

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 11 – Offences

44. **Section 11** of the Act replaces the existing section 17 of the Interests Act, which relates to offences, with a new section 17. This is required because the existing provisions are only preserved until the coming into force of further provision by the Parliament on sanctions (under section 7(3) of the Scotland Act 2012).¹ New section 17 largely restates the existing criminal offence as previously set out in section 39(6) of the Scotland Act 1998², read with section 17 of the Interests Act.
45. Subsection (1) of the new section 17 sets out the criminal offence associated with breaching the Interests Act. It is an offence to take part in proceedings without having complied with or in contravention of the requirements of:
- section 3 (initial registration of interests), section 5 (registration of interests acquired after date of return), section 6 (late registration) or section 8A(4) and (5) (notifying the Clerk of changes to controlled transactions);
 - section 13 (declaration of interests);
 - a measure taken by the Parliament under section 15 (preventing or restricting participation in proceedings of the Parliament); or
 - a measure taken by the Parliament under section 16 (exclusion from proceedings of the Parliament).
- Contraventions of section 14 (prohibition of paid advocacy) also form part of the section 17(1) offence.
46. There are a couple of minor substantive changes to the overall scope of the criminal offence. It now captures breaches of the new provision on notifying the Clerk of changes to a controlled transaction (section 8A(4) and (5)) and the scope of the paid advocacy prohibition to which the criminal offence attaches is widened by section 9 of the Act to cover *requesting or agreeing to receive* any payment or benefit in kind.
47. Subsection (2) makes provision on the available penalty, reiterating the penalty found in section 39(7) of the Scotland Act. A person found guilty of an offence under section 17 is liable on summary conviction to a fine not exceeding level 5 on the standard scale (which currently amounts to £5,000).

¹ Available at: <http://www.legislation.gov.uk/ukpga/2012/11/section/7/enacted>

² Available at: <http://www.legislation.gov.uk/ukpga/1998/46/section/39>