

Draft Order laid before Parliament under section 13(5) of the European Parliament (Representation) Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

**NATIONAL ELECTION EXPENDITURE
POLITICAL PARTIES
REPRESENTATION OF THE PEOPLE**

The European Parliamentary Elections (Loans and
Related Transactions and Miscellaneous Provisions)
(United Kingdom and Gibraltar) Order 2009

Made - - - - 2009

Coming into force in accordance with article 1(2)

The Secretary of State, in exercise of the powers conferred by sections 12, 13, and 23(2) of the European Parliament (Representation) Act 2003 (1), after consultation with the Electoral Commission in accordance with section 12(5) of that Act, makes the following Order, a draft of which has been laid before and approved by a resolution of each House of Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009.

(2) It shall come into force on the day after the day on which it is made.

(3) It extends to each part of the United Kingdom and Gibraltar.

2.—(1) In section 163(11) of the Political Parties, Elections and Referendums Act 2000(2) (which lists the Parts of that Act that extend to Gibraltar), after paragraph (d), insert —

“(da) Part 4A(3) (Regulation of Loans and Related Transactions);”.

(2) The further amendments to that Act specified in the Schedule shall have effect.

(1) 2003 c.7.

(2) 2000 c. 41; section 163(11) was inserted in the 2000 Act by article 4(1) of The European Parliamentary Elections (Combined Region and Campaign Expenditure) (United Kingdom and Gibraltar) Order 2004 (S.I. 2004/366) (“the 2004 Order”).

(3) Inserted in the 2000 Act by section 61 of the Electoral Administration Act 2006 (c. 22) (“the 2006 Act”).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009 No. 185*

Ministry of Justice

SCHEDULE

Amendment of Political Parties, Elections and Referendums Act 2000

1. Section 54(2A)(4) (permissible donors) is amended as follows—
 - (a) in paragraph (b)(i) for “Ordinance” substitute “Act”;
 - (b) in paragraph (d) for “Ordinance” substitute “Act”; and
 - (c) in paragraph (e) for “Ordinance 1997” substitute “Act”.
2. Omit section 57A(5) (additional limit on Gibraltar donations to UK parties).
3. After section 71G(6) (valuation of regulated transaction), insert—

“Prohibition on increase in value of Gibraltar regulated transaction following European parliamentary election

71GA.—(1) This section applies to a Gibraltar regulated transaction which is entered into within the permitted period and which does not fall to be dealt with by section 71HA.

(2) A registered party which is not a Gibraltar party shall not, whether during the permitted period or otherwise, enter into an arrangement with any person which has the effect, on or after the date of the poll for an election to the European Parliament in the combined region, of increasing the value of a transaction to which this section applies or which enables that value to be increased.

(3) Where such a party enters into an arrangement contrary to subsection (2), the related transaction is to be treated for the purposes of this Part (other than this section) as if it was entered into with a participant who is not an authorised participant within the meaning of section 71H(3A).

(4) This section does not apply to an arrangement entered into before the commencement of the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009.”.

4. In section 71H (authorised participants)—
 - (a) subsection (2) has effect in relation to a registered party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region as if for the words from “section 61” to the end there were substituted “the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009”;
 - (b) after subsection (3) insert—

“(3A) As respects a registered party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region, “authorised participant” means a person who is a permissible donor under section 54(2A).

(3B) In its application for the purposes of this Part by virtue of subsection (3A), section 54(2A) has effect as if for “the donation is received” there were substituted “the regulated transaction” is entered into.”.
5. After section 71H insert—

(4) Section 54(2A) was inserted in the 2000 Act by paragraph 12(b) of the Schedule to the 2004 Order.

(5) Section 57A was inserted in the 2000 Act by paragraph 14 of the Schedule to the 2004 Order.

(6) Sections 71F to 71X of the 2000 Act were inserted by section 61(1) of the 2006 Act.

“Financial limit on Gibraltar donations and Gibraltar regulated transactions

71HA.—(1) This section applies where the permitted maximum is exceeded by the aggregate value of—

- (a) Gibraltar donations which are received and accepted;
- (b) Gibraltar regulated transactions which are entered into;

within the permitted period by a registered party which is not a Gibraltar party.

(2) Such of the Gibraltar donations and Gibraltar regulated transactions as fall within subsection (3) are to be treated for the purposes of Part 4 and this Part as if—

- (a) they were received or entered into, as the case may be, at the end of the period of three months after the end of the permitted period;
- (b) in the case of a Gibraltar donation, it was received from a person who was not a permissible donor at the time;
- (c) in the case of a Gibraltar regulated transaction, it was entered into with a person who was not an authorised participant at the time.

(3) A Gibraltar donation or Gibraltar regulated transaction falls within this subsection if—

- (a) in a case where it is the first of the Gibraltar donations received or is the only one, the value of the donation alone exceeds the permitted maximum;
- (b) in a case where it is the first of the Gibraltar regulated transactions entered into or is the only one, the value of the transaction alone exceeds the permitted maximum; or
- (c) otherwise, the aggregate value of that donation or regulated transaction and such of the Gibraltar donations and Gibraltar regulated transactions previously received or entered into, as the case may be, exceeds the permitted maximum.

(4) But—

- (a) in a case within subsection (3)(a), only so much of the donation as exceeds the permitted maximum is a donation falling within subsection (3); and
- (b) in a case within subsection (3)(c) in which the aggregate value of the Gibraltar donations and Gibraltar regulated transactions previously received or entered into, as the case may be, does not exceed the permitted maximum, only so much of the donation as exceeds the difference between that aggregate value and the permitted maximum is a donation falling within subsection (3).

(5) In this section “permitted maximum” means an amount equal to the limit imposed by paragraph 4(2) of Schedule 9 on campaign expenditure incurred by or on behalf of a registered party which is not a Gibraltar party and which stands for election at an election to the European Parliament in the combined region.”.

6. Section 71I(7) has effect in relation to a registered party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region as if for the words from “section 61” to the end there were substituted “the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009”.

7. Section 71J(8) has effect in relation to a registered party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region as if for the words from “section 61” to the end there were substituted “the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009”.

8. Section 71L(14) has effect in relation to a registered party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region as if for the words from “section 61” to the end there were substituted “the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009.”

9. In section 71O (existing transactions) after subsection (3) insert—

“(4) The date referred to in subsection (3) for the purposes of Gibraltar is the commencement date of the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009.”

10. In section 71R (exemptions from section 71Q), after subsection (1) insert—

“(1A) Section 71Q does not apply in relation to a Gibraltar party.”

11. In section 71S (submission of transaction reports to Commission) in subsection (3), after “the Representation of the People Act 1983” insert “or corresponding provisions forming part of the law of Gibraltar”.

12. In section 71U (weekly donation reports other than in general elections) after subsection (2) insert—

“(3) An order applying the provisions mentioned in subsection (1)(a) may disapply section 71R(1A) (which excludes Gibraltar parties from the operation of section 71Q).”

13. In section 71W (proceedings under sections 71I and 71S) —

(a) in subsection (2) after paragraph (c) insert—

“(d) in Gibraltar, the Gibraltar Court.”; and

(b) in subsection (6) after “Rules of court” insert “in any part of the United Kingdom”.

14. In section 71X (constructions of Part 4A) after the definition of “credit facility” insert—

“Gibraltar donation” means a donation —

(a) which is received from a permissible donor falling within subsection (2A) (but not subsection (2)) of section 54; or

(b) which is an exempt Gibraltar trust donation regarded by virtue of section 55(5A) as received from a permissible donor.

“Gibraltar regulated transaction” means a regulated transaction which is entered into with an authorised participant who, by virtue of section 71H(3A), is listed in section 54(2A) (but not subsection (2));

“permitted period” means the period of four months ending with the date of the poll for an election to the European Parliament in the combined region.”

15. In section 160(6)(7) for “Ordinance” in both places where it appears substitute “Act”.

16.—(1) Schedule 6 (details to be given in donation reports) is amended as follows.

(2) In paragraph 2(2A)(a) and (b)(8) for “House of Assembly” substitute “Gibraltar Parliament”.

(3) In paragraph 2(3A)(a) and (b)(ii)(9) for “House of Assembly” substitute “Gibraltar Parliament”.

(4) In paragraph 2(6)(10)—

(7) Section 160(6) was inserted in the 2000 Act by paragraph 31(b) of the Schedule to the 2004 Order.

(8) Paragraph 2(2A) of Schedule 6 was inserted by paragraph 33(b) of the Schedule to the 2004 Order.

(9) Paragraph 2(3A) of Schedule 6 was inserted by paragraph 33(d) of the Schedule to the 2004 Order.

(10) Reference to the Trade Unions and Disputes Ordinance was inserted in paragraph 2(6) of Schedule 6 by paragraph 33(f) of the Schedule to the 2004 Order.

- (a) after “Order 1992” insert “as registered in accordance with”; and
 - (b) for “Trade Union and Trade Disputes Ordinance” substitute “Trade Unions and Trade Disputes Act”.
- (5) In paragraph 2(7) for “Ordinance 1997” substitute “Act”.

17.—(1) Schedule 6A(**11**) (details to be given in transaction reports) shall be amended as follows.

(2) In paragraph 2(2)(a), after “(within the meaning of section 54)” insert “or the Gibraltar register”.

(3) In paragraph 2(3), after “the Representation of the People Act 1983” insert “or corresponding provisions forming part of the law of Gibraltar”.

(4) In paragraph 2(4) after “section 54(2)(b)” insert “or section 54(2A)(b)”.

(5) In paragraph 2(6)—

(a) after “section 54(2)(d) insert “or section 54(2A)(d)”;

(b) after “the Industrial Relations (Northern Ireland) Order 1992” insert “or as registered in accordance with the Trade Unions and Trade Disputes Act(**12**)”.

(6) In paragraph 2(7)(**13**), after “1986” insert “or which is an existing registered society within the meaning of the Banking (Extension to Building Societies) Act(**14**)”.

(7) In paragraph 2(8) after “section 54(2)(f)” insert “or section 54(2A)(f)”.

(8) In paragraph 2(10), after “section 54(2)(h), insert “or section 54(2A)(g)” and after “United Kingdom” insert “or Gibraltar, as the case may be”.

(9) In paragraph 3(2), after “the Representation of the People Act 1983” insert “or corresponding provisions forming part of the law of Gibraltar”

18.—(1) Schedule 7A(**15**) (control of loans etc to individuals and members associations) shall be amended as follows.

(2) After paragraph 4(3) insert—

“(3A) A person who is a permissible donor within the meaning of section 54(2A) is also an authorised participant if—

(a) the regulated transaction is entered into by—

(i) a member of a registered party; or

(ii) a members association whose membership consists wholly or mainly of members of a registered party,

and the party is a party whose entry in the register includes a statement that it intends to contest one or more elections to the European Parliament in the combined region; or

(b) the regulated transaction is entered into by a member of the European Parliament elected in the combined region.

(3B) In its application for the purposes of this Part by virtue of subsection (3A), section 54(2A) has effect as if for “the donation is received” there were substituted “the regulated transaction” is entered into.”.

(11) Schedule 6A was inserted in the 2000 Act by section 61(5) of the 2006 Act.

(12) Gibraltar Principal Act 1947-15.

(13) Reference to the Banking (Extension to Building Societies) Ordinance was inserted in paragraph 2(6) of Schedule 6 by paragraph 33(g) of the Schedule to the 2004 Order.

(14) Gibraltar Principal Act 1998-04.

(15) Schedule 7A was inserted in the 2000 Act by paragraph 99 in Part 6 of Schedule 1 to the 2006 Act.

- (3) In paragraph 9(4)(a) after “section 54(2)” insert “or (2A)”.
- (4) In paragraph 17—
 - (a) in subsection (2) after paragraph (c) insert—
 - “(d) in Gibraltar, the Gibraltar Court.”; and
 - (b) in subsection (6) after “Rules of court” insert “in any part of the United Kingdom”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision about the rules relating to registered political parties from the United Kingdom and registered parties established in Gibraltar which put forward candidates to contest elections to the European Parliament in Gibraltar by virtue of its status as a part of the South West combined region. The Order also makes a small number of miscellaneous consequential and updating provisions.

Article 2 of the Order amends section 163(11) of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) with the result that Part 4A of that Act, which deals with the regulation of loans and related transactions, extends to Gibraltar. In doing so Part 4A now extends to cover political parties established in Gibraltar and registered in the United Kingdom with the Electoral Commission for the purposes of contesting European Parliamentary elections in the South West combined region and registered political parties established in the United Kingdom who have also registered such an intention with the Commission. Part 4A is extended in this way, subject to the changes and modifications to that Part.

There are two significant changes and modifications to Part 4A as it extends to Gibraltar under this Order.

First, paragraph 2 of the Schedule inserts a new section 71GA. This has the effect of preventing a registered political party that is not a Gibraltar political party from entering into any arrangement which increases the value of a regulated transaction or which enables that value to be increased on a date on or after the polling date for a European parliamentary election.

Second, paragraph 7 of the Schedule inserts a new section 71HA which, in part, replaces section 57A which was originally inserted by The European Parliamentary Elections (Combined Region and Campaign Expenditure) Order 2004 (“the 2004 Order”). In doing so it places a limitation on registered political parties that are not Gibraltar parties which receive donations or enter into regulated transactions within a period beginning on a date four months before the polling date for a European parliamentary election. The limitation is that the aggregate of donations received and regulated transactions entered into must not exceed a permitted maximum, defined in the Order. New section 71HA also sets out the consequences of exceeding the maximum.

The remaining paragraphs of the Schedule make necessary consequential provisions and update references in other parts of the 2000 Act as originally applied to Gibraltar by the 2004 Order. The Order refers to Gibraltar Acts. They can be obtained at <http://www.gibraltarlaws.gov.gi> or from Publications, Government Secretariat, No. 6 Convent Place, Gibraltar. Further requests or queries may also be submitted by telephone (00 350 2005 1734), Fax: (00 350.2007.1734 4524) or by mail (publications@gibraltar.gov.gi).

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