

## Political Parties and Election Bill

### Lords Consideration of Commons Amendments

This note sets out the Electoral Commission's view of the new amendments 12G to 12N tabled by the Government on 16 July 2009 following the Commons Consideration of Lords Amendments on 13 July.

#### Background

At the Commons Consideration stage the Government disagreed to Lords amendments 11 and 12, which introduced new provisions relating to the tax status of individual donors, and proposed alternative amendments 12A to 12F which were agreed by the Commons. The alternative amendments had the same policy intention as Lords amendments 11 and 12 but were intended to be more workable. During the debate on 13 July, The Secretary of State for Justice and Lord Chancellor indicated<sup>1</sup> that the Government would table additional amendments at the Lords Consideration of Commons Amendments stage, to further improve the workability of the new provisions. The Secretary of State added that:

“any restriction on permissibility of donations – one of the major problems with the proposition – linked to an individual’s taxation status would not currently be fully enforceable without further steps being taken. Should the amendments be agreed, we would want to discuss the implications carefully with the parties and the Electoral Commission before the new restriction came into force.”

#### After Clause 8

##### New amendments 12G to 12N

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The new **amendments 12G to 12N** completely replace the previous amendments in respect of tax status and permissibility. We have not yet had the opportunity to analyse the amendments fully but our understanding is that they are intended to achieve the following effect:

- to tighten the definition of a ‘permissible’ individual donor (that is, an individual from whom a registered political party or other regulated entity under the 2000 Act may accept a donation or loan worth more than a certain amount), so that to be permissible, the individual must be (i) on an electoral register, as at present, and (ii) liable to income tax on the basis that they are resident and domiciled in the UK;

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<sup>1</sup> HC Debate, **13 July 2009, c 60**

- to apply the second criterion for permissibility – that of tax status – only to donations that are worth more than £7,500 either individually or when aggregated together over a calendar year, rather than to all donations that are worth more than £500;
- to require the donor of a donation to which the tax status criterion applies to make a declaration about their tax status when giving the donation – it is to be a criminal offence for an individual knowingly or recklessly to make a false declaration; and
- to specify the steps that a recipient of such a donation must take in order to verify that it is a permissible donation – the recipient can accept the donation provided it “had no reasonable grounds for thinking” that the declaration given by the donor “was incorrect”.

## The Commission’s view

As we have said in previous briefings on the original Lords amendments 11 and 12, it is for Parliament to decide the criteria that determine which types of donor are permissible. The Commission’s role is to apply the law in carrying out its regulatory role, and to advise Parliament and others on whether proposals for changes to the law are workable. We had significant concerns about the workability of amendments 11 and 12.

In view of Parliament’s decision to introduce considerations of tax status into the existing test of permissibility, the Commission welcomes the fact that amendments 12G to 12N go some way to addressing our previous concerns. In particular, they appear for the most part to remove the need for those receiving donations that attract the new tax status criterion for permissibility to seek to validate declarations from donors about tax status. As we have noted in previous briefings, it could have been very difficult to comply with such a requirement. It seems that it will now be sufficient for the recipient to consider whether or not it has reasonable grounds for thinking that the donor’s declaration is incorrect. It would be helpful if the Government could clarify what steps a recipient of a donation might be expected to take if it had a doubt about the accuracy of the accompanying declaration on tax status.

Some other aspects of the drafting of the new amendments appear to us to require further consideration. We note that amendment 12I contains a delegated power for the Government to make supplementary provision to give full effect to the new requirements, and we urge the Government to consult with us and with those we regulate, in order to consider what further provision may be necessary, before it commences the new requirements. At this point we have commented on two particular issues, aggregation and enforcement, that may need further thought or clarification.

## Aggregation

It should be relatively straightforward for recipients of individual donations and loans worth more than £7,500 to identify the need for the donation to be accompanied by a declaration about tax status. This is the same requirement that applies to the new declaration about agency status introduced by clause 8 of

the Bill as introduced in the Lords. However, the new provisions also require recipients to ensure that a declaration on tax status is given when receiving donations from an individual that are worth more than £7,500 in aggregate over a year. This requirement does not apply to the declaration about agency status.

This means that all regulated entities will have to aggregate donations falling in the range between £500 and £7,500 quickly after receipt, so that they can check whether a tax status declaration will be required, and arrange for it to be given, within the 30 days they are allowed to check the permissibility of donations. This may be a significant new administrative burden for those we regulate. At present, registered parties are only required to aggregate donations received on a quarterly basis for donation reporting purposes. It will also be important to clarify whether the aggregation requirement is to apply across all accounting units of a party that has such units, or to each unit individually.

## Enforcement

The new requirements create a new offence under the 2000 Act; it will be an offence for a donor “knowingly or recklessly” to make a false declaration about their tax status during the “current tax year”. The Commission has the statutory role of securing compliance with the Act, and it is important that the scope of our role in respect of the new requirements is clear. The Commission is unlikely to be able to establish the tax status of individuals in order to assess or pursue any allegation we may receive that an individual has committed this offence. We would therefore expect to pass on any such allegations to the police or another appropriate authority.

## Further information

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