

Rt Hon James Brokenshire MP
Secretary of State for Northern Ireland
1 Horse Guards Road
London
SW1A 2HQ

5 December 2017

Dear Mr Brokenshire

The Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018: statutory consultation on the Order

I am writing regarding your department's consultation this year with the Electoral Commission on the Northern Ireland Office's proposals concerning the confidentiality arrangements for donations and loans to political parties and other regulated individuals and bodies in Northern Ireland. The Electoral Commission is required to be consulted on these matters in accordance with section 15A(1) of the Northern Ireland (Miscellaneous Provisions) Act 2006 and section 63(1) of the Electoral Administration Act 2006.

The consultation on the Order

We welcome the laying in Parliament of the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 which will, subject to coming into force, allow us to publish information about donations and loans to Northern Ireland political parties and other regulated individuals and bodies for the first time. This will apply to donations and loans entered into on or after 1 July 2017 and, in some specific cases, aggregated donations and loans back to 1 January 2017 and future changes to loans dating back to 1 January 2014. Annex A to this letter provides our consultation response to the Order that was laid on 23 November and also refers to comments that we sent to you during the consultation period.

We have published an update to our website and a factsheet to inform political parties and other regulated recipients of donations or loans about the changes. It is available at: <https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/guidance-for-political-parties/reporting-donations-and-loans-northern-ireland>. We have written to all MPs, MLAs and Northern Ireland parties to inform them about this guidance. We were

The Electoral Commission
Ground Floor
4 Cromac Place
The Gasworks
Belfast BT7 2JB

Tel: 028 9089 4020
inforthernireland@
electoralcommission.org.uk
electoralcommission.org.uk

disappointed that the Commission was unable to make the first publication in November 2017 because of delays with laying the legislation, and we trust that the timetable for the Order to be scrutinised, made and come into force will be as swift as possible. We want to begin publishing this information for voters to see in the New Year.

Additional transparency and future Orders

The Northern Ireland (Miscellaneous Provisions) Act 2014 provided for permanent anonymity for donors and lenders prior to 1 January 2014, and also anticipated that the names of donors and lenders from January 2014 would be made public at some point in the future. While this Order is a welcomed first step in transparency of donations to political parties and other recipients in Northern Ireland, we continue to recommend that another Order should be brought forward by the UK Government in the near future. This should provide for full transparency back to 2014, as anticipated by the 2014 Act. We also note that it is open for an Order to be made to permit limited information from 2007-2013 to be published, as long as it is not possible to identify a donor or lender. (Annex B to this letter illustrates the information that Commission holds on NI donations and loans and what we could be permitted to publish in future.)

We therefore look forward to working with the Northern Ireland Office on future Order/s that would allow the Commission to publish the remaining historic data that we hold. I would be grateful if you could keep us updated on your plans for future Transparency Orders so that we can also plan accordingly.

Yours sincerely



Claire Bassett
Chief Executive
Electoral Commission

Annex A

The Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 Consultation response

We welcome the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 which will, for the first time, allow us to publish information about certain donations and loans to Northern Ireland political parties and other regulated individuals and bodies. The consultation was an opportunity for us to highlight queries and concerns about the wording, interpretation and proposed implementation of the changes. We are pleased that the Northern Ireland Office officials worked with us to find constructive ways to address the points we raised. We think that the final legislation that has been laid should be workable in practice.

We remain disappointed that this Order does not provide for full transparency of donations and loans back to January 2014. We continue to recommend that another Order should be brought forward by the UK Government in the near future to allow the Commission to publish this additional information. The separate annex on the last page of this document illustrates the information that Commission holds on donations and loans reported by Northern Ireland political parties and other regulated individuals and bodies, and what we could be permitted to publish in future.

This document provides our substantive comments on the Order that was laid on 23 November 2017 and also refers to comments that we sent to you during the consultation period. We note that more detailed commentary about the legislative context, policy background and purpose of each of the provisions can be found in both the [explanatory note and explanatory memorandum](#) that the Northern Ireland Office has published alongside the [Order](#).

Comments on the provisions in the Order

Amendments to the Political Parties, Elections and Referendums Act 2000

Article 2: amendment to duty not to disclose contents of donation reports

Article 3: amendment to duty not to disclose contents of transaction reports

Articles 6, 7, 8 and 9: amendments to reporting requirements of NI parties and NI regulated donees

1. Under the Political Parties, Elections and Referendums Act 2000 (PPERA), the Electoral Commission commits a criminal offence if it discloses details relating to a donation or loan¹ received by a Northern Ireland political party or other recipient (known as a “regulated donee”²) that is regulated under that Act. The

¹ We use the term ‘loans’ to refer to the following transactions that are covered by the rules: loans of money, credit facilities, and securities or guarantees.

² Regulated donees are members of registered political parties, holders of relevant elective office and members associations. Regulated donees are subject to controls on the donations and loans they can accept in connection with their political activities.

Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 makes provision that will permit us to publish donations received (or loans entered into) on or after 1 July 2017.

2. After the Order comes into force, the Commission will still commit an offence if it discloses information about donations or loans that were received prior to 1 July 2017 (except in limited specified circumstances relating to donations received (or loans altered) on or after that date). When considering the original draft of the Order dated 23 May 2017, we wanted to find ways to reduce the risks of the Commission inadvertently disclosing information from before 1 July and committing a criminal offence.
3. We noted that the PPERA obligations for statutory reports of donations do not require parties and regulated donees to provide the date of receipt of a donation, although we would need to know that date to make a decision on whether or not to publish that donation. The Commission therefore has to rely on what parties and regulated donees have voluntarily told us when we determine whether a donation was received (or a loan entered into) either before, on or after 1 July 2017. We also considered the risk and consequences of a party or regulated donee making a mistake and providing an incorrect received date. If this caused us to incorrectly publish confidential information, our recourse against them might be limited, we would have committed a criminal offence and information that is legally required to remain confidential would be in the public domain.
4. We proposed a number of ways to address these issues within the powers available under the Order. The Order has now been amended to help address these risks. The Order amends the criminal offence in PPERA so that it will not be an offence if Commission officials publish information relating to a donation received (or loan entered into) on or after 1 January 2014 and before 1 July 2017 and if several conditions are met. These conditions are that the statutory 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 are reasonably entitled to hold that belief.

Aggregation of donations

5. If a number of donations and loans are received over a calendar year by a recipient from the same source, PPERA provides for these donations and loans to be reported when their aggregated total exceeds the reporting threshold³. The Order 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. We noted in our previous response that the interaction between the Commission's publication requirements and the aggregation provisions during the different transparency periods could be complex in certain circumstances. This will depend

³ The reporting requirements apply to donations and loans over £7,500 for parties and members associations and £1,500 for other regulated donees. These amounts were £5,000 and £1,000 before 2010. Regulated organisations and individuals have 30 days from *receiving* a donation to decide if they can accept it. If the donation is not from a permissible donor, or the true identity of the source is not clear, the donation must be returned. A donation is *accepted* once a regulated organisation or individual decides to keep it, or after 30 days if it has not been returned. Donations and loans must be reported to the Electoral Commission according to four quarterly statutory reporting deadlines set out in the Political Parties, Elections and Referendums Act 2000.

on the patterns of donations that parties or regulated donees receive. We provided Northern Ireland Office officials with our interpretation of how we thought the provisions would apply in some scenarios so that we could identify potential questions over interpretation and confirm a shared understanding. It was useful to confirm a shared view on those scenarios so that the Order now clarifies how they should be treated if they arise in donation or loans reports.

Publication of changes to loans originally entered into between 1 January 2014 and 30 June 2017

6. Under the original draft of the Order, we noted that it would allow the Commission to publish information about loans entered into on or after 1 January 2014 if a reportable change is made on or after 1 July 2017. Since one of the changes that is required to be reported is a loan coming to an end, it would have meant that all loans entered into during this period would eventually move onto the public register if they came to an end on or after 1 July 2017.
7. Following discussion about NIO's policy intentions, we note that the Order has been amended to make clear that the reportable changes that will trigger publication are changes such as a change in the value or rate of a loan, a change of the repayment term or a change to the parties to a loan.

Articles 4 and 5: Inspection of Commission's registers

8. Where donations are given by Irish citizens, the party or regulated donee is required to provide a copy of certain identification documents to us to prove the permissibility of the donor. We asked for it to be clarified that the Commission is not required to publish the identity document itself, and it is helpful to have received that confirmation from NIO officials so that it is clear that the Order is consistent with our other data management obligations. We also wanted to clarify that this provision does not undermine the current transparency requirement to publish whether a donation or loan is from an Irish source, and we note that this is clear.

Article 9: Transaction reports - transactions with authorised participants

9. This Article addresses a technical provision in PPERA which provides that a loan taken out by a regulated donee with an original value over £500 but under the relevant reporting threshold should become reportable if it is increased to an amount that exceeds the reporting threshold. However, under the revised confidentiality regime, changes to loans taken out prior to 1 January 2014 must remain confidential even if the value is increased after 1 July 2017.
10. This article is therefore a consequential amendment to ensure that the confidentiality regime is not undermined by this technical provision in PPERA that otherwise requires the publication of loans that fall under it. To assist us with complying, we recommended that the Order should be amended to require regulated donees to report the date when such a transaction was originally entered into, so that it will be clear which loans were originally taken out prior to 1 January 2014. We are pleased that the Order has been amended accordingly.

Amendments to the Political Parties, Elections and Referendums Act 2000 (Northern Ireland Political Parties) Orders 2007 and 2008

Articles 10 and 11: Verifying information in statutory reports

11. Under PPERA, the Commission has a general statutory duty to take all reasonable steps to ensure compliance with the rules for regulated donations and loans received by recipients in Great Britain and Northern Ireland. In addition, PPERA and other related Orders from 2007 and 2008 specify additional details about when the Commission must take steps to ascertain whether the information provided in Northern Ireland reports is accurate and any documentation genuine. We understand that these additional statutory requirements were originally put in place as a safeguard because the confidentiality requirements meant that the Northern Ireland reports are not subject to the same level of public scrutiny as reports in Great Britain.
12. The proposed removal of the Northern Ireland confidentiality requirements means that reports submitted by parties across the UK will be published and become open to be subject to the same levels of public scrutiny in future. However, Articles 10 and 11 in the 2018 Order provide that the additional duty on the Commission in relation to Northern Ireland reports will continue in respect of donations and loans after the confidentiality requirement ceases to apply.
13. During the transition period to full transparency, we recognise that there may be benefit in continuing to specify additional details about when the Commission must carry out verification checks on Northern Ireland donation and loan returns. In the longer-term, we think that the UK Government and Parliament should keep under review whether the additional statutory requirements for Northern Ireland reports remain appropriate. After a transitional period, the additional requirements could be adjusted or removed. The Commission would continue to take all reasonable steps to ensure compliance with the donations and loan rules under our general statutory duty, as we already do for donations to recipients in Great Britain. We look forward to hearing from the Northern Ireland Office about whether the continuing verification duty can be kept under review after the transition to transparency has taken place.

Transitional provisions

Article 12: First publication of reports

14. These Articles provide that the Commission can only publish the first donation or loan reports from regulated donees (regulated individuals and bodies that are not political parties) after we have published political party returns. This will only apply to the first time that we publish under the revised publication system.

Annex B

Summary table of information that the Electoral Commission holds on donations and loans reported by Northern Ireland political parties and other individuals and bodies regulated under the Political Parties, Elections and Referendums Act 2000

The table sets out what information will be permitted to be published after the 2018 Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 is in force come into force, and what other information could be permitted to be published in future.

2007 - 2013	2014 - June 2017	July 2017 onwards
Historic confidential period	Information which could be made public in future	Future transparent period
<p>Information about donations and loans during this period will remain protected.</p> <p>The Commission is not permitted to disclose any information relating to it.</p> <p>It is open for the UK Government to make an Order in the future to permit the Commission to publish information relating to this period as long as it is not possible to identify a donor or lender.</p>	<p>Information about donations or loans during this period is not affected by the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 and the Commission is not permitted to disclose any information relating to it (except for aggregation and changes to loans – see next column).</p> <p>It is open for the UK Government to make an Order in the future to permit the Commission to publish information relating to this period.</p>	<p>When the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 is in force, the Commission will be required to publish information about donations received or loans entered into (and changes to those loans) on or after 1 July 2017.</p> <p>The Commission will also publish:</p> <ul style="list-style-type: none"> • information about donations and loans made before July 2017 if they are required to be aggregated with a donation or loan made on or after that date • information about loans that were entered into on or after 1 January 2014, if a change is made to the loan (other than repayment in full) on or after 1 July 2017