

EXPLANATORY MEMORANDUM TO
THE TRANSPARENCY OF DONATIONS AND LOANS ETC. (NORTHERN
IRELAND POLITICAL PARTIES) ORDER 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order will provide for the full publication of information relating to political donations and loans received by Northern Ireland political parties and regulated donees on or after 1 July 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland.

4. Legislative Context

Donations

- 4.1 The Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”), introduced a new regulatory system of party funding. One aspect of that new system is that details of donations above certain thresholds received by political parties must be reported to the Electoral Commission (“the Commission”) and the Commission then publishes information relating to those donations.
- 4.2 This new regulatory system was not introduced to Northern Ireland immediately due to the need for further discussion and consultation on whether the circumstances in Northern Ireland required the new rules to be applied with modifications there.
- 4.3 The Northern Ireland (Miscellaneous Provisions) Act 2006 (“the 2006 Act”) amended the 2000 Act and extended that new regulatory system in relation to donations to Northern Ireland. However, while Northern Ireland parties are required to report donations (above a certain threshold) to the Commission, the Commission must not publish that information except in certain limited circumstances (see section 71E of the 2000 Act). The Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Order 2007 (S.I. 2007/2501) made further related provision. The publication restriction was considered to be a temporary measure in place only for a prescribed period, which was from time to time extended.
- 4.4 The Northern Ireland (Miscellaneous Provisions) Act 2014 (“2014 Act”) removed the need to prescribe periods extending the duration of the restriction and, amongst other

things, inserted section 15A of the 2006 Act which provides the Secretary of State with the power by Order to make provision permitting or requiring the Commission to publish information about donations received by Northern Ireland recipients, or make other provision for the purpose of increasing transparency in relation to such donations. However, section 15B of the 2006 Act, also inserted by the 2014 Act, has the effect that this Order cannot provide for the publication of “protected information” which is defined in section 15B as meaning information (a) which relates to a donation received before 1 January 2014, and (b) which identifies the donor or from which it is possible to identify the donor.

Loans

- 4.5 The Electoral Administration Act 2006 (“the EAA 2006”) amended the 2000 Act to make provision relating to loans for political purposes similar to that made for donations for political purposes. The Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319), made under section 63 of the EAA 2006, provided for the confidentiality arrangements which apply to Northern Ireland political donations to apply to Northern Ireland political loans by inserting section 71Z4 into the 2000 Act. The Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Order 2008 (S.I. 2008/1713) made further related provision.
- 4.6 Section 63(1) of the EAA 2006 provides that the Secretary of State by Order may make provision relating to regulated transactions, controlled transactions or relevant matters which corresponds to or is similar to any provision relating to donations for political purposes which is made by, or which may be made under, the 2006 Act. The provision that can be made in relation to loans is subject to the same restriction as in relation to donations under section 15B of the 2006 Act (see above). That is, this Order cannot provide for the publication of information relating to Northern Ireland political loans entered into before 1 January 2014 which identifies the donor or from which it is possible to identify the donor.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Chloe Smith, Parliamentary Under-Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

“In my view, the provisions of the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The 2000 Act provides for the regulation of political donations and loans throughout the UK. All political parties and regulated donees are required to report donations and loans received over the relevant thresholds. The Commission is under an obligation to

publish these reports in relation to donation and loans to recipients in Great Britain only. The Commission is prohibited from publishing information relating to donations and loans to Northern Ireland recipients (except in the limited circumstances set out in the 2000 Act).

- 7.2 Maintaining confidentiality in respect of Northern Ireland political donations and loans has been considered necessary to date to protect donors from the risk of intimidation. Following public consultation in 2010/11, the Government again concluded that the time was not yet right to move to full transparency and that the current arrangements should be extended.
- 7.3 Nevertheless, the Government has consistently expressed its desire to see full transparency introduced as soon as circumstances allow. In January 2017, the Secretary of State for Northern Ireland wrote to the Northern Ireland political parties to seek their views on moving to full transparency. All parties that responded agreed that full transparency should be introduced.
- 7.4 The parties were also asked about the date from which transparency should take effect. While all parties that responded expressed broad support for the future publication of donations and loans, only one party expressed support for backdating publication. All responses are available at the following link <https://www.gov.uk/government/news/brokenshire-provides-further-details-of-political-donations-policy-to-mps>.
- 7.5 In a statement to Parliament on 3 July 2017, the Secretary of State for Northern Ireland announced his intention to bring forward secondary legislation to give effect to full transparency of Northern Ireland political donations and loans received on or after 1 July 2017 (Hansard Vol 626, Col 900).

Publication

- 7.6 The Order therefore provides for the Commission to publish all Northern Ireland donations and loans above the relevant thresholds received on or after 1 July 2017.
- 7.7 All donations and loans received before this date will be kept confidential, except in cases of aggregation or where there is a reportable change to a loan, as set out in more detail below.

Aggregation

- 7.8 If a number of donations and loans are received over the calendar year by a recipient from the same source, the 2000 Act provides for details of these donations and loans to be published when their aggregated total exceeds the reporting threshold. The Order therefore provides for the publication of a donation or loan received before 1 July 2017 if it is aggregated with a donation or loan received on or after 1 July 2017. For example, if a donation (or loan) of £3,000 was made in February 2017 and a further donation or loan, from the same source, of £5,000 was made in September 2017, details about both would be published as their aggregated total exceeds the reporting threshold.

Reportable changes to a loan

- 7.9 Loans, unlike donations, may not be one off events and changes to a loan may be made over time. Certain changes to a loan must be reported to the Commission. Reportable changes to a loan can include a change in the value or rate of a loan, a

change of the repayment term, a change to the parties to a loan, or the loan coming to an end.

- 7.10 The Order provides for reportable changes taking effect on or after 1 July 2017 to be published.
- 7.11 The publication of reportable changes taking effect on or after 1 July 2017 also applies to such changes to loans entered into on or after 1 January 2014 but before 1 July 2017. The effect will be that a change to such a loan which takes effect on or after 1 July 2017 will result in the publication of all details relating to that loan, including from the pre-1 July 2017 period. However, the Order provides that such publication will not take place if the change to the loan is simply the repayment of the whole of the debt, or all of the remaining debt, under the loan.

Personal Information

- 7.12 The 2000 Act permits donations and loans from certain Irish citizens and bodies to Northern Ireland recipients. Additional information must be provided in donation reports in respect of these donors to the Commission in order to confirm their identity. This includes passports and statements of naturalisation.
- 7.13 It would be inappropriate for the Commission to publish sensitive personal information such as passport and naturalisation documentation. The Order therefore provides that such information will not to be published by the Commission.

Verification by the Commission

- 7.14 The Order ensures that the current verification steps undertaken by the Commission to verify Northern Ireland donations and loans will apply to Northern Ireland donations and loans received on or after 1 July 2017.

First publication

- 7.15 The 2000 Act provides for reports to the Commission to be submitted and published at different times, depending on whether the recipient is a political party or regulated donee. The Order provides that the first publication of all party and regulated donee information will take place at the same time.

Exemption from the prohibition on disclosure of information

- 7.16 The prohibition on Commission officials disclosing information relating to Northern Ireland political donations and loans is also supported by a criminal offence (see sections 71E(1) and (5) and 71Z4(5) of the 2000 Act). This will remain the case for donation and loans received before 1 July 2017 unless the disclosure relates to aggregation or a reportable change to a loan (see paragraphs 7.8-7.11 above).
- 7.17 The Order also provides that the Commission will not act contrary to the prohibition on disclosure if Commission officials publish information relating to a donation or loan received after 1 January 2014 and before 1 July 2017 if the relevant donation or transaction report does not state that the donation or loan was received before 1 July 2017 and that Commission officials believe that the donation or loan was received on or after 1 July 2017 and were reasonably entitled to hold that belief.

Consolidation

- 7.18 There are no plans for consolidation at this time.

8. Consultation outcome

- 8.1 There is a statutory requirement for the Electoral Commission to be consulted prior to making this Order and the Department has worked closely with the Commission throughout the drafting process. The Commission's response to this consultation will be made available on the Commission's website at www.electoralcommission.org.uk. The Secretary of State for Northern Ireland wrote to the Northern Ireland political parties in January to seek their views on moving to full transparency and the date from which transparency should take effect. All responses are available at the following link <https://www.gov.uk/government/news/brokenshire-provides-further-details-of-political-donations-policy-to-mps>.

9. Guidance

- 9.1 The Electoral Commission will distribute detailed guidance to donors and recipients about the new transparency arrangements and any changes to reporting procedures and will also publish this on guidance on the Commission's website at www.electoralcommission.org.uk

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is that the Electoral Commission will now publish details of Northern Ireland donations and loans.
- 10.3 An Impact Assessment has not been prepared for this instrument. Reporting requirements for parties and other recipients will remain broadly the same. The main change is that the Electoral Commission will now publish Northern Ireland reports along the same lines as reports from recipients in Great Britain.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Department will work closely with the Electoral Commission to monitor the implementation of the new transparency arrangements, including whether further provision may be needed.

13. Contact

- 13.1 Lee Hegarty, Head of Constitutional Policy at the Northern Ireland Office Tel: 02890 160214 or lee.hegarty@nio.gov.uk can answer any queries regarding the instrument.