



# Political Parties and Elections Act 2009

## 2009 CHAPTER 12

### PART 2

#### POLITICAL DONATIONS ETC AND EXPENDITURE

##### *Donations etc*

#### **9 Declaration as to source of donation**

- (1) In section 54 of the 2000 Act (permissible donors), in subsection (1) (circumstances in which party may not accept donation), after paragraph (a) there is inserted—
- “(aa) in the case of a donation of an amount exceeding £7,500, the party has not been given a declaration as required by section 54A; or”.
- (2) After that section there is inserted—

##### **“54A Declaration as to source of donation**

- (1) Where a person (P) causes an amount exceeding £7,500 to be received by a registered party by way of a donation, a written declaration must be given to the party—
- (a) by P, if P is an individual, or
- (b) if not, by an individual authorised by P to make the declaration, stating, to the best of the individual’s knowledge and belief, whether or not subsection (2) applies to the donation.
- (2) This subsection applies to the donation if—
- (a) a person other than P has provided, or is expected to provide, money or any other benefit to P with a view to, or otherwise in connection with, the making of the donation, and
- (b) the money, or the value of the benefit, is more than £7,500.

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- (3) Where a declaration under this section contains a statement to the effect that subsection (2) applies to the donation, it must also—
- (a) state whether or not, in the opinion of the person making the declaration—
    - (i) subsection (4) of section 54 applies to the donation;
    - (ii) subsection (6) of that section applies to it;
  - (b) if the person’s opinion is that neither of those subsections applies to the donation, give the person’s reasons for that opinion.
- (4) A declaration under this section must also state the full name and address of the person by whom it is made and, where subsection (1)(b) applies—
- (a) state that the person is authorised by P to make the declaration;
  - (b) describe the person’s role or position in relation to P.
- (5) A person who knowingly or recklessly makes a false declaration under this section commits an offence.
- (6) Regulations made by the Secretary of State may make provision as to how the value of a benefit is to be calculated for the purposes of subsection (2).”
- (3) In section 56 of the 2000 Act (acceptance or return of donations: general), in subsection (2) (steps to be taken if donation to be refused)—
- (a) in paragraph (a), for “section 54(1)(b)” there is substituted “section 54(1)(aa) or (b)”;
  - (b) after that paragraph there is inserted—
    - “(aa) if the donation falls within section 54(1)(aa) (but not section 54(1)(b)), the donation, or a payment of an equivalent amount, must be sent back to the person appearing to be the donor.”;
  - (c) in paragraph (b), for “that provision” there is substituted “section 54(1)(b)”.
- (4) Before subsection (4) of that section there is inserted—
- “(3B) Where—
- (a) subsection (2)(aa) applies in relation to a donation, and
  - (b) the donation is not dealt with in accordance with that provision,
- the party and the treasurer of the party are each guilty of an offence.”
- (5) In Schedule 6 to the 2000 Act (details to be given in donation reports), after paragraph 1 there is inserted—

*“Declarations as to source of donation*

- 1A In relation to each recordable donation in the case of which a declaration under section 54A has been given, a quarterly or weekly report must either—
- (a) state that no reason was found to think that the declaration was untruthful or inaccurate, or
  - (b) give details of any respects in which the declaration was found or suspected to be untruthful or inaccurate.”
- (6) In paragraph 6 of that Schedule (donations from impermissible donors)—

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- (a) in the heading, at the end there is inserted “*or without required declaration*”;
- (b) for “section 54(1)(a)” there is substituted “section 54(1)(a) or (aa)”;
- (c) in paragraph (a), after “the donor” there is inserted “or the person appearing to be the donor”;
- (d) in paragraph (b), for “section 56(2)(a)” there is substituted “section 56(2)(a) or (aa)”.

(7) In Schedule 20 to the 2000 Act (penalties) the following entry is inserted at the appropriate place—

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“Section 54A(5) (making a false declaration as to source of donation)	On summary conviction in England and Wales or Scotland: statutory maximum or 12 months
	On summary conviction in Northern Ireland: statutory maximum or 6 months
	On indictment: fine or 1 year”.

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(8) Schedule 3 has effect.

That Schedule makes amendments to—

- (a) Schedules 7, 11 and 15 to the 2000 Act (control of donations to individuals and members associations; to recognised third parties; and to permitted participants), and
- (b) Schedule 20 to the 2000 Act (penalties),

corresponding to those made by subsections (1) to (7).

(9) The Secretary of State, after consulting the Electoral Commission, may make an order that—

- (a) amends or modifies a provision of the 2000 Act inserted by this section or Schedule 3 so far as it applies in relation to Northern Ireland;
- (b) makes provision that is consequential on or supplemental to that made by virtue of paragraph (a) (including provision amending or modifying any provision of the 2000 Act).

(10) The power to make an order under subsection (9) is exercisable by statutory instrument.

(11) No order may be made under subsection (9) unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

## **10 Non-resident donors etc**

(1) In section 54 of the 2000 Act (permissible donors), in subsection (1) (circumstances in which party may not accept donation), for paragraph (aa) (inserted by section 9 above) there is substituted—

- “(aa) any declaration required to be made in respect of the donation by section 54A or 54B has not been received by the party; or”.

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(2) In subsection (2)(a) of that section (individuals who are permissible donors), for “registered in an electoral register” there is substituted “who is registered in an electoral register and (subject to subsection (2ZB)) satisfies the condition set out in subsection (2ZA)”.

(3) After subsection (2) of that section there is inserted—

“(2ZA) The condition referred to in subsection (2)(a) is that the individual’s liability to income tax for the current tax year (including eligibility to make any claim) falls to be determined (or would fall to be determined) on the basis that the individual is resident, ordinarily resident and domiciled in the United Kingdom in that year.

In this subsection “tax year” has the meaning given by section 4 of the Income Tax Act 2007.

(2ZB) The condition set out in subsection (2ZA) applies in relation to a donation only if—

- (a) it is a donation of more than £7,500, or
- (b) when the donation is added to any other relevant benefit or benefits accruing in the same calendar year as the donation, the aggregate amount of the benefits is more than £7,500.

(2ZC) For the purposes of subsection (2ZB)(b) “relevant benefit” and “accruing” have the meaning given by section 62(3A).”

(4) After section 54A (inserted by section 9 above) there is inserted—

**“54B Declaration as to whether residence etc condition satisfied**

- (1) An individual making to a registered party a donation in relation to which the condition set out in section 54(2ZA) applies must give to the party a written declaration stating whether or not the individual satisfies that condition.
- (2) A declaration under this section must also state the individual’s full name and address.
- (3) A person who knowingly or recklessly makes a false declaration under this section commits an offence.
- (4) The Secretary of State may by regulations make provision requiring a declaration under this section to be retained for a specified period.
- (5) The requirement in subsection (1) does not apply where, by reason of section 71B(1)(a), the individual by whom the donation would be made is a permissible donor in relation to the donation at the time of its receipt by the party.”

(5) In section 56 of the 2000 Act (acceptance or return of donations: general), after subsection (1) there is inserted—

“(1A) In so far as subsection (1) requires steps to be taken to verify or ascertain whether an individual satisfies the condition set out in section 54(2ZA), the requirement is treated as having being complied with if—

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- (a) the individual has given to the party a declaration under section 54B stating that the individual satisfies that condition, and
  - (b) the party had no reasonable grounds for thinking that the statement was incorrect.”
- (6) In Schedule 6 to the 2000 Act (details to be given in donation reports), in paragraph 1A (inserted by section 9 above)—
- (a) in the heading, at the end there is inserted “*or as to whether residence etc condition satisfied*”;
  - (b) at the end of that paragraph (which becomes sub-paragraph (1)) there is inserted—
- “(2) In relation to each recordable donation in the case of which a declaration under section 54B has been given, a quarterly report must either—
- (a) state that no reason was found for thinking that the declaration was incorrect, or
  - (b) give details of any respects in which the declaration was found or suspected to be incorrect.”
- (7) In Schedule 20 to the 2000 Act (penalties) the following entry is inserted at the appropriate place—

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“Section 54B(3) (making a false declaration as to whether residence etc condition satisfied)	On summary conviction in England and Wales or Scotland: statutory maximum or 12 months
	On summary conviction in Northern Ireland: statutory maximum or 6 months
	On indictment: fine or 1 year”.

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(8) Schedule 4 has effect.

That Schedule makes amendments to—

- (a) Schedules 7, 11 and 15 to the 2000 Act (control of donations to individuals and members associations; to recognised third parties; and to permitted participants), and
- (b) Schedule 20 to the 2000 Act (penalties),

corresponding to those made by subsections (1) to (7).

## **11 Non-resident lenders etc**

(1) After section 71H of the 2000 Act there is inserted—

### **“71HZA Declaration that residence etc condition is satisfied**

- (1) A registered party must not be a party to a regulated transaction to which this section applies unless the registered party has received a written declaration from each of the other parties to the transaction who is an individual stating that the individual satisfies the condition set out in section 54(2ZA).

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- (2) This section applies to a regulated transaction—
- (a) if the value of the transaction is more than £7,500, or
  - (b) if the aggregate amount of it and any other relevant benefit or benefits accruing in the same calendar year as the transaction is more than £7,500.
- (3) For the purposes of subsection (2)(b) “relevant benefit” and “accruing” have the meaning given by section 71M(3).
- (4) A declaration under this section must also state the individual’s full name and address.
- (5) A person who knowingly or recklessly makes a false declaration under this section commits an offence.
- (6) The Secretary of State may by regulations make provision requiring a declaration under this section to be retained for a specified period.
- (7) The reference in subsection (1) to each of the other parties to the transaction does not include any individual who, at the time the transaction is entered into, is an authorised participant in relation to it by reason of section 71Z1(1)(a).”
- (2) In section 71L of the 2000 Act (offences relating to regulated transactions), after subsection (9) there is inserted—

“(9A) An offence cannot be committed under subsection (1), (2), (5) or (6) on the basis that a person (P) ought reasonably to have known that a particular individual does not satisfy the condition set out in section 54(2ZA) (and is therefore not an authorised participant) if—

- (a) the individual has given a declaration under section 71HZA stating that the individual satisfies that condition, and
- (b) P had no reasonable grounds for thinking that the statement was incorrect.”

- (3) In Schedule 6A to the 2000 Act (details to be given in transaction reports), after paragraph 1 there is inserted—

*“Declaration as to whether residence etc condition satisfied*

1A In relation to each recordable transaction in the case of which a declaration under section 71HZA has been given, a quarterly report must either—

- (a) state that no reason was found to think that the declaration was incorrect, or
- (b) give details of any respects in which the declaration was found or suspected to be incorrect.”

- (4) In Schedule 7A to the 2000 Act (control of loans etc to individuals and members associations), after paragraph 4 there is inserted—

*“Declaration that residence etc condition satisfied*

4A (1) A regulated participant must not be a party to a controlled transaction to which this paragraph applies unless the regulated participant has received a written declaration from each of the other parties to the transaction who

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is an individual stating that the individual satisfies the condition set out in section 54(2ZA).

- (2) This paragraph applies to a controlled transaction—
    - (a) if the value of the transaction is more than £7,500, or
    - (b) if the aggregate amount of it and any other relevant benefit or benefits accruing in the same calendar year as the transaction is more than £7,500.
  - (3) For the purposes of sub-paragraph (2) “relevant benefit” and “accruing” have the meaning given by section 71M(3).
  - (4) A declaration under this paragraph must also state the full name and address of the person by whom it is made.
  - (5) A person who knowingly or recklessly makes a false declaration under this paragraph commits an offence.
  - (6) The Secretary of State may by regulations make provision requiring a declaration under this paragraph to be retained for a specified period.
  - (7) The reference in sub-paragraph (1) to each of the other parties to the transaction does not include any individual who, at the time the transaction is entered into, is an authorised participant in relation to it by reason of section 71Z1(1)(a).”
- (5) In paragraph 8 of that Schedule (offences), after sub-paragraph (9) there is inserted—
- “(9A) A person (P) cannot commit an offence under sub-paragraph (1), (2), (5) or (6) on the basis that P ought reasonably to have known that a particular individual does not satisfy the condition set out in section 54(2ZA) (and is therefore not an authorised participant) if—
- (a) the individual has given a declaration under paragraph 4A stating that the individual satisfies that condition, and
  - (b) P had no reasonable grounds for thinking that the statement was incorrect.”
- (6) In paragraph 9 of that Schedule (transaction reports: transactions with authorised participants)—
- (a) in sub-paragraph (9)(a) and (10), for “paragraphs 2” there is inserted “paragraphs 1A, 2”;
  - (b) in sub-paragraph (10), after paragraph (b) there is inserted—

“(ba) any reference to section 71HZA must be construed as a reference to paragraph 4A above;”.
- (7) In Schedule 20 to the 2000 Act (penalties) the following entries are inserted at the appropriate places—

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“Section 71HZA(5) (making a false declaration as to whether residence etc condition satisfied)

On summary conviction in England and Wales or Scotland: statutory maximum or 12 months

On summary conviction in Northern Ireland: statutory maximum or 6 months

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On indictment: fine or 1 year”

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“Paragraph 4A(5) of Schedule 7A (making a false declaration as to whether residence etc condition satisfied)

On summary conviction in England and Wales or Scotland: statutory maximum or 12 months

On summary conviction in Northern Ireland: statutory maximum or 6 months

On indictment: fine or 1 year”.

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## **12 Defence to charge of failing to return donation from impermissible donor**

In section 56 of the 2000 Act (acceptance or return of donations: general), after subsection (3) there is inserted—

“(3A) Where a party or its treasurer is charged with an offence under subsection (3), it shall be a defence to prove that—

- (a) all reasonable steps were taken by or on behalf of the party to verify (or ascertain) whether the donor was a permissible donor, and
- (b) as a result, the treasurer believed the donor to be a permissible donor.”