EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS (LOANS AND RELATED TRANSACTIONS AND MISCELLANEOUS PROVISIONS) (UNITED KINGDOM AND GIBRALTAR) ORDER 2009

2009 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice 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 During the four months before a European election, Gibraltar (which is combined with the Southwest Region of the United Kingdom for the purposes of voting in European elections) is subject to a modified form of the statutory provisions regulating donations to political parties. This Order supplements and amends the existing UK legislation which extends to Gibraltar to take account of relevant recent developments in UK electoral law. Most significantly, the Electoral Administration Act 2006 amended the Political Parties and Referendums Act 2000 to put in place rules relating to the loans and related transactions which political parties may enter into. This order extends those new rules, with modifications, in order to regulate loans made to Gibraltar and UK parties contesting the combined region (of the Southwest and Gibraltar). It also makes related consequential changes.

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

3.1 None.

4. Legislative Context

4.1 The European Parliament (Representation) Act 2003 ("the 2003 Act") provides for Gibraltar to be combined with an existing UK European Parliament region in order that the Gibraltar electorate should be able to vote in European elections as part of, and on the same terms as, the UK electorate; and contains (in sections 12 and 13) an enabling power to make consequential provision to ensure that Gibraltar should be treated as if it were as much part of the combined region as the other areas of the region.

4.2 The European Parliamentary Elections (Combined Region and Campaign Expenditure) (United Kingdom and Gibraltar) Order 2004 ("the 2004 Order") combines Gibraltar with the Southwest region in England to form "the combined region" for the purposes of European Parliamentary elections and makes related provision. In addition, the 2004 Order extended a number of provisions of the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") to Gibraltar. Its main effect in that regard is to allow registered political parties which declare an intention to contest a European Parliamentary election in the combined region to accept donations from permissible donors which are based in Gibraltar. However, registered parties who wish to contest a European Parliamentary Election but which are not Gibraltar parties may only receive

donations from Gibraltar donors in the four months before a European Parliament election. In addition, the Order places a cap on the total amount of income by way of donations that UK parties may receive in Gibraltar during this period: this is set at the amount of campaign expenditure which the registered party would be permitted to incur if it were standing for election in the combined region only. At present, this would equate to £315, 000.

4.3 Since 2004, a number of changes have been made to the legislative regime for the financial regulation of political parties. In particular, the Electoral Administration Act 2006 ("the 2006 Act") has inserted a new Part 4A into the 2000 Act to regulate, for the first time, loans and related transactions to political parties and others. This prohibits UK parties from entering into loans or related transactions with specified individuals and organisations, including individuals who are not on a UK register and with bodies which are not on the relevant UK register and which do not carry on business in the UK. The 2006 Act did not provide that part 4A of the 2000 Act should extend to Gibraltar. The effect of this is that there is no means of regulating loans to political parties in Gibraltar, including in the period before an election to the European Parliament – so UK parties wishing to contest a European election in the combined region would not be able to accept loans from Gibraltar at all, but there would be no restriction on loans to Gibraltar parties.

4.4 The 2006 Act did, however, insert new section 12(3)(ba) into the 2003 Act to provide that an Order made under section 12 of this Act may also make provision about the regulation of loans or credit facilities which benefit registered political parties in Gibraltar or their officers or members. In view of the Government's public commitment to treating Gibraltar electors in the same way as UK electors as far as possible in European Parliamentary elections, and in the interests of establishing a level playing field for political parties contesting the combined region at elections to the European Parliament, the draft Order will supplement the 2004 Order by applying new Part 4A of the 2000 Act to Gibraltar with the modifications set out in its Schedule.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom and Gibraltar.

5.2 The effect of the Order is to apply to Gibraltar, with modifications, Part 4A of the 2000 Act which currently applies in full to England, Scotland and Wales, and in a modified form to Northern Ireland (by virtue of the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008).

6. European Convention on Human Rights

6.1 The Minister of State, the Rt Hon Michael Wills MP, has made the following statement regarding Human Rights:

"In my view the provisions of the European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 Following the decision of the European Court of Human Rights in *Matthews v. United Kingdom*, the UK Government enacted the European Parliament (Representation) Act 2003 in order to enable Gibraltar to participate in European Parliamentary elections. Against this background, the Government is committed to ensuring that, for the purpose of voting at elections to the European Parliament, the Gibraltar electorate should be treated as similarly as possible to the UK electorate. The draft Order will contribute toward achieving this policy objective by broadly replicating the current provisions regulating donations to parties contesting the combined region (as set out in the 2004 Order) for the regulation of loans to parties (which were not regulated in 2004 in the UK, but are now), to ensure as much parity of treatment as possible between the Gibraltar and UK electorates.

7.2 The Order contains the following significant provisions.

7.3 Article 2(1) amends section 163(11) of the 2000 Act with the effect that Part 4A of the 2000 Act extends to Gibraltar. Article 2(2) specifies that the amendments to the 2000 Act set out in the Schedule to the Order will apply in Gibraltar.

7.4. Paragraph 1 of the Schedule omits section 57A of the 2000 Act (as originally inserted by the 2004 Order) which had the effect of regulating the acceptance of donations by UK political parties within a period of 4 months prior to the polling date of a European Parliamentary election. This is omitted because of new section 71HA of the 2000 Act, as inserted by paragraph 4 of the Schedule to the Order. That adapts the basic proposition of section 57A that donations may only be received within a 4 month period if they do not exceed a specified permitted maximum, so that the permitted maximum now applies to donations, loans and regulated transactions.

7.5. Accordingly, under new section 71HA, if a party accepts a donation or enters into a loan or regulated transaction which causes the aggregate total value of the donations it has received *and/or* the loans or regulated transactions into which it has entered to exceed the permitted maximum then specific consequences will follow. Those consequences are that the donation or part of the donation, or the whole of the loan or regulated transaction, which has the effect of causing the aggregate value of donations and/or loans and regulated transactions to exceed the permitted maximum will be treated as if it were impermissible or unauthorised. That may be an offence under the 2000 Act. The donation, loan or regulated transaction is regarded as having been entered into 3 months after the polling date for these purposes. This is to enable a party to repay the donation (or portion of it) or any amount received under a loan or regulated transaction within 3 months of the election having taken place.

7.6. Paragraph 2 of the Schedule inserts new section 71GA into the 2000 Act to prohibit a non-Gibraltar party which has entered into a loan or regulated transaction with a Gibraltarian individual or body during the four month pre-election period from entering into an arrangement at any time to increase the value of the loan or regulated transaction after the election has taken place. The intention behind this is to prevent non-Gibraltar parties from using existing loans or regulated transactions (i.e. those entered into during the permitted period) as a means of borrowing more money from Gibraltar individuals or bodies after the end of the permitted period. This will ensure that these parties will not have access to sources of funding additional to those available to other registered UK parties outside of the permitted period.

7.7. Paragraph 3 replicates for loans and regulated transactions the principles underlying section 54(2A) of the 2000 Act as inserted by the 2004 Order. The effect is

to ensure that Gibraltar parties may only enter into loans or regulated transactions with those listed in section 54(2A). That limitation also applies to UK parties who wish to contest a European Parliamentary election in Gibraltar, subject to the additional limitation that loans and regulated transactions may only be entered into during the 4 month pre-election period. This brings the position on loans and regulated transactions into line with the pre-existing treatment of donations made to UK parties in Gibraltar.

7.8. Paragraphs 5 to 13, each make further related transitional and other consequential changes to Part 4A of the 2000 Act to ensure that both the exiting provisions in Part 4A, its related Schedules 6A and 7A (which relate to the reporting of loans and regulated transactions) and the new provisions mentioned above operate correctly, are not retrospective and contain appropriate references to Gibraltar legislation and institutions.

7.9 The reference in the amendments made by paragraphs 11, 17(3) and (9) to "*corresponding provisions forming part of the law of Gibraltar*" is intended to reflect the fact that shortly after the Order is likely to be laid or made Gibraltar will introduce a law of its own that will make provision relating to anonymous registration in terms equivalent to that in the Representation of the People Act 1983. However, that legislation is not yet currently in place. The drafting here is designed to ensure that the Order incorporates a reference to this forthcoming legislation so as to avoid the need for a separate stand-alone amendment to be made to the Order shortly after the Gibraltar legislation is passed.

- ***Consolidation***

7.10 The Ministry of Justice does not have any current plans for the consolidation of the Political Parties, Elections and Referendums Act 2000.

8. Consultation outcome

8.1 Both the Government of Gibraltar and the Electoral Commission have been consulted on the draft Order and are content.

9. Guidance

9.1 The Electoral Commission provides detailed guidance for political parties to assist their compliance with the statutory requirements in relation to the reporting of loans and donations. This can be accessed using the Electoral Commission's website or directly using this link:
http://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0018/13707/DonationsloansguidanceFinal_27536-17297__E__N__S__W__.pdf

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

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 Electoral Commission carries out regular reviews of the legislation regulating donations and loans to political parties.

13. Contact

Ruth Sloan at the Ministry of Justice (tel: 02033343895 or email: ruth.sloan@justice.gsi.gov.uk) can answer any queries regarding the instrument.