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Political donations and loans in Northern Ireland

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In August 2010 the Northern Ireland Office (NIO) published the consultation *Donations and Loans to Northern Ireland: the Confidentiality Arrangements*, which seeks the views of stakeholders on the future of donations and loans to political parties and regulated donees in Northern Ireland. Any change to the current arrangements will impact on both parties and what are termed 'regulated donees', which means holders of elective office. The consultation is the latest in a series of steps by the Government dealing with the issue of donations and loans in Northern Ireland.

Key Points

- The Political Parties, Elections and Referendums Act 2000 introduced controls on political donations in Great Britain. This was later extended to include loans
- Parties and regulated donees (holders of elective office) in GB have to report details of donations and loans over a certain threshold to the Electoral Commission, which makes the information available on its website
- Northern Ireland was not included in the scheme due to fears that donors would be subject to intimidation if their details were made available to the public
- Information on political donations and loans to political parties and regulated donees in Northern Ireland are currently held on a confidential basis by the Electoral Commission
- Parties and regulated donees in Northern Ireland can also accept donations and loans from Irish citizens and Irish companies
- The government is currently consulting on whether Northern Ireland should be brought into line with GB

Executive Summary

The Political Parties, Elections and Referendums Act 2000 (PPERA) introduced controls on political donations in Great Britain banning foreign and anonymous donations to political parties and regulated donees (holders of elective office). This had followed recommendations made by the fifth report of the Committee on Standards in Public Life (CSPL) which had been tasked with examining the funding of political parties following allegations of political 'sleaze' throughout the 1990s.

However, the CSPL recommended that the relevant section of PERA should not be applied to Northern Ireland due to concerns that donors could be subject to intimidation if their details were released into the public domain. This was accepted by the government of the day.

Nevertheless, this was seen as a temporary measure and it was always the government's intention that Northern Ireland would be brought more into line with the scheme operating in Great Britain and in the years since the introduction of PERA, attempts have been made to address the issue of political donations and loans in Northern Ireland.

In 2006, new legislation (the Northern Ireland (Miscellaneous Provisions) Act 2006) meant that from 1 November 2007 political parties and regulated donees in Northern Ireland had to provide details of donations to the Electoral Commission, but with two key differences to their counterparts in GB – the information provided to the Commission would be checked for permissibility but would be held on a confidential basis and political parties and regulated donees in Northern Ireland would be able to accept donations from Irish citizens and Irish companies.

The confidentiality arrangements were due to last for three years, but this was extended to March 2011 to allow for full consultation.

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1 Introduction

This paper looks at the issue of political donations and loans to political parties in Northern Ireland. In particular, it looks at the following aspects of the scheme:

- the legislative background
- the impact on regulated donees (holders of elected office)
- previous and current consultations

The paper draws on guidance issued by the Electoral Commission to regulated donees. It should be noted that under Schedule 2 of the Northern Ireland Act 1998 elections in Northern Ireland are an excepted matter, which means that they remain the responsibility of the UK Parliament.

2 Background

The fifth report of the Committee on Standards in Public Life (the Neill Committee report) recommended a number of changes to the funding of political parties in the UK. This had followed concerns around issues of political 'sleaze' throughout the 1990s. Subsequently, the Political Parties, Elections and Referendums Act 2000 (PPERA) introduced controls on the sources of donations to prohibit foreign and anonymous donations to political parties in the UK. The Electoral Commission (another recommendation of the Neill report) was established to regulate party and election finance in the UK. Initially, parties were required to report donations of £5,000 or more to the Electoral Commission and could not accept donations from certain sources unless the donation was worth less than £200. Regulated donees had to report donations of more than £1000 and could not accept donations from impermissible sources unless the donation was worth less than £200.

However, the Committee's report stated that it would be unsafe to disclose the names of those who made donations to parties in Northern Ireland as they could be open to intimidation. The Committee also recommended that because of the special role of Ireland in the political life of Northern Ireland, it would not be right to ban donations from there. The Government accepted these recommendations.

Therefore, unlike their counterparts in GB, neither political parties nor regulated donees in Northern Ireland were required to report any donations to the Electoral Commission (this is referred to as the Disapplication of Part IV of the Political Parties, Elections and Referendums Act 2000 (PPERA)). An Order in 2005 extended the Disapplication period, but during its passage through Parliament, the Government announced its intention to at some point bring the reporting arrangements in Northern Ireland more into line with those operating in Great Britain.

Following a period of consultation, the Northern Ireland (Miscellaneous Provisions) Act 2006 introduced new reporting arrangements for parties and regulated donees. The system was administered along broadly similar lines to that operating in GB, but with two key differences:

- Political parties and regulated donees would be required to report donations to the Commission, which would then hold the information on a confidential basis.
- Irish citizens and companies would be able to donate to parties on the Northern Ireland register of political parties, but not to those registered on the Great Britain register of parties.

It was intended that the new arrangements would run for a period of three years until October 2010, but Parliament approved legislation¹ to extend this to 1 March 2011 to allow for full consultation.

Legislation

The following table provides an overview of the key legislation relating to political donations and loans in Northern Ireland

Legislation	What did it do?
Political Parties, Elections and Referendums Act 2000	Introduced controls on party political funding in the UK Established the Electoral Commission as the regulator of party and election finance
Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc) Orders 2001 and 2005	These Orders exempted Northern Ireland from the controls that applied to parties and regulated donees in Great Britain.
Northern Ireland (Miscellaneous Provisions) Act 2006	Required parties and regulated donees in Northern Ireland to report to the Electoral Commission information on donations. This information would be held by the Commission on a confidential basis
Electoral Administration Act 2006	Allows parties and regulated donees in GB to accept loans
Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Order 2007	Modifies PPERA to allow Northern Ireland parties and regulated donees to accept donations from Irish citizens and Irish companies and establishes how donations are to be reported
Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Order 2008	Applies provisions similar to those in the 2007 Order in respect of loans
Political Parties and Elections Act 2009	Raised the reporting thresholds for donations and loans

3 Regulated donees

Under Schedule 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA), regulated donees are subject to controls on the acceptance and reporting of

¹ Control of Donations and Regulations of Loans Etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2010

donations. This came into effect for regulated donees on 1 November 2007. The Electoral Administration Act 2006 (EAA) added Schedule 7A to PPERA, which subjects regulated donees to controls on the acceptance and reporting of loans. This came into effect for Northern Ireland on 1 July 2008.

Regulated donees are:

- members of registered parties (on the Northern Ireland register of political parties maintained by the Electoral Commission)
- members associations (an organisation is a members' association if its membership consists **wholly or mainly** of members of a political party registered with the Commission)
- holders of relevant elective office

An individual is a holder of relevant elective office if they are:

- a member of the European Parliament elected to represent Northern Ireland
- a member of the House of Commons from a Northern Ireland constituency
- a member of the Northern Ireland Assembly
- a member of any local council in Northern Ireland

Donations and loans to regulated donees

A donation or loan to a regulated donee is regulated only if it is made in connection with the donee's political activities in their capacity as a regulated donee. The Electoral Commission has interpreted this definition as it relates to each type of regulated donee.

Table 1: Definitions of regulated donees

Members of registered parties	Those activities carried out by a member of a registered party in connection with their membership. For example, a member of a party wants to promote himself as a potential candidate for election to the Assembly. He is given a small donation to cover the cost of producing a letter to be sent to local party members outlining what he would do if elected. This is a donation in connection with his political activities as a party member.
Members associations	Examples include promoting or developing policies for adoption by a party, or promoting candidates for internal office within the party.
Holders of relevant elective office	Includes both party political activities and activities concerned with government. For example, an MLA hosts a meeting bringing together representatives of businesses, community groups and councillors from her constituency. To host the event, she is given a donation from one of the businesses represented at the event. This is a donation to her in connection with her political activities.

What do regulated donees have to report?

Under Schedule 7 of PPERA, regulated donees can only **accept** a donation of more than £500 if it is from a permissible donor. Permissible donors may donate as often as they wish. Donations of more than £500 cannot be accepted from an impermissible donor or if the donor cannot be identified. Individual regulated donees (MLAs) must **report** to the Commission details of the following donations:

- any donations of more than £1500 accepted from permissible sources
- any donation of more than £500 received from an impermissible or unidentified donor
- new loans entered into by the regulated donee with a value of over £1500 where the other participants are authorised participants
- loans whose terms have changed, including loans that have ended with a value of over £1500
- loans entered into by the regulated donee with a value of over £500 where one or more of the other participants is not an authorised participant
- aggregations of donations and loans of over £1500

What is a donation?

Any of the following is defined as a donation:

- a gift of money or other property, for example cash or a photocopier
- sponsorship provided to a regulated donee in relation to the following
 - a meeting or other event hosted by or on behalf of the donee
 - a document produced by or on behalf of the donee
- money spent (other than by the regulated donee) paying their expenses which is not reimbursed, for example the payment of a donee's monthly office rental cost
- the provision, other than on commercial terms, the provision of property, services, or facilities for the use of a regulated donee, for example
 - office space provided to a donee without charge
 - provision by an employer of an individual to work for a regulated donee at no cost to the donee
 - a 50% discount offered to a regulated donee when purchasing new office equipment
- a donation of over £1500 provided to meet the cost of an overseas visit

4 Options for reform

The NIO consultation published in August 2010 outlines three options relating to the future of the donations and loans regime in Northern Ireland.

Option one – allow the prescribed period to expire and make the full register of donations available to the public

If this is the option chosen by Government, then no further legislation would be necessary. After 1 March 2011, the Electoral Commission would publish details of donations and loans by parties and regulated donees.

Option two – extend prescribed period, retaining current arrangements

Under this option, the Secretary of State could make an Order to extend the prescribed period for a further two years if approved by Parliament. The Electoral Commission would continue to receive information from parties and regulated donees without publishing the information.

Option three – extend prescribed period but with modifications

This option would require the Secretary of State to make a provision modifying the current confidentiality arrangements alongside any Order extending the prescribed period. This could allow, for example, the Electoral Commission to publish some information relating to donations and loans – recipient party, amount received - without releasing donors' details. Furthermore, parties could waive the confidentiality arrangement in cases where there is unlikely to be a risk of intimidation.

5 Retrospective publication of donations and loans received during the prescribed period

The consultation also seeks views on whether donations and loans reported to the Commission **during** the prescribed period should be published if and when that period expires. This is a potentially controversial issue as it could be argued that donations made to parties and regulated donees during the prescribed period were given in the belief that they would always remain confidential. However, the NIO consultation states that the current legislative framework does not permit this and that if a decision was made that all donations made before 1 March 2011 should remain confidential, then the current prescribed period would need to be extended to allow time for the necessary legislative provision to be made.

6 The views of the parties

The main political parties in Northern Ireland are divided on the issue of confidentiality of donations. It should be noted that the views outlined below are the latest public

positions of the DUP, Sinn Fein, SDLP and the Alliance Party and may not necessarily reflect their responses to the NIO consultation. However, the UUP position has been summarised from the party's response to the NIO.

Democratic Unionist Party

In the same report, the DUP had cautioned against a change in legislation, with the DUP's Simon Hamilton saying he favoured confidentiality in the current climate:

We have got to be very mindful of the potential negative impact this could have on people's safety and security. In the past people in business, the general public, were targeted indiscriminately by terrorists for no apparent reason at all. I think if people are shown to be funding one political party or another political party, given the current climate of dissident republican terrorist activity, I think we have got to be very cautious about radically changing the system in a way that might put people in danger².

Sinn Fein

Speaking to the BBC in August 2010, Sinn Fein's Alex Maskey dismissed the notion that security concerns justified confidentiality. He said his party already published details of its donations in the Irish Republic as required by law and saw no reason why parties in NI should not do the same as an anti-corruption measure: "We do not as a party receive corporate donations and I think the public should know; essentially it protects all of us, including parties, against corruption"³.

In the Republic of Ireland, political parties are required to report details of donations to the Standards In Public Offices Commission. The Electoral Acts⁴ require the Standards Commission to monitor and, where it considers it appropriate to do so, to report to the Chairman of Dáil Éireann on matters relating to:

- the acceptance and disclosure of donations received by political parties, Members of both Houses and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections
- the opening and maintenance of political donations accounts
- the limitation, disclosure and reimbursement of election expenses
- State financing of qualified political parties

²BBC News Online, 'DUP and Sinn Fein divided over donations' <http://www.bbc.co.uk/news/uk-northern-ireland-11077017> retrieved 15 October 2010

³ As above

⁴ The purpose of the Electoral Acts is to ensure that there is openness and accountability in the relationships that exist between, on the one hand, political parties and individual politicians and, on the other, those who would support them politically, whether by way of financial assistance or otherwise.

- the registration of "third parties" (i.e. campaign / lobby groups or individuals which accept a donation for political purposes which exceeds €127 in value) and other persons⁵.

The Standards Commission may conduct whatever enquiries are necessary in the discharge of its statutory functions.

Ulster Unionist Party

The UUP would support a continuation of the current arrangements but with modifications to allow some information to be published without revealing donors' details. Furthermore, the party would be strongly opposed to retrospective publication of donations made under the confidential period.

Social Democratic and Labour Party

Prior to her election as leader of the SDLP, Margaret Ritchie gave a commitment that if elected, she would publish details of donations made to the party. The Belfast Telegraph obtained a copy of an internal party document which stated: "From April 1 2010, the SDLP will voluntarily publish the names of all political donations over the threshold of £5,000⁶."

Alliance

Commenting in 2007 on the legislation that required parties to report donations to the Electoral Commission, Alliance leader David Ford said: "There is absolutely no excuse not to have the same transparency within local political parties as those in rest of UK. It is vitally important that people can have total confidence in their representatives and that there is clarity as regards the funding of political parties⁷."

The views of the Ulster Unionist Party on this issue are not available.

6 The views of the public

In 2009 the Electoral Commission sought the views of the public on the issue party and election finance, including donations and loans. The research consisted of eight focus groups conducted in Belfast, Newry and Londonderry/Derry, representing urban/rural and Nationalist/Unionist communities. The key findings from the research were⁸:

⁵ <http://www.sipo.gov.ie/en/AboutUs/Functions> retrieved 15 November 2010

⁶ Belfast Telegraph: 'Ritchie: 'I'll reveal who the SDLP's donors are' 2 February 2010

<http://www.belfasttelegraph.co.uk/news/politics/margaret-ritchie-irsquoill-reveal-who-the-sdlprsquoos-donors-are-14662172.html> retrieved 15 October 2010

⁷ Alliance Party website: 'Ford welcomes new donations laws',

http://www.allianceparty.org/news/003387/ford_welcomes_new_party_donation_laws.html retrieved 15 October 2010

⁸ The Electoral Commission 'Party and election finance – public opinion research' July 2009,

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/82126/Ipsos-Mori-Research-Report-On-Party-And-Election-Finance-In-Northern-Ireland.pdf retrieved 18 October 2010

- people have relatively little knowledge of or interest in how political parties in Northern Ireland are funded. Of greater interest was how parties spent their money.
- to a large degree, people believed that private donations and loans from businesses were generally made to buy favours or to influence policy
- the vast majority of focus group participants would not donate money to a political party
- participants were uncertain if donors' details were kept confidential. Six of the eight groups were in favour of lifting the confidentiality arrangements. While there was an acknowledgment that intimidation of donors could be an issue, many felt that Northern Ireland had moved on sufficiently to make donors' details public without major repercussions. The general view was that parties would be more accountable if this information was publicly available.

7 Potential impact on MLAs

The key factors the Government will take into account when deciding on the future of the system are likely to be:

- the security situation in Northern Ireland
- the views of the political parties in Northern Ireland
- the views of the Electoral Commission

If the Government decided to implement option one and the details of all donations were made publicly available, there would probably be a greater focus on donations to parties, rather than those made to individual Members. In addition, under section 4 of the Northern Ireland Assembly's Register of Members' Interests, MLAs are already required to declare:

- any donations, loans or credit received by a Member's constituency party or association, or relevant grouping of associations, which is linked either to candidacy at an election or to membership of the Assembly; and
- any other form of financial or material benefit (including loans or credit) received by a Member in support of his or her role as a Member of the Assembly

amounting to more than £1000 from a single source, whether as a single transaction or as multiple transactions of more than £200 during the course of the calendar year.

Unlike the information held by the Electoral Commission, the Register is a public document and is available to view on the Assembly's website. The Commission would publish the names of individual donors and the full name and address of corporate donors.