

POLITICAL PARTIES AND ELECTIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Investigatory powers of the Commission: Schedule to be inserted into the 2000 Act

215. **Schedule 1** of the Act contains new Schedule 19B to the 2000 Act. This gives the Electoral Commission increased investigatory powers.
216. **Paragraph 1** of the new Schedule restates powers that the Electoral Commission have in relation to registered parties and others and which are contained in the current section 146 of the 2000 Act. Sub-paragraph (1) lists the individuals and organisations to which the investigatory powers to require information set out in paragraph 1 can be applied. Broadly, these individuals and organisations are those considered to be the primary focus of the Commission's function of monitoring compliance as, together, they are the individuals and organisations on whom obligations under the 2000 Act are principally imposed.
217. **Sub-paragraphs (2) and (3)** allow the Commission, after issuing a "disclosure notice", to require an individual, or an officer of an organisation, to produce or provide documents or an explanation in relation to income or expenditure where the information in question is reasonably required by the Commission to carry out their functions. **Sub-paragraph (4)** obliges the person to comply with a requirement set out in a disclosure notice within a reasonable time. It is a criminal offence not to do so without reasonable excuse, under paragraph 13 of the Schedule.
218. **Paragraph 2** enables a person authorised by the Commission to enter premises at any reasonable time and inspect relevant documentation, to enable the Commission to carry out their functions. This power can only be exercised after the Commission have obtained a warrant from a magistrate authorising entry of the specified premises and is restricted so that it can only be used in relation to registered parties, recognised third parties, permitted participants and members associations.
219. An inspection warrant will be valid for a period of one month from the day on which it is issued and may not be used in connection with an investigation by the Commission of a suspected breach or offence.
220. **Paragraph 3** provides the Commission with a new power in cases where they have reasonable grounds for suspecting that an offence under the 2000 Act has been committed or that a contravention of any restriction or requirement of the Act has taken place. Where the Commission hold such a suspicion they may, under **sub-paragraph (2)**, issue a notice to a person requiring that person to produce or provide any documents or explanation reasonably required for an investigation by them of the suspected offence or contravention. **Sub-paragraph (3)** obliges the person to comply with the notice within a reasonable time. It is a criminal offence not to do so without reasonable excuse, under paragraph 13 of the same Schedule. This power is wider than

that set out in paragraph 1 because it is not restricted to documentation or information relating to income or expenditure nor is it restricted to a list of specified individuals or bodies.

221. *Sub-paragraph (4)* allows an investigator authorised by the Commission to require a person to come and answer in person any questions that the investigator reasonably considers relevant to the investigation. The powers created by paragraph 3 can be used in relation to a person who is also covered by paragraph 1, albeit for a different purpose (i.e. that of investigating purported wrongdoing), and may be used against any other person who holds, or is thought to hold, information reasonably required for an investigation by the Commission. It follows that use of the power may be used in respect of the individual or body suspected by the Commission of having committed an offence or contravention but is not limited to such an individual or body.
222. *Paragraph 4* applies where the Commission have given a notice under paragraph 3 requiring documents to be produced. *Sub-paragraph (2)* allows a High Court or (in Scotland) the Court of Session to issue an order against a person following an application from the Commission if satisfied of four things. First, that there are reasonable grounds for believing that there has been an offence under, or other contravention of, the 2000 Act. Second, that documents referred to in the notice under paragraph 3 have not been produced in response to that notice. Third, that the documents are in the custody of the person against whom the order is issued. Finally, that the documents are reasonably required for the purposes of an investigation.
223. *Sub-paragraph (3)* provides that a document-disclosure order is an order requiring the person to whom it is given to deliver to the Commission documents referred to in the order within the timeframe set out in the order.
224. *Sub-paragraph (4)* provides that a document is in a person's control if they have possession of it, or a right to possession of it.
225. *Sub-paragraph (5)* stipulates that a person who fails to comply with a document-disclosure order may not be punished for both contempt of court, and an offence under paragraph 14 of the Schedule.
226. *Paragraph 5* applies where the Commission have given notice under paragraph 3 requiring any information or explanation to be produced. *Sub-paragraph (2)* allows a High Court or (in Scotland) a Court of Session to issue an order against a person following an application from the Commission if satisfied of the three things. First that there are reasonable grounds to suspect a person has committed an offence or contravention under or by virtue of the 2000 Act. Second that there is any information or explanation, referred to the notice issued under paragraph 3 which has not been provided in response to that notice and is reasonably required by the Commission in investigating the offence or contravention. Third, that the respondent is able to provide the information or explanation.
227. *Sub-paragraph (3)* provides that an information-disclosure order is an order requiring the person to whom it is given to provide the Commission with information or explanation referred to in the order within the timeframe set out in the order.
228. *Sub-paragraph (5)* stipulates that a person who fails to comply with an information-disclosure order may not be punished for both contempt of court, and an offence under paragraph 14 of the Schedule.
229. *Paragraph 6* specifies that the Commission may retain documents delivered to them in compliance with an order under paragraph 4 for three months. However, if during that time any relevant criminal proceedings are begun, or notices are issued or penalties imposed under the new civil sanctions powers given by Schedule 19C, the documents may generally be retained until they are no longer required in relation to the proceedings or civil sanctions.

230. *Paragraph 7* provides that the Commission, or a person authorised by the Commission, may make copies or records of relevant information or explanations obtained under the Schedule.
231. *Paragraph 8* requires that any authorisation of a person by the Commission made under this Schedule must be in writing.
232. *Paragraph 9* requires the person entering premises under the powers set out in paragraph 2 to provide evidence of their right to do so if the person on the premises asks for this.
233. *Paragraph 10* deals with documents held in electronic form. Sub-paragraph (1)(a) gives the Commission a power to require such documents to be made available in a legible form. *Sub-paragraph (1)(b)* enables a person authorised to inspect documents to require any person on premises being searched to give reasonable assistance to allow the inspector to make legible copies of electronic documents, or records of information contained in them. Under this power such assistance may also be required by an inspector in order to enable him to inspect and check any computer or associated apparatus used in connection with the information.
234. *Paragraph 11* exempts information subject to legal professional privilege (or confidentiality of communications in Scotland) from any requirement to produce information (in whatever form) under any power provided by this Schedule. The appropriate test is whether a claim to legal professional privilege or, in Scotland, confidentiality of communications could be maintained in legal proceedings in respect of the material in question.
235. *Paragraph 12* deals with the admissibility of statements provided under compulsion. *Sub-paragraph (1)* provides that a statement made in response to a requirement under the Schedule may be used in any proceedings, provided that it complies with any other rules of evidence in those proceedings. But *sub-paragraph (2)* provides that the statement is not admissible against the maker of the statement in criminal proceedings or proceedings under the new Schedule 19C, unless evidence about the statement is relied on, or a question about it is asked, by the maker, or unless the proceedings are for an offence mentioned in *sub-paragraphs (3) and (4)*. (These offences are similar to perjury).
236. *Paragraph 13* provides that it is an offence to fail to comply with any requirement imposed under the Schedule (for example, to refuse to supply the Commission with information requested under paragraph 1 or 3); to obstruct intentionally somebody performing functions under the Schedule; or knowingly or recklessly provide false information in response to a requirement imposed under the Schedule.
237. *Paragraph 14* imposes a duty on the Electoral Commission to publish guidance on the matters set out in *sub-paragraph (1)*, which concern the ways in which it will make use of the investigatory powers set out in Schedule 19B. *Sub-paragraph (2)* obliges the Commission to keep the guidance under review, and *sub-paragraph (3)* places a requirement on the Commission to consult such persons as they consider appropriate before publishing guidance or revised guidance. *Sub-paragraph (4)* requires the Commission to have regard to the guidance or revised guidance in exercising their functions.
238. *Paragraph 15* requires the Electoral Commission to report on its use of the investigatory powers contained in new Schedule 19B in its annual report which it lays before Parliament under paragraph 20 of Schedule 1 to the 2000 Act.
239. *Sub-paragraph (2)* explains what information the Commission must include in the report on the use of their investigatory powers. *Sub-paragraph (3)* exempts the Commission from having to report any information that, in their opinion, it would be inappropriate to include because it would be unlawful or because it would prejudice an ongoing investigation or proceedings.