

SCOTTISH PARLIAMENT (ASSISTANCE FOR POLITICAL PARTIES) ACT 2021

EXPLANATORY NOTES

BACKGROUND TO THE ACT

4. Subsection (1) of section 97 of the Scotland Act 1998 provides for Her Majesty, by Order in Council, to authorise the Scottish Parliamentary Corporate Body (the SPCB) to make payments to registered political parties “for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties”. “Registered political party” is defined in section 5(9) of the 1998 Act as a party registered under Part II of the Political Parties, Elections and Referendums Act 2000. Subsection (2) provides that an Order in Council made under subsection (1) may authorise payments only to parties whose MSPs do not hold ministerial office in the Scottish Government (either as Cabinet Secretaries or as Ministers¹), but (under subsection (3)) the Order may specify circumstances in which this limitation is to be disregarded. The Order may also (under subsection (4)) determine what it means for an MSP to be “connected with” a party.
5. The Scottish Parliament (Assistance for Registered Political Parties) Order 1999 ([SI 1999/1745](#)) is the only Order that has been made under section 97. Since it came into force on 1 July 1999, it has governed arrangements for the payments made, by the SPCB, to political parties represented in the Parliament. These payments are often known as “Short money”, adopting the term used in the UK Parliament for similar arrangements there.
6. A provision in an Act authorising the making of Orders in Council is equivalent in most respects to the more typical delegated powers provision that authorises UK or Scottish Ministers to make regulations (or orders, etc.). The Orders in Council themselves, like the regulations (or orders etc.) more typically made, are subordinate legislation made in the form of a statutory instrument. The difference is that Orders in Council are made by the Queen, in the Privy Council, on the advice of Ministers, rather than by Ministers themselves. At the time the 1999 Order was made, it was UK Ministers who provided that advice, although they are understood in practice to have consulted the then Scottish Executive.
7. When the Scotland Act 1998 was first enacted, section 97 was one of its provisions that was protected from modification by Schedule 4 to the Act, meaning that amending the section would have been outside the Parliament’s legislative competence.² This restriction was removed by the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 1999 ([SI 1999/1749](#)), with further provision being made in the Scotland Act 2016, which also changed the Parliamentary procedure to which Orders in Council made under section 97 are subject.³ Whereas such Orders originally required approval by resolution of both Houses of Parliament and of the Scottish Parliament, the effect of

¹ Section 97 refers to “members of the Scottish Government or junior Scottish Ministers”, but the Scottish Government refers to such post-holders as Cabinet Secretaries and Ministers respectively.

² Paragraph 4 of Schedule 4, as originally enacted.

³ Scotland Act 2016, section 12(2) (removal of restriction on modification) and (3) (change of Parliamentary procedure).

These notes relate to the Scottish Parliament (Assistance for Political Parties) Act 2021 (asp 7) which received Royal Assent on 22 March 2021

the 2016 Act was that approval by the Scottish Parliament alone was sufficient.⁴ This reflected an understanding that, had a new Order in Council been made to replace the 1999 Order, responsibility for drafting the Order would have rested with the Scottish Ministers alone.

⁴ Type A procedure has been replaced by Type D – see Schedule 7 to the Scotland Act 1998.