

Summary: Intervention & Options

Department/Agency:

Ministry of Justice

Title:

Impact Assessment for Political Parties and Elections Act – Control of donations to Members Associations

Stage: Royal Assent

Version: Final

Date: 20 July 2009

Related Publications: Party Funding and Expenditure in the United Kingdom: The Government's proposals (June 2008) London: The Stationery Office

Available to view or download at: <http://www.ialibrary.berr.gov.uk>

Contact for enquiries: Maxine Monks

Telephone: 020 3334 4772

What is the problem under consideration? Why is government intervention necessary?

Members Associations are defined widely by the Political Parties, Elections and Referendums Act 2000 (PPERA). They can have loose and diverse structures, as current legislation does not require specific posts or organisational arrangements. PPERA provides that where a members association has a treasurer then that individual is responsible for compliance and, potentially, liable for any breach; and that where a members association does not have a treasurer they are deemed to have a 'responsible person' who is responsible for dealing with donations to the association; but there has been concern that the current statutory arrangements do not offer sufficient clarity or certainty as to whom liability attaches to in the event of a failure by an MA to comply with reporting requirements.

What are the policy objectives and the intended effects?

To ensure that the regulatory regime as it applies to members associations is clear and enforceable in line with the regime for other regulated entities.

What policy options have been considered? Please justify any preferred option.

Option 1: No legislative change.

Option 2: Legislative change to require members associations that do not have a treasurer to appoint a responsible person within 30 days of receiving a reportable donation (i.e. above £7,500), or receiving an impermissible recordable donation (i.e. above £500). A responsible person will also be required for the reporting of loans.

The Government concluded that option 2 should be pursued since this addressed an existing problem in PPERA whereby liability was unclear.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Government will consider whether this policy needs to be reviewed after the next general election.

Ministerial Sign-off

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date: 20 July 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Control of donations to Members Associations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups': It is not possible to assess the monetised costs of this policy option.
	One-off (Transition)	Yrs	
	£	1	
	Average Annual Cost (excluding one-off)		
	£	10	Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' This proposal will require members associations receiving donations of more than £7,500 to appoint a responsible person where they do not currently have one.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups': It is not possible to assess the financial value of the benefits of this policy option.
	One-off	Yrs	
	£		
	Average Annual Benefit		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' This proposal will enable the Electoral Commission to give clear guidance to members associations as to what is required of them to comply with reporting requirements, reducing the prospect of unintentional cases of non-compliance. The Electoral Commission will also be able to deal more effectively with cases of non-compliance. This will result in improved public confidence in the political system.			

Key Assumptions/Sensitivities/Risks:

Price Base Year	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?		UK-wide	
On what date will the policy be implemented?			
Which organisation(s) will enforce the policy?		Electoral Commission	
What is the total annual cost of enforcement for these organisations?		£ Not available	
Does enforcement comply with Hampton principles?			
Will implementation go beyond minimum EU requirements?			
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	N/A	N/A	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)
 Increase of £ Decrease of £ **Net Impact** £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Members associations are defined at schedule 7(6) of the Political Parties, Elections and Referendums Act 2000 (PPERA) as any organisation consisting wholly or mainly of members of a registered party, other than a registered party itself; the central organisation of a registered party or an accounting unit of a registered party which has responsibility for its own finances. Members associations are not required to register with the Electoral Commission.

Members associations receiving donations are deemed to have a 'responsible person' under schedule 7 (9) of PERPA. This person is either the treasurer, if there is one, or 'any person responsible for dealing with donations to the association'. It is this person who is held liable if there is a failure to comply with the reporting requirements under Schedule 7. The definition of 'responsible person' is broad, presumably to avoid being prescriptive as to the composition of such a broad group of organisations.

Concern has arisen that this loose formulation does not provide certainty as to who is liable in the event of a failure to comply with reporting requirements. This would mean that in the event of a breach in the law on loans and donation reporting by a members association it could be difficult to establish liability for the breach.

Option 1: No legislative change

As the law stands there is no legal requirement for a members association itself to ensure that donations or loans are reported where it is not possible to identify who is the responsible person. No change would fail to address the concern that members associations could avoid liability for offences under PERPA where there is evidence that an offence has been committed by failing to identify who their responsible person is. Failure to tackle this problem could have a damaging effect on public confidence in the political system.

Option 2: Legislate change to require members associations that do not have a treasurer to appoint a responsible person to whom liability would attach in the event of a failure to comply with donation and loan reporting requirements

The Government considered concerns raised regarding members associations and decided to table amendments during the passage of the Political Parties and Elections Act to address this. The provisions require members associations that do not have a treasurer and receive a permissible donation or loan in excess of the reportable threshold – that is, with a monetary value of above £7,500 – or an impermissible donation above the recordable threshold - that is, £500 - to appoint a 'responsible person', to whom liability would attach for any failures to adequately comply with that or subsequent reporting requirements to the Electoral Commission over the course of a year. In addition a members association may appoint a responsible person on a voluntary basis in anticipation of receiving a donation of that size in the future.

Failure to comply with these new requirements would be an offence. In addition, the provisions make clear that either the responsible person or the members association may be liable for a failure to comply with the requirements under PERPA to report donations or loans.

The new requirements will require a notice appointing a responsible person to be signed on behalf of the members association, and to contain a signed statement by the responsible person confirming that he/she is willing to be appointed. The notice will contain certain details pertaining to the association: name and address, full name of the individual to be appointed, and their home address. The notice would be in force from the date it is received by the Electoral Commission and lapses 12 months later unless a renewal notice has been received.

It will be an offence to fail to appoint, without reasonable excuse, a responsible person as required under the new regime. This offence can attract a fine of up to level 5 on the standard scale in the event of summary conviction. Paragraph 12 of schedule 7 PERPA provides that it is an offence to fail to deliver a donation report, and sub-paragraph 4 of this amendment provides that this offence is committed by the

regulated donee in cases other than members associations, or by the members association and relevant responsible person in cases of members associations.

Why this is the preferred option

If the Government chose not to legislate in this area, concerns surrounding the lack of clarity around the regulation of members associations and their transactions would continue, and thus continue to undermine public confidence in the political process. Option 1 is therefore not, in the Government's view, feasible.

Given the nature of members associations the Government does not want fundamentally to alter their status or add unnecessary regulatory burdens. Equally the Government wants to ensure that the PPERA regime is enforceable and that breaches of the rules can be pursued robustly. Option 2 was the preferred choice as it will ensure that the regulatory regime as it applies to members associations is as clear and enforceable as that applied to other regulated entities. This will result in the desired effect of increasing public confidence in the process without placing members associations under a disproportionate burden of compliance.

Option 2 attracted cross-party support during its passage in the Political Parties and Elections Act, and support from the Electoral Commission¹.

Evidence on impact

Since the inception of the reporting requirements in PPERA in 2001, 409 donations of above the reportable threshold² (currently £5,000, but due to rise to £7,500 when the relevant provisions of the Political Parties and Elections Act are commenced) have been reported to the Electoral Commission (*source: Electoral Commission website*). The table below shows the distribution of reported donations and of donations of more than £7,500 per year since 2001:

Year	Donations Made	Donation above £7,500
2001	40	12
2002	41	14
2003	60	14
2004	73	32
2005	33	16
2006	23	18
2007	27	24
2008	34	33
2009	7	5
TOTAL 2001- 2009	388	168

Since members associations are already required to report donations received to the Electoral Commission, there should be no additional reporting burden. We do not consider that there will be a financial burden arising from the requirement to appoint a responsible person.

¹ Electoral Commission Briefing Note - *Political Parties and Elections Bill House of Lords Report Stage - 15 and 17 June 2009* - http://www.electoralcommission.org.uk/data/assets/pdf_file/0003/77952/Lords-Report-Stage-FINAL.pdf

² Including impermissible donations and public funds, both of which are excluded from the table

Summary

Summary of costs/disadvantages	Summary of savings/benefits
Requirement for members associations to appoint a responsible person where they do not already have one.	Improved transparency surrounding the source of donations. Improved public confidence in the political system. An increased deterrent to those seeking to circumvent the transparency arrangements in PPERA. Greater accountability.

Small Firms Impact Test

The Government has committed to considering the impact on small firms when legislation will affect small firms or the business environment in which they operate. The policy option that we have chosen will only impose a new requirement on donations from individuals. This policy option does not affect companies and therefore we do not consider that a SFIT is necessary.

Privacy Impact Assessment

We do not believe that this policy requires a full or small privacy impact assessment. The new provisions are fully compliant with the Data Protection Act and other relevant privacy law.