
Changes to legislation: There are currently no known outstanding effects for the Parliamentary Voting System and Constituencies Act 2011, SCHEDULE 9. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 6

CONTROL OF LOANS ETC TO PERMITTED PARTICIPANTS

The Schedule referred to in section 6(1) is as follows—

“SCHEDULE 15A

CONTROL OF LOANS ETC TO PERMITTED PARTICIPANTS

PART 1

INTRODUCTORY

Operation of Schedule

- (1) This Schedule has effect in relation to the referendum under section 1 of the Parliamentary Voting System and Constituencies Act 2011 for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.
- (2) The following provisions have effect for the purposes of this Schedule.
- (3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.
- (4) “Regulated transaction” has the meaning given by paragraph 2.
- (5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 4(2) to a permissible donor falling within section 54(2) does not include a registered party.

Regulated transactions

- (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.
- (2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.
- (3) Where—
 - (a) a permitted participant and another person (A) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),

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- (b) A also enters into an arrangement whereby another person (B) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and
 - (c) the use condition is satisfied,
- the arrangement is a regulated transaction.
- (4) An agreement or arrangement is also a regulated transaction if—
 - (a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but
 - (b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.
 - (5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3)(a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.
 - (6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.
 - (7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.
 - (8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.
 - (9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3)(b).
 - (10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.
 - (11) A credit facility is an agreement whereby a permitted participant 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 permitted participant) as is specified in or determined in accordance with the agreement.
 - (12) An agreement or arrangement is not a regulated transaction—
 - (a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 9 of Schedule 15, to be included in a return under section 120, or
 - (b) if its value is not more than £500.

Valuation of regulated transaction

- (1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.
- (2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

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- (3) The value of a regulated 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 contained 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.

PART 2

CONTROLS ON REGULATED TRANSACTIONS

Authorised participants

- (1) A permitted participant must not—
 - (a) be a party to a regulated transaction to which any of the other parties is not an authorised participant;
 - (b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.
- (2) In this Schedule, an authorised participant is a person who is a permissible donor falling within section 54(2).

Regulated transaction involving unauthorised participant

- (1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.
- (2) The transaction is void.
- (3) Despite sub-paragraph (2)—
 - (a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 711(3)(a);
 - (b) the person from whom it was received is entitled to recover the money, along with such interest.
- (4) If—
 - (a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3) (a), or
 - (b) the person entitled to recover the money refuses or fails to do so,the Commission may apply to the court to make such order as it thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- (5) An order under sub-paragraph (4) may in particular—
 - (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it);
 - (b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.

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- (6) In the case of a regulated transaction where a party other than a permitted participant—
- (a) at the time the permitted participant enters into the transaction, is an authorised participant, but
 - (b) subsequently, for whatever reason, ceases to be an authorised participant,
- the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

- (1) This paragraph applies if—
- (a) a permitted participant and another person (A) enter into a transaction of a description mentioned in paragraph 2(3)(a),
 - (b) A is party to a regulated transaction of a description mentioned in paragraph 2(3)(b) (“the connected transaction”) with another person (B), and
 - (c) B is not an authorised participant.
- (2) Paragraph 5(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).
- (3) The connected transaction is void.
- (4) Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 5(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.
- (5) Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.
- (6) Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.
- (7) In the case of a connected transaction where B—
- (a) at the time A enters into the transaction, is an authorised participant, but
 - (b) subsequently, for whatever reason, ceases to be an authorised participant,
- sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.
- (8) If the transaction mentioned in paragraph 2(3)(a) is not a regulated transaction of a description mentioned in paragraph 2(1) or (2), references in this paragraph and paragraph 5(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—
- (a) the return or recovery of any property provided under the transaction,
 - (b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or
 - (c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

If an authorised participant purports to transfer the participant's interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

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Offences

- (1) An individual who is a permitted participant commits an offence if—
 - (a) the individual enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant, and
 - (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (2) A permitted participant that is not an individual commits an offence if—
 - (a) it enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant, and
 - (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant, and
 - (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (4) An individual who is a permitted participant commits an offence if—
 - (a) the individual enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant,
 - (b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual he fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.
- (5) A permitted participant that is not an individual commits an offence if—
 - (a) it enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant,
 - (b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person he fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- (6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
 - (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 2(1) or (2) to which another party is not an authorised participant,
 - (b) sub-paragraph (3)(b) does not apply to the person, and
 - (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person he fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- (7) An individual who is a permitted participant commits an offence if—

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- (a) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
 - (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (8) A permitted participant that is not an individual commits an offence if—
- (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
 - (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
- (a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
 - (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (10) An individual who is a permitted participant commits an offence if—
- (a) the individual is a party to a transaction of a description mentioned in paragraph 2(3)(a),
 - (b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
 - (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual he fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.
- (11) A permitted participant that is not an individual commits an offence if—
- (a) it is a party to a transaction of a description mentioned in paragraph 2(3)(a),
 - (b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
 - (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person he fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.
- (12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
- (a) the permitted participant is a party to a transaction of a description mentioned in paragraph 2(3)(a),
 - (b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
 - (c) sub-paragraph (9)(b) does not apply to the person, and

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- (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the person he fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.
- (13) A person commits an offence if the person—
- (a) knowingly enters into, or
 - (b) knowingly does any act in furtherance of,
- any arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the participation by a permitted participant in a regulated transaction with a person other than an authorised participant.
- (14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove that the person took all reasonable steps to prevent the permitted participant entering into the transaction.
- (15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove that the person took all reasonable steps to prevent the permitted participant benefiting in consequence of the connected transaction.
- (16) A reference to a permitted participant entering into a regulated transaction includes a reference to any circumstances in which the terms of a regulated transaction are varied so as to increase the amount of money to which the permitted participant is entitled in consequence of the transaction.
- (17) A reference to a permitted participant entering into a transaction to which another party is not an authorised participant includes a reference to any circumstances in which another party to the transaction who is an authorised participant ceases (for whatever reason) to be an authorised participant.

Penalties

- (1) A person guilty of an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 8 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) A person guilty of an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or (13) of paragraph 8 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine.
- (3) In the application of sub-paragraph (2)(a)—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
 - (b) in Northern Ireland,
- the reference to 12 months is to be read as a reference to 6 months.

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PART 3

REPORTING OF REGULATED TRANSACTIONS

Statement of regulated transactions

- (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under section 120 a statement of regulated transactions entered into by the permitted participant.
- (2) The statement must comply with paragraphs 11 to 15.
- (3) For the purposes of those paragraphs a regulated transaction is a recordable transaction—
 - (a) if the value of the transaction is more than £7,500, or
 - (b) if the aggregate value of it and any other relevant benefit or benefits is more than that amount.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of Schedule 15) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

Identity of authorised participants

The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A.

Identity of unauthorised participants

The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—

- (a) the name and address of the person;
- (b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 5 or those sub-paragraphs as applied by paragraph 5(6) or 6(2).

Details of transaction

- (1) The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A (read with any necessary modifications).
- (2) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 2(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A.
- (3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 2(3)(a) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A.

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Changes

- (1) Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any other change in any of the information that is required by paragraphs 11 to 13 to be included in the statement, the statement must record—
 - (a) the information as it was both before and after the change;
 - (b) the date of the change.
- (2) Where a recordable transaction has come to an end, the statement must—
 - (a) record that fact;
 - (b) record the date when it happened;
 - (c) in the case of a loan, state how the loan has come to an end.
- (3) For the purposes of sub-paragraph (2), 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.

Total value of non-recordable transactions

The statement must record the total value of any regulated transactions that are not recordable transactions.

PART 4

SUPPLEMENTAL

Non-disclosure with intent to conceal

- (1) This paragraph applies where, on an application made by the Commission, the court is satisfied that any failure to comply with a requirement of Part 3 of this Schedule in relation to—
 - (a) any transaction entered into by the permitted participant, or
 - (b) any change made to a transaction to which the permitted participant is a party, was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.
- (2) The court may make such order as it thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- (3) An order under this paragraph may in particular—
 - (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it);
 - (b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

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Proceedings under paragraphs 5 and 16

- (1) This paragraph has effect in relation to proceedings on an application under paragraph 5(4) or 16.
- (2) The court is—
 - (a) in England and Wales, the county court;
 - (b) in Northern Ireland, the county court.In Scotland, the court is the sheriff and the proceedings are civil proceedings.
- (3) The standard of proof is that applicable to civil proceedings.
- (4) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 8 or section 123.
- (5) An appeal against an order made by the sheriff may be made to the Court of Session.
- (6) Rules of court in any part of the United Kingdom may make provision—
 - (a) with respect to applications or appeals from proceedings on such applications;
 - (b) for the giving of notice of such applications or appeals to persons affected;
 - (c) for the joinder, or in Scotland sisting, of such persons as parties;
 - (d) generally with respect to procedure in such applications or appeals.
- (7) Sub-paragraph (6) does not affect any existing power to make rules.

Interpretation

- (1) In this Schedule—
 - “authorised participant” is to be construed in accordance with paragraph 4 (and see paragraph 1(5));
 - “connected transaction” has the meaning given by paragraph 2(9);
 - “credit facility” has the meaning given by paragraph 2(11);
 - “permitted participant” is to be construed in accordance with paragraph 1;
 - “regulated transaction” is to be construed in accordance with paragraph 2.
- (2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 2(3)(a), as if it were a party to the connected transaction.”

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