EXPLANATORY MEMORANDUM TO

THE CONTROL OF DONATIONS AND REGULATION OF LOANS ETC. (EXTENSION OF THE PRESCRIBED PERIOD) (NORTHERN IRELAND) ORDER 2011

2011 No.

1. This explanatory memorandum has been prepared by the Northern Ireland Office (NIO) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Although political parties and other regulated recipients in Northern Ireland must report donations and loans and other related transactions received or entered into and which exceed specified thresholds to the Electoral Commission, the Commission may not presently, other than in specified circumstances, disclose details of these donations, loans or transactions and there is no right to inspect the registers of these matters that the Commission is required to keep. This period of confidentiality is due to end on 1 March 2011 but may be extended by Order. This Order extends the period of confidentiality for a further two years until 28 February 2013.

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

3.1 None.

4. Legislative Context

4.1 The Political Parties, Elections and Referendums Act 2000 introduced new reporting and publication requirements in relation to donations to UK political parties and other regulated recipients. The Electoral Administration Act 2006 made similar provision in relation to loans and related transactions. Initially these provisions did not apply in Northern Ireland because of the need for them to be modified before doing so. These modifications were made by the Northern Ireland (Miscellaneous Provisions) Act 2006 (such that the modified regime for donations commenced on 1 November 2007) and the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (such that the modified regime for loans commenced on 1 July 2008). The modifications include, amongst other things, the prohibition on disclosure referred in paragraph 2.1 above. Some of those modifications apply only during the "prescribed period" which was to expire on 31 October 2010, but which can be extended for up to two years at a time by Order.

4.2 In August 2010, an Order was made extending the period in relation to both donations and loans to expire on 1 March 2011 (S.I. 2010/2061) and this Order extends the period for a further two years as described above.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 The Minister of State for Northern Ireland, Hugo Swire, has made the following statement regarding Human Rights:

'In my view the provisions of the Control of Donations and Regulation of Loans etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2011 are compatible with the Convention rights.'

7. Policy background

- *What is being done and why*

7.1 Across the UK, political parties and other recipients must report donations and loans received over specified thresholds to the Electoral Commission. However, unlike for the rest of the UK, the Commission is under a statutory obligation not to publish or disclose details of donations and loans received by Northern Ireland recipients. This is to protect against the risk of donor intimidation in Northern Ireland. The confidentiality period - known formally as "the prescribed period" - is temporary and the law currently provides for this to end on 1 March 2011. However, the prescribed period may be extended by Order for up to two years at a time.

7.2 The NIO commenced a full public consultation on this issue in August 2010 and put forward a number of options for reform ranging from retention of the current arrangements to full transparency. The consultation revealed widespread public support for full transparency; however, there were also concerns that the time was still not right to move to full transparency because of the risk of intimidation to potential donors. Since that consultation period ended, NIO officials have sought to find ways of increasing transparency in Northern Ireland while still protecting donor identities. This work is continuing but will not be completed by the time the prescribed period expires on 1 March 2011

7.3 A further Order to extend the prescribed period is therefore necessary. This will allow for donor identities to be protected during this extended period, but will also allow the Government to continue its work on establishing greater transparency and to bring forward further legislation to provide for this if necessary.

8. Consultation outcome

8.1 As mentioned above, the Government conducted a full public consultation on political donations in 2010. The consultation demonstrated widespread public support for full transparency; however there were also concerns raised that the time was not yet right to move to full transparency because of the risk of donor intimidation. The Electoral Commission was also formally consulted.

9. Guidance

9.1 This Order is not accompanied by any guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will continue to examine how best to achieve greater transparency within the current framework and will bring forward further legislation to achieve this if necessary.

13. Contact

Lee Hegarty, Head of Human Rights and Electoral Reform at the Northern Ireland Office Tel: 0207 210 6569 or email: lee.hegarty@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office
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