

Note to Commissioners

New third party regulatory framework - Governance implications for Commissioners

Risk of ceasing to hold Office as a Commissioner, and Declaring an interest and conflict

Risk of ceasing to hold Office as a Commissioner

1. Under the new third party regulatory framework introduced by the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 (Transparency Act):

- When a third party organisation that is obliged to register with the Commission provides its financial return to the Commission, that return must include a statement of 'relevant donations' to it. Registered campaigners will be required to report donations every three months in the circa seven and a half month regulated period before polling day at UK Parliamentary general elections¹, and also (as at present) after the poll.
- Relevant donations are donations to the third party in respect of controlled spending that is used for specified campaigning activities during the regulated period. Donations can include non-financial support given to an organisation, but does not include the time of volunteers.
- Both the number and type of third party organisations required to register with the Commission is likely to increase, with the scope of controlled expenditure expanding; and therefore potentially the incidence of relevant donations.

2. Under the Political Party Elections and Referendums Act 2000 (PPERA) if a Commissioner were to be [properly] listed by a third party registered campaigner in its financial return to the Commission as a donor (of £7,500 or more), the Commissioner would be deemed to cease to hold office.

3. **Accordingly in the context of the forthcoming UK Parliamentary general election (and the elections referred to in footnote 1), a gift or donation of £7,500 or over (including cumulatively by smaller payments) made to a registered third party organisation e.g. a charity - if the organisation reports it as relating to controlled spending – would trigger the Commissioner ceasing to hold office. This would apply**

¹ The majority of changes introduced the Transparency of Lobbying Act will apply to UK Parliamentary General Elections. Changes to the scope of regulated activities and to the threshold for spending that is regulated will apply to European Parliament, Scottish Parliament, Welsh Assembly or Northern Ireland Assembly elections.

even if the gift or donation were made without intent or knowledge that the receiving organisation may subsequently use it for campaigning purposes.

Frequently asked questions – risk of ceasing to hold office

Q.1 I make donations (or they are made indirectly through another vehicle, such as a trust I have an interest in) from time to time to a third party organisation that I support e.g. a charity, a faith group, a trade union or a trade association. I do not stipulate how they may be used by the third party. These may cumulatively add up to £7,500 or more. Does this trigger the PPERA provision whereby I cease to be a Commissioner?

A. Probably not. That is, if the donations you make are for the general purposes of the third party and there is no indication from you or the third party that they will use the donations for campaigning intended to influence voters. It would be unlikely that this could be properly concluded as you donating for such purposes. So, the risk of the PPERA trigger applying should be low.

However, you do need to bear in mind that the PPERA trigger could apply in some circumstances e.g. if you made these donations in a context where their use for campaigning purposes (intended to influence voters) was a requirement or objectively possible or likely.

Q.2 I am a trustee [or on the board] of a third party organisation and/or give them advice and expertise. The 'value' my time could amount to £7,500 or more. Does this trigger the PPERA provision whereby I cease to be a Commissioner?

A. Probably not. The donations (whether in money or in kind), would only be regulated if they were directed towards campaigning purposes intended to influence voters. Further, volunteering activities are not caught by the third party regulatory requirements. So, provided you are not being paid for the activity (apart from re-imbursement of expenses), it would be unlikely that this could properly be concluded as you donating for campaigning purposes intended to influence voters. The risk of the PPERA trigger applying should be low.

However, you do need to bear in mind that the PPERA trigger could apply in some circumstances e.g. if your advice, expertise and time was given or paid for in a context where their application was clearly for or objectively possible or likely to be used for campaigning purposes intended to influence voters.

Q.3 In considering whether a number of donations cumulatively add up to £7,500 or more over what time period do I calculate this?

A. It is only necessary to add up separate donations given over a period of time if it could reasonably be concluded that they are part of a number of donations all linked to a particular purpose and this will properly flow through to reference to

you as a donor named in a regulated third party report to the Commission on regulated expenditure in a particular election.

Declaring an interest and conflict

4. As reflected by the Commissioner Code of Conduct, the work of the Commission must be carried out free from any suggestion of improper influence, whether financial, personal, or political. This is integral to maintaining public confidence in the Commission generally, and especially in its role as a regulator.

5. It would be impracticable and unnecessary to register all personal involvement of a less direct or more minor kind with third parties, given the very wide part that for example organisations such as charities play in daily life. If a Commissioner makes a gift or donation (including in time or expertise) to a third party, the Commissioner should consider whether to report that to the Commission as a 'declaration of an interest'. At all times the key question to ask when assessing whether to record an interest, is - does it have an impact on the work of the Electoral Commission or reasonable public perception of my role as an Electoral Commissioner?

6. Payment of say an annual membership fee or the giving in the normal course of events of small donations and not linked to a particular live campaigning issue of potential or actual political relevance, should not be such as to require declaration of this to the Commission. However more active involvement in a third party such as volunteering, provision of advice/assistance generally, fundraising activities and so on, would all be indicators of it being prudent to declare an interest to the Commission. Making significant personal donations would clearly lead to the need to declare an interest (e.g. above £1,000 in a year).

7. If a third party could reasonably be expected to campaign on issues in the lead up to PPERA regulated elections, this is very likely to give rise to the need to declare an interest to the Commission and possibly - depending on the facts - a conflict of interest.

8. In the event of a conflict of interest, the Commissioner must withdraw from participating in or influencing any related Commission business.

9. Commissioners should also consider the relevance of the above requirements if a close family member or associate is making donations to or closely involved with a campaigning third party.

10. The guiding principle for Commissioners is to err on the side of caution. That is, if it appears that you could need to declare to the Commission that you have

made a donation to, or are involved in, the activities of a third party, it is best to do so. This will place yourself and the Commission beyond reproach.

Frequently asked questions – declaring an interest and conflict

Q.1 I have made a donation of over £1,000 to a third party organisation that I support e.g. a charity, a faith group, a trade union or a trade association. Do I need to inform the Commission that I have done this?

A. Yes, if the donation is over £1,000 (including cumulative effect of smaller donations in a 12 month period). Make the declaration regardless of the organisation to which you've made the donation.

Q.2 What about the need to declare a donation of less than £1,000?

A. If the donation is less than £1,000 you still need to consider whether to inform the Commission. You may well be inclined to err on the side of caution and declare the donation to the Commission. Consideration would include whether you are directly involved in the activities of the organisation; and whether the receiving organisation or individual is or is likely to be involved in live campaigning on issues of potential or actual political relevance,

Q3. What if I have made a donation in kind, rather than money e.g. giving advice or my time in voluntary activity?

A. The same rules apply as in question 2, as if you had donated money.

Q4. I am a member or friend of a third party organisation e.g. the National Trust. Do I need to declare this?

A. In the normal course of events, no, you do not have to declare this. However, if such an organisation were involved or subsequently became involved in live campaigning on issue(s) of potential or actual political relevance you should do so.

Q5. I'm involved with/have donated to an organisation that is campaigning, but I doubt at levels that would require it to register with the Commission as a third party – should I declare my involvement?

A. Yes. The fact that they are campaigning may mean that they either should have or will need to register as a third party with the Commission.