

EXPLANATORY MEMORANDUM TO

THE CONTROL OF DONATIONS AND REGULATION OF LOANS ETC. (EXTENSION OF THE PRESCRIBED PERIOD) (NORTHERN IRELAND) ORDER 2013

2013 No. 320

1. This explanatory memorandum has been prepared by the Northern Ireland Office (NIO) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Political parties and other regulated recipients in Northern Ireland must report to the Electoral Commission donations and loans and other related transactions received or entered into which exceed specified thresholds. However, for a prescribed period of time the Commission may not, other than in specified circumstances, disclose details of these donations, loans or transactions and there is no right to inspect the registers of these reports kept by the Commission. This period of confidentiality is due to end on 28 February 2013 but may be extended by Order. This Order extends the period of confidentiality until 30 September 2014.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Political Parties, Elections and Referendums Act 2000 introduced new reporting and publication requirements in relation to donations to UK political parties and other regulated recipients. The Electoral Administration Act 2006 made similar provision in relation to loans and related transactions. Initially these provisions did not apply in Northern Ireland because of the need for them to be modified before doing so. These modifications were made by the Northern Ireland (Miscellaneous Provisions) Act 2006 (such that the modified regime for donations commenced on 1 November 2007) and the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (such that the modified regime for loans commenced on 1 July 2008). The modifications include, amongst other things, the prohibition on disclosure referred in paragraph 2.1 above. Some of those modifications apply only during the “prescribed period” which was originally to expire on 31 October 2010, but which was extended until 1 March 2011 (S.I. 2010/2061) and again until 28 February 2013 (S.I 2011/431), and can be extended for up to two years at a time by further Order.

4.2 This Order extends the period for a further nineteen months until 30 September 2014.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 The Minister of State for Northern Ireland, Mike Penning, has made the following statement regarding Human Rights:

‘In my view the provisions of the Control of Donations and Regulation of Loans etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2013 are compatible with the Convention rights.’

7. Policy background

- *What is being done and why*

7.1 Across the UK, political parties and other recipients must report donations and loans received over specified thresholds to the Electoral Commission. However, in relation to donations and loans received by Northern Ireland recipients, the Electoral Commission is under a statutory obligation not to publish or disclose details of those reports. This is to protect against the risk of donor intimidation in Northern Ireland. The confidentiality period - known formally as “the prescribed period” - is temporary and the law currently provides for this to end on 28 February 2013. However, the prescribed period may be extended by Order for up to two years at a time.

7.2 The NIO conducted a full public consultation on this issue in August 2010 and put forward a number of options for reform ranging from retention of the current arrangements to full transparency. The consultation revealed widespread public support for full transparency of donations and loans in the future. However, there was some opposition to the disclosure of past donations and loans (those received between 1 November 2007 and the end of the prescribed period) because those who made donations and loans in the past did so in the belief that their details would not be released even when the confidentiality arrangements expired. Following the consultation, it was considered that, given the prevailing security situation at the time, there remained a case for continuing confidentiality of donor information, but the NIO undertook to consider whether modifications could be made to provide more information while retaining anonymity of past donations. The prescribed period was extended until 28 February 2013 to allow for this.

7.3 The NIO has concluded that the only certain way of making the existing system more transparent, while preserving the anonymity of past donations, is to enact primary legislation. Forthcoming primary legislation, introduced when parliamentary time allows, will deliver the Government’s commitment to make the donations and loans system in Northern Ireland more transparent. However, pending the introduction of that legislation, donor

identities should continue to be protected. To achieve this, the prescribed period needs to be extended from 28 February 2013 until the provisions of the forthcoming Bill come into force.

8. Consultation outcome

8.1 The Government conducted a full public consultation on political donations in 2010. The consultation demonstrated widespread public support for full transparency of donations and loans in the future, but demonstrated strong opposition to the disclosure of past donations and loans.

8.2 Given that this was consulted on in 2010 and that the commitments made following that consultation will be delivered when parliamentary time allows, there is no need to conduct a public consultation on extending the prescribed period. The Electoral Commission have, however, been formally consulted in conjunction with article 5(3) of the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008.

9. Guidance

9.1 This Order is not accompanied by any guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government is continuing to examine how best to achieve greater transparency and is bringing forward primary legislation to achieve this.

13. Contact

Philippa Saunders, Head of the Constitutional Policy Unit at the Northern Ireland Office Tel: 0207 210 6431 or email: philippa.saunders@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office

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