Interests of Members of the Scottish Parliament (Amendment) Act 2016

2016 asp 4

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th December 2015 and received Royal Assent on 21st January 2016

An Act of the Scottish Parliament to amend the Interests of Members of the Scottish Parliament Act 2006 and the Political Parties, Elections and Referendums Act 2000.

Amendment of the Interests of Members of the Scottish Parliament Act 2006

1 Amendment of the Interests of Members of the Scottish Parliament Act 2006

The Interests of Members of the Scottish Parliament Act 2006 is amended as in sections 2 to 14.

Commencement Information

I1 S. 1 in force for certain purposes at 22.1.2013 and at 5.5.2016 for certain purposes and in accordance with s. 16(5)(a), see s. 16(5)

Registrable financial interests

2 Exempt expenses

In the definition of "specified limit" in sub-paragraph (5) of paragraph 2 of the schedule (which, among other things, exempts from registration certain expenses expressed as a percentage of salary), for "1%" there is substituted " 0.5% ".

3 Gifts

For paragraph 6 of the schedule (registrable gifts) there is substituted—

"**Gifts**

6 (1) Where the circumstances are as described in sub-paragraph (2) or (3).

(2) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds the specified limit; or

(b) in the case where gifts were received from that person on more than one occasion during the current parliamentary session, the aggregate value of those gifts, each valued at the date on which it was received, exceeds the specified limit; and, in either case,

(c) that gift or those gifts meet the prejudice test.

(3) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds £1,500; or

(b) in the case where—

(i) the value of the gift, at the date on which it was received, exceeds £500 (but does not exceed £1,500); and

(ii) the aggregate value of the gift and any aggregable benefit or benefits, each valued at the date on which it was received, exceeds £1,500; and, in either case,

(c) that gift is—

(i) offered to the member; or

(ii) having been accepted, retained by the member,

for use by or the benefit of the member in connection with the member's political activities.

(4) Sub-paragraph (2) does not apply to the costs of travel and subsistence in connection with the member's attendance at a conference or meeting where those costs are borne in whole or in part by—

(a) the organiser of that conference; or

(b) one of the other parties attending that meeting,

as the case may be.

(5) Sub-paragraphs (2) and (3) do not apply to—

(a) any support (of any kind) provided by the services of a volunteer which are provided in that volunteer's own time and free of charge; or

(b) a donation (of any kind) which is intended by the donor to be used for the purposes of meeting—

(i) the election expenses of the member in relation to the election at which that member was returned as a member of the Scottish Parliament; or

(ii) the election expenses of the member in relation to any UK parliamentary election at which that member stands as a candidate,

but this exemption ceases to apply if the donation is not used for its intended purpose by the expiry of the 35th day after the election result is declared.

(6) Sub-paragraph (3) does not apply to a gift or other benefit which the member has returned (or repaid) or sent to the Electoral Commission in accordance with sections 56 and 57 of the Political Parties, Elections and Referendums Act 2000 (c.41) (as applied by paragraph 8 of Schedule 7 to that Act).

(7) The reference in sub-paragraph (3)(b)(ii) to a benefit being valued at the date on which it was received is, in the case of a controlled transaction, a reference to its being valued at the date on which it was entered into.

(8) For the purposes of this paragraph—

"aggregable benefit" means any of the following that is accepted by the member from the same person as gave the gift and in the same calendar year as the member accepted it—

(a) any other gift of a kind to which sub-paragraph (3)(b)(i) and (c) applies;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with any of the member's political activities; or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500);

"candidate" has the same meaning as in section 118A, as read with section 90ZA(5) of the Representation of the People Act 1983 (c.2);

"controlling interest" means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company;

"current parliamentary session" means the parliamentary session which begins immediately after, or in which, the member is returned;

"election expenses", in relation to a member, has the same meaning for the purposes of—

(a) sub-paragraph (5)(b)(i) as "election expenses" has in relation to a candidate in the order under section 12 of the 1998 Act which is in force for the purposes of the election at which the member was returned; and

(b) sub-paragraph (5)(b)(ii) as "election expenses" has in section 90ZA of the Representation of the People Act 1983 (c.2);

"political activities", in relation to a member, means the political activities of the member as such or as a member of a registered political party or both;

"specified limit" means 0.5% of a member's salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.".

Commencement Information

I2 S. 3 in force 5.5.2016 by s. 16(2) but see s. 17

4 Loans, credit facilities etc.

After paragraph 6 of the schedule, there is inserted—

"**Loans, credit facilities etc.**

6A (1) Where a member enters into a controlled transaction and—

(a) the value of the transaction is more than £1,500; or

(b) if not, the aggregate value of it and any aggregable benefit or benefits exceeds £1,500.

(2) Sub-paragraphs (3) to (10) define and provide further about controlled transactions.

(3) An agreement between the member and another person by which that person lends money to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(4) An agreement between the member and another person by which that person provides a credit facility to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(5) A credit facility is an agreement whereby a member 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 member) as is specified in or determined in accordance with the agreement.

(6) Where—

(a) the member and another person enter into a controlled transaction of a kind mentioned in sub-paragraph (3) or (4) or a transaction under which any property, services or facilities are provided for the use or benefit of the member (including the services of any person);

(b) the other person also enters into an arrangement where a third person gives any form of security for a sum owed to the other person by the member under a transaction mentioned in paragraph (a); and

(c) the use condition (see sub-paragraph (9)) is satisfied,

the arrangement is a controlled transaction.

(7) But the agreement or arrangement is not a controlled transaction—

(a) to the extent that, in accordance with any enactment, a payment made in pursuance of the agreement or arrangement falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election;

(b) to the extent that it is entered into by the member and a person—

(i) in connection with the provision of goods or services to the member; and

(ii) in the normal course of that person's trade or business and on its normal terms;

(c) if its value does not exceed £500; or

(d) despite section 3(1)(b), it was entered into by the person who is the member before the date the member was returned.

(8) For the purposes of sections 3 and 5 and sub-paragraph (1) of this paragraph, if—

(a) the value of a controlled transaction as first entered into is such that it is not registrable; but

(b) the terms of the transaction are subsequently varied in such a way that it becomes registrable,

the member is to be treated as having entered into a registrable transaction on the date when the variation takes effect.

(9) The use condition is that the member intends, at the time the member enters into the loan or credit facility agreement or the transaction second mentioned in sub-paragraph (6)(a), to use any money or benefit obtained in consequence of it in connection with the member's political activities (either as a member or as a member of a registered political party or both).

(10) For the purposes of sub-paragraph (9), it is immaterial that only part of the money or benefit is intended to be used in connection with the member's political activities.

(11) In sub-paragraph (1)(b), "aggregable benefit" means any of the following that is accepted by the member from the same person, being a party to the controlled transaction, and in the same calendar year as the member accepted the controlled transaction—

(a) any other controlled transaction having a value not exceeding £1,500;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of expenses incurred directly or indirectly by the member in connection with the member's political activities (as a member or as a member of a registered political party or both); or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500).

Value of loans, credit facilities etc.

6B (1) The value of a controlled transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a controlled 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 controlled 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 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.”.

Commencement Information

I3 S. 4 in force at 5.5.2016 by s. 16(2) but see s. 17

5 Overseas visits

For paragraph 7 of the schedule (overseas visits) there is substituted—

“**Overseas visits**

7 (1) Where the circumstances are as described in sub-paragraph (2) or (4).

(2) Where the member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.

(3) Sub-paragraph (2) does not apply to a visit the travel and other costs of which—

(a) are wholly met—

(i) by the member;

(ii) by the member's spouse, civil partner or cohabitant;

(iii) by the member's mother, father, son or daughter;

(iv) by the Parliamentary corporation; or

(v) out of the Scottish Consolidated Fund; or

(b) were approved prior to the visit by the Parliamentary corporation.

(4) Where a member makes, or has made, a visit outside the United Kingdom in connection with any of the member's political activities (as a member or as a member of a registered political party or both) (an “overseas political visit”) and—

(a) the costs of the visit exceed £1,500; or

(b) those costs exceed £500 (but do not exceed £1,500) and the aggregate value of them and any aggregable benefit or benefits exceeds £1,500.

(5) Sub-paragraph (4) does not apply to a visit the travel and other costs of which—

(a) are wholly met—

(i) by the member;

(ii) by the Parliamentary corporation; or

(iii) out of the Scottish Consolidated Fund; or

(b) were approved prior to the visit by the Parliamentary corporation.

(6) In sub-paragraph (4)(b), "aggregable benefit" means any of the following that is accepted by the member from the same person as met the costs of the visit and in the same calendar year as the member accepted it—

(a) any other overseas political visit having a value exceeding £500 (but not exceeding £1,500);

(b) any remuneration that is registrable by virtue of paragraph 2, having such a value and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with the member's political activities (as a member or as a member of a registered political party or both);

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500.".

Commencement Information

I4 S. 5 in force at 5.5.2016 by s. 16(2) but see s. 17

Time periods

6 Changes to certain time periods

(1) In section 3 (initial registration of financial interests: 30 day limit), there is added—

"(5) But where the member acquired the registrable interest on the same date as the member was returned, the relevant date for the purposes of subsection (3) is the last day of the period of 30 days beginning with the date of the return.".

(2) In section 5(2) (subsequent registration: 30 day limit), for "after" there is substituted " beginning with ".

(3) In section 10(1) (retention of old entries in the register for 5 years) for "5" there is substituted " at least 10 ".

Commencement Information
I5 S. 6 in force at 5.5.2016 by s. 16(2)(3) but see s. 17

Written statements of interests: registration of addresses

7 Written statements: registration of individuals' addresses

In section 4 (registration of statements of registrable interests), there is added—

"(6) However, the Clerk need not register the address of any individual named or referred to in a written statement.".

Commencement Information
I6 S. 7 in force at 5.5.2016 by s. 16(2) but see s. 17

The register of interests

8 Reporting and registration of changes to controlled transactions

After section 8 there is inserted—

"**8A Reporting and registration of changes to controlled transactions**

(1) For the purposes of this section, there is a change to a registered interest that is a controlled transaction if—
  (a) another person becomes party to the transaction (whether in place of or in addition to any existing party to it);
  (b) there is a change to anything about which information was (or should have been) provided by the member in the written statement lodged by the member when registering the transaction;
  (c) the transaction comes to an end.

(2) The reference in subsection (1)(b) to information provided is a reference to information—
  (a) about or relating to the transaction; and
  (b) provided in accordance with a determination under section 4(2).

(3) For the purposes of subsection (1)(c), a loan comes to an end if—
  (a) the whole debt (or all the remaining debt) is repaid;
  (b) the creditor releases the whole debt (or all the remaining debt).

(4) A member who has registered a controlled transaction shall notify the Clerk of any change to the transaction.

(5) A member shall comply with subsection (4) by lodging a written notice with the Clerk not later than the last day of the period of 30 days beginning with the day on which the change takes effect.

(6) A written notice shall—

(a) be in such form; and

(b) contain such information about the change or relating to it, as the Parliament may determine.

(7) Within 30 days after a member has lodged a written notice in accordance with this section, the Clerk shall—

(a) amend the entry relating to that member in the register so as to record the change and the date when it took effect; and

(b) send a copy of the amended entry to the member.”.

Sanctions

9 Prohibition of paid advocacy

In section 14 (prohibition of paid advocacy etc.)—

(a) in subsection (2)(b), for sub-paragraphs (i) and (ii) there is substituted—

“(i) which the member receives, agrees to receive or requests and which falls within subsection (2A); or

(ii) which the member's spouse, civil partner or cohabitant receives, agrees to receive or requests and which falls within subsection (2B).

(2A) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit results (or, if and when made or given, would result) in some benefit to the member, other than a vote for that member in any election to the Parliament.

(2B) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit—

(a) is being provided (or, if and when made or given, would be provided) in connection with the Parliamentary duties of the member; and

(b) results (or, if and when made or given, would result) in some benefit to that member.”,

(b) in subsection (3) after “receiving” there is inserted “ , agreeing to receive or requesting ”.

10 Exclusion from Parliamentary proceedings

In section 16 (exclusion from proceedings of the Parliament), for the words from “any” to “15” there is substituted “ section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 ”.

11 Offences

For section 17 (offences) there is substituted—

"**17 Offences**

(1) Any member who—

(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, section 3, 5, 6, 8A(4) and (5) or 13 or a measure taken by the Parliament under section 15 or 16; or

(b) contravenes section 14,

is guilty of an offence.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.".

12 Other sanctions

After section 17 there is inserted—

"**17A Other sanctions**

(1) If a member fails to comply with, or contravenes, section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16, the Parliament may, by resolution, do one or more of the following—

(a) exclude the member, for such period as the Parliament determines, from the premises of the Parliament or such part of them as it determines;

(b) withdraw, for such period as the Parliament determines, the member's right to use the facilities and services provided for members by the Parliamentary corporation or such of them as the Parliament determines;

(c) censure the member.

(2) Where a member is to be excluded from proceedings in the Parliament under section 16 or from the premises of the Parliament (or a part of them) under subsection (1)(a), the Parliament may also, by resolution, disallow payment of—

(a) the salary that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines;

(b) the allowances that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines; or

(c) both.

(3) In this section—

(a) "premises" includes places to which the public has access;

(b) "salary of the member" means the salary payable to the member by virtue of section 81(1) of the 1998 Act (including any salary payable because of section 83(4) of that Act (membership during dissolution));

(c) the references to a period not exceeding the duration of an exclusion are, where there are two exclusions of different lengths, references to the longer one.".

Scottish Law Officers

13 Scottish Law Officers

In section 18(4) (modifications in relation to a Scottish Law Officer who is not a member), after "3(4)" there is inserted " and (5) ".

Commencement Information
I7 S. 13 in force at 5.5.2016 by s. 16(2) but see s. 17

Interpretation of 2006 Act

14 Meaning of "member" and "registered political party" and interpretation of "accepted"

In section 19 (interpretation)—

(a) in subsection (1)—

(i) in the definition of "member", after " "member"" there is inserted " (except in references to a member of a registered political party) ", and

(ii) after the definition of "the register" there is inserted—

""registered political party" means a political party registered under Part II of the Political Parties, Elections and Referendums Act 2000 (c.41);",

(b) there is added—

"(4) For the purposes of the schedule, a member is to be taken as accepting a controlled transaction when it is entered into (even although, in the case of an arrangement of the kind mentioned in paragraph 6A(6) of the schedule, the member is not a party to the arrangement).".

Commencement Information
I8 S. 14 in force at 5.5.2016 by s. 16(2) but see s. 17

Amendment of Political Parties, Elections and Referendums Act 2000

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

In—

(a) paragraph 10(8) of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 (donation reports under that Act by, among others, MSPs who are not members of a registered political party), and

(b) section 59(2) of the Electoral Administration Act 2006 (which inserted that paragraph into the 2000 Act),

the words from "either" to "(b)" are repealed.

General

16 Commencement

(1) This Act comes into force as follows.

(2) Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016 (but see section 17).

(3) Sections 2, 6(3) and 9 to 12 come into force on 5 May 2016 (and see section 18).

(4) Sections 8, 15, 17 to 19 and this section come into force on the day after Royal Assent.

(5) Section 1 comes into force—

(a) so far as it relates to sections 3 to 7 (but not 6(3)), 13 and 14, on the same date as those provisions,

(b) so far as it relates to sections 2, 6(3) and 9 to 12, on 5 May 2016,

(c) so far as it relates to section 8, on the day after Royal Assent.

17 Commencement: alternative and supplementary provisions

(1) If, on 4 May 2016, the provisions mentioned in subsection (2) are not all in force so far as relating to members of the Parliament, then sections 3 to 7 (but not 6(3)) and 13 and 14 do not come into force on 5 May 2016 but instead on such date as the Parliament may designate by resolution.

(2) Those provisions are the following—

(a) section 59 of the Electoral Administration Act 2006 and paragraphs 10(8) and (9) and 15A of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 as inserted into that Schedule by that section, and

(b) paragraph 99 of Schedule 1 to the Electoral Administration Act 2006 and paragraph 16 of Schedule 7A to the Political Parties, Elections and Referendums Act 2000 as inserted into Schedule 7A by paragraph 99.

(3) A resolution under subsection (1) may contain such transitional, transitory and savings provision as the Parliament considers necessary or expedient.

(4) Paragraph 10(2) to (5) of the schedule to the Interests of Members of the Scottish Parliament Act 2006 (Parliamentary resolution modifying that schedule to be treated for certain purposes as if it were a Scottish statutory instrument) applies also to a resolution under subsection (1).

18 Commencement: further supplementary provision

Section 17A of the Interests of Members of the Scottish Parliament Act 2006 (as inserted into that Act by section 12) does not apply to any failure to comply or contravention occurring before 5 May 2016.

19 Short title

The short title of this Act is the Interests of Members of the Scottish Parliament (Amendment) Act 2016.

Changes to legislation:
There are currently no known outstanding effects for the Interests of Members of the Scottish Parliament (Amendment) Act 2016.