



Donations to Members of Parliament

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Author: Oonagh Gay

Section Parliament and Constitution Centre

From 1 July 2009 Members no longer have to report certain donations to both the Electoral Commission and Registrar of Members' Interests. The Note examines the history behind this dual requirement enacted in the *Political Parties, Election and Referendums Act 2000* (PPERA). Section 59 of the *Electoral Administration Act 2006* provided for dual registration to end, but implementation of this provision was delayed until July 2009.

The Note also sets out the new limits on donations which have to be declared by Members, enacted in the *Political Parties and Elections Act 2009*. Increased statutory thresholds for reporting and recording donations apply, from 1 January 2010. Donations and loans over £1,500 (previously £1,000) will need to be reported, and donations and loans over £500 (previously £200) will need to be recorded by Members.

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1 An end to dual registration

As set out below, the requirement to register donations to Members both with the Registrar of Members Financial Interests and the Electoral Commission has been ended since July 2009. Primary legislation, in the form of section 59 of the *Electoral Administration Act 2006*, was required to amend the *Political Parties, Elections and Referendums Act 2000*.

After the Standards and Privileges Select Committee issued an interim report in July 2008, indicating that it hoped to bring forward detailed proposals shortly,¹ it produced a final report on 2 February 2009 expecting dual reporting to end by June 2009 at the latest, dependent on the necessary commencement order being brought forward by the Secretary of State for Justice, following Electoral Commission approval.² It noted:

6. Although there will be a substantial increase in the information Members are required to place on the Register, this will be more than compensated for by the removal of the need for Members to report the same information to the Electoral Commission. We are confident that the new regime will lead to a significant reduction in the administrative burden on Members, without losing any of the rigour of the regulatory system. We intend to keep this under review, and we invite the Electoral Commission to do the same. It is vital for the health of our democracy that confidence in the registration and regulatory systems applying to Members of Parliament is maintained.

From commencement, Members are required to register with the Registrar all donations and loans previously reported to the Electoral Commission. The Registrar will offer advice on obligations under House Resolutions but advice on PPERA obligations should continue to be sought from the Electoral Commission. The Electoral Commission will have access to information previously received directly from Members but not to other information provided by Members. A memorandum of understanding between House authorities and the Commission will govern this arrangement.

The new Guide to the Rules, published with the Code of Conduct for Members notes:

After receiving a donation over £200 in value a Member has 30 days to check and confirm it is from a permissible source before either accepting it or returning it. Before entering into a loan a Member must check and confirm the lender is permissible. The Member then has a further 30 days to report permissible donations or loans over £1000 to the Registrar or to report impermissible or unidentifiable donations and loans (over £200) to the Commission.³

MPs will need to register donations over £1,500 and record donations over £500 following changes in the *Political Parties and Elections Act 2009* which come into effect on 1 January 2010.⁴

The Electoral Commission has produced in July 2009 a guide *Donations and Loans to Members of Parliament: a brief guide to permissible sources and reporting*. This, among

¹ HC 989 2007-08

² HC 208 2008-09 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmstnprv/208/20802.htm>

³ June 2009 <http://www.publications.parliament.uk/pa/cm200809/cmcode/735/73501.htm> The wording was changed slightly from the original guide published as HC 208 of 2008-09, following a motion on 9 February 2009 at col 1114

⁴ See Library Standard Note 4967 *Progress of the Political Parties and Elections Bill* for background

other points, reminds MPs that they need to remind the Commission directly if they return an impermissible donation.⁵

Details of individual donations received by Members are available from the Electoral Commission website, the most recent being for 10 December 2009.⁶

1.1 The Commons debate on 9 February 2009

Sir George Young, chairman of the Standards and Privileges Committee, noted:

Although hon. Members will no longer have to provide information on permissible donations and loans directly to the Electoral Commission, the Commission will remain under a statutory obligation to publish all the relevant information as soon as is reasonably practicable. That means that the commission will publish information on its register within one month of receipt. In order to avoid a four-month gap opening up in the commission's register, it will be necessary to return to the previous practice of requiring Members to register their interests within one month of their election or re-election to the House, rather than within three months, as at present. Separate deadlines for information required under statute and for information required under resolutions of the House would create confusion and lead to error, and the Committee therefore considers it preferable to have a single deadline.

In order for the Electoral Commission to obtain the information it needs to keep its register up to date, its officials will be granted controlled access to the office of the Parliamentary Commissioner for the sole purpose of gathering the information to which they are entitled. After a general election, the commission will need to publish some of this information in its register before the first edition of the House's register is published. A memorandum of understanding is being drawn up with the Electoral Commission, and it will specify the limited circumstances in which access may be granted.

Members will also need to continue to report impermissible donations, or donations from unidentified sources, directly to the commission, which will remain the sole authority on such matters. All the substantive changes are described in the Committee's report and are picked out in red. I shall not describe each of them, but I shall highlight just two aspects of the revised rules that are not related to the end of dual reporting.

First, hon. Members need to keep full records of each benefit of a value greater than £200. That is because a series of donations from the same source, each unregistrable in itself and even if spread across different registration categories, can give rise to a requirement to register if they accumulate to a value of £1,000 or more. Secondly, the motion makes specific provision to rename the Register of Members' Interests so that it is called the Register of Members' Financial Interests, and to make a corresponding change to the title of the registrar. The change has been proposed because there is some confusion outside the House as to the purpose of the register. By renaming it the Register of Members' Financial Interests, we will make it clear that all the entries in the register have a real or potential monetary value. It is a small change, but one that the Committee believes is worth making.⁷

There was some debate about the need to increase clarity in respect of registering constituency fund raising events which could be linked to the future candidature of Members,

⁵ http://www.electoralcommission.org.uk/__data/assets/pdf_file/0020/78230/EC_permissibility_brief-_guide.pdf

⁶ <http://www.electoralcommission.org.uk/regulatory-issues/regdonregulateddonee.cfm>

⁷ HC Deb 9 February 2009 c1117

but the report was approved. A commencement order under section 59 of the *Electoral Administration Act 2006* was made on 16 June 2009 and brought the section into effect from 1 July 2009.⁸

2 New thresholds for registration of donations and regulated loans

Section 20 of the *Political Parties and Elections Act 2009* amends various provisions in the *Political Parties Elections and Referendums Act 2000* to increase the thresholds above which donations or regulated loans need to be reported. The changes were made to take account of inflation and address concerns about the burden of complying which rests on volunteer party workers. These apply to political parties, members associations, unincorporated associations and holders of relevant elective office. MPs fall within this latter definition.

The main changes are:

- An increase in the threshold for recording donations from £200 to £500 (this threshold requires recipients to verify the permissibility of the donor and to keep their details)
- An increase in the threshold for reporting to the Electoral Commission donations and loans from accounting units and individual regulated donees from £1,000 to £1,500
- An increase in the threshold for reporting donations and loans to the Electoral Commission from party headquarters, members associations, recognised third parties and permitted participants from £5,000 to £7,500.
- the Secretary of State to review the recordable and reportable thresholds in PPERA to take account of changes in the value of money at least once during the lifetime of a Parliament lasting more than two years.⁹

In addition, donations and loans worth over £7,500 will have to be accompanied by a new declaration confirming the original source of the money, but this requirement in section 9 has not yet been brought into force. ¹⁰

2.1 Compliance officers

Sections 15 to 17 of the *Political Parties and Elections Act 2009* amend Schedule 7 of PPERA to enable holders of relevant elective office to appoint a compliance officer to assist in the reporting of donations and regulated loans. This was a backbench initiative accepted by the Government at Report stage in the Commons.¹¹ The sections come into effect on 1 January 2010.¹² The Electoral Commission is due to issue guidance on their role.¹³ Forms for

⁸ http://www.england-legislation.hmsso.gov.uk/si/si2009/uksi_20091509_en_1

⁹ Section 20(4) of *Political Parties and Elections Act 2009*

¹⁰ "The Political Parties and Elections Act 2009" Newsflash *Ministry of Justice* 21 July 2009 http://www.aea-elections.co.uk/downloads/moj_newsflash_ppe_act_210709.pdf and the Political Parties and Elections Act in action Electoral Commission July 2009 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/78919/PPE-Act---A-summary-guide-to-what-is-changing.FIN.pdf

¹¹ HC Deb 9 February 2009 c1187

¹² Commencement Order no 2 http://www.opsi.gov.uk/si/si2009/uksi_20093084_en_1

¹³ The Political Parties and Elections Act in action July 2009 Electoral Commission http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/78919/PPE-Act---A-summary-guide-to-what-is-changing.FIN.pdf

the appointment of compliance officers will be available in December via the Commissions website.¹⁴

3 Background: Dual registration provisions

3.1 The Register of Members' Interests

Until July 2009, MPs were under a duty to register donations with both the Registrar of Members' Interests and the Electoral Commission. The registration of Members' Interests is a requirement on Members who are bound by successive resolutions of the House. The Register was set up following a Resolution of the House of 22 May 1974. The maintenance of the Register is one of the principal duties laid on the Parliamentary Commissioner for Standards by House of Commons Standing Order No. 150. The registration requirements are not statutory, but binding on Members because of parliamentary privilege, which gives the House the authority to discipline its own Members.

The interests which are to be registered are set out in the "Code of Conduct and Guide to the Rules relating to the Conduct of Members", first agreed in July 1996. The current edition of the Code is available online. The registration details for individual Members are available on the internet.¹⁵

3.2 The Political Parties, Elections and Referendums Act 2000

The statutory provisions on registration of donations contained in the *Political Parties, Elections and Referendums Act 2000* (PPERA) came into force in 2001. The fact that MPs as individuals were also subject to this new statutory regulation received little attention during the passage of this major piece of legislation. Debate was reserved to the impact on political parties. However, Schedule 7 of PERA applied the donation registration requirements to regulated donees, a category which includes MPs.

A 'controlled donation' is defined in Schedule 7, para 1(3) as follows:

(c) in relation to a holder of a relevant elective office, means a donation received by that person which is-

(i) offered to him, or

(ii) where it has been accepted, retained by him, for his use or benefit (as the holder of such an office) in connection with any of his political activities.

'Political activities' appears to be defined in relation to members of registered parties, and members associations, but not for holders of relevant elective office.¹⁶ PERA was amended by the *Electoral Administration Act 2006* to regulate loans to political parties, candidates and regulated donees. The details are set out in Schedule 7A of PERA, which has been brought into force. Controlled donations must be reported to the Electoral Commission by the donee within 30 days of the date of acceptance of the donations.

The Electoral Commission published a detailed guide on the implications for Members in November 2006.¹⁷

¹⁴ <http://www.electoralcommission.org.uk/guidance/those-we-regulate/individuals>

¹⁵ <http://www.publications.parliament.uk/pa/cm/cmregmem/memi02.htm>

¹⁶ Schedule 7, para 1(4)

¹⁷ *Donations and Loans: guidance to Members of Parliament* November 2006

4 Ending dual registration

Although this overlap was evident in 2001, it took some time for the consequences to be felt and the problem to be highlighted.¹⁸ The report of the Committee on Standards in Public Life *Standards of Conduct in the House of Commons* published in 2002 did not allude to dual registration issues at all, as its focus was on methods of enforcement.

There had been some initial friction when the Electoral Commission considered that passes awarded by the BAA to all Members should be registered, whereas registration had not been required in the Commons, as the passes were available to all Members. There were similar issues in relation to the registration of overseas visits by select committee members or CPA and IPU delegates.¹⁹

In its review of the Code in 2002, the Standards and Privileges Committee attempted to align requirements where possible. For example, in Category 4, Sponsorship, all benefits over £1000 were made registrable to fit in with the PPERA requirement that all donations to regulated donees over £1000 were to be registered with the Electoral Commission. It considered whether registration with the Electoral Commission should be sufficient:

22. We considered whether benefits which are reported to the Electoral Commission, and which are therefore a matter of public knowledge, should be exempted from registration in the Register of Members' Interests. We decided that they should not, because we believe the public and the House will wish to have this information readily available in one document.²⁰

However, in 2005, the Standards and Privileges Committee indicated that it would support legislative changes to create a one stop shop for registration in a report concerning the conduct of a Member.²¹ The Committee made detailed proposals in its fifth report of 2005-6, having obtained support from the Electoral Commission and the Department for Constitutional Affairs:

2. In our Second Report [3] we commented that Members found burdensome the duplication inherent in these arrangements. There is also scope for confusion, arising from the differences between them. We expressed the view that a single system of notification, operating under the authority of the Parliamentary Commissioner for Standards, to enable Members to discharge both the House's and PPERA's requirements through a single declaration, would be better. We therefore recommended that the Electoral Commission and the Government work together to bring forward proposals for such a system, and noted that the Electoral Administration Bill might provide a suitable vehicle for required legislative changes.²²

Initial amendments were made at Commons report stage to create a "one stop shop" for MPs.²³ The Government announced that it intended to ensure that dual registration requirements no longer applied to MEPs, Members of devolved administrations and local

¹⁸ *The Regulation of Parliamentary Standards- A Comparative Perspective* Committee on Standards in Public Life/Constitution Unit May 2002 p13

¹⁹ See HC Deb 19 July 2001 c460; "MPs in airport parking perk row" 3 June 2001 *Sunday Times* ; HC Deb 15 November 2001 c984

²⁰ HC 763 Session 2001-2

<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstnprv/763/76303.htm#a6>

²¹ HC 420 2004-5

²² HC 807 2005-6

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmstnprv/807/80702.htm>

²³ HC Deb 11 January 2006 c348

councillors and passed amendments to that effect at Lords third reading. The only exception to the removal of the dual requirement was for a Member of the Scottish Parliament or a Scottish local government councillor who is not a member of a political party. The junior minister, Baroness Ashton of Upholland, said:

The Electoral Commission will still be obliged to record any such details it receives from the relevant Registers of Members' Interests. The commission will also continue to monitor compliance with the regulatory system set out in the Political Parties, Elections and Referendums Act 2000. However, it would have no role to play regarding the non-reporting of donations. The Register of Members' Interests of the body that Members belong to will retain its functions on that issue..²⁴

The section was not immediately brought into force, as it proved difficult to achieve alignment, as indicated in the Annual Report from the Parliamentary Commissioner for Standards in October 2007.²⁵

The continuing requirement for dual registration became a matter of public interest in January 2008, when donations to George Osborne's office came under scrutiny.²⁶ However, there have been other examples since 2000.²⁷ The matter was raised by David Kidney in Public Bill Committee of the *Political Parties and Elections Bill 2007-08*.²⁸

The main areas of overlap with the Register of Members' Interests were Category 4 Sponsorship, Category 5 Gifts and Category 6 Overseas visits. Detailed advice on PPERA was previously available from the Electoral Commission website entitled *Donations and Loans: guidance for Members of Parliament*, published in November 2006, which emphasised that general advice could not cover all circumstances, and that advice should be sought from the Electoral Commission on individual cases.

As noted above, from 1 July 2009 this separate requirement to register with the Electoral Commission is now ended. However, the information supplied to the Registrar is made available to the Commission, which subsequently publishes the information required under PPERA on its website.

²⁴ HL Deb 7 June 2006 c1299

²⁵ *Parliamentary Commissioner for Standards Annual Report 1006-7* HC 1012 2006-7
<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcomstan/1012/1012.pdf>

²⁶ "The Osborne emails in full and what 'Labour sources' are asking" 14 January 2008 *Times*
<http://timesonline.typepad.com/politics/2008/01/the-osborne-e-m.html>

²⁷ See Standards and Privileges Second Report 2005-6 *Conduct of Mr John Horam* HC 420

²⁸ PBC Deb 20 November 2008 c387