
Changes to legislation: There are currently no known outstanding effects for the Scottish Independence Referendum Act 2013, PART 6. (See end of Document for details)

SCHEDULE 4 CAMPAIGN RULES

PART 6

CONTROL OF LOANS AND CREDIT

Operation of Part

- 45 (1) This Part has effect for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.
- (2) The following provisions have effect for the purposes of this Part.
- (3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.
- (4) “Regulated transaction” has the meaning given by paragraph 46.
- (5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 48(2) to a permissible donor does not include a registered party.

Regulated transactions

- 46 (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.
- (2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.
- (3) Where—
- (a) a permitted participant and another person (“A”) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),
 - (b) A also enters into an arrangement whereby another person (“B”) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and
 - (c) the use condition is satisfied,
- the arrangement is a regulated transaction.
- (4) An agreement or arrangement is also a regulated transaction if—
- (a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but
 - (b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.

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- (5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3)(a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.
- (6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.
- (7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.
- (8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.
- (9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3)(b).
- (10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.
- (11) A credit facility is an agreement whereby a permitted participant is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the permitted participant) as is specified in or determined in accordance with the agreement.
- (12) An agreement or arrangement is not a regulated transaction—
 - (a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 39, to be included in a return under paragraph 21, or
 - (b) if its value does not exceed £500.

Valuation of regulated transaction

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- (1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.
 - (2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.
 - (3) The value of a regulated transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.
 - (4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision contained in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.

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Authorised participants

- 48 (1) A permitted participant must not—
- (a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,
 - (b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.
- (2) In this Part, an authorised participant is a person who is a permissible donor.

Regulated transaction involving unauthorised participant

- 49 (1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.
- (2) The transaction is void.
- (3) Despite sub-paragraph (2)—
- (a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 71I(3)(a) of the 2000 Act,
 - (b) the person from whom it was received is entitled to recover the money, along with such interest.
- (4) If—
- (a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3)(a), or
 - (b) the person entitled to recover the money refuses or fails to do so,
- the Commission may apply to a sheriff to make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- (5) An order under sub-paragraph (4) may in particular—
- (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
 - (b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.
- (6) In the case of a regulated transaction where a party other than a permitted participant—
- (a) at the time the permitted participant enters into the transaction, is an authorised participant, but
 - (b) subsequently, for whatever reason, ceases to be an authorised participant,
- the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

- 50 (1) This paragraph applies if—
- (a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 46(3)(a),

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- (b) A is party to a regulated transaction of a description mentioned in paragraph 46(3)(b) (“the connected transaction”) with another person (“B”), and
 - (c) B is not an authorised participant.
- (2) Paragraph 49(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).
- (3) The connected transaction is void.
- (4) Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 49(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.
- (5) Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.
- (6) Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.
- (7) In the case of a connected transaction where B—
- (a) at the time A enters into the transaction, is an authorised participant, but
 - (b) subsequently, for whatever reason, ceases to be an authorised participant,
- sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.
- (8) If the transaction mentioned in paragraph 46(3)(a) is not a regulated transaction of a description mentioned in paragraph 46(1) or (2), references in this paragraph and paragraph 49(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—
- (a) the return or recovery of any property provided under the transaction,
 - (b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or
 - (c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

- 51 If an authorised participant purports to transfer the participant's interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

Offences

- 52 (1) An individual who is a permitted participant commits an offence if—
- (a) the individual enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant, and
 - (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (2) A permitted participant that is not an individual commits an offence if—
- (a) it enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant, and

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- (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant, and
 - (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (4) An individual who is a permitted participant commits an offence if—
 - (a) the individual enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant,
 - (b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual the individual fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.
- (5) A permitted participant that is not an individual commits an offence if—
 - (a) it enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant,
 - (b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person the responsible person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- (6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant,
 - (b) sub-paragraph (3)(b) does not apply to the person, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person the person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- (7) An individual who is a permitted participant commits an offence if—
 - (a) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
 - (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (8) A permitted participant that is not an individual commits an offence if—
 - (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and

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- (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
 - (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (10) An individual who is a permitted participant commits an offence if—
 - (a) the individual is a party to a transaction of a description mentioned in paragraph 46(3)(a),
 - (b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
 - (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.
- (11) A permitted participant that is not an individual commits an offence if—
 - (a) it is a party to a transaction of a description mentioned in paragraph 46(3)(a),
 - (b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
 - (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person the responsible person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.
- (12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant is a party to a transaction of a description mentioned in paragraph 46(3)(a),
 - (b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) sub-paragraph (9)(b) does not apply to the person, and
 - (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the person the person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.
- (13) A person commits an offence if the person—
 - (a) knowingly enters into, or

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- (b) knowingly does any act in furtherance of,
any arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the participation by a permitted participant in a regulated transaction with a person other than an authorised participant.
- (14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove that the person took all reasonable steps to prevent the permitted participant entering into the transaction.
- (15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove that the person took all reasonable steps to prevent the permitted participant benefiting in consequence of the connected transaction.
- (16) A reference to a permitted participant entering into a regulated transaction includes a reference to any circumstances in which the terms of a regulated transaction are varied so as to increase the amount of money to which the permitted participant is entitled in consequence of the transaction.
- (17) A reference to a permitted participant entering into a transaction to which another party is not an authorised participant includes a reference to any circumstances in which another party to the transaction who is an authorised participant ceases (for whatever reason) to be an authorised participant.

Penalties

- 53 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 52 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (2) A person who commits an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or (13) of paragraph 52 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of regulated transactions

- 54 (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 21 a statement of regulated transactions entered into by the permitted participant.
- (2) The statement must comply with paragraphs 55 to 59.
- (3) For the purposes of those paragraphs a regulated transaction is a recordable transaction—
- (a) if the value of the transaction exceeds £7,500, or
 - (b) if the aggregate value of it and any other relevant benefit or benefits exceeds that amount.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of paragraph 29(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

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Identity of authorised participants

- 55 The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A to the 2000 Act.

Identity of unauthorised participants

- 56 The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—
- (a) the name and address of the person,
 - (b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 49 or those sub-paragraphs as applied by paragraph 49(6) or 50(2).

Details of transaction

- 57 (1) The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A to the 2000 Act (read with any necessary modifications).
- (2) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 46(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A to the 2000 Act.
- (3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 46(3) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A to the 2000 Act.

Changes

- 58 (1) Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any other change in any of the information that is required by paragraphs 55 to 57 to be included in the statement, the statement must record—
- (a) the information as it was both before and after the change,
 - (b) the date of the change.
- (2) Where a recordable transaction has come to an end, the statement must—
- (a) record that fact,
 - (b) record the date when it happened,
 - (c) in the case of a loan, state how the loan has come to an end.
- (3) For the purposes of sub-paragraph (2), a loan comes to an end if—
- (a) the whole debt (or all the remaining debt) is repaid,

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- (b) the creditor releases the whole debt.

Total value of non-recordable transactions

- 59 The statement must record the total value of any regulated transactions that are not recordable transactions.

Transaction reports during referendum period

- 60 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—
- (a) the period ending with the 28th day of the referendum period (including the time before the referendum period),
 - (b) each of the two succeeding periods of 4 weeks during the referendum period, and
 - (c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).
- (2) The report for any period must record, in relation to each regulated transaction having a value exceeding £7,500 which is entered into by the permitted participant during the period—
- (a) the same information about the transaction as would be required, by virtue of paragraph 57, to be recorded in the statement referred to in paragraph 54(1),
 - (b) in relation to a transaction to which an authorised participant is a party, the information about each authorised participant which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by virtue of paragraph 3 of Schedule 6A to the 2000 Act, and
 - (c) in relation to a transaction to which a person who is not an authorised participant is a party, the information referred to in paragraph 56.
- (3) If during any period no regulated transactions having a value exceeding £7,500 were entered into by the permitted participant, the report for the period must contain a statement of that fact.
- (4) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
- (a) a separate report under this paragraph need not be prepared for any preceding period, but
 - (b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.
- (5) Sub-paragraphs (2) and (3) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.
- (6) References in this paragraph and in paragraph 61 to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction

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would have been a regulated transaction had the individual or body been a permitted participant at that time.

- (7) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—
- (a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,
 - (b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.
- (8) For the purpose of sub-paragraph (7)(b), the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - (b) Christmas Eve or Christmas Day,
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.
- (9) If, in relation to a regulated transaction entered into with an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.
- (10) The responsible person commits an offence if, without reasonable excuse, the person —
- (a) fails to comply with the requirements of sub-paragraph (7) in relation to a report under this paragraph,
 - (b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (9).
- (11) A person who commits an offence under sub-paragraph (10)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) A person who commits an offence under sub-paragraph (10)(b) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to transaction reports under paragraph 60

- 61 (1) Each report prepared under paragraph 60 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.
- (2) The declaration must state—
- (a) that the responsible person has examined the report, and
 - (b) that to the best of the responsible person's knowledge and belief, it is a complete and correct report as required by law.
- (3) A person commits an offence if—
- (a) the person knowingly or recklessly makes a false declaration under this paragraph, or

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- (b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.
- (4) A person who commits an offence under sub-paragraph (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 60

- 62 (1) Where the Electoral Commission receive a report under paragraph 60 they must—
- (a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
 - (b) keep any such copy available for public inspection for the period for which the report or other document is held by them.
- (2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual's address.
- (3) At the end of the period of 2 years beginning with the date when any report under paragraph 60 or other document accompanying it is received by the Commission—
- (a) they may cause the report or other document to be destroyed, or
 - (b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Non-disclosure with intent to conceal

- 63 (1) This paragraph applies where, on an application made by the Commission, a sheriff is satisfied that any failure to comply with a requirement of paragraphs 54 to 61 in relation to—
- (a) any transaction entered into by the permitted participant, or
 - (b) any change made to a transaction to which the permitted participant is a party, was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.
- (2) The sheriff may make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- (3) An order under this paragraph may in particular—
- (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
 - (b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

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Proceedings under paragraphs 49 and 63

- 64 (1) This paragraph has effect in relation to proceedings on an application under paragraph 49(4) or 63.
- (2) The proceedings are civil proceedings and, accordingly, the standard of proof that applies is that applicable to civil proceedings.
- (3) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 24 or paragraph 52.
- (4) An appeal against an order made by the sheriff may be made to the Court of Session.
- (5) Rules of court may make provision—
- (a) with respect to applications or appeals from proceedings on such applications,
 - (b) for the giving of notice of such applications or appeals to persons affected,
 - (c) for the sisting of such persons as parties,
 - (d) generally with respect to procedure in such applications or appeals.
- (6) Sub-paragraph (5) does not affect any existing power to make rules.

Interpretation

- 65 (1) In this Part—
- “authorised participant” is to be construed in accordance with paragraph 48 (and see paragraph 45(5)),
 - “connected transaction” has the meaning given by paragraph 46(9),
 - “credit facility” has the meaning given by paragraph 46(11),
 - “permitted participant” is to be construed in accordance with paragraph 45,
 - “regulated transaction” is to be construed in accordance with paragraph 46.
- (2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 46(3)(a), as if it were a party to the connected transaction.

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