



Cabinet Office

Guidance on Election Funding for candidates at the Douglas South By-election 2020

July 2020

Disclaimer: This is a guide to the requirements. It should not be relied on as legally definitive and the Cabinet Office cannot accept responsibility for any errors or omissions or any act arising from them. If you have any doubts about a particular point, it is strongly recommended that you consult the appropriate legislation and seek your own legal advice.

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Introduction

This guidance aims to provide practical advice regarding election expenses and donations to anyone who wishes to stand for election in the 2020 House of Keys by-election in the constituency of Douglas South.

Electoral law provides for the regulation and control of election spending by candidates.

Setting a limit on campaign spending is intended to support openness and transparency and to establish a level playing field for all candidates.

The period that candidates must log their expenses and donations for the 2020 Douglas South by-election commences from the date when they become a prospective candidate.

The maximum amount that can be spent by a candidate on an election campaign is £2,000 plus 50p for each registered elector in the relevant constituency.

The limit for the Douglas South by-election will be based on the total number of registered electors in the constituency on the publication of the electoral register dated 1 July 2020.

This guidance intends to provide an overview of the practical operation of the law. It does not cover all aspects of the provisions and those intending to stand are advised to familiarise themselves with the full text of the law which can be obtained from the Tynwald Library or the Attorney General's Chambers websites (Appendix B).

Overview

In summary, the requirements and restrictions in respect of a candidate's election expenses and donations are:

- 1. There is a **limit on the amount you can spend** on your election campaign from the moment you make your public declaration.
- 2. You will have to **declare any donations** received after you have made your public declaration.
- 3. **Anonymous donations cannot be kept** once you have made your public declaration if it is likely that the donations are provided for election purposes.
- 4. There are a range of **criminal offences** for failure to comply with the provisions. Conviction of such offences can have various consequences, including **losing your seat** in the House of Keys if you are elected.

To whom do the new requirements apply?

The requirements apply to "prospective candidates" and "candidates" seeking election to the House of Keys.

A person becomes a "prospective candidate" when they publicly declare their intention to stand for election, or when another person makes the announcement on their behalf (with their consent).

The Cabinet Office considers that a declaration needs to be in the public domain to be treated as such. For example, a statement made on a news website, radio station or social media declaring that the person will stand for election. Situations such as a private conversation with a family member or a public consideration of standing would not qualify as a public declaration.

A person officially becomes a "candidate" at the time his or her nomination is accepted by the returning officer for the constituency. For the 2020 By-election in Douglas South, this will be between 10am on Wednesday 22 July to 1pm on Wednesday 29 July.

Subsequent references in this guide to "candidate" refer both to candidates and prospective candidates unless otherwise stated.

What is the time period for the requirements?

There is a defined "relevant period" that applies to a candidate's election expenses and donations.

For the 2020 By-election in Douglas South the relevant period will begin on the date when a person becomes a prospective candidate and end on polling day, Thursday 27 August 2020.

What is the maximum amount allowed for election expenses?

The maximum amount that a candidate can spend on his or her election campaign expenses for the 2020 Douglas South by-election is £4,379.50.

This is calculated as £2,000 plus 50p for each of the 4,759 registered electors in the constituency of Douglas South on the electoral register on 1 July 2020.

Candidates may obtain a copy of the register of electors for the constituency in which they intend to stand from the General Registry (see Appendix B).

What is meant by "election expenses"?

Election expenses are any expenses incurred by a candidate during the relevant period to promote his or her election or to prejudice the chances of another candidate standing against him or her at the same election. Expenses may relate to the supply of goods or services and might, for example, include costs associated with:

- manifestos, leaflets or calling cards;
- posters or banners;
- car stickers, rosettes or balloons;
- the creation of a website;
- newspaper advertisements; and
- hiring a van with a loudspeaker.

The total cost of a candidate's election campaign, from when they declare their intention to stand until polling day, must be within the expenses limit no matter who the cost is covered by. Therefore, election expenses include both direct expenses (costs paid directly by the candidate) and notional expenses (costs covered by another individual or company).

The decision on whether to spend the total permitted, or how to spend it, is entirely a matter for the candidate. In assessing whether particular expenditure is an election expense the candidate must ask himself or herself a simple question –

"Am I spending this money or receiving these services as part of my election campaign and to increase my chances of success or to try to prejudice the chances of another candidate?"

If the answer to the question is "yes" then the item concerned is an election expense that counts towards the permitted expenses.

What happens if someone else incurs expenses on the candidate's behalf?

A candidate must count as part of his or her own expenses any amounts that are incurred on his or her behalf by anyone else if the candidate is aware of the expenditure and gives consent, either directly or by implication. So if, for example, a candidate's friend offers to place and pay for a number of advertisements in a newspaper, and the candidate agrees, the candidate must be aware of the cost of the adverts and make sure that the cost can be accounted for within his or her own expenditure limit.

How are expenses incurred jointly by more than one candidate counted?

If two or more candidates incur expenditure jointly then the expense is split equally between them unless a different split can be shown to be appropriate, i.e. that the benefit of the expenditure was not equally shared.

If, for example, four candidates place an advert in the newspaper urging electors to vote for each of them, the cost of this advert would normally be split into four and each quarter share counted as part of the total expenses allowed to each candidate. If, however, common leaflets were printed for the same four candidates, it might be possible to prove that the cost should be apportioned according to the relative sizes of the constituencies concerned and the number of leaflets needed in each.

What happens if goods or services are supplied free of charge or at a discount?

Normally a candidate will simply need to count the actual amount he or she has spent on an item as part of the total permitted election expenses.

There may, however, be occasions when a candidate is given goods or services at a discount, which is where notional expenses are relevant. For example, if a candidate's supporter prints pamphlets for the candidate for £200, when the normal price charged is £400, the election expenses incurred by the candidate are a £200 direct expense and a £200 notional expense. The £200 discount also constitutes a donation by the supporter (which is relevant to the requirement, described below, to disclose donations).

What happens if donations are given to a candidate?

A candidate may decide to pay for his or her campaign using only his or her own funds, but candidates may also receive donations to assist with campaign expenditure. Candidates are required to declare donations received and must therefore retain details of these. Donations fall within the scope of the law if they are made during the relevant period, the donor specifies, expressly or by implication, that the money is for election purposes and if they are or are worth £50 or more. This amount also applies to aggregated donations which total £50 or more. Also, any donations received between nomination day and polling day are automatically deemed to be for election purposes unless the contrary can be proved.

A donation takes many forms; it might be cash, the provision of services or goods at a discount (for example, printing leaflets for a price that is only 75% of the normal price is a donation - and notional expense - of 25% of the normal price) or the provision of services or goods free of charge.

A donation is anonymous if the recipient is unable to ascertain the identity of the donor. Candidates *(for certainty, this does include prospective candidates)* are required by law not to keep anonymous donations. Any anonymous donation received with an indication that it is to be used for the election or any anonymous donation received between nomination day and polling day (with or without an indication of its intention) must be forwarded to the Chief Financial Officer (see Appendix B) within 10 working days of receipt. The Chief Financial Officer will then forward the donation to the Manx Lottery Trust for appropriate distribution.

It is important to note that the law does not prevent a candidate receiving more donations than he or she is actually allowed to spend in the election. Any donations received must nevertheless be properly declared. For example, a candidate who is allowed to spend up to £4,500 might declare that he or she received a donation towards his or her campaign of £5,000 from a generous supporter. This donation must be declared but the candidate would commit an offence if he or she spent more than £4,500 in total on the election campaign. It is a purely private matter between the candidate and the donor(s) to agree whether funds that cannot be used for the election can be retained by the candidate.

Is anything excluded as an election expense or as a donation?

Certain expenses and donations are excluded from the operation of the law. These are:

- 1. a volunteer's motor vehicle for transporting voters to/from a polling station on polling day;
- 2. the services of a volunteer helper in terms of their time (goods used or supplied by them in doing so are not excluded);
- 3. election material published in a newspaper or periodical or broadcast on the television or radio including on a website (other than an advertisement);
- 4. the discharge of legal obligations (such as payment of postage of election manifestos by the Treasury); and
- 5. expenses incurred in connection with the proper performance of an elected person's duties (such as a sitting MHK's newsletter to his or her constituents).

Any goods that are purchased, provided or used for a person's campaign outside the relevant period are not to be taken into account as a donation or election expense.

Therefore, any election related goods already in a person's possession before they declare their intention to stand for the 2020 By-election in the constituency of Douglas South are not included as an expense for that election.

Subsequently, any goods purchased for the 2020 By-election that are re-used in future elections will not be included as an expense for the later elections.

The law only covers expenditure incurred and donations received up until polling day and, as a result, there is no restriction on expenditure on matters such as a party for supporters after the poll, thank you letters or an advert in the press thanking voters. It should nevertheless be stressed that payments made after the poll for goods or services received and used before the poll are, of course, part of the election expenditure that must be counted and, if necessary, declared.

How is voluntary assistance to candidates treated?

Voluntary assistance provided to a candidate free of charge by an individual in his or her own time is not counted as a donation or as part of the candidate's election expenses. However, any goods used or supplied by such individuals in the course of providing their services are counted as a donation and an expense.

As a result, friends and supporters can help candidates on a voluntary basis and the candidate does not need to calculate or declare the value of the time spent by those individuals. Friends and supporters of a candidate might, for example, offer to put up banners, distribute manifestos or leaflets or address envelopes. This type of assistance is exempt as long as the help is provided by an individual (and not, for example, by a company or organisation), free of charge and undertaken in the individual's own time.

Where, in the course of the provision of volunteers' own services they use their own goods, the use of the goods and any expenditure incurred by the volunteers is an expense and, under certain circumstances, a donation.

For example, petrol consumed when a volunteer drives around canvassing before polling day will incur an expense and/or a donation. If the candidate pays for the petrol, the cost is a direct expense. If the volunteer pays for the petrol and seeks no reimbursement, the cost is a donation made by the volunteer and a notional expense. If the volunteer uses petrol worth £50 or more without reimbursement, the candidate is required to include the amount on their declaration of donations received. The cost of petrol used would be included by the candidate as an expense (whether direct or notional) and so must be considered when calculating his or her total expenses and, if necessary, declared. Candidates should be able to demonstrate reasonable attempts to apportion fuel costs for them and their volunteers, for example, by retaining receipts, recording increase in usual mileage or fuel purchased or using rates recommended by a recognised motoring company for their particular vehicle¹.

Voluntary assistance can be contrasted, for example, with assistance given by a public relations company which provides free public relations guidance and graphic design services to a candidate where the work is undertaken by the company as a normal business activity (albeit free of charge). The market value of this work would form a donation to the candidate and a notional expense that the candidate will have to account for in his or her election expenses.

Will candidates get any assistance at public expense?

The law requires the Chief Secretary to make arrangements for a candidate's manifesto to be displayed on an appropriate website if one is forwarded to him or her. This service will be provided equally to all candidates who request it and does not count as an election expense or a donation.

The law allows for the distribution of one copy of each manifesto to every household in the relevant constituency which has at least one registered elector. This service will be provided equally to all those who request it and does not count as an election expense or a donation.

What if a candidate is supported by a political party?

Political parties ("parties") must register in order to support or endorse candidates for election to the House of Keys. A candidate cannot accept support or endorsement from a party unless the party is registered.

It should be clear when a candidate is supported or endorsed by a party, as it must be explicit and made publicly. If either of these conditions are not met there can be no endorsement. For example, stating in your public declaration that you intend to stand as a party's candidate would mean that you are supported/endorsed by that party. However, simply agreeing with policies of a party would not amount to you being endorsed by that party.

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If a candidate is endorsed by a party, he or she is deemed to have consented to any expenditure incurred by the party on his or her behalf.

Therefore, for example, if a party pays for posters to be printed to encourage electors to vote for their candidate, the printing costs would be accounted for by that candidate as a notional expense (as well as a donation from the party to the candidate).

The same rules regarding apportionment apply to expenditure for multiple candidates supported by a party. For example, if a party that has endorsed four candidates places an advert in the newspaper urging electors to vote for these candidates, the cost of this advert would normally be split into four and each quarter share counted as part of the total expenses allowed to each candidate. However, if, for example, common leaflets were printed for a number of candidates supported by a party, it might be possible to prove that the cost should be apportioned according to the relative sizes of the constituencies concerned and the number of leaflets needed in each.

The same rules regarding donations also apply to candidates supported by parties. Therefore, any money provided to a candidate by a party for use towards their election campaign would be regarded as a donation and must be declared if it amounts to £50 or more. However, members of a party who, for example, spend their free time distributing manifestos or leaflets do not make a donation in terms of their time as long as it is provided by an individual (and not, for example, by a company or organisation), free of charge and undertaken in the individual's own time.

Separate guidance on how to make an application to register a party is available from the Cabinet Office website (Appendix B).

How do the provisions work in practice?

Examples of what might constitute an election expense and/or donation and how each of these should be treated is included in this guidance (Appendix A).

What do I need to do once I declare my intention to stand?

Managing expenditure and record keeping

Keeping accurate details of expenses to ensure you remain below the expenses limit is extremely important once you become a prospective candidate or candidate (the latter if you make no declaration to stand before your nomination paper is accepted by the returning officer so you are at no time a prospective candidate). These include expenses incurred by another person on your behalf and the law requires anyone who does incur such an expense to provide you with the relevant information to allow you to comply with the requirements. You should also retain receipts and invoices etc. that may be required at a future date in order to justify and substantiate a declaration, if necessary.

Record-keeping for most expenses will be straightforward, for example, if a precise quote or invoice from the printers has been received for the printing of leaflets. However, there will undoubtedly be matters that are more difficult. This could be the case, for example, if goods or services are provided free of charge or at a discount. In these circumstances, candidates must make every effort to ascertain a realistic and accurate open market value for the item concerned. For example, a design company might create a logo for a candidate, which would normally cost £60, free of charge. That candidate should account for the notional expense of £60 and record a donation of £60.

Records of donations received

As soon as you become a prospective candidate or a candidate (the latter if you are at no time a prospective candidate), you should record any donations received equal to or worth £50 or more. This requirement includes donations that are notional expenses, such as that in the above example regarding a logo for a candidate. Relevant donations also include aggregated amounts, for example, a candidate who receives two £30 donations from the same individual two months apart would need to declare them. You will need this information to submit your declaration to the Electoral Registration Officer on or before Thursday 20 August 2020.

Anonymous donations

As soon as you become a prospective candidate, you must forward any anonymous donations that the giver intends (either expressly or by implication) for use to pay election expenses to the Chief Financial Officer. As soon as you become a candidate, you must forward any anonymous donations to the Chief Financial Officer.

Declaration of donations received

Every candidate must submit a declaration of donations to the Electoral Registration Officer no later than Thursday 20 August 2020. This declaration is not required by any prospective candidates who, for any reason, do not become candidates. The declaration will include information regarding relevant donations received, or a declaration that no such donations have been received, and that any anonymous donations have been forwarded accordingly.

Once you have submitted your declaration, if you receive any further donations or find that you need to make an alteration to your declaration, you must make a further declaration within 10 working days of identifying the need to do so.

The details of your declaration will be included in a register and a copy of the declaration itself will be filed with the General Registry. The register and the declaration will be available for public viewing at the General Registry.

What do I need to do after the election?

Declaration of expenditure

If the Electoral Registration Officer receives a complaint alleging that a candidate (not a prospective candidate) has exceeded the expenses limit, that candidate must provide a written declaration of his or her expenses that itemises each expense (whether direct or notional) and the goods or services to which each expense relates within 15 working days. The Electoral Registration Officer may also require proof of such expenses, for example, invoices for printing of manifestos and receipts for the purchase of wooden stakes.

An allegation of exceeding the expenses limit can be made up to three months after an election. In order to allow time for the Electoral Registration Officer to process the complaint and advise the candidate and then for any request for verification to be made, it is advisable to keep records regarding expenses for at least six months following an election. In the case of the 2020 By-election in the constituency of Douglas South, if contested, this would be 27 January 2021 – six months after polling day on Thursday 27 August 2020.

What happens if the rules are breached?

The more serious offences in the law relating to electoral expenses and donations include, but are not limited to, failure to forward anonymous donations accordingly, exceeding the maximum amount on election expenses, failure to deliver a declaration or the delivery of a false declaration. These offences can be committed either knowingly or recklessly. There is, however, a defence for an accused who can show that he or she had a reasonable excuse.

Once notified of such an offence, the Attorney General will make such inquiries and institute such prosecutions as the circumstances of the case require in his or her opinion. If the Attorney General does institute proceedings, his or her agreement is required to a decision on the level of Court which ultimately deals with the matter.

Upon a criminal conviction the accused is liable to a fine and is also deemed to have committed an illegal practice. A sitting Member found guilty would also lose their seat in the House and any person found guilty would be barred from standing for election to the Keys for a certain period of time depending on the nature of the offence.

The less serious offences include, but are not limited to, failure to send proof of expenses when requested. If proceedings are instituted and the accused is convicted, he or she may be fined.

Summary

Relevant expenses and donations are:

- incurred or received during the relevant period by a prospective candidate or a candidate; and
- incurred or received with a view to promoting or prejudicing a person's election.

Expenses

- The cost of a campaign must not exceed the limit (£2,000 plus 50p per registered elector in the constituency of Douglas South).
- A declaration of expenses is only required if a complaint is made after the election.
- Proof of expenses may be required in respect of a complaint made after the election.
- Complaints can be made up to three months following an election.

Donations

- A declaration of donations received worth £50 or more must be made by Thursday 20 August 2020.
- Anonymous donations cannot be kept.
- Any donation received between a candidate's nomination and polling day, where the donor does not signify the intended use of the money, is a relevant donation.

Other

- No prospective candidate or candidate can accept support from an unregistered political party.
- There are a range of criminal offences for any failure to comply with the provisions.

Appendix A

EXAMPLES OF ELECTION EXPENSES AND DONATIONS

(References to "candidate" apply both to candidates and prospective candidates)

Example	Donation	Direct Expense	Notional Expense	Note
Use of a volunteer's car to transport voters to/from the poll on polling day	N/A	N/A	N/A	Excluded as a donation and as a notional expense
Services or goods (e.g. legal advice (in a professional capacity), creation of websites (by a professional), printing, stakes)	N/A	Cost to candidate	N/A	
Free services or goods (e.g. as above)	Open market rate for goods or services	N/A	Open market rate for goods or services	
Reduced price services or goods (e.g. as above)	Difference between charge & open market rate for services or goods	Cost to candidate	Difference between charge & open market rate for services or goods	
Volunteers' time	N/A	N/A	N/A	Only a donation if in a professional capacity
Candidate's own time ²	N/A	N/A	N/A	Effectively volunteering
Candidate's work time on a lengthy or repeated basis ³	Wages paid	N/A	N/A	Wages paid for time must equate to £50 to be a relevant donation from the employer
Candidate's work time (one-off) ⁴	N/A	N/A	N/A	Marginal amount of good-will involved, not a donation
Candidate's use of own vehicle for campaigning	N/A	Fuel consumed	N/A	Make reasonable attempt to apportion fuel costs ⁵
Use of volunteer's car for campaigning (before poll) at no cost to the candidate	Petrol consumed	N/A	Petrol consumed	Petrol would have to equate to £50 to be a relevant donation. Make reasonable attempt to apportion fuel costs ⁶
Use of volunteer's car for campaigning (before poll) when candidate pays petrol	N/A	Petrol consumed	N/A	Make reasonable attempt to apportion fuel costs ⁷
Purchase of a banner for two candidates	N/A	50% of the cost to each candidate	N/A	Amount equally apportioned unless proven that the expense

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				did not provide equal benefit
Issue of a regular newsletter from MHK or Councillor to constituents	N/A	N/A	N/A	Costs incurred while carrying out the proper duties of a person in an elected office are disregarded
Issue of constituency boundary information to constituents from MHK(s) ⁸				
Purchase of a banner advertising various candidates of a political party paid for by the party	Apportioned cost of the banner for every candidate	N/A	Apportioned cost of the banner for every candidate	Amount equally apportioned unless proven that the expense did not provide equal benefit
Newspaper/radio coverage	N/A	N/A	N/A	Coverage is in an official capacity so no donation
Social media coverage (e.g. Facebook)	N/A	N/A	N/A	Free of charge for anyone to do
Example	Donation	Direct Expense	Notional Expense	Note
Postage of manifestos	N/A	N/A (see note)	N/A	Expense incurred if more than allowed (i.e. more than one per household with a registered elector or over weight limit)
Display of manifesto on Government website	N/A	N/A	N/A	Statutory obligation so disregarded
Campaign material already in a person's possession before they are a candidate	N/A	N/A	N/A	Cost incurred outside the relevant period and/or by a private individual
Gift of money for campaign expenses	Amount received	N/A	N/A	Money spent on the campaign recorded in relation to the relevant expense(s)
Anonymous gift of money or goods	Send to Chief Financial Officer	N/A	N/A	Include on declaration of donations
Loan of money for campaign interest free	Open market interest rate	N/A	N/A	Money from the loan spent on the campaign recorded in relation to the relevant expense(s)
Loan of money for campaign with reduced interest	Difference between interest charged & open market interest rate	Interest paid and/or owed	N/A	Money from the loan spent on the campaign recorded in relation to the relevant expense(s)
Write-off of a loan originally provided at market rate	Amount not repaid & amount of interest	Any interest paid	N/A	Money from the loan spent on the campaign recorded in relation to

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	originally due but not paid			the relevant expense(s)
Advertisement on a vehicle paid for by the candidate	N/A	Printing cost	N/A	
Advertisement on a vehicle not paid for by the candidate	Open market rate for printing	N/A	Open market rate for printing	
Vehicle showing advertisement travelling around constituency to be seen (petrol not paid for by candidate)	Petrol consumed	N/A	Petrol consumed	Petrol would have to equate to £50 to be a relevant donation
Vehicle showing advertisement carrying out regular journeys	N/A	N/A	N/A	Journeys not made for election purposes
Hire of a van with a loudspeaker	N/A	Cost of hire	N/A	
Series of cash donations from an individual/company	Total amount		N/A	Must declare if total is £50 or more. Money from the donation spent on the campaign recorded in relation to the relevant expense(s)
Example	Donation	Direct Expense	Notional Expense	Note
Example Campaign related telephone call on a free calls plan ⁹	Donation N/A			Note
Campaign related telephone		Expense	Expense	Attempts should be made to reasonably identify costs involved, e.g. use of an itemised bill if available.
Campaign related telephone call on a free calls plan ⁹ Campaign related telephone	N/A	Expense N/A Cost	Expense N/A	Attempts should be made to reasonably identify costs involved, e.g. use of an itemised
Campaign related telephone call on a free calls plan ⁹ Campaign related telephone	N/A	Expense N/A Cost	Expense N/A	Attempts should be made to reasonably identify costs involved, e.g. use of an itemised
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Campaign related telephone call on a free calls plan ⁹ Campaign related telephone	N/A	Expense N/A Cost	Expense N/A	Attempts should be made to reasonably identify costs involved, e.g. use of an itemised

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Appendix B

CONTACT LIST

Returning Officer

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Attorney General's Chambers

Address: Third Floor, St Mary's Court, Hill Street, Douglas, IM1 1EU

Website: www.legislation.gov.im

Chief Financial Officer

Address: Third Floor, Government Office, Bucks Road, Douglas, IM1 3PZ

Tel: (01624) 685980

Email: <u>treasuryadmin@gov.im</u>

Chief Registrar

Address: General Registry, Isle of Man Courts of Justice, Deemsters Walk, Douglas, IM1 3AR

Tel: (01624) 687505

Chief Secretary

Address: Cabinet Office, Third Floor, Government Office, Bucks Road, Douglas, IM1 3PN

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Crown & Elections Unit

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Electoral Registration Officer

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