

# **INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 21: Short title and commencement***

82. This section provides for the short title of the Act. It also provides for two distinct commencement dates. Subsection (3) provides for a number of provisions to come into force on the day after Royal Assent but only for a limited purpose. The limited purpose is to enable the Parliament to make determinations under those provisions to come into force when the remainder of the Act comes into force in accordance with subsection (4). The provisions coming into force on the day after Royal Assent are:
- sections 4(1) and (2), which empowers the Parliament to make determinations regarding the form and content of written statements;
  - section 11(1) which empowers the Parliament to make determinations regarding the publication of the register;
  - section 13(2) which empowers the Parliament to make determinations regarding the circumstances in which an oral or written declaration of interests should be made;
  - section 19 which contains definitions of expressions to assist the making of such determinations;
  - this section; and
  - the schedule, paragraph 8(1)(b) which empowers the Parliament to make determinations regarding the amount of gross income for the purpose of determining whether a right or interest in heritable property is a registrable interest.
83. Subsection (4) specifies that the remaining provisions of the Act, not already in force, should come into force the day after the date of the first dissolution of the Parliament following the date of Royal Assent. The intention is to start a new session of the Scottish Parliament under the new requirements as set out in this Act. The Act will be binding on members and Scottish Law Officers from this date.

#### **The Schedule: Registrable financial interests**

84. The schedule defines the various financial interests which require to be registered. This schedule follows closely the Schedule to the Order. The Act defines those interests under the following headings:
- remuneration;
  - related undertakings;
  - election expenses;

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- sponsorship;
- gifts;
- overseas visits;
- heritable property; and
- interest in shares.

#### Remuneration

85. [Paragraph 2\(1\)](#) provides for remuneration to be a registrable interest. If a member holds a position that is not remunerated the member does not need to register that interest unless the interest consists of a directorship of a related undertaking or partner in a firm as specified in paragraph 3. Certain remuneration such as remuneration as an MSP (which consists of salary and allowances) is not registrable. Remuneration which is not registrable is set out in paragraph 2(2). The provisions in the Act restate the provision on remuneration in the existing Order.

#### Related undertakings

86. [Paragraph 3](#) provides for a registrable interest where a member is an unpaid director of a related undertaking or a partner in a firm. The provision applies where a member holds a paid directorship in one undertaking but also has an unpaid directorship in any parent or subsidiary of that undertaking or is a partner in a firm but does not receive remuneration for the position held.

#### Election expenses

87. [Paragraph 4](#) provides for election expenses to be a registrable interest where a donation or donations from a person in aggregate exceeds 25% of those expenses. Election expenses means the same as it does in the order, which is in force for the purpose of the election for which the member is returned, made under section 12 of the 1998 Act. Paragraph 4 also omits a registered political party from the meaning of “person”. This means that any donation, that exceeds 25% of the aggregate of the election expenses, received from a registered political party which the member is connected with will not be required to be registered under the Act.

#### Sponsorship

88. [Paragraph 5](#) makes provision for sponsorship to be a registrable interest. Sub-paragraph (2) provides that a member is sponsored by receiving, or having received any financial or material support as a member from the same person on more than one occasion which over a parliamentary session amounts in aggregate to more than a specified limit. Services provided by a volunteer are excepted from this definition. “Specified limit” is detailed in sub-paragraph (3) as 1 per cent of a member’s salary as published at the beginning of the parliamentary session (currently £480).

#### Gifts

89. [Paragraph 6](#) provides for gifts which a member receives, or has received, that exceed 1 per cent of the gross annual salary of the member on the date when the gift was received to be a registrable interest. In addition to exceeding this financial threshold the gift must be one that meets the prejudice test. Thus the member must be satisfied that if after taking into account all the circumstances, that interest would reasonably be considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament. Gifts to the member or a company in which a member has a controlling interest or a partnership of which the member is a partner are all covered by this paragraph. It is expressly provided that it does not apply to the costs of travel and subsistence in connection with the member’s attendance at a conference where these are met, in whole or in part, by the organiser of or one of the parties at the conference.

#### Overseas visits

90. [Paragraph 7](#) provides for overseas visits. In terms of subparagraph (1) overseas visits are registrable where they meet the prejudice test. Subparagraph (2) sets out the categories of overseas visits that do not require to be registered. Visits do not require to be registered where travel and other costs are wholly met by the member or the member's spouse, civil partner, cohabitant, mother, father, son or daughter, the Parliamentary Corporation or the Scottish consolidated fund. Additionally visits do not have to be registered if approved prior to the visit by the Parliamentary Corporation. The provisions of the Act restate the exemption categories in the Order except that they are amended to include civil partners.

#### Heritable property

91 Paragraph 8 makes provision for interests in heritable property to be a registrable interest. Heritable property by virtue of the definition in section 19(1) includes any right or interest in heritage whether in Scotland or elsewhere. Heritable property consists of land including houses and other buildings. The heritable property may be situated in any part of the world. There are two thresholds for such interests to be registrable interests. The first, dealt with in paragraph 8(2) (a), is the market value of the heritable property, which if it exceeds 50 per cent of a member's salary at the relevant date, requires to be registered. Paragraph 8(2) (b), sets out the second threshold, which requires a member to register heritable property if the gross income for 12 months prior to the relevant date exceeds an amount determined by the Parliament.

90. [Paragraph 8\(3\)](#) clarifies that holding or owning heritable property covers sole ownership, holding property jointly and holding property in a trust where you have an interest as a beneficiary in that trust.
91. Property which is, or was, used as a residential home by the member, member's spouse, civil partner or cohabitant is excepted under paragraph 8(4)(a) and (b) from the registration requirement (including a former residential home which is, or was, unoccupied and for sale, for a maximum period of 12 months). Paragraph 8(4) (c) clarifies that heritable property forming part of the assets of a partnership does not require to be separately registered where any income from that partnership is registered as remuneration.
92. [Paragraph 8](#) also makes provision as to what is the relevant date for valuation of the right or interest in heritable property. Where the member has, or had, such a right or interest on the date of the member's return as a member, then paragraph 8(6) provides that the relevant date is that date and 5th April in each succeeding year where the heritable property continues to be owned or held. Where the right or interest is acquired after the date of the member's return then paragraph 8(7) provides that the relevant date is the date of acquisition and 5th April in each succeeding year where the heritable property continues to be owned or held. Where the property is disposed off during the year no revaluation is necessary.
93. Accordingly, where a right or interest in heritable property is retained on 5th April in each succeeding year, a member should reassess the value of that right or interest at that time to determine whether it has become, or remains, or ceases to be a registrable interest. A right or interest in heritable property may not initially be a registrable interest because it falls below the valuation threshold on the first relevant date. However, if that right or interest is retained it may become a registrable interest as a result of a revaluation on 5th April in a succeeding year. In that event, the member must register that interest within 30 days of acquiring such a registrable interest in terms of section 5. If a registered right or interest in heritable property falls below the thresholds on 5th April in a succeeding year the member may lodge a statement that it has become a ceased interest and have it deleted from the register.

#### Interest in shares

94. [Paragraph 9](#) provides that a member has a registrable interest when a member has or had an interest in shares if it meets the criteria in subparagraph (2), irrespective of whether the interest is held by the member or by a relevant person. A relevant person is, in terms

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of subparagraph (7) (b), a person subject to the member's direction and control. That could include a third party or a member's spouse, civil partner or cohabitant, where, for example, shares are held nominally in their name but with an arrangement in place that allows the member to dictate when they are to be sold or for dividends to be remitted back to the member

95. [Paragraph 9\(2\)](#) provides for two thresholds. The first is that the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body. The second is that the market value of the shares at the relevant date exceeds, or exceeded, 50 per cent of a member's salary on that date (rounded down to the nearest £10). Based on a member's salary for 2005/06 the threshold would be £25,850.
96. [Paragraph 9\(3\)](#) clarifies that holding or owning an interest in shares covers sole ownership, holding shares jointly and holding shares in a trust where you have an interest as a beneficiary in that trust. [Paragraph 9\(4\)](#) clarifies that an interest in shares forming part of the assets of a partnership does not require to be separately registered where any income from that partnership is registered as remuneration.
97. As in the case of heritable property, paragraph 9 also makes provision as to what is the relevant date to calculate the interest in shares. That date is the date the member was returned or if later, the date the shares were acquired and, where the interest is retained, each succeeding 5th April. Where shares were disposed of before the member was returned, the relevant date is the date when the interest ceased. Similar considerations apply to shares as they apply to heritable property. Accordingly, where an interest in shares is retained on 5th April in each succeeding year, a member should reassess the value of that interest at that time to determine whether it has become, or remains, or ceases to be a registrable interest.

#### Modification

98. [Paragraph 10](#) confers a power on the Parliament to modify by resolution any part of the schedule which it considers necessary or expedient. This power is necessary to avoid the need for new primary legislation should there be a requirement to alter the terms of the schedule perhaps in the light of changing circumstances or events. Amendment could be by addition, removal or replacement of provisions.
99. Publication of the resolution by Her Majesty's Stationery Office is provided for under paragraph 10(2) which applies relevant provisions of the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Statutory Instruments\) Order 1999 \(SI 1999/1096\)](#) to the resolution.