

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2 – Exempt expenses

7. Paragraph 2 of the schedule to the Interests Act makes provision for registering remuneration and in particular provides at paragraph 2(3) that remuneration which consists solely of expenses does not require to be registered unless it is above a specified limit in value. The specified limit, defined in paragraph 2(5) is currently 1% of a member's salary (rounded down to the nearest £10) at the start of the current parliamentary session.
8. *Section 2* of the Act reduces the specified limit for registering remuneration received solely as expenses to 0.5% of a member's salary (rounded down to the nearest £10) at the start of the current parliamentary session.

Section 3 – Gifts

9. *Section 3* replaces the existing paragraph 6 in the schedule to the Interests Act with a new paragraph 6. Paragraph 6 sets out the requirement to register gifts (subject to certain criteria).
10. The new sub-paragraph (1) requires that members register any gifts which meet the requirements of sub-paragraphs (2) or (3).
11. The new sub-paragraph (2) replicates the existing provision, which requires a gift or aggregated gifts valued in excess of the "specified limit" (further defined at sub-paragraph (8)) that meet the prejudice test set out in section 3(2) of the Interests Act to be registered.
12. New sub-paragraphs (3)(a) and (b) insert new provisions which incorporate the PPERA requirements on members to register certain donations for political activities. Sub-paragraph (3)(a) (when read with sub-paragraph (3)(c)), requires members to register gifts for the member's political activities (as a member of the Parliament or a registered political party or both), the value of which is over £1,500.
13. Sub-paragraph (3)(b) makes equivalent provision for the registration of a gift for the member's political activities (valued above £500) which when aggregated with other aggregable benefits, accepted from the same person in the course of a calendar year, exceeds £1,500. For the purposes of the gifts category, paragraph 6(8) defines "aggregable benefit". It includes any other gift, overseas visit, certain remuneration received as expenses or controlled transaction, for the member's political activities and individually valued in excess of £500 (but not exceeding £1,500), and accepted from the same person in the same calendar year. Equivalent provision on the aggregation of aggregable benefits can be found in the overseas visits and controlled transactions categories.

14. New sub-paragraph (3)(c) sets out new political activities related criteria, applying to gifts received by members that fall within paragraph 6(3)(a) or 6(3)(b). These criteria are met where a gift is offered to the member for their use or benefit in connection with their political activities or retained by the member for those purposes or both. In assessing whether a gift is for a member's use or benefit in connection with their political activities, regard is had to the intent of the donor in offering it or the intent of the member in retaining it.
15. New sub-paragraph (4) retains the existing exemption from registering the costs and travel and subsistence in connection with a member's attendance at a conference or meeting (where those costs are borne by the organiser of the conference or one of the other parties attending the meeting). This means that such gifts will only be registrable where they are over the value of £1,500 (singly or cumulatively) and for the member's political activities (further to sub-paragraph (3)). This provision ensures that the existing exemption continues to apply in most cases but that gifts covered by PPERA (i.e. over £1,500 for political activities) require to be registered.
16. New sub-paragraph (5)(a) ensures that the existing exemption from registering the services of a volunteer which are provided in that volunteer's own time and free of charge is retained. Members are not required to register the services of a volunteer under the existing Interests Act, nor are they required to do so under PPERA.
17. Sub-paragraph (5)(b) largely replicates an existing exemption for certain election income. This provision ensures that members are exempt from registering donations towards election expenses (whether for election to the Scottish Parliament or the UK Parliament). Such donations would usually be included in electoral returns submitted to the Returning Officer after an election. The exemption does not apply to any donation which has not been used for election expense purposes by the end of the 35th day after the election result is declared (i.e. if the member has some donations towards election expenses left over after the election and uses them for other purposes).
18. In one respect, sub-paragraph (5)(b) represents a narrowing of the previous exemption, which had exempted campaign expenditure in connection with a member's campaign for election to a party office from registration. Such expenditure will now be registrable if it meets the registration criteria set out in sub-paragraph (2) or (3).
19. PPERA requires that members only accept donations over £500 from a permissible source (see section 54 of, and paragraphs 6 to 9 of Schedule 7 to, PPERA). If the donation is not from a permissible source it must be returned to the donor or forwarded to the Electoral Commission where the donor cannot be identified, on which there is further provision in sections 56 and 57 of PPERA (as applied by paragraph 8 of Schedule 7 to that Act). New sub-paragraph (6) excepts from registration under the Interests Act any gift or other benefit that is returned to the donor (or repaid), or forwarded to the Electoral Commission, under those provisions.
20. New sub-paragraph (7) makes clear that for the purposes of aggregating a gift or gifts with other aggregable benefits under sub-paragraph (3)(b)(ii), any controlled transaction is valued at the date on which it is entered into.
21. New sub-paragraph (8) sets out the definitions of the terms used in paragraph 6. Most of these simply replicate what is currently in the Interests Act. The three changes to the existing definitions in sub-paragraph (8) are:
 - The addition of the definition of "aggregable benefits" (see paragraph 12 of these notes);
 - The addition of a definition of "political activities" in so far as it relates to a member of the Scottish Parliament;
 - The definition of "specified limit" sets the threshold for registering gifts (that meet the prejudice test) under the Interests Act. This threshold was previously set at 1%

of a member's salary at the start of a parliamentary session (currently £570) and is being lowered to 0.5% of a member's salary at the start of a parliamentary session (rounded down to the nearest £10).

Section 4 – Loans, credit facilities etc.

New paragraph 6A

22. **Section 4** inserts a new paragraph 6A into the schedule to the Interests Act, which adds a new category of interest to the register known as a controlled transaction (certain loans, credit facilities and connected transactions). This brings the controlled transactions covered by Schedule 7A to PPERA within “registrable financial interest” for the purposes of registration under the Interests Act. Sub-paragraphs (1)(a) and (b) set out the requirement to register controlled transactions over the value of £1,500.
23. Sub-paragraphs (3) to (10) provide further definition of “controlled transaction” and this concept incorporates a political activities related “use condition” which must be met for a controlled transaction to be registered (further set out at sub-paragraph (9)). A controlled transaction is registrable where its value exceeds £1500, either singly or when aggregated with other “aggregable benefits” accepted from the same person in the same calendar year. Sub-paragraph (11) defines “aggregable benefit” to include gifts, certain remuneration received as expenses, overseas visits, or other controlled transactions; provided they are for the member's political activities and individually exceed £500 (but not exceeding £1,500).
24. New sub-paragraphs (3) and (4) define a controlled transaction as an agreement between the member and another person where that person lends money or provides a credit facility to the member, where the political activities related “use condition”, set out in sub-paragraph (9), is satisfied. Sub-paragraph (5) defines a credit facility. An example of a controlled transaction that is a credit facility would be where a member enters into a credit card agreement with the intention of using that wholly or partly for their political activities.
25. New sub-paragraph (6) provides that certain transactions that are connected to a controlled transaction or a transaction under which any property, services or facilities are provided for the member's use or benefit are also registrable if the “use condition” (see sub-paragraph (9)) is met. A connected transaction is one under which a third party gives security in relation to the sum owed by the member under the initial loan or credit agreement (or other transaction mentioned in sub-paragraph (6)(a)). An example of such a connected transaction is where a third person gives a personal guarantee to a bank in respect of a loan or credit facility provided to the member (and for registration purposes the “use condition” would also need to be met).
26. New sub-paragraph (7) sets out certain agreements or arrangements that do not amount to a controlled transaction. Sub-paragraph (7)(a) provides that members are not required to register payments, made in pursuance of an agreement or arrangement, which in accordance with any enactment form part of an Electoral Return for an election. Sub-paragraph (7)(b) makes clear that members are not required to register trade credit, given on normal (rather than preferential to the member) terms. Sub-paragraphs (7)(c) and (d) make clear that loans, credit facilities or connected transactions do not fall within the definition of “controlled transaction” and are therefore not registrable if:
 - they do not exceed £500;
 - they were entered into before the member was returned as a member (this applies despite section 3(1)(b) of the Interests Act which provides for the registration of other registrable financial interests previously held – but no longer held at the date of return – if the prejudice test is met).

27. New sub-paragraph (8) provides for the situation where a controlled transaction was not registrable when first entered into as its value was not sufficient to trigger registration, but it is subsequently varied so as to become registrable (either singly or when aggregated with other aggregable benefits). For example, where the terms of a loan agreement are subsequently varied to take its value above £1500. In such circumstances the date on which the controlled transaction is considered to be entered into for the purposes of the Interests Act (e.g. in relation to registration and aggregation) is the date on which that variation takes effect.
28. New sub-paragraph (9) explains that the “use condition” is that the member intends, at the time they enter into the loan or credit facility agreement, or a transaction mentioned in sub-paragraph (6)(a) (for the provision of property, services or facilities), to use any money or benefit obtained in connection with their political activities. New sub-paragraph (10) sets out that a controlled transaction is registrable, even if only part of the money or benefit obtained is intended to be used in connection with the member’s political activities.

New paragraph 6B – Value of loans, credit facilities etc.

29. New paragraph 6B(1) to (3) makes provision in relation to how a controlled transaction should be valued, depending on whether it involves a loan, credit facility or a connected transaction involving an arrangement under which security is given. In the case of a loan, the value is the value of the total amount to be lent under the loan agreement. For a credit facility, the value is the maximum amount which may be borrowed under the agreement for the facility. And, where a third party gives security to a member for a controlled transaction (i.e. where it is a connected transaction), the value is the contingent liability under the security provided.
30. Sub-paragraph (4) sets out that (for the purposes of valuing a controlled transaction that is a loan or a credit facility) no account is to be taken of any provision in the loan or credit facility agreement, as entered into, that would allow the adding of outstanding interest to any sum, for the time being owed, when calculating the value of the controlled transaction.

Section 5 – Overseas visits

31. [Section 5](#) of the Act replaces paragraph 7 of the schedule to the Interests Act with an amended version. Sub-paragraphs (1) and (2) restate the existing requirements to register certain “overseas visits” (i.e. that members are required to register visits outside of the United Kingdom which meet the prejudice test – subject to the exemptions from registration set out in sub-paragraph (3)).
32. Sub-paragraph (4) introduces a new requirement for members to register overseas visits over the value of £1,500 (singly or in aggregate) in connection with the member’s political activities. Sub-paragraph (5) replicates the exemptions from registering overseas visits set out in sub-paragraph (3) with the exception that members are not exempt from registering an overseas visit paid for by their spouse, civil partner, cohabitant, mother, father, son or daughter if it is over the value of £1,500 and for political activities. Such overseas visits are required to be registered under PPERA.
33. Sub-paragraph (6) sets out the definition of “aggregable benefit” for the purposes of aggregating an overseas visit for political activities with other benefits for political activities accepted from the same person in the same calendar year, further to sub-paragraph (4)(b). The aggregable benefits that can be aggregated include other overseas political visits, other gifts, certain remuneration received as expenses or controlled transactions, where they are for political activities and are individually valued in excess of £500 (but not exceeding £1,500).

Section 6 – Changes to certain time periods

34. Section 3(1) of the Interests Act requires members to register any registrable interest which the member had on the date on which the member was returned. This would include an interest acquired on the date of return. The member must register such interests no later than the date which is 30 days after the day on which the member took the oath of allegiance or made a solemn affirmation in accordance with section 84(1) of the Scotland Act 1998. The oath is normally taken several days after the date of return. PPERA on the other hand requires a donation received on the date of return to be reported within 30 days beginning with the date of acceptance of the donation. Where a donation received on the date of return is accepted quickly, section 3 therefore potentially allows longer than the maximum period under PPERA within which to register it.
35. **Section 6(1)** makes an adjustment to the registration deadline so that members have a 30 day period to register an interest starting with the date of return in the case of any interest acquired on that date. This aligns the time limit with the maximum period permitted under PPERA.
36. Under PPERA, a member must report a donation within the period of 30 days beginning with the date of acceptance of the donation. Under section 5 of the Interests Act, a member must register an interest with the Clerk within 30 days after the date on which the member acquired the interest. The 30 day period runs from the following day in the case of the Interests Act. The amendment made in section 6(2) of the Act, brings the starting point of the 30 day period into line with the PPERA requirement, so that it begins on the date on which an interest is acquired.
37. **Section 6(3)** amends section 10 of the Interests Act so that old entries in a member's register are to be kept for at least 10 years from the date of the last amendment to the member's register (the existing provision requires them to be kept for 5 years).

Section 7 – Registration of individuals' addresses

38. A written statement is the means by which a member is required to register their interests with the Clerk. The Interests Act specifies the nature of written statements and sets out certain obligations on the Clerk for their registration and publication. Section 7 of the Act states that the Clerk is not obliged to register the address of any individual named or referred to in the written statement, so as to avoid any unnecessary publication of personal data.

Section 8 – Reporting and registration of changes to controlled transactions

39. **Section 8** inserts a new section 8A into the Interests Act. New subsections (4) and (5) place a requirement on a member who has registered a controlled transaction to notify the Clerk of any change to it, no later than the last day of the period of 30 days beginning with the date on which the change takes effect. Subsections (1) to (3) provide further definition for the purposes of this section of what amounts to a change to a registered controlled transaction. There is such a change where: another person becomes a party to the transaction; there is a change to anything about the transaction on which the member provided (or should have provided) information (see further definition in subsection (2)) in the written statement when registering it; or where the transaction comes to an end.
40. New subsections (5) to (7) set out the process for members to register any changes to controlled transactions. A member notifies the Clerk by submitting a written notice (within 30 days of the change taking effect). The Clerk will then have 30 days in which to amend the entry in the member's register of interests, to record the change and the date on which it took effect, sending a copy of the amended entry to the member (subsection (7)). Under subsection (6), the written notice must be in such form and contain such information about or relating to the change as the Parliament may determine. Under the Standing Orders similar determinations under the Interests Act

are made by a resolution of the Parliament further to a motion of the SPPA Committee (e.g. in relation to the written statement under section 4 of the Interests Act).

Section 9 – Prohibition of paid advocacy

41. Section 14 of the Interests Act prohibits paid advocacy (i.e. advocating or initiating any cause or matter on behalf of any person or urging any other member to do so) in consideration of any payment or benefit in kind. This includes any payment or benefit in kind which the member's spouse, civil partner or cohabitant receives in connection with the Parliamentary duties of the member and which results in some benefit to the member. Paid advocacy is a criminal offence.
42. **Section 9** of the Act extends the offence of paid advocacy so that it applies not just where the member (or their spouse, civil partner or cohabitant) receives a payment or benefit in kind, but also where they agree to receive a payment or benefit in kind (regardless of whether payment is ultimately received). The Act was amended at Stage 2 to extend the offence further to ensure that it covers a member or their spouse, civil partner or cohabitant requesting an inducement for the member to carry out advocacy.

Section 10 – Exclusion from Parliamentary proceedings

43. **Section 10** of the Act makes minor amendments to section 16 of the Interests Act (Exclusion from proceedings of the Parliament). It adds in references to new section 8A(4) and (5), allowing the Parliament to exclude a member from proceedings in the Parliament where there has been a failure to comply with, or contravention of, the requirements in those provisions on notifying the Clerk of a change to a registered controlled transaction. Section 10 also makes minor changes to the wording used in section 16 to cross-refer to other sections of the Interests Act. This ensures consistency with the wording used in new section 17 of the Interests Act (which relates to the offences associated with breaches of the Act), as replaced by section 11 of the Act.

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.

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>

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).

Section 12 – Other sanctions

48. **Section 12** of the Act inserts a new section 17A into the Interests Act. This section sets out other sanctions available to the Parliament to impose on members who fail to comply with or contravene the provisions of the Interests Act mentioned at new section 17A(1) (section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16 of the Interests Act). Where there is such a contravention or failure to comply, section 17A(1) enables the Parliament, by resolution, to: exclude a member from the premises of the Parliament or such part of them as it determines and for such period as it determines; withdraw the member's right to use parliamentary facilities and services or such of them as the Parliament determines; censure a member.
49. Section 17A(2) makes additional sanctions available to the Parliament where a member is to be excluded from proceedings in the Parliament under section 16 of the Interests Act or excluded from some or all of the premises under section 17A(1). In such cases, the Parliament may also, by resolution, disallow payment of salary or allowances (or both) to a member in respect of such period (not exceeding the duration of the exclusion) as the Parliament determines.
50. The sanctions set out at section 17A draw on some of the measures currently available to the Parliament (e.g. exclusion from the proceedings and the wider premises of the Parliament, withdrawal of salary and allowances, withdrawal of access to parliamentary facilities) where it withdraws a member's rights and privileges under Rule 1.7 of the Standing Orders, e.g. in relation to Code of Conduct breaches. Specifying these sanctions at section 17A for the purposes of Interests Act breaches is consistent with section 39(8) of the Scotland Act 1998 which envisages legislative provision being made by or under an Act of the Scottish Parliament.

Section 13 – Scottish Law Officers

51. **Section 13** is a consequential amendment to section 18(4) of the Interests Act arising from the insertion (by section 6 of the Act) of new section 3(5) on the meaning of the relevant date where an interest is acquired on the date of return. Section 18 applies the provisions in the Interests Act with certain modifications to the Scottish Law Officers where they are not members of the Scottish Parliament. Section 18(4) makes bespoke provision on the relevant date for the purposes of initial registration by a Scottish Law Officer who is not a member of the Parliament and new section 3(5) is not required for the purposes of defining relevant date in such cases. Section 13 makes a small adjustment to section 18(4) to disapply section 3(5).

Section 14 - Meaning of “member” and registered political party and interpretation of “accepted”

52. **Section 14(a)** clarifies the definition of “member” in section 19 of the Interests Act. This is necessary because the phrase “member of a registered political party” is being inserted into the Interests Act by the Act. Section 14(a) also gives the meaning of “registered political party”.

53. [Section 14\(b\)](#) also amends section 19, inserting new subsection (4). It clarifies that the point in time at which a member is considered to have accepted a controlled transaction is when it is entered into. This applies even though in the case of a controlled transaction that is a connected transaction (i.e. one falling within paragraph 6A(6) of the schedule) the member is not a party to the arrangement. Paragraph 24 of these notes sets out further detail about connected transactions.

Section 15 – Amendment of 2000 Act: MSPs who are not members of a registered party

54. When it came to light that there was significant overlap in reporting requirements on individual members (i.e. to the Parliament under the Interests Act and the Electoral Commission under PPERA), section 59 of the Electoral Administration Act 2006 was brought in to remove the requirement for holders of relevant elective office to report donations to the Electoral Commission. Section 59 and the necessary exemptions it inserts into Schedule 7 of PPERA, do not, however, extend to members of the Scottish Parliament who are not members of a registered political party (a political party registered under Part II of PPERA). If this section is commenced for MSPs as it stands, dual reporting would end for MSPs who are members of registered parties, but independent members would still be required to report donations to both the Electoral Commission and the Parliament.
55. [Section 15](#) of the Act amends paragraph 10(8) of Schedule 7 to PPERA, and section 59(2) of the Electoral Administration Act 2006 (which inserts paragraph 10(8) into Schedule 7), to delete an express exception for members of the Scottish Parliament who are not members of a registered party. This makes the necessary changes to PPERA and the Electoral Administration Act 2006 to allow dual reporting to be ended for any MSP who is not a member of a registered party – independent MSPs for example.

Section 16 – Commencement

56. [Section 16](#) sets out the commencement provisions for the Act. Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016, but see also the alternative commencement arrangements set out in section 17 of the Act in relation to these provisions. These provisions cover the majority of the changes needed to allow dual reporting to be ended.
57. [Sections 2, 6\(3\), 9 to 12](#), which cover a minor adjustment to the remuneration category, the retention period relative to old register entries and provision on sanctions (including an adjustment to the paid advocacy prohibition) come into force on 5 May 2016. This will allow these changes all to come into force at the start of the new parliamentary session.
58. [Sections 8](#) (reporting and registration of changes to controlled transactions), 15 (amendment to the 2000 Act to end dual reporting for independent MSPs) and 19 (short title) will come into force on the day after Royal Assent.

Section 17 - Commencement: alternative and supplementary provisions

59. [Section 17](#) sets out alternative and supplementary commencement provision applying in the event that the provisions of PPERA and the Electoral Administration Act 2006 mentioned at section 1(2) - i.e. the provisions that trigger an end to dual reporting - are not commenced in relation to MSPs before 5 May 2016. In such circumstances section 17(1) permits the Parliament, by resolution, to designate an alternative date for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14 of the Act.
60. Subsection (3) allows for the making of transitional, transitory and savings provision in any resolution made under section 17(1). Subsection (4) applies provision in paragraphs 10(2) to (5) of the schedule to the Interests Act to any such resolution. This requires the Clerk to send a copy of it to the Queen's Printer for Scotland immediately after

*These notes relate to the Interests of Members of the Scottish Parliament
(Amendment) Act 2016 (asp 4) which received Royal Assent on 21 January 2016*

it is passed, and applies with modifications provision (in section 41(2) to (5) of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#) and the [Scottish Statutory Instruments Regulations 2011 \(S.S.I. 2011/195\)](#)) on numbering, publication and citation of Scottish statutory instruments to such a resolution as if it were a Scottish statutory instrument.

Section 18 – Commencement (further supplementary provision)

61. [Section 18](#) clarifies that the provision on other parliamentary sanctions in new section 17A does not apply to any failure to comply or contravention occurring before 5 May 2016.