

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (ELECTION EXPENSES
EXCLUSION) ORDER 2013

2013 No. 688

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This Order amends the Representation of the People Act 1983 to exclude grant awards made by the Access to Elected Office Fund ('the Fund') from the definition of election expenses. The Fund has been established by the Government Equalities Office to award financial support to disabled persons who will (or wish to) stand for elected office. In order to give full effect to the Fund policy, the Order amends existing provisions on 'electoral expenses' which would otherwise cause difficulties for the proper operation of the Fund. This is because disabled and non-disabled candidates would otherwise not be treated equally as regards the incurring of expenses, in that disabled candidates who received monies from the Fund to remove or mitigate disability barriers would, amongst other things, have to count such expenditure against their election expenses limit. This would have the effect of reducing the amount they could spend on other electoral expenses. Whereas in contrast the non-disabled candidates would incur no such disability related expenses and so would benefit from the advantage of having the entirety of their election expenses limit to spend on other election expenses.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative context**

4.1 This Order is made under the power provided by paragraph 15(1) of Schedule 4A to the Representation of the People Act 1983 (as amended). It amends Part 2 of Schedule 4A of the Representation of the People Act 1983. Schedule 4A (as introduced by s.90ZA) provides for the definition of the term 'electoral expense' with part 1 setting out matters that are to be considered 'election expenses' and part 2 setting out a list of matters excluded from being "elections expenses". The classification of an expense as an 'election expense' has a number of regulatory consequences in the Act, including the fact that under section 76 of the Act candidates are subject to a limit on the amount that can be spent on election expenses (the specific amount of the limit varies depending on the type of election concerned).

4.2 The Order makes provision for a new Paragraph 7A to be inserted into Part 2. New paragraph 7A exempts certain expenditure by or on behalf of disabled candidates from being considered 'election expenses'. However in order to benefit from the exemption from being an 'election expense' the expenditure must be;

- Designed to remove or reduce the barriers to seeking elected office faced by disabled candidates (Article 2, inserted paragraph 7A(1)),
- An expense that arises as a consequence of the candidate's particular disability (Article 2, inserted paragraph 7A(1)),
- Defrayed or reimbursed by a grant awarded from the Access to Elected Office Fund. However, if the expense is greater than amount of the grant provided by the Fund then the exemption only applies in relation to the amount of the expense that is covered by the Fund (Article 2, inserted paragraph 7A(2)),
- In accordance with the terms and conditions of the grant made from the Access to Elected Office Fund (Article 2, inserted paragraph 7A(2)).

4.3 The provisions set out above therefore provide that only matters of expenditure that a disabled candidate would face, but a non-disabled candidate would not face, are to be exempted from the definition of expenses. Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption or within the scope of the Fund. However where a disabled candidate requires specially adapted transportation in order to participate in door-to-door campaigning on a level basis with a non-disabled candidate, then such an additional expense is likely to fall within the scope of the Fund and providing it satisfies the conditions set out in paragraph 4.2 above is likely to fall within the scope of this exemption.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. However the Fund only applies to UK Parliamentary elections, local elections in England (except parish council elections), Greater London Authority elections, Mayoral elections in England and Police and Crime Commissioner elections in England and Wales.

6. European Convention on Human Rights

6.1 The Minister for Political and Constitutional Reform has made the following statement regarding Human Rights:

In my view the provisions of the Representation of the People (Election Expenses Exemption) Order are compatible with the Convention rights.

7. Policy background

7.1 The Access to Elected Office Strategy reflects a Coalition Government commitment to introduce extra support for disabled people who want to become MPs, Councillors or other elected officials. The Strategy's main element is the Fund, which will distribute £2.3 million in grants from July 2012 to June 2014. The Fund is designed to meet the additional costs that a disabled person may face - such as extra transport costs or sign language interpreters - when seeking to stand for selection by a

political party or election. Details of the Fund can be found at <https://www.access-to-elected-office-fund.org.uk/>

7.2 The Government ran a public procurement exercise to find an administrator for the Fund, appointing Digital Outreach (operating as “Convey”) to the role. As a registered company, Convey is a permissible donor and therefore, as the body that independently makes funding decisions on applications to the Fund, is permitted to award payments to candidates.

7.3 Generally, election expenses need to be reported on a candidate’s expenses return and will usually count towards the relevant candidate’s expenses limit. The fact that the disability related expenses the Fund will cover could count towards the election expenses limit is undesirable, as it reduces the equalising intention of the Fund. – Many of the kind of items the Fund is proposing to award grants for, such as British Sign Language interpreters are expensive and non-disabled candidates will thus have a proportionally higher spending limit than the disabled candidates who have incurred such extra costs. This may deter disabled people from applying for support from the Fund or seeking access to elected office.

7.4 There is significant interest in the Fund and Convey has contractual responsibility for publicising it. The May 2013 and 2014 local elections will provide the key opportunity for the Fund, not only because of the number of seats being contested, but also because local elections tend to attract the highest number of independent candidates who are most likely to need support from the Fund. To enable that funding, this Order must be made before 27 March, the start of the regulated period, the point from which candidates will be subject to limits on their expenditure.

8. Consultation Outcome

8.1 The Electoral Commission (EC) have been consulted on this instrument as required by paragraph 15(3)(b) of Schedule 4A of the Representation of the People Act 1983.

8.2 The majority of issues raised by the Electoral Commission have been incorporated into the Order. Of these, there are two principal issues:

8.3 The Order refers to removing or mitigating ‘*barriers*’ to elected office associated with a candidate’s disability. The EC contends this is a novel use of the word in legal terms and it is difficult to interpret its meaning and policy intention. As a result, the EC is concerned that there is scope for the Fund administrator to make grant allocations for a far wider range of matters than was intended.

8.4 The Government’s view is that ‘*barriers*’ means both things that merely impede progress or success, as well as things that prohibit progress or success altogether. The term ‘*barriers*’ is therefore the most appropriate for the Order. The fundamental difference appears to be that the EC would prefer the exemption to be defined by an exhaustive list for reasons of certainty. However, the Fund has been set up on the basis that it must be able to fund any potential expense that arises from the mitigation of a barrier to elected office that occurs because of the candidate’s disability. Consequently it is impossible to define the exemption in the terms of an

exhaustive list. A non-exhaustive list of expenses it will pay for would equally be unsatisfactory, because it will necessarily not mention everything covered. Therefore in order to provide certainty we have sought to define the exemption through descriptive principles that, as required, exactly match the scope of the Fund.

8.5 Further, the Order as drafted has the effect of imposing the test that expenses are only exempted provided they are aimed at removing or reducing the impediments disabled candidates face when seeking elected office. There is a further requirement that the impediments must directly result from a candidate's disability.

8.6 Even if the 'barriers' test is met, the Order also requires that for any spending to be exempt, it must be in line with the Fund's terms and conditions. The Commission is not convinced that the terms and conditions are fit for purpose as currently drafted, believing they cannot be relied on to accurately define what is and is not exempt from spending limits.

8.7 The Government does not agree that it is the terms and conditions that define the exemption, as this is done by the text of the Order. The reference to terms and conditions in the exemption is so as to ensure an individual who fraudulently obtains funding does not benefit from the exemption. In practice the terms and conditions are likely to help provide practical guidance, but it remains the case that the definition of the exemption is the wording set out in the Order.

8.8 The Electoral Commission's response is published at:
<http://www.electoralcommission.org.uk/publications-and-research/consultations-and-responses>

9. Guidance

9.1 The Electoral Commission has published detailed guidance for election candidates on its website:<http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/candidates-and-agents>. This includes information on candidate spending limits and election expenses rules. The Government is working closely with the Electoral Commission to update this guidance to alert disabled candidates to the Access to Elected Office Fund and the impact of Fund payments on their elections spending limits. The Electoral Commission will also update the guidance to encourage recipients of the Fund to voluntarily disclose any awards.

9.2 Convey, the Access to Elected Office Fund administrators, have also provided detailed guidance on the Fund's remit and application on their website:
<http://www.access-to-elected-office-fund.org.uk/apply/application-form-guidelines/>

10. Impact

10.1 A full regulatory impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Access to Elected Office Fund launched as a pilot exercise in July 2012 and is expected to run until the 30th June 2014. The Order consequently makes provision in inserted paragraph 7A(4) for the order to expire on that date.

12.2 There is a policy commitment to review the impact of the Fund after the local elections scheduled for May 2013. The assessment, to be undertaken by the Government Equalities Office, will consider whether or not the Fund has met its aim of supporting disabled people to stand as candidates for election.

13. Contact

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