact within 30 days of receipt of the donation that exceeds the £25,000 limit. Paragraph 2 of new schedule 19A requires UIAs that fall within the reporting regime by having made such donations to report to the Commission all gifts (both monetary or non-monetary) they have received of over £7,500 in the calendar year in which the donation that exceeds the £25,000 limit is received, the calendar years prior to and following that calendar year. The requirement to report gifts of more than £7,500 applies both to individual gifts which exceed that amount and a series of individual gifts of more than £500 from one source within the same calendar year which, when aggregated, exceed £7,500.
45. Paragraph 3 sets out the details that must be included in reports about gifts and those who made them which are required to be submitted in accordance with paragraph 2. Paragraphs 4 and 5 of the new Schedule 19A provide that reports from UIAs must contain a declaration from an authorised individual within the unincorporated association, confirming that everything stated in the report is accurate; and that the report contains everything that it is required to contain. Paragraph 6 of the new schedule 19A creates offences for failure to comply for both unincorporated associations and their authorised individuals. Paragraph 7 details

the requirements imposed on the Electoral Commission for including in a register specified details of matters reported to them under the new Schedule.

46. These new provisions provide two powers to make secondary legislation that will be of interest to the Committee.
47. First, clause 12(4) enables the Secretary of State by order to make provision which modifies or amends the effect of the new Schedule so far as it applies in Northern Ireland. This is to enable the Secretary of State to modify the new provisions as he may consider appropriate in light of the different regime in relation to the reporting of donations which applies in Northern Ireland (as previously described in paragraph 40 above). Under clause 12(6) any order made under this power is subject to the affirmative resolution procedure.
48. As with the equivalent power in clause 8(9) of the Bill, we are satisfied that this power, which enables the modification of primary legislation by secondary legislation, requires full parliamentary scrutiny and should be subject to the affirmative resolution procedure. Clause 8(11) provides for this result. In addition, under clause 12(4), the Secretary of State may only exercise these powers following consultation with the Electoral Commission. This will provide an important additional check to ensure that the Secretary of State's proposals are appropriate.
49. Second, paragraph 9(3) of Schedule 19A provides an enabling power for the Secretary of State to issue regulations specifying the things that are, or are not, to be regarded as gifts to unincorporated associations for the purposes of new additional requirements on UIAs; and to make provision as to how the value of a gift to an unincorporated association is to be calculated. For example, these regulations could provide for a person to be treated as making a gift where that person pays expenses incurred by another; or provides any property, services or facilities for the use or benefit of another otherwise than on commercial terms; or transfers any money or other property for a consideration that is worth less than what is transferred (or for no consideration).
50. This regulation-making power is appropriate since detailed provision relating to what constitutes a gift, and calculating the value of gifts, is more suited to secondary legislation. The regulations are likely to adopt the approach taken towards calculation of the value of donations as contained in sections 52 and 53 of PPERA with such suitable modifications as may be necessary for the purposes of these specific provisions. As such they are unlikely to contain significant new policy. Any regulations made under this power will deal primarily with the broadly administrative matter of how the value of a gift should be calculated by an unincorporated association that may become subject to the reporting requirements contained in the new Schedule. If it is thought that the content of any regulation is more contentious than this then it is considered that the negative resolution procedure will provide adequate opportunity for the regulations to be fully debated in Parliament.
51. In our view, the negative resolution procedure provides an appropriate level of scrutiny for regulations made under this power.

Clause 14 and Schedule 5: Limitation of pre-candidacy election expenses for certain general elections

Powers conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument

Parliamentary procedure: negative resolution if order made under section 76A(1)(b), otherwise no procedure

52. Clause 14 adds new section 76ZA to the Representation of the People Act 1983 (“the 1983 Act”) which introduces a new, additional, regulated period for candidate election expenses, to apply only in the event that a Parliament runs for over 55 months. The limit would then regulate spending used for election purposes between the point 55 months after a Parliament first meets and the point when an individual formally becomes regarded as a candidate by virtue of section 118A of the 1983 Act.
53. Subsection (2) of new section 76ZA sets out how the level of the limit shall be calculated for each constituency. Paragraph 6 of Schedule 5 makes a minor and consequential amendment to section 76A of the 1983 Act (power to vary provisions about election expenses). This section specifies that the Secretary of State may by order made by statutory instrument vary any of the sums specified in sections 73(2), 74(1)(a) to (d), 75(1ZA) and 76(2). Schedule 5 would amend section 76A to add section 76ZA(2) to that list.
54. Such an order may only be made where the Secretary of State considers it expedient to do so in consequence of changes in the value of money or where the order gives effect to a recommendation of the Electoral Commission. This matter is left to secondary legislation, as it may be necessary to vary specified sums from time to time. An order made under section 76A(1)(a) is not subject to parliamentary procedure, but since it can only be made in limited circumstances and to limited effect this is thought to be justifiable. An order made under section 76A(1)(b) is subject to the negative resolution procedure. It is thought desirable that there should be some Parliamentary scrutiny of orders made under this provision, but since such orders are made on the recommendation of the Commission it is believed that the negative resolution procedure is sufficient.
55. It is considered that the existing arrangements in the 1983 Act have provided an adequate level of scrutiny for the exercise of this power in relation to variation of sums already specified in that Act. That being the case, it is proposed that the level of scrutiny that applies to the existing power to issue an order to vary sums should equally apply to the power to vary by order the sums specified in the proposed new spending limit in new section 76ZA.

Clause 15: Election expenses: guidance by Commission

Power conferred on: Electoral Commission and Secretary of State

Power exercisable by: issuing draft code of practice

Parliamentary procedure: negative

56. Clause 15 amends paragraph 14(1) of Schedule 4A to the 1983 Act in order to give the Commission a revised power to issue guidance about candidate expenditure in parliamentary general elections. This amendment enables the Commission to issue

guidance about the circumstances in which certain expenses incurred by candidates will be regarded as having been incurred for the purposes of a candidate's election within the meaning of section 90ZA(3) of that Act. The significance of expenses being incurred for that purpose is that they will fall within the expenditure limits put in place by section 76(2) of the 1983 Act.

57. Under paragraph 14(1) of Schedule 4A, guidance made under this power will be issued in the form of a code of practice. Before being issued the code must be submitted to the Secretary of State (sub-paragraph (2)), who can approve it in its original form or with modifications (sub-paragraph (3)). Once it has been approved the guidance is laid before each House by the Secretary of State with a statement of reasons for any modification made, if relevant (sub-paragraphs (4) and (5)). Under sub-paragraph (7) the draft code must then be formally issued by the Secretary of State in the form in which it was laid if, after 40 parliamentary sitting days have passed, no resolution has been passed by either House not to approve the code. If such a resolution is passed no further steps may be taken in relation to the draft code (sub-paragraph (6)).
58. It is considered that the existing arrangements in the 1983 Act provide an adequate level of scrutiny for the exercise of this power. The new power to issue guidance does not significantly extend the power of the Commission, nor does the capacity of the Secretary of State to modify that guidance represent any substantial advance of his existing powers of that type. That being the case, there is no compelling reason to increase the level of scrutiny that applies where a code of practice is issued under paragraph 14(1) of Schedule 4A. However, it is appropriate to apply the existing level of scrutiny rather than something lesser.

Clause 16: Election falling within canvass period

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument following consultation with the Electoral Commission

Parliamentary procedure: affirmative resolution

59. Clause 16 inserts new section 13BB into the 1983 Act. The new section requires Electoral Registration Officers (“EROs”) to amend the electoral register, where an application for registration is made on an annual canvass form and is determined before the 5th or 6th day before the poll, if a poll is to be taken between the 1st July and 1st December.
60. Where by virtue of subsection (1), section 13BB applies, subsection (2) requires EROs to treat the application for registration as made, either when the canvass form is returned or when the election notice is published, or “at such other time as may be prescribed”. This caveat addresses a situation in which a person expects to be resident in a particular constituency or area on 15th October (being the reference date for the canvass in accordance with section 4 of the 1983 Act) but is not yet resident there when they return their form or the notice of election is published.
61. This power will enable the Secretary of State to make regulations to deal with such a case by prescribing that the process for determining an application for registration will not begin, in certain circumstances, until after the date at which a person becomes resident at the address they have applied to be registered at. Separate provision will be made under the existing power in section 10(4) of the 1983 Act to prescribe a new canvass form to collect information about when a person will

become resident. As the process which a registration officer must follow when determining applications for registration is already set out in secondary legislation, it is appropriate that provision providing for these circumstances should also be made in secondary legislation. Making this provision in secondary legislation will also ensure there is an appropriate measure of flexibility rather than fixing the process for determining certain applications in primary legislation.

62. Section 202 of the 1983 Act makes clear that “prescribed” except in Part III of this Act means prescribed by regulations’. By virtue of section 201 of the 1983 Act, regulations made under that Act (including those made under section 13BB(2)) will be subject to the affirmative resolution procedure. The regulations set out in the subsequent statutory instrument will affect an electors’ entitlement to be added to the electoral register and for that reason they are suitable for this same level of scrutiny.

Clause 19: Filling vacant European Parliament seats in Northern Ireland

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument following consultation with the Electoral Commission

Parliamentary procedure: affirmative resolution

63. Clause 19 amends section 5 of the European Parliamentary Elections Act 2002 (“the 2002 Act”) to extend the power to make regulations in respect of filling vacant European Parliament seats in Northern Ireland. Currently, section 5 of the 2002 Act only provides for regulations to be made in respect of by-elections or where a seat has been filled using a party list.
64. The party list system does not operate in Northern Ireland and the effect of section 5 of the 2002 Act is that a by-election must ensue if a European Parliament seat in Northern Ireland is vacated during its normal term. Section 3 of the 2002 Act provides that the voting system for European Parliamentary elections in Northern Ireland must be by the Single Transferable Vote form of Proportional Representation (PR-STV) and Northern Ireland is single region for the purposes of European Parliamentary elections returning just 3 MEPs.
65. A by-election held as a result of a seat becoming vacant would be held in respect of the whole of Northern Ireland under PR-STV and this would most likely result in the strongest party of the day winning the seat. This could lead to that party being disproportionately represented in the European Parliament and gaining more seats than they otherwise would at a general European Parliamentary election. The Northern Ireland Office consulted publicly on possible reform of the current system and the vast majority of respondents agreed that change was needed. There was also widespread support, particularly among the main political parties, for the proposal that, where the vacating MEP was a member of a political party when returned, the nominating officer of that party should be able to nominate a replacement to fill the vacancy. Where the vacating MEP was not a member of a political party when returned, the vacancy would be filled by a person included on a list of substitutes submitted by the vacating MEP.
66. Subsection (1) of clause 19 inserts new subsections (4) and (5) into section 5 of the 2002 Act. New subsections (4) and (5) provide a power for the Secretary of State to make regulations requiring a vacant European Parliament seat in Northern Ireland to be filled in two different ways. Subsection (4) provides that where the previous

MEP was a member of a registered party when returned regulations may require the vacancy to be filled by a person nominated by the nominating officer of that registered party. If the previous MEP was not a member of a registered party when returned, the regulations may provide for a person named in a list of possible replacements submitted by the previous MEP to fill the vacancy.

67. As further regulations will be required to give full effect to the new policy, subsection (2) of clause 19 makes transitional provision to ensure that arrangements provided for in the regulations under subsection (1) may have effect in relation to any vacancy arising after clause 19 comes into force but in respect of which a notice of by-election has not yet been issued.
68. As noted above, at present provision as to the process for filling a vacancy in a European Parliamentary seat is set out in secondary legislation. It is appropriate that provision for this new method of filling a vacant seats should also be made in secondary legislation, to ensure that there is an appropriate measure of flexibility rather than trying to fixing the process in primary legislation.

Clause 21: CORE information and action to be taken by electoral registration officers

Powers conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument following consultation with the Electoral Commission, the Information Commissioner, the ERO who acts for each area proposed to be specified in the CORE scheme order, and the ERO who acts for an area the specification of which the Secretary of State proposes to remove from the CORE scheme order

Parliamentary procedure: affirmative resolution

69. Part 1 of the Electoral Administration Act 2006 (“the 2006 Act”) provides for the establishment, by order made by the Secretary of State, of one or more Co-ordinated Online Record of Electors (“CORE”) schemes. A CORE scheme will be run by a CORE keeper designated by the Secretary of State and will consolidate into a centralised record electoral registers and related information maintained by the electoral registration officers (“EROs”) in the area which is covered by the scheme.
70. Part 1 of the 2006 Act provides for the detail of how the scheme will operate to be set out in the CORE scheme order itself, although section 1(2) imposes a duty on EROs to provide the specified electoral registration information to the CORE keeper. In addition, section 2(5) requires the CORE keeper to inform an ERO if he thinks that any of the circumstances specified in section 2(6) (which may be indicative of duplicate registration or absent voter fraud) have arisen.
71. Clause 21 extends the Secretary of State’s order-making powers in relation to a CORE scheme. Subsection (3) provides that, where the CORE keeper informs an ERO of the circumstances mentioned in section 2(5) of the 2006 Act or of any suspicions that the CORE keeper has concerning the commission of an offence under the 1983 Act or other impropriety, a CORE scheme order may require the ERO to respond by taking such steps, if any, as appear to the ERO to be appropriate. It also provides that a CORE scheme order may require the ERO to notify the CORE keeper of the steps taken, or of the reasons for not taking any. In

the absence of these powers, EROs could not be required to respond to information provided by the CORE keeper.

72. The amendments in subsection (5) enable a CORE scheme order to authorise an ERO to share information with another ERO for the purpose of taking steps in response to information provided by the CORE keeper. This power is necessary to ensure that EROs can take appropriate action where the information provided by the CORE keeper relates to electoral records held by two or more EROs and may, therefore, require a co-ordinated response.
73. Section 6(2) of the 2006 Act provides that a CORE scheme order, in which the new powers provided by clause 21 will be exercised, will be subject to the affirmative resolution procedure. We are satisfied that this remains an appropriate level of scrutiny in light of the additional powers.
74. Under section 6(4) of the 2006 Act, a CORE scheme order may not be made or varied unless the Secretary of State has first consulted the Electoral Commission, the Information Commissioner, the ERO who acts for each area proposed to be specified in the scheme and the ERO who acts for an area the specification of which the Secretary of State proposes to remove from the scheme. This requirement, which will also apply to the exercise of the new powers contained in clause 21, provides an important additional check to ensure that the Secretary of State's proposals are appropriate.

Clause 22 - Schemes for provision of data to registration officers

Power conferred on: Secretary of State

Power exercisable by: regulations made by statutory instrument, in accordance with an application made by a registration officer (or with agreed modifications) and following consultation with the Electoral Commission, the Information Commissioner, and any person required to provide information under an order.

Parliamentary procedure: affirmative resolution

75. Clause 22 creates new provisions permitting the Secretary of State to create, by order, a scheme which requires a person to supply a registration officer with data which they can use for the purpose of maintaining a complete and accurate electoral register and ensuring that any other information they hold on electors is accurate.
76. The persons that may be required to provide information under a scheme are local or public authorities and/or persons undertaking functions or services on behalf of an authority. An order made under this section may create more than one data sharing scheme in the same statutory instrument and may contain incidental, supplemental, transitional or saving provision.
77. Subsection (6) provides that where a public authority or person would otherwise been prevented from disclosing information by of a restriction, statutory or otherwise, that the data matching scheme order will prevail. However, subsection (7) places restrictions on the onward disclosure by a registration officer of data provided under a scheme so that a registration officer may not share the data with another person, unless it is with a person to whom he may delegate his functions, or to another person where that is for the election registration purposes set out in subsection (2) or is for the purposes of civil or criminal proceedings. A person who

breaches these restrictions is guilty of an offence and will be liable to a fine on summary conviction.

78. It is necessary to provide for the creation of these schemes in secondary, rather than primary legislation, as they need to be sufficiently flexible to allow the piloting of data matching arrangement that correspond with the needs of local registration officers and the public authorities who will be providing the information to them. The power in Clause 22 is subject to a number of procedural safeguards. In accordance with subsection (9) of the new clause, an order implementing a scheme can only be made following the affirmative resolution procedure. In addition the power is subject to the safeguards in Clause 23. That clause provides that a scheme can only be created where a registration officer has submitted a proposal to the Secretary of State for consideration and the Secretary of State implements that proposal or does so with modifications agreed to by the registration officer. It also provides that before making an order, the Secretary of State must consult the Electoral Commission, the person providing data to the registration officer and the Information Commissioner. In summary, these provisions ensure that any scheme will be subject to scrutiny by Parliament and all key persons effected by it.

Clause 29: Commencement

Powers conferred on: Secretary of State

Powers exercisable by: order made by statutory instrument

Parliamentary procedure: none

79. Clause 29 provides the Secretary of State with the power to appoint the day on which the provision of the Political Parties and Elections Act will come into force, by order. Such an order may make different provision for different purposes or different areas and transitional or saving provision.

Ministry of Justice

March 2009

APPENDIX 3: HEALTH BILL [HL] — GOVERNMENT RESPONSE

Letter o the Chairman from Lord Darzi of Denham, Parliamentary Under-Secretary of State, Department of Health

1. Thank you for your consideration of the delegated powers in the Health Bill as part of the Committee's Third Report, published 5 February 2009. I was pleased to note that the Committee was satisfied with the majority of our proposals.
2. The Committee recommended changes to the level of scrutiny afforded to powers that relate to two important measures in the Bill – namely Quality Accounts and Trust Special Administrators.
3. I am grateful to the Committee for these recommendations. Amendments will be laid shortly that act on them:
 - Page 5, line 38, leave out subsection (2)
 - Page 5, line 41, leave out “Subject to that, “
 - Page 13, line 25, leave out from “Act” to end of line 26 and insert “, if required by directions given by the Secretary of State;”
 - Page 13, line 27, leave out “ that may be prescribed” and insert “, if required by directions given by the Secretary of State”
 - Page 14, line 3, leave out “make regulations requiring” and insert “direct”
4. I am copying this letter to interested peers.

Department of Health

March 2009