



Northern
Ireland
Office

CONSULTATION PAPER

**Donations and Loans
to Northern Ireland
Political Parties:**

The Confidentiality
Arrangements

August 2010

Contents

Foreword by Hugo Swire MP, Minister of State

Chapter 1 – Background.....5

Chapter 2 – Extending the prescribed period: relevant factors.....9

Chapter 3 – Options.....15

Chapter 4 – Responding to this consultation.....19

Chapter 5 - Responses: Confidentiality and disclaimer.....21

Foreword by Hugo Swire MP, Minister of State for Northern Ireland



It is crucial in any democratic society for citizens to play an active role in political and civic life and this Government has expressed its strong commitment to encouraging this. It is equally important that there is maximum transparency in party funding arrangements so that voters can have full confidence that the political process is geared towards their needs and not those of special interest groups.

The particular circumstances and recent history of Northern Ireland has meant that transparency has not yet been delivered for voters in Northern Ireland. Those wishing to contribute funding to a political party in Northern Ireland can do so confidentially and avoid the risk of intimidation because details of such funding are held confidentially by the Electoral Commission. The Commission checks rigorously whether these donations have come from a permissible source. Nevertheless, the voter is given no indication of the identities of donors, of the amounts received by parties or whether the donor was an individual, business or other organisation.

I believe that there is a case for greater transparency in the process and, given the Government's desire to normalise politics in Northern Ireland, we are prepared to take steps to achieve this. However, I would want to be sure that any increase in transparency would not lead to individuals or organisations withdrawing their support to political parties because of the risk of intimidation.

For this reason, the consultation sets out a number of options for next steps and I would urge all those with an interest in this issue to respond to enable the Government to make an informed choice on the best way forward.

A handwritten signature in black ink, appearing to read 'H. Swire'.

**Hugo Swire MP
Minister of State**

CHAPTER 1 - Background

1.1 Introduction

1.1.1. This consultation paper seeks views on whether details of donations and loans made to political parties in Northern Ireland should be made public or whether some confidentiality provisions should continue to apply for a further period.

1.1.2 Currently, political parties must report details of donations and loans they have received above certain thresholds¹ to the Electoral Commission. However, the Commission is currently under a strict duty not to release information relating to donations and loans made to Northern Ireland political parties publicly. This duty of confidentiality was previously due to cease on 31 October 2010, however Parliament recently approved legislation² to extend this to 1 March 2011 to allow for full consultation on this issue.

1.1.3 The consultation will last for 12 weeks and responses are requested by **25 October 2010**. Further details on how to respond are set out in Chapter 4.

1.2 Overview of current system

1.2.1 In 2000, Parliament approved the introduction of a new regulatory system of party funding³. Broadly speaking, under this new system, details of donations received by political parties must be reported to the Electoral Commission. The Commission then checks whether the donations have been properly made by permissible donors. In 2006, this regulatory system was extended to cover loans made to political parties⁴.

¹ This was originally any donation or loan to a political party worth more than £5000 or a donation or loan to an accounting unit worth more than £1000. However, the Political Parties and Elections Act 2009 increased these thresholds to £7500 and £1500 respectively.

² Control of Donations and Regulations of Loans Etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2010 (“the 2010 Order”)

³ By virtue of the Political Parties, Elections and Referendums Act 2000.

⁴ By virtue of amendments to the 2000 Act made by the Electoral Administration Act 2006.

1.2.2 This new regulatory system was not introduced to Northern Ireland immediately due to the need for further discussion and consultation on whether the circumstances in Northern Ireland required the new rules to be applied with modifications there. In 2006, Parliament approved the Northern Ireland (Miscellaneous Provisions) Act 2006 which provided for the new system to be applied to Northern Ireland with two key policy changes⁵. First, unlike parties elsewhere in the UK, Northern Ireland political parties can receive funding from Irish citizens⁶ and bodies. Secondly, although the Northern Ireland parties are still required to report donations and loans to the Electoral Commission, the Commission is under a strict obligation not to release details of these transactions publicly. These new arrangements have been in place in Northern Ireland since 1 November 2007 for donations and 1 July 2008 for loans.

1.3 The confidentiality provisions

1.3.1 Provision prohibiting the publication of information relating to donations and loans to Northern Ireland political parties⁷ was made because of fears of intimidation of potential donors. There were strong concerns that individuals or businesses making donations to particular parties would face the threat of intimidation or violence if information relating to these donations was made public. The risk of intimidation might then result in potential donors refusing to provide funding to political parties in future.

1.3.2 For this reason, the Miscellaneous Provisions Act and Loans Order place a strict duty on Electoral Commission employees and members not to disclose information it receives in relation to donations and loans made to Northern Ireland political parties. The Commission is however still obliged to

⁵ Referred to hence as “the Miscellaneous Provisions Act”; The Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (referred to hence as “the Loans Order”) provides for similar arrangements in respect of loans.

⁶ Irish citizens are in theory eligible to make donations and loans to parties in GB, but section 54 of the 2000 Act provides that they must be a registered elector in the UK to do so

⁷ For ease of reference, this paper refers to political parties more generally. However, other “regulated donees” such as individual holders of elective office are also covered by confidentiality provisions and any change to the current arrangements would apply to other regulated donees also.

check rigorously that donations and loans received by Northern Ireland political parties have been made lawfully and will publish details of any donation or loan that the party has accepted from an impermissible source (excluding the name of the donor or lender).

1.3.3 It is important to emphasise that the duty on Electoral Commission employees and members not to disclose information relating to these donations and loans publicly is not permanent. The then Government was clear when introducing these provisions that it hoped that the risk of intimidation in Northern Ireland would decrease significantly as greater political stability was achieved. The Miscellaneous Provisions Act therefore provided for the duty of non-disclosure to last for a “prescribed period” running from 1 November 2007 to 31 October 2010, which was extended by the 2010 Order until 1 March 2011. The Secretary of State may make a further Order to extend this prescribed period for up to a further two years⁸.

1.3.4 The Electoral Commission is under an obligation to record donations and loans on a register and, in Great Britain, is required to make this register available for public inspection. The obligation to make the register public in respect of donations and loans made to Northern Ireland parties does not apply during the prescribed period. If the prescribed period was allowed to expire, it is worth emphasising that the Commission would be obliged to release publicly details of all reported donations to political parties in Northern Ireland since 1 November 2007 and all loans since 1 July 2008.

1.4 Legislative timetable

1.4.1 Allowing the prescribed period to expire would not require any further legislative provision. Extending the prescribed period would require the Secretary of State to make an Order providing for this by 1 March 2011. If

⁸ Section 14 of the Miscellaneous Provisions Act provides for the Secretary of State to extend the prescribed period but also provides that “the prescribed period must not be extended for more than 2 years at a time”; the prescribed period for loans was originally 1 July 2008 to 31 October 2010 and article 5(3) makes similar provision in relation to extending the prescribed period (which was extended to 1 March 2011 by virtue of the 2010 Order)

further legislation to extend the prescribed period is required, the NIO would aim to have this laid before Parliament in autumn 2010.

Chapter 2 –Extending the prescribed period: relevant factors

2.1 Introduction

2.1.1 The key question on which views are sought is whether there is a case for extending the prescribed period for a further two years. If the prescribed period is extended then some confidentiality provisions will continue to apply to donations and loans made to Northern Ireland parties until March 2013. These might take the same form as the current confidentiality provisions or might be modified in some way (possible modifications are discussed further in chapter 3). If the prescribed period is not extended, no confidentiality provisions will apply and the Commission's full register of donations and loans will automatically become public.

2.1.2 There are a number of factors that will influence any decision to extend the prescribed period for a further two years. Has the risk of intimidation decreased significantly since 2007? Is there now a greater need for transparency in the way political parties and representatives are funded? Is it possible to provide for greater transparency but still provide protection to potential donors? Is it now time to 'normalise' the rules on donations in line with the rest of UK legislation? What if there was a rapid decline in the security situation? The key factors are discussed in greater detail below.

2.2 Security situation and risk of donor intimidation

2.2.1 There was still a degree of uncertainty regarding the political process in Northern Ireland when the Miscellaneous Provisions Act was being debated and passed by Parliament in 2006 and the prescribed period of 1 November 2007 to 31 October 2010 was being approved. However, the Agreement at St Andrews later that year and the restoration of devolution in 2007 brought a new period of political stability. The IMC report into paramilitary activity during this period also concluded that paramilitary shootings and assaults had

decreased substantially although many loyalist and dissident Republican groups remained active⁹.

2.2.2 Devolved government in Northern Ireland has continued to provide political stability since the institutions were restored in 2007. However, recent IMC reports into paramilitary activity have concluded that there has been an increase in paramilitary assaults and shootings in recent years and are now averaging between two and three victims every week.¹⁰

2.2.3 In its most recent report, the IMC also emphasised that the statistics on which it based its conclusions referred only to acts of violence which came to the notice of the police and that not all incidents are reported. The report adds that:

“...it is not possible to quantify intimidation short of actual violence, which may also not be reported and which can have just as traumatic an impact” (Pg 21)¹¹

2.2.4 Although it is not possible to provide precise figures on the current level of intimidation, it is clear that there has been a rise in violent activities of paramilitaries more generally in Northern Ireland in recent years. It is likely that this rise in violent activity will have been accompanied by an increase in intimidation.

2.3 Greater trust through more transparency

2.3.1 Last year, the Electoral Commission commissioned public opinion research on current party funding arrangements in Northern Ireland. The report concluded that there was clear support for more openness and transparency on matters relating to party and election finance with six out of

⁹ Twelfth Report of the Independent Monitoring Commission October 2006 Pg 28

¹⁰ Twenty Third Report of the Independent Monitoring Commission 26 May 2010 Pg 25 HC17

¹¹ Ibid Pg 21

eight focus groups supporting the removal of the current confidentiality provisions¹².

2.3.2 The report also emphasised that, although participants possessed limited knowledge of the detail of the current arrangements:

“...there was a fair amount of cynicism surrounding these issues, stemming from a general distrust in politicians and politics.” (Pg 16)

2.3.3 It is important to reflect on the extent to which removing the current confidentiality provisions might result in greater confidence in party funding arrangements in Northern Ireland and greater trust in politicians and politics more generally.

2.4 Other factors

2.4.1 As noted above, the primary reason for the current confidentiality provisions is to protect potential donors from the threat of intimidation and violence. However, in the report commissioned by the Electoral Commission referred to above, a number of participants raised the point that there may be other repercussions of making identities of donors known. In particular, they raised concerns that businesses in certain areas that donate to a particular party may lose custom or face outright boycott from large sections of the community opposed to that party's beliefs.

2.4.2 It may be argued that this is a problem elsewhere in the UK and beyond and that all business owners, particularly those with a large customer base, understand that expressing active support for a political party or cause may result in potential customers deciding to spend their money elsewhere.

2.4.3 Alternatively, it may be argued that the division amongst unionists and nationalists in Northern Ireland is sufficiently strong to warrant special provision and that business owners identified as providing financial support to

¹² Party and election finance – public opinion research (research report prepared for the Electoral Commission) Ipsos MORI 10 July 2009 Pg 16

parties may find that significant numbers of people refuse to use their services for political reasons. Although such action may be non-violent and lawful, it might still result in potential donors being reluctant to provide financial support to political parties in Northern Ireland.

2.4.4 Respondents to this consultation are asked to consider whether any other factors – for example, the prospect of a business, or even an individual, being shunned by a community if it is known that they donated to a Northern Ireland political party – should be taken into account when determining whether the prescribed period should be extended.

2.5 The ability to modify arrangements quickly

2.5.1 As noted above, the Secretary of State may make an Order to extend the prescribed period for up to a further two years. If the Secretary of State does not make an Order, the prescribed period will expire. While the prescribed period is ongoing, the Secretary of State has the power under the Miscellaneous Provisions Act and Loans Order to make provision modifying the confidentiality arrangements.¹³ For example, modifications could be made to relax the confidentiality arrangements to some extent (e.g. by allowing some details relating to donations to be released – such as the name of the recipient party and the amount received – without actually releasing the name of the donor). Or, if the confidentiality arrangements had been relaxed, but there was then a rapid deterioration in the security situation, the law could be amended again quickly to provide for the previous strict non-disclosure arrangements to apply. But this ability to make modifications ceases to exist once the prescribed period comes to an end; after that, further provision on confidentiality could only be introduced through primary legislation.

2.5.2 The types of modifications which might be made during the prescribed period are discussed in more detail in Chapter 3. However it may be worth considering more generally whether there is a case for extending the

¹³ Section 15 of the Miscellaneous Provisions Act and article 5

prescribed period for a further period, so that the law may be modified quickly in line with the prevailing security climate and threat of intimidation to donors.

2.6 Donations and loans made during the prescribed period

2.6.1. As noted in paragraph 1.3.4 above, at the point when the prescribed period expires¹⁴, details of donations and loans reported to the Electoral Commission during the prescribed period (that is from 1 November 2007 onwards) will be made public. A case could be made for keeping confidential any information reported about donations and loans made *during* the prescribed period, and for the Commission to release only information relating to donations and loans made *after* the expiry of the prescribed period. However, the current legislative framework does not permit this; such a change could only be secured through amendment via primary legislation and it is highly unlikely that this could be done before 1 March 2011. If a decision was made that details of all donations and loans made during the prescribed period should remain confidential, the current prescribed period would need to be extended to allow time for the necessary legislative provision to be made.

CHAPTER 2 – Recap

Views are sought on whether there is a case for extending the prescribed period for up to a further two years, and thus retaining some confidentiality provisions for donations and loans made to political parties until then.

Various factors might influence this decision, including:

- **The degree to which there remains a risk of donor intimidation, particularly given the level of paramilitary activity in recent years;**
- **The extent to which full transparency in respect of donations**

¹⁴ If the prescribed period is extended by Order, under current law this will simply delay publication of all donations and loans already reported to the Commission for up to a further two years.

could help build trust and respect for politics more generally;

- **Any other factors which might be considered relevant (for example the possibility of businesses losing custom);**
- **Whether there is a need to retain the ability to modify arrangements quickly (for example to cope with any rapid deterioration in the prevailing security climate);**
- **The fact that details of donations and loans reported to the Commission during the prescribed period will be released when the prescribed period ends (unless a change is made via primary legislation, which could not be done before the end of the current prescribed period).**

Chapter 3 –Options

3.1 Introduction

3.1.1 All confidentiality arrangements for donations and loans will cease on 1 March 2011 unless the Secretary of State makes an Order, approved by Parliament, to extend the prescribed period for up to two years. As noted above, the Secretary of State may also make a further Order to modify the extent of the confidentiality requirements, if the prescribed period is extended. Chapter 2 sets out the factors which might be relevant to a decision on whether the prescribed period should be extended. This chapter sets out the three main options for dealing with donations and loans beyond 1 March 2011. It also seeks views on whether details of donations made during the prescribed period should be released by the Electoral Commission when the prescribed period has ended.

3.2 Option 1 – Allow the prescribed period to expire and make the full register of donations available to the public

3.2.1 No further legislation would be required to enable the prescribed period to expire. After 1 March 2011, the Electoral Commission would be obliged to publish the register it currently maintains, which provides details of all donations and loans reported to the Commission from Northern Ireland recipients from 1 November 2007. Details of any future donations and loans reported to the Commission would also be available for public inspection and Commission employees and members would no longer be under a duty not to disclose such information.

3.2.2 If the prescribed period was allowed to expire, confidentiality requirements could only be re-introduced by primary legislation, which would usually take several months to implement.

3.3 Option 2 – Extend prescribed period, retaining current arrangements

3.3.1 The Secretary of State may make an Order to extend the prescribed period for a further two years if approved by Parliament following debate in

both Houses. This would simply extend the current arrangements and continue to prohibit the Electoral Commission from making details of donations and loans made to Northern Ireland political parties available for public inspection.

3.3.2 Option 2 does not anticipate any short term plans to relax or modify the current arrangements. However, the Secretary of State would retain the capacity to make provision through secondary legislation to relax the current arrangements throughout the two year extension period in response to any change to the prevailing security climate.

3.4 Option 3 – Extend prescribed period but with modifications

3.4.1 The Secretary of State may make provision modifying the current confidentiality arrangements alongside any Order extending the prescribed period. This could allow for the current arrangements to be relaxed substantially at the point at which the prescribed period is extended. For example, it could provide for the Electoral Commission to publish details of the donation, including the recipient party, amount received and whether the donor was a business or individual, but not the actual name or address of the donor. Provision might also be made to allow political parties to waive the need for confidentiality in respect of donations where there is unlikely to be a risk of intimidation and for the Commission to then publish full details of such donations.

3.4.2 We would be grateful if proponents of option 3 could provide greater detail on the extent to which the current system should be relaxed in any response and whether such modifications should apply to all donations and loans made since 1 November 2007 or only to those made from 1 March 2011 onwards¹⁵.

3.4.3 As with option 2, under option 3 the Secretary of State would still retain the power to make further modifications to the existing confidentiality

¹⁵ The modification power contained in s.15 of the Miscellaneous Provisions Act allows for provision to be made for either option

arrangements through secondary legislation at any point during the extended period (for example, in response to any positive or negative change to the prevailing security climate).

3.5 Releasing details of loans and donations made when the prescribed period has ended

3.5.1 In addition to the above options, views are also sought on whether donations and loans made during the prescribed period should be published by the Electoral Commission when the prescribed period has ended. As paragraph 2.6.1 above makes clear, the current law provides for details of all donations and loans reported to the Commission since 1 November 2007, including the names of donors, to be made public when the prescribed period expires.

Allow these details to be released

3.5.2 No further legislation would be required for these donations to be made public when the prescribed period has ended. The legislation would simply expire at which point information on donations and loans reported to the Commission from 1 November 2007 would be released publicly either on 1 March 2011 (if option 1 above was pursued) or up to 1 March 2013 (if options 2 or 3 were pursued).

Keep these details confidential

3.5.3 There may be strong support for donations and loans reported to the Electoral Commission during the prescribed period to be kept confidential when the prescribed period has expired. However, the current law does not provide for this and can only be amended by primary legislation – that is a Bill before Parliament – which usually takes around six to nine months to implement. It is therefore very unlikely that such legislation could be made after the 12 week consultation period and before the current prescribed period expires on 1 March 2011.

3.5.4 Those in support of keeping details relating to donations and loans made during the prescribed period confidential when the prescribed period expires should therefore be aware that the prescribed period itself will need to be extended to achieve this (which only options 2 and 3 above provide for). This will provide time for the necessary primary legislation to be taken forward.

CHAPTER 3 – Summary of Key Questions:

(i) Please state which option you support for future policy on political donations and loans in Northern Ireland:

- **Option 1 – Full transparency**
- **Option 2 - Prescribed period extended for further two years in line with current confidentiality arrangements**
- **Option 3 – Prescribed period extended but with modifications to provide for increased transparency (please provide details of modifications sought)**

(ii) Please also state whether you believe that donations and loans reported to the Electoral Commission during the prescribed period (which commenced on 1 November 2007) should be released publicly when the prescribed period has ended?

CHAPTER 4

Responding to this consultation

- 4.1 This consultation will run for 12 weeks and responses are therefore requested by **25 October 2010**. Email responses should be sent to: electionsunit@nio.x.gsi.gov.uk; faxed responses to 02072100248; and by post to:

Human Rights & Electoral Reform Unit
Northern Ireland Office
11 Millbank
LONDON
SW1P 4PN

Please call 02072106569 for queries in relation to this consultation. The NIO textphone number is 02890527668.

- 4.2 This consultation document is available on the NIO website: www.nio.gov.uk under Public Consultation. Printed copies of this consultation document may also be obtained free of charge from the above address. You may make additional copies of this document without seeking permission. This document can also be made available on request in different formats, for individuals with particular needs.
- 5.3 If you are responding on behalf of a group or organisation please make this clear. The NIO is committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and our response to them. **If you do not wish your comments to be published in this way, you must make this clear in any response you submit.**

5.4 If you have any concerns or complaints about the consultation process you should contact the NIO's consultation co-ordinator, Martin Adams on 020 7210 6458, or e-mail martin.adams@nio.x.gsi.gov.uk or by post:

Martin Adams
Consultation Co-ordinator
Northern Ireland Office
11 Millbank
London
SW1P 4PN

CHAPTER 5

Responses: Confidentiality and Disclaimer

- 5.1 The information you send us may be passed to colleagues within the Northern Ireland Office, the Government or related agencies. **Individual responses may also be published on the internet at www.nio.gov.uk, unless a respondent has requested otherwise.** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily: the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations (2004).
- 5.2 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice, with which public authorities must comply, and which deals, amongst other things, with obligations regarding confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
- 5.3 Please ensure that your response is marked clearly if you wish your response to be kept anonymous. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Confidential responses, included in any statistical summary of numbers of comments received and views expressed, will be anonymised. The Department will process your personal data strictly in accordance with the Data Protection Act. In most circumstances this will mean that your personal data will not be disclosed to third parties.

