

DONATIONS

Explanatory Notes for Candidates

Introduction

The Political Parties, Elections and Referendums Act (PPERA) 2000 inserted new Schedule 2A to the Representation of the People Act (RPA) 1983. Schedule 2A of the RPA regulates donations made to Candidates at elections to local government¹, the devolved legislatures and the Westminster and European Parliaments for the purpose of meeting their election expenses. Under the controls introduced at Schedule 2A, a Candidate may only accept donations over £50 from certain sources, and any donations accepted by the Candidate must be reported in the Candidate's election expenses return. A Candidate commits an offence if he or she accepts a donation from an impermissible source, or fails to submit a report of donations in his or her expenses return which complies with the requirements of Schedule 2A to the RPA.

The following guidance notes explain the responsibilities of Candidates and their Agents in handling and reporting donations. Further guidance can be obtained from:

Registrations and Compliance Team
The Electoral Commission
Trevelyan House
30 Great Peter Street
London
SW1P 2HW

The team will be happy to answer any queries that you may have and can be contacted on:

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¹ Excluding parish and community level elections in England and Wales, and all local government elections in Scotland, but including elections in Northern Ireland.

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Part 1: General – what is a donation and who can make one?

1. Why do donations have to be reported?

The Political Parties, Elections and Referendums Act (PPERA) 2000 amended the Representation of the People Act (RPA) 1983 to bring it into line with the treatment of donations made to political parties, holders of elective office, members of registered parties and members associations. Although previously Candidates were required to report any 'money, securities or equivalent' received for the purposes of election expenses, the PPERA introduced additional controls regulating who can make donations, and specifying the information that Candidates must submit in their expenses return in respect of all accepted and received donations over £50. The purpose of the new controls is to ensure transparency in the funding of Candidates and the UK's democratic system.

2. What donations come within the controls?

The RPA regulates donations to Candidates or their election agents for the purpose of meeting election expenses incurred by or on behalf of the Candidate. Only donations of more than £50 are regulated by the RPA.

3. Which elections are regulated?

The RPA regulates donations to Candidates at elections to:

- local government in England and Wales(excluding parish and community council elections);
- the Scottish Parliament (excluding Local Government Elections in Scotland);
- the National Assembly for Wales;
- the Northern Ireland Assembly (excluding Local Government Elections in Northern Ireland);
- the Westminster Parliament;
- the European Parliament.

4. What is a donation?

The RPA defines a donation as any of the following:

- (a) any gift² to the Candidate or his election agent of money or other property;
- (b) any sponsorship provided in relation to the Candidate (see section 6 below);

² Includes any bequest or other form of testamentary disposition

- (c) any money spent (other than by the Candidate, his election agent or any sub-agent) in paying any election expenses incurred by or on behalf of the Candidate;
- (d) any money lent to the Candidate or his election agent other than on commercial terms;
- (e) the provision for the use or benefit of the Candidate of any property, services or facilities (including the services of any person) other than on commercial terms.

5. Are any payments or services NOT regarded as a donation?

The following are not regarded as donations:

- (a) any donation of £50 or less;
- (b) any facilities provided in relation to any right conferred on a Candidate at an election by the RPA;
- (c) the provision by an individual of his own services (which he provides voluntarily in his own time and free of charge);
- (d) any interest accruing to a Candidate or his Election Agent in respect of a donation from an impermissible or unidentifiable source which is dealt with by the Candidate or his Election Agent in accordance with section 56 of the PPERA (see sections 14 and 15, below).

6. What is sponsorship?

Sponsorship is defined as any money or property transferred to the Candidate or to any other person for the purpose of helping the Candidate meet costs incurred in connection with:

- any conference, meeting or event organised by or on behalf of the Candidate;
- the preparation, production and dissemination of any publication by or on behalf of the Candidate; or
- any study or research organised by or on behalf of the candidate.

This does not include:

- any admission charge to an event as listed above;
- the purchase price of (or any other charge for access to) any publication;
- commercial payments to place advertisements in publications which are made at the true commercial rate.

7. Are there any restrictions on who may make a donation to a Candidate?

Only certain individuals and organisations may make a donation of more than £50 to a candidate. Candidates and their election agents may only accept

donations from an individual or organisation that, at the time the donation is received, is a permissible donor under the PPERA.

8. What is a 'permissible donor'?

The following are classified as permissible donors by the PPERA:

- (a) an individual registered in an electoral register;
- (b) a company –
 - (i) registered under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, and
 - (ii) incorporated within the United Kingdom or another member State of the European Community,which carries on business in the UK;
- (c) a registered party;
- (d) a trade union in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992;
- (e) a building society (within the meaning of the Building Societies Act 1986);
- (f) a limited liability partnership registered under the Limited Liability Partnerships Act 2000, or any corresponding enactment in force in Northern Ireland, which carries on business in the United Kingdom;
- (g) a friendly society registered under the Friendly Societies Act 1974, or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969; and
- (h) any unincorporated association of two or more persons which does not fall within any of the above categories but which carries on business or other activities wholly or mainly in the United Kingdom and whose main office is there.

In addition, a donation can also be accepted if:

- it is from an exempt trust (see section 24);
- it is transmitted by a trustee on behalf of a person who is a permissible donor;
- it is from the bequest of an individual who was registered to vote at any time in the five years before his or her death.

9. What if the donation is less than £50?

Donations of £50 or less are not subject to the controls of the RPA, and a candidate may therefore accept a donation of £50 or less without checking whether it is from a permitted source.

However, candidates should be aware of any unusual donations with a value of £50 or less – for example, numerous electronic transfers of £50 – and ensure that these are not intended to evade the controls on donations. In cases of doubt, further advice should be obtained from the Commission's Registrations & Compliance Team.

Part 2: Receiving, accepting and returning donations

10. To whom should donations be given?

Any money or property provided by anyone other than the Candidate or election agent, for the purpose of meeting the Candidate's election expenses, must be provided to the Candidate or his election agent. This does not apply to any money or other property provided for the purpose of meeting expenses that can lawfully be paid by someone other than the Candidate, election agent, or any authorised sub-agent.

11. Who is responsible for handling donations?

If an election agent has been appointed, the Candidate is required to pass donations to the election agent immediately upon receipt.

If a candidate receives a donation after the deadline for appointing an election agent, the Candidate shall immediately pass the donation, and any relevant information received with it, to the election agent. The donation will then be treated (in accordance with sections 13, 14 and 15, below) as if the election agent had received it on the date on which the donation was received by the Candidate.

If a Candidate receives a donation before an agent has been appointed, the candidate must take the necessary steps to deal with the donation as described at sections 13, 14 and 15, below. On the appointment of an agent, the candidate must pass the donation and all relevant information about it to the agent.

If the donation is received before the deadline for appointing an agent but after an agent has been appointed, the Candidate shall immediately pass the donation and any relevant information to the agent, or deal with it himself as described at sections 13, 14, and 15. If the Candidate deals with the donation himself, he must pass the donation and any information about it to the agent as soon as reasonably practicable.

12. When does a Candidate receive a donation?

A Candidate is deemed to have received a donation on the date on which he or she (or the election agent) takes possession of the donation. If the donation is transferred into a bank account electronically, the donation is deemed to have been received on the day on which the Candidate is notified of the payment (eg, the date of the next bank statement for the relevant account).

13. What action must be taken when a donation of more than £50 is received?

On receiving a donation of more than £50, a Candidate or Election Agent (see sections 10 and 11 above) must first decide whether or not there is any reason immediately to refuse the donation. If not, then the Candidate or election agent must take all reasonable steps to verify or find out the identity of the donor, and therefore to confirm whether or not the donation is from a permissible source.

In order to clarify whether or not a donation is from a permissible donor, Candidates should ensure that they have the information specified at section 21 for each type of donor. If the donation is from an impermissible or unidentifiable source, the donation should be dealt with in accordance with section 56 of the PPERA (see sections 14 and 15, below).

Under s.56 of the PPERA 2000, Candidates are allowed a period of 30 days (starting with the date of receipt of the donation) in which to make any enquiries, and to take any necessary action. After that time they will be regarded as having accepted the donation, unless a record can be produced showing that it has been returned to the donor or otherwise been disposed of in accordance with the requirements of the Act. If a Candidate does not wish to accept a permissible donation, it must therefore be returned within 30 days. Failure to do so is an offence (see section 25 on Penalties).

Donations may be held in an account whilst enquiries are being undertaken.

14. What action must be taken when a donation of more than £50 from an impermissible donor is received?

If a donation of more than £50 is received from an impermissible donor, the donation must be returned to the person who made the donation (or to any person acting on their behalf) within the thirty-day period beginning with the date on which the donation was received.

15. What action must be taken when a donation of more than £50 is received from an unidentifiable donor?

If a Candidate is unable to ascertain the identity of a donor who made a donation of more than £50, the donation must be returned (within 30 days) to one of the following:

- if the donation was transmitted by an identifiable person (other than the donor), it should be returned to that person; or
- if the donor used an identifiable financial institution (eg, a bank), it should be returned to that institution; or
- otherwise, it should be sent to the Electoral Commission (for payment into the Government's Consolidated Fund).

16. What if a person makes a donation to an agent acting as agent for more than one Candidate?

Where a donation is given to an agent acting on behalf of more than one candidate, the agent will need to ascertain whether the donor intended for the donation to be attributed equally between all the candidates, or whether it was intended specifically for one or more of the Candidates on whose behalf the agent is acting.

The donation should be apportioned between the Candidates on the basis of the information supplied by the donor.

17. What if a person gives a donation of more than £50 on behalf of more than one person, or makes a donation from a joint bank account?

If one person makes a donation to a Candidate on behalf of more than one person, each individual contribution of more than £50 should be reported as if it were a separate donation from the person contributing that sum. When making such a donation, the principal donor must give the details specified at section 22 for each of the people/organisations who have contributed more than £50 to the donation.

Where a donation is made from a joint bank account, the donation should be treated as being made equally by all the account holders, and therefore split accordingly. Each of the account holders must be a permissible donor (see section 8).

18. What if someone gives a donation on behalf of someone else?

The person transferring the donation must ensure that the Candidate is given the full name and address (and company registration number if applicable) of the person giving the donation. Failure to do so without reasonable excuse is an offence (see section 25 on Penalties).

Part 3 Recording and reporting donations

19. What record of donations should Candidates keep?

Candidates and their agents should ensure that they keep full records of donations that have been received and accepted to enable them to make a full statement of donations in their election expenses return. The statement of donations included in a Candidate's election expenses return should include details of:

- any accepted donations of more than £50;
- any impermissible donations received;
- any donations received from unidentifiable sources.

20. When and how do donations have to be reported by a Candidate?

A statement of relevant donations made to the Candidate or election agent is required to be included as part of the Candidate's election expenses return. This return should be submitted to the relevant electoral office within 35 days of the day on which the result of the election was declared.

21. When and how do donations have to be reported by a Candidate at elections for the Mayor of London and GLA?

Candidates for the Mayor of London should submit their returns no later than 70 days after the date on which the result of the election is announced, whilst election expenses returns for elections to the GLA should be returned within 70 days after the day on which the last of the successful candidates is declared. Returns in respect of elections to the GLA should contain a statement of all relevant donations made to each of the candidates on the relevant party list. For further information, please refer to the guidance notes on candidates' election expenses returns.

22. What information should be included in a Candidate's expenses return?

For each **accepted permissible donation** you should give:

- the date of receipt of the donation;
- the date of acceptance of the donation;
- the amount, or nature and value, of the donation;
- the information specified below for each type of donor:

- (a) **Individual** – the full name of the donor, their address in the electoral register, and their electoral roll number. In the case of a bequest, you should give the last address at which the individual leaving the bequest was registered to vote (if they were not registered at the time of their death).

- (b) **Registered party** – the name of the party and the address of its registered party headquarters, and if applicable the name of the local branch of the party making the donation;
- (c) **Company** - the company's registered name, the address of its registered office and its registration number;
- (d) **Trade Union** - the union's name and the address of its head or main office;
- (e) **Building Society** – the society's name and the address of its principal office;
- (f) **Limited Liability Partnership** – the partnership's name and the address of its registered office;
- (g) **Friendly or other Registered Society** – the name of the society and the address of its registered office; or
- (h) **Unincorporated Association** – the name of the association and the address of its main office in the UK.
- (i) **Exempt Trusts**–

(i) in the case of a Trust created before 27 July 1999, and to which no property has been transferred nor the terms of reference varied on or after that date:

- the date the Trust was created; and
- the full name of the person who created the Trust and of every other person that transferred property to the trust before 27 July 1999 (including by bequest); or

(ii) in the case of a Trust created by a permissible donor and to which all other transfers have been made by a permissible donor, the details required by sections (a) to (h) above in respect of:

- the person who created the Trust; and
- every other person that has transferred property to the Trust (including by bequest).

(j) **Public Fund Payment** - details of the statutory or other provision under which the payment was made.

For each **impermissible donation received** you should give:

- the name and address of the donor;
- the amount, or nature and value, of the donation;
- the date of receipt of the donation, and the date when and the manner in which it was returned to the donor or a person acting on their behalf.

For each **unidentifiable donation received** you should give:

- the amount, or nature and value, of the donation;
- details of the manner in which the donation was made;
- the date on which the donation was received, and the date on which it was dealt with (see section 15 above).

There is no requirement to report donations from permissible donors that a Candidate has chosen not to accept.

23. How should the value of a non-cash donation be calculated and reported?

Candidates may receive donations in kind rather than in cash. Non-cash donations should be calculated as follows:

- (a) a gift of property should be valued at the market value of the property (see section 24);
- (b) where goods, services, facilities, or a loan, are supplied other than on commercial terms, the value of the donation is the difference between;
 - the amount that on ordinary commercial terms would have to be paid for the service or facility etc, and
 - the amount that the Candidate or agent actually paid for the for the service or facility;
- (c) any sponsorship received by a Candidate should be valued at the commercial or market value (see section 24) of the goods, services, property or facilities provided by the sponsor. Any benefit received by the sponsor should be discounted when valuing sponsorship;
- (d) where a Candidate or agent receives a payment (in cash or kind) in respect of goods or services etc provided by or on behalf of the Candidate, and that payment exceeds the commercial value of the services provided, the donation will be valued at the difference between the commercial value of the services provided and the amount actually received by the Candidate.

For example, each of the following indicates how the non-cash expenditure described above should be valued:

- (a) If a Candidate's campaign team was given a photocopier to help with the campaign, the value of the donation would be the market value of that type of photocopier.
- (b) (i) If the Candidate's campaign team rented premises (eg, as a campaign headquarters) at half the rate of what it would normally cost to hire the premises, the donation would be the difference between the normal cost of hiring the premises and the cost charged to the candidate, eg:

Normal rent:	£150 p/w
Rent paid by candidate:	£75 p/w
Value of donation:	£75 p/w

- (ii) Or, where a Candidate wishes to hold a public meeting in a room that would normally be hired at a cost of £75, but the charge is waived, the value of the donation would be £75.
- (c) If a sponsor provided the Candidate with promotional banners, free of charge, on the basis that the sponsor's name was displayed as well, the value of the sponsorship would be the price that the supplier would normally charge to produce a banner that did not include his name.

(d) If a Candidate held a fund raising dinner, charging £75 for a ticket where the value of the meal was £20, each ticket would represent a donation to the candidate of £55.

Please note that where a Candidate receives a non-cash donation, it is likely that a notional election expense will be incurred. This should be reported as an election expense in the Candidate's return (see section 24).

Part 4 Useful Information

24. Useful words and phrases:

Candidate - Section 118A of the RPA specifies the date on which a person becomes a Candidate at a parliamentary or local government election.

Where a person has previously been declared (whether by himself or someone else) to be a Candidate at the relevant election, he becomes a Candidate on:

- (at a parliamentary by-election) the date on which the parliamentary vacancy occurs;
- (at a parliamentary general election) the date of the dissolution of parliament;
- (at an election under the Local Government Act) the last day for publication of notice of election.

Where a person has not previously been declared a Candidate, he becomes a Candidate on:

- (at a parliamentary by- or general election) the day on which he declares himself to be a Candidate or is so declared by someone else (whichever is the earlier);
- (at an election under the Local Government Act) the day on which he declares himself to be a candidate or is so declared by someone else (whichever is the earlier).

Exempt Trust donation - a donation from the trustee of any Trust that was:

- (a) (i) created before 27 July 1999,
(ii) to which no property has been transferred on or after that date,
and
(iii) whose terms have not been varied on or after that date; or
- (b) (i) created by a person who was a permissible donor at the time when the Trust was created, or created by the will of a person who was a permissible donor at the time of their death; and
(ii) to which no property has been transferred except by a person who was a permissible donor at the time of the transfer,

provided that the donation has not been made by the exercise of any discretion which is vested by the Trust in the trustee or any other person.

When making an Exempt Trust donation, a trustee is required to give the candidate or their agent all the information about the Trust that is specified at section 18.

Market value – the market value of property means the price that might reasonably be expected to be paid for the property on sale in the open market.

Commercial value - the commercial value in relation to the provision of services or facilities is the commercial rate that the provision of the services or facilities would ordinarily cost.

Nature of a donation – the description of a non-cash donation, such as printing facilities, rent of premises etc

Notional expenditure – notional expenditure is incurred when any goods, services, property or facilities are transferred to, or provided to the Candidate or election agent, for free or at a discount of more than 10% of ordinary commercial value. Items of notional expenditure incurred by a Candidate fall to be included as an election expense in the Candidate's election expenses return. Candidates and their agents will wish to note that donations in kind are also likely to be notional expenditure.

For example, if it would normally cost £500 to print a set of leaflets, but a candidate receives a discount of 20%, the candidate would therefore receive a donation of £100 and incur £100 of notional expenditure (in addition to £400 actual expenditure).

25. Penalties

Important

You should consult the PPERA and RPA for full details of offences and their relevant penalties.

In summary it is an offence:

- for a person giving a donation on behalf of himself (and one or more others) to fail to provide the required information about those making the donation and the value of it (see section 21 above);
- for a person giving a donation on behalf of a third party to fail to give the Candidate or agent all the relevant details (see section 21 above);
- for a Candidate or agent to fail to return a donation from an impermissible or unidentifiable donor within 30 days of the date of receipt ;

- for any person to knowingly support any arrangement that enables impermissible sources to make donations to Candidates;
- for any person to knowingly give false information about the amount of a donation or the person/body making that donation;
- for a Candidate or agent to fail to include a full and accurate return of donations as part of his election expenses return.