

This document relates to the Scottish Parliament (Assistance for Political Parties) Bill (SP Bill 78) as introduced in the Scottish Parliament on 24 June 2020

# Scottish Parliament (Assistance for Political Parties) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Scottish Parliament (Assistance for Political Parties) Bill, introduced in the Scottish Parliament on 24 June 2020.
2. The following other accompanying documents are published separately:
  - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 78–LC); and
  - a Financial Memorandum (SP Bill 78–FM).<sup>1</sup>
3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in

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<sup>1</sup> A Policy Memorandum is not required for a Committee Bill and one has not been prepared on this occasion. The policy is set out in the Standards, Procedures and Public Appointments Committee's 2<sup>nd</sup> Report, 2020 (Session 5), Proposal for a Committee Bill – Scottish Parliament (Assistance for Political Parties) Bill, available at: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/SPPA/2020/2/5/Proposal-for-a-Committee-Bill---Scottish-Parliament--Assistance-for-Political-Parties--Bill-1/SPPAS052020R02.pdf>

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conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

## The Bill

4. The Bill amends the Scotland Act 1998 so that provision for financial assistance to registered political parties can henceforth be made by means of a resolution of the Parliament, replacing the existing provision that is contained in an Order in Council.

## Background

5. 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 Ministers<sup>2</sup>), 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.

6. 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

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<sup>2</sup> 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.

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money”, adopting the term used in the UK Parliament for similar arrangements there.

7. 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.

8. 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.<sup>3</sup> 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.<sup>4</sup> Whereas such Orders originally required approval by resolution of both Houses of Parliament and of the Scottish Parliament, approval by the Scottish Parliament is now sufficient.<sup>5</sup> This reflects an understanding that, were a new Order in Council to be made to replace the 1999 Order, responsibility for drafting the Order would now rest with the Scottish Ministers alone.

## Commentary on sections

9. Section 1 replaces the existing section 97 of the 1998 Act with a new version. The new subsection (1) is equivalent to the existing subsection (1) except that the means by which provision (about payments to registered political parties) is made is a resolution of the Parliament rather than an

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<sup>3</sup> Paragraph 4 of Schedule 4, as originally enacted.

<sup>4</sup> Scotland Act 2016, section 12(2) (removal of restriction on modification) and (3) (change of Parliamentary procedure).

<sup>5</sup> Type A procedure has been replaced by Type D – see Schedule 7 to the Scotland Act 1998.

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Order in Council. There is no equivalent of subsections (2) and (3) of the existing section; but this does not alter the scope of what may be authorised, which includes the making of payments to political parties, some of whose MSPs hold ministerial office. (Under the 1999 Order, this is limited to parties whose MSPs do not constitute more than a fifth of the MSPs holding ministerial office in the Scottish Government.)

10. Subsection (2)(a) allows a resolution to confer functions on the SPCB. This replicates to an extent the effect of the existing section 97(1) in making it clear that the SPCB will have functions under the resolution. This will enable the SPCB to continue in its existing role as the body that administers the arrangements made, at present, by the 1999 Order. Paragraph (b) largely replicates existing section 97(4). Paragraph (c) replicates the provision made (in relation to the original section 97 power) by section 113(2) of the 1998 Act (under which powers to make subordinate legislation may be exercised so as to make different provision for different purposes). It also replicates provision made in the context of other provisions of the 1998 Act that enable the Parliament to make provision by resolution (see for example section 83(5) in relation to resolutions about remuneration of members). This will also enable a resolution to make different provision equivalent to that in subsections (2) and (3) of existing section 97, relating to parties some of whose MSPs hold Ministerial offices.

11. Section 2 of the Bill repeals the entry relating to section 97 in a table (in Schedule 7 to the 1998 Act) which specifies, for each provision in that Act conferring a power to make subordinate legislation, the Parliamentary procedure to which that subordinate legislation is subject. As section 97 will no longer confer such a power, the entry is no longer needed.

12. Section 3 ensures that the removal (by section 1) of the power to make an Order in Council does not affect the validity of the 1999 Order made under that power, and does not retrospectively affect things done under the 1999 Order (such as particular payments made). Subsections (2) and (3) ensure that the 1999 Order remains in force, governing the arrangements for payments to registered political parties, until such time as the Parliament first exercises its new power (under the replacement section 97) to make new arrangements by resolution. The coming into force of that first resolution will then automatically revoke the 1999 Order.



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