



Non-domiciled donors-*Political Parties and Elections Act 2009*

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Section 10 of the *Political Parties and Elections Act 2009* made changes to the *Political Parties, Elections and Referendums Act 2000* which had the effect of ensuring that donations made to political parties and individuals would not be valid if the donor was not domiciled in the UK for tax purposes. This is in addition to the existing requirement that donors appear in the electoral register.

This section was inserted in the legislation as a backbench amendment in the House of Lords, against Government opposition. The provision has yet to come into force, as a commencement order is required to bring the section into effect, and that order has not been laid before Parliament. The *Times* reported on 21 September 2012 that commencement was not imminent, since the provision was being considered in the context of all party talks on the funding of political parties.

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1 Political Parties, Elections and Referendum Act 2000 provisions on donations

The Electoral Commission website explains the current rules on donations to parties, which are set out in the *Political Parties Elections and Referendums Act 2000*:

There is no limit to the amount an individual or organisation can donate or lend to an organisation/individual. However, the money must come from a permissible source if it is above £500.

When organisations/individuals receive a donation or a loan above £500, they must verify that the donor or lender is permissible.

Permissible donors

Under Section 54 of PPERA, eligible donors or lenders are:

an individual registered in a UK electoral register (including bequests)

a UK registered company which is incorporated within the European Union and carries on business in the UK

a GB registered political party

a UK registered trade union

a UK registered building society

a UK registered limited liability partnership that carries on business in the UK

a UK registered friendly society

a UK based unincorporated association that carries on business or other activities in the UK

Additionally, certain kinds of UK-based trusts can also **donate** to political parties. Parties must not, however, enter into **loans** with trusts.

When an organisation or individual receives a donation, it has 30 days to decide whether the donor or lender is permissible. If it is found that the donor is impermissible, it can return the money to the donor if within 30 days from the day the donation was received. If the donation is accepted but is later found to be from an impermissible source, the money may have to be forfeited and paid into the [Consolidated Fund](#).

If the loan or credit facility is from an impermissible source, the transaction is void.¹

¹ Legislation on political finances at <http://www.electoralcommission.org.uk/party-finance/legislation>

2 Political Parties and Elections Act 2009

Section 10 of the *Political Parties and Elections Act 2009* made changes to the *Political Parties, Elections and Referendums Act 2000* which had the effect of ensuring that donations made to political parties and individuals would not be valid if the donor was not domiciled in the UK for tax purposes. This is in addition to the existing requirement that donors appear in the electoral register. Section 11 enacted a similar provision where an individual makes a non-commercial loan.

Library Standard Note 4967 [Progress of the Political Parties and Elections Act 2009](#) explains the background to these provisions. They resulted from backbench initiative and were initially opposed by the Labour Government. However, following a defeat in the House of Lords, the Government accepted the amendments. The following is an extract from Standard Note 4967:

Donations by non-UK taxpayers: the Prentice amendments

Lord Campbell-Savours (Labour) moved amendments to the Bill in Grand Committee seeking to make it unlawful for any person who is not a UK resident for tax purposes to make a substantial donation to a political party.² The amendments were the same as those tabled by Gordon Prentice MP at the report stage of the Bill in the House of Commons; these were not debated because of lack of time. The Minister, Lord Bach, said that the Government wanted to move forward on proposals for better regulation in this area on the basis of consensus and that there were wider issues to consider than those which the amendments addressed. Lord Bach said that the Government was clear that it “would be wrong to tie democratic rights in one area to taxation status, as the amendments propose, while leaving other democratic rights unfettered.”³ Lord Bach also indicated that there would be practical difficulties for a recipient party and the Electoral Commission about ascertaining whether a donor’s statement about his tax status was accurate. There would also be confidentiality and data-sharing implications of any proposal to tie residency to the permissibility of donations. Lord Bach concluded that the matter was too complex for a detailed consideration during the timetable allowed for the Bill but that the Government would reflect on how to take forward work on this issue.⁴ The amendment was withdrawn but Lord Campbell-Savours returned to the issue at report stage.

Lord Campbell-Savours said that the amendment was based on a simple principle; if someone wanted to donate to a political party they had to be liable for tax in the UK. A donor would tick a box on their tax return and the Electoral Commission would need only to verify that this had been done with HMRC; there would be no onus on the HMRC to investigate the tax status of an individual. The Liberal Democrats supported the amendment and Lord Tyler said

If we leave the Bill as it is, without a clear statement that these sorts of donations from foreign sources are not permissible, the Bill will not fulfil the requirements that the Government have placed upon it. Even since the Bill was in Grand Committee, there is greater awareness of the potential corruption of our political system by people with very large chequebooks who can buy their

² HL Deb 30 April 2009 c141GC

³ HL Deb 30 April 2009 c153GC

⁴ HL Deb 30 April 2009 c154GC

way into influencing a relatively small number of constituencies, the marginal seats.⁵

Lord Borrie (Labour) said that there was no supporting evidence or legal argument that a restriction on such donors would breach the European Convention on Human Rights as the Government had suggested.⁶ Baroness Gould of Potternewton (Labour) said she could not support the amendment because it was badly flawed although she had great sympathy with what it was trying to achieve. Baroness Gould said she shared the concern of the Electoral Commission about the verification of the permissibility of donations; the Commission suggested that more than 1,000 individual donations would need to be verified each year. It would also be an impossible task for political parties to check the residence status of donors for tax purposes.

Lord Anderson of Swansea (Labour) acknowledged that the amendment would not wholly solve the problem but he agreed with Lord Tyler that it would give the House of Commons the opportunity, denied to it at report stage there, to take a decision on the issue. Lord Anderson could see no reason for the Government's rejection of the amendment and said that "it had not come forward with any real reasons why this particular anomaly should not be met."⁷ Lord Bach said that the Government continued to have serious concerns about the amendment "on principled, practical and legal grounds".⁸ He continued:

*The Government have stated their firm belief that it would be wrong in principle to create an anomaly by introducing extra restrictions on only one form of participation without considering whether equivalent restrictions should be placed on other forms of participation. We believe that the issue of what should be the correct relationship between an individual's taxation status and their right to civic and democratic participation needs to be looked at as a whole. I can tell the House tonight that this will be one of the issues that will be covered by the democratic renewal council in its deliberations, which are taking place now, on the wider constitutional reform agenda. I can give that commitment to the House this evening that it will be part of its brief to look at this issue as a whole.*⁹

Lord Bach also said that there were significant legal and practical difficulties which needed detailed consideration before any restriction on donations relating to tax status could be introduced; there was the possibility of a breach of the European Convention on Human Rights; the linking of an individual's taxation status to their ability to donate would require information on the taxation of all potential donors to be readily available and an investigation into every individual who makes a political donation would be a significant undertaking. The Minister concluded that the amendment was unrealistic and would not work but the Government was continuing to reflect on how the issue could be taken forward. The Government was defeated when the amendment was agreed on division; contents 107, not-contents 85.

There was some doubt before the 2010 election as to the likely timescale for these sections to be brought into force. The *Observer* reported in August 2009 that these sections would not be brought into force before the expected general election. Ministry of Justice officials were

⁵ HL Deb 15 June 2009 c905

⁶ HL Deb 15 June 2009 c906

⁷ HL Deb 15 June 2009 c905

⁸ HL Deb 15 June 2009 c914

⁹ HL Deb 15 June 2009 c914

quoted as stating that the law was complex and more time was needed before commencement.¹⁰ The *Times* reported in September 2012 that commencement was not imminent, since all party talks on the funding of political parties were continuing.¹¹ Nick Clegg announced in March 2012 that he had begun a new round of talks. Background is given in [Standard Note 6123 *In brief: party funding*](#).

¹⁰ [Observer 2 August 2009](#) "Labour quietly postpones law banning non doms from funding political parties"

¹¹ [Times 21 September 2012](#) "Parties urged to hand back donations banned by 'ghost law'".