

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *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.