

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***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

*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*

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 35<sup>th</sup> 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).