

POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Control of donations to registered parties and their members etc.

Chapter I (Sections 50 to 53) : Donations to registered parties

106. These sections, as a preliminary to the restrictions on the receipt of donations imposed under Chapter II and the reporting requirements imposed by Chapter III, define what does and does not constitute a “donation”.

Section 50 : Donations for the purposes of Part IV

107. “Donation” is defined in *subsection (2)* as gifts of money and property (including money or property transferred to a party for consideration which is less than its value); the provision of any sponsorship in relation to the party; subscriptions and affiliation fees; money spent (other than by or on behalf of the party) to meet expenses incurred by the party; and loans, property, services and other facilities provided to the party on other than commercial terms. Anything given or transferred to an officer, agent, trustee or member of the party in that capacity will be regarded as having been given or transferred to the party, unless it is given solely for his own use or benefit (*subsection (6)*). A donation to a member or officer of a party for use otherwise than on the business of the party as such - for example, in assisting him or her in standing for an internal election – is subject to the separate controls in section 71 and Schedule 7. The definition of a “donation” applies to anything given or transferred to the party either directly or indirectly through a third person (*section 50(8)(a)*).

Section 51 : Sponsorship

108. *Section 51* defines what constitutes sponsorship for the purpose of Part IV. The definition covers any money or other property transferred to a party for the purpose of helping the party with meeting any defined expenses. *Subsection (2)* defines “defined expenses” as expenses incurred in connection with:
- (a) any conference, meeting or other event organised by or on behalf of the party;
 - (b) the preparation, production or dissemination of any publication; or
 - (c) any study or research.
109. However, by virtue of *subsection (3)*, the payment of an admission charge to any conference, meeting or other event, or the purchase price of any publication, does not constitute sponsorship. *Subsection (4)* confers power to amend by order the definition of “defined expenses” in *subsection (2)* or the list of exempted items in *subsection (3)*. Such an order may only be made on the recommendation of the Electoral Commission.

Section 52 : Payments, services etc. not to be regarded as donations

110. *Section 52* specifies those payments or services to a party which are not to be regarded as a “donation”. Any donation whose value is £200 or less is to be disregarded (*subsection (2)(b)*). Also to be disregarded are policy development grants made to parties (under the provisions of section 12) and grants for security costs at party conferences. In addition, the definition of “donation” excludes the notional benefit to parties of air time for political party broadcasts, the use of public rooms at elections and the distribution of election addresses to electors, all of which facilities are provided free of charge. The definition also excludes the provision by an individual of his own services provided these are provided freely and in his own time (*subsection (1)(g)*). It is not intended that, for example, a voluntary officer of the party should be regarded as making a donation if, in their own time, they contribute professional services (such as accountancy) within their personal sphere of expertise. However, services provided free of charge by an individual who was nevertheless paid by his employer while providing those services will fall within section 50(2)(f) and thus count as a donation by the employer.
111. *Subsection (2)(a)* also excludes donations made for the purpose of meeting a candidate’s election expenses (which will continue to be the subject of a separate statutory return under the relevant provisions of the Representation of the People Act 1983, as augmented by section 130 and Schedule 16, and other enactments relating to elections).

Section 53: Value of donations

112. *Section 53* deals with the valuation of donations. Gifts of property are required to be valued at their market value, that is at the price they would fetch on their sale in the open market (see section 160(1)). Where money or property is transferred to a party for a consideration less than the market value of the property, the value of the donation is the difference between the value of the money or the market value of the property and the consideration provided by the party (*subsection (2)*). Similarly, where loans, property, services and other facilities are provided on other than commercial terms, their value will be taken to be the difference between their actual cost to the party and the cost which the party would have incurred if they had been provided on commercial terms (*subsection (4)*). In the case of any sponsorship, the value of the donation is to be taken to be the value of the money or property transferred to the party; the value of any benefit conferred on the sponsor is to be disregarded (*subsection (3)*).

Chapter II (Sections 54 to 61) : Restrictions on donations to registered parties

Section 54 : Permissible donors

113. This section introduces the concept of a “permissible donor”, as a means of prohibiting the foreign funding of political parties. *Subsection (1)* provides that a party may accept a donation only from a permissible donor and where the identity of the donor is known. The latter requirement is intended to cover not only cases where a donation is made anonymously but also where an identity has been given but is clearly fictional (and it is therefore impossible to establish that the donor is a permissible donor).
114. *Subsection (2)* specifies those sources of funding which are to be regarded as permissible. They include individuals registered in an electoral register; a company registered in the United Kingdom and incorporated in a member state of the European Union and which carries on business in the United Kingdom; a registered political party; a trade union; a building society; a limited liability partnership; a friendly society or industrial and provident society and any other unincorporated association which is carrying on business or other activities, and has its main office, in the United Kingdom. Where a donation is in the form of a bequest it is sufficient that the deceased was on the electoral register at any time in the last five years prior to his death (*subsection (3)*).

115. *Subsections (4) and (5)* provide that where a person (“the principal donor”) makes a donation on behalf of two or more other persons the individual contribution of each will be treated as a separate donation for the purposes of controls on donations under this Part. The recipient party will therefore need to establish the identity of each separate donor (and to this end the principal donor will be under a duty to provide such information) and whether each constitutes a permissible source.

Section 55 : Payments etc. which are (or are not) to be treated as donations by permissible donors.

116. *Section 55* makes special provision in respect of donations from certain specified sources. By virtue of *subsection (2)* any payment to a party out of public funds (other than one of the payments listed in section 52(1)(a) and (b), which do not constitute donations) is to be regarded as a donation from a permissible donor. Such payments will include the financial assistance paid to opposition parties in the House of Commons (‘Short money’) and House of Lords (‘Cranborne money’). *Subsections (3) and (4)* provides that where a party receives a donation to meet the reasonable travel and subsistence expenses of a member or officer of the party for the purpose of undertaking an overseas visit, such a donation is to be regarded as being from a permissible donor, irrespective of whether the donor is one of those listed in section 54(2). By virtue of *subsection (5)* an “exempt trust donation” is to be regarded as a donation from a permissible source; the term is defined in section 162. *Subsection (6)* provides that a donation by a trustee, acting in his capacity as such, is to be regarded as a donation from an impermissible source unless the donation satisfies one of the criteria set out in the subsection. The inclusion of the reference to an unincorporated association, in subsection (6)(b)(ii), reflects the fact that such an association cannot hold property in its own right, so its assets are commonly held in and disbursed from a trust.

Sections 56 and 57: Acceptance or return of donations

117. Upon receipt of a donation it will be incumbent upon the party to take all reasonable steps to identify the donor and determine whether the donor constitutes a permissible source (*section 56(1)*). This may require that the party makes some enquiries and it is perfectly possible that a donation will remain in a party’s account while those enquiries are carried out. The Act therefore distinguishes between the receipt and the acceptance of a donation and makes provision for a period of 30 days during which the status of the donation may be determined and appropriate action taken before the party is to be regarded as having accepted the donation. *Sections 56(2) and 57(1)* provide for the return of a donation to its source where that source is an impermissible donor or where it proves impossible to ascertain the donor’s identity. In the latter instance, if it is not possible to return the donation to its source, it is to be surrendered to the Electoral Commission for payment into the Consolidated Fund.

Sections 58 to 60 : Forfeiture of certain donations

118. *Sections 58 to 60* apply sanctions to the acceptance of donations from an impermissible source, or where the identity of the donor is not known. These provisions should be read in conjunction with section 66 which requires the treasurer of a party to declare (and makes it an offence falsely to declare) that the party has not accepted any donations from an impermissible source.
119. *Section 58* enables the Electoral Commission to apply to a court to order the forfeiture of a donation which a party has accepted from a source which is either impermissible or not known. *Section 59* provides for appeals against such an order. *Section 60* enables rules of court to be made in respect of applications or appeals under sections 58 and 59. It also provides that any sums forfeited under these provisions shall be paid into the Consolidated Fund. *Subsection (5) of section 60* specifies that, where a registered party is not a body corporate, forfeiture proceedings will be brought against the party

in its own name and not in that of any of its members and that any sums forfeited will be paid out of the funds of the party.

Section 61 : Offences concerned with evasion of restrictions on donations

120. In addition to a party's civil liability under section 58, *section 61* makes it a criminal offence for any person knowingly to participate in an arrangement or to withhold information, or supply false information, so as to evade the restrictions on the sources of donations. The bringing of criminal proceedings does not preclude the Commission from also applying for forfeiture of the donation in question (see *section 58(4)*).

Chapter III (Sections 62 to 69) : Reporting of donations to registered parties

121. These sections set out the scheme for reporting large donations to the Electoral Commission and for publishing details of them.

Section 62 and Schedule 6 : Quarterly donation reports

122. *Section 62* requires a party to prepare a donations report in respect of each quarter of a calendar year. A quarterly donations report will record any donation of more than £5,000 (or more than £1,000 in the case of a donation made to an accounting unit of a registered party) accepted during that quarter or any donation which, when added to other donations from the same source during that calendar year, brings the amount up to more than £5,000 (£1,000 in the case of donations to accounting units). It must also record any further donations of more than £1,000 from a source which, during the same calendar year, has already been recorded in a donation report. Parties must also report donations from the same source made to any of their accounting units which in aggregate exceed £5,000 (*subsection (12)*). To comply with these requirements political parties will need to keep records of all donations received and accepted above the *de minimis* level of £200 (as set out in *section 52(2)(b)*).
123. A quarterly donations report will also record all donations received by the party from an impermissible or anonymous source during that period.
124. Where a party has received no donations which fall to be recorded, it will be required to report to that effect.
125. *Subsection (13)* gives effect to *Schedule 6* which makes additional provision as to the information to be included in a quarterly donation report. In particular, the treasurer is required to record, in respect of each recordable donation, the identity of the donor (including their name and address), the value of the donation and the circumstances in which the donation was made.

Section 63 : Weekly donation reports during general election periods

126. During a parliamentary general election period, *section 63* requires donation reports to be sent to the Electoral Commission in respect of each seven-day period (and any final period of less than seven days). Weekly donations reports differ from the quarterly donations reports in that they will include disclosable donations received whether or not they are eventually accepted. Only donations of more than £5,000 made to a party or, in the case of a party with accounting units, to the central organisation of a party need to be recorded in the weekly reports. The general election period is defined for the purpose of this section as the period commencing with the date of the announcement of Her Majesty's intention to dissolve Parliament and ending with the date of the poll. In the fifteen general elections since the Second World War the length of this period has, on average, been thirty-three days.

Section 64 : Exemptions from section 63

127. *Section 64* enables any registered party which does not intend to field candidates at a particular general election to be exempted from the requirement to submit weekly donations reports.

Section 65 : Submission of donation reports to Commission

128. *Section 65* requires the submission of quarterly donation reports within thirty days and of weekly donation reports within seven days of the end of the period to which they relate, and makes it an offence for the treasurer to fail to submit donation reports or to submit reports which do not comply with the requirements.

Section 66 : Declaration by treasurer in donation report

129. *Section 66* requires donation reports to be accompanied by a declaration made by the treasurer. The terms of the declaration in respect of quarterly reports are set out in *subsection (2) or (3)* (the latter subsection applies where the treasurer makes a 'nil' return), while those for weekly reports are set out in *subsection (4)*. It is an offence knowingly to make a false declaration (*subsection (5)*).

Section 67 : Weekly donation reports in connection with elections other than general elections

130. *Section 67* enables the requirement to submit weekly donation reports to be applied (with modifications) by order to elections to the European Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

Section 68 : Reporting of multiple small donations

131. *Section 68* is a counter-evasion provision. Under section 52(2)(b) a donation of £200 or less is disregarded for the purposes of Part IV. This *de minimis* limit is intended to alleviate the administrative burden on political parties arising from the controls on donations. In particular, a party will not need to verify the source of any sum below the *de minimis* limit and will not have to record the name and address of the donor. Whilst the £200 threshold reduces the administrative workload on parties, however, it opens up the prospect of evasion of the disclosure requirement by the device of multiple small donations each of which is below the *de minimis* limit. Section 68 accordingly places a duty on a donor who makes a number of donations to a party in a year, each of which is £200 or less but which in aggregate exceed £5,000, to report the donations to the Electoral Commission. Reports must be delivered to the Commission by the end of January following the year in which the donations were made. The requirement to report to the Electoral Commission is placed on the donor, rather than the registered party concerned, because the latter may not have kept records of the receipt of the individual donations and could not, therefore, verify any information provided by the donor.

Section 69 : Register of recordable donations

132. The Electoral Commission is required by *subsection (1)* to maintain a register of all reported donations. To protect the privacy and safety of individual donors, the published register will not include their home addresses. In addition, information supplied by a registered treasurer under paragraph 7(b) of Schedule 6 (details of any element of deception or concealment employed by a donor) will not be published.

Chapter IV (Section 70) : Power to make special provision

Section 70: Special provision for Northern Ireland parties

133. *Section 70* enables the Secretary of State by order to extend in relation to a Northern Ireland party the categories of permissible donor specified in *section 54(2)* or to exempt

Northern Ireland parties from the scope of any or all of the provisions of Part IV of the Act. A Northern Ireland party is defined as a party registered in the Northern Ireland register (*subsection (6)*). The intention is to allow suitable arrangements to be made, along the lines recommended in the Neill Committee report, in recognition of the special circumstances which apply in Northern Ireland. Any order made under this section may remain in force for no longer than four years, but this is without prejudice to a further order being made (*subsection (4)*). To prevent a Northern Ireland party acting as a conduit for foreign donations to a party in the Great Britain register, *subsection (5)* provides that when an order is in force under this section a party registered in the Great Britain register may not accept a donation from a Northern Ireland party.

Chapter V (Section 71) : Control of donations to individuals and members associations

Section 71 and Schedule 7 : Control of donations to individuals and members associations

134. *Section 71* gives effect to *Schedule 7* which applies, with appropriate modifications, the provisions of Chapters I to IV to donations made to individuals and members associations for their own use or benefit in connection with their political activities. (Donations made to individual party members or officers for the benefit of a party would be regarded as donations to the party for the purposes of Part IV (see section 50(6)).)
135. The controls set out in *Schedule 7* apply to donations made to individual members of a registered party, members associations and holders of relevant elective offices. *Paragraph 1(6)* defines a ‘members association’ as an organisation which is comprised wholly or mainly of members of the party. These are groups which lie outside the formal structure of the party for the purposes of controls on funding and which, therefore, will not have been included in the scheme proposed and adopted in accordance with section 26. They would, for example, include groups which are formed within parties to champion particular policies or ideas (such as the Tribune Group or the Tory Reform Group). *Paragraph 1(8)* identifies the relevant elective offices, the holders of which are subject to the controls, namely that of Member of the House of Commons, Member of the European Parliament elected in the UK, member of a devolved legislature, member of a local authority (other than a parish or community council), member of the Greater London Assembly and Mayor of London or any other elected mayor within the meaning of Part II of the Local Government Act 2000.
136. A donation made to an individual party member or members association is subject to the controls set out in *Schedule 7* if it is either offered to or retained by the individual or association for their own use or benefit in connection with political activities within the party. Such activities include the conduct of internal elections to positions within the party (for example, that of party leader or positions on the party’s management committee) and the conduct of “primaries” for the selection of a party candidate for an elective office (for example, that of Mayor of London). A controlled donation to a holder of a relevant elective office is a donation offered to or accepted by him in connection with any political activities of his. Such activities might include campaigning for re-election or the running of his office. Donations made to individuals or associations for their private use or for purely social purposes would not be subject to control unless, despite the intention of the donor, the donation was used in connection with political activities within the party.
137. *Paragraph 2* of *Schedule 7* defines “donation” for these purposes in terms equivalent to those in relation to donations to a party (see section 50(2)). *Paragraph 3* defines sponsorship for the purpose of the Schedule. *Paragraph 4* defines those payments and services which are not to be regarded as a donation. These include any remuneration or allowances paid to the holder of a relevant elective office in that capacity.

138. *Paragraphs 6 to 9 of Schedule 7* impose restrictions, including those on permissible sources, on the acceptance of donations by individuals and members associations equivalent to those applying to registered political parties under sections 54 to 61.
139. *Paragraphs 10 and 11 of Schedule 7* require the disclosure to the Electoral Commission by an individual or members association of the source and amount of any donation or donations amounting to more than £1,000 in the case of an individual or more than £5,000 in the case of a members association. Reports must be sent to the Commission within thirty days of the acceptance of any disclosable donation. Donations received from an impermissible or unidentifiable source must similarly be reported. *Paragraph 12* creates offences in relation to failure to deliver a required report and the delivery of an incomplete report, as well as providing for the forfeiture of a donation where failure to comply with the requirements of Schedule 7 is due to an intention to conceal the existence or the true amount of the donation in question. *Paragraph 13* makes provision, equivalent to that under section 66, for any report as to a disclosable donation to be accompanied by a declaration attesting that the donation has been received from a permissible source. In this case, however, there is no requirement for 'nil returns'.
140. *Paragraph 14* makes equivalent provision to section 67 to counter evasion by a donor of the disclosure requirements by making multiple donations under the *de minimis* threshold of £200. *Paragraph 15* provides for the inclusion of donations disclosed in accordance with Schedule 7 in a register of disclosable donations.
141. One effect of these provisions is to require that donations made to a holder of an elective office, which are disclosed in a register of members' interests, will also be subject to the reporting requirements set out in Schedule 7. This will mean some overlapping of registers of members' interests and the Electoral Commission's register of disclosable donations. But the controls on donations to MPs and others will not in any way circumscribe the ability of the House of Commons or the devolved legislatures to regulate the interests and conduct of their members.