The Standards, Procedures and Public Appointments Committee introduced a Bill to amend the Interests of Members of the Scottish Parliament Act 2006 on 27 May 2015. The Scottish Parliament had been given increased power over its members interests scheme by the provisions of the Scotland Act 2012.
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EXECUTIVE SUMMARY


The Standards, Procedures and Public Appointments (SPPA) Committee of the Scottish Parliament – which is responsible for setting standards of behaviour for Members of the Scottish Parliament – launched a consultation on possible changes to the register of interests’ scheme in April 2013.

The potential changes included responding to the recommendations to the Scottish Parliament set out in the GRECO evaluation report on anti-corruption standards in the United Kingdom.

The other changes, which the Committee were interested in seeking comment on, related to ending the requirements on Members to register financial interests with the Electoral Commission for political donations, as well as registering their other interests with the Parliament. An end to this dual reporting was seen as beneficial to both Members, and the public who would only have to check in one place to see all the registered interests of any Member of the Scottish Parliament.

Following the consultation, and the publication of a draft Bill to amend the Interests of Members of the Scottish Parliament Act 2006, the SPPA Committee introduced its Interests of Members of the Scottish Parliament (Amendment) Bill in the Parliament on 27 May 2015.

The proposals in this technical Bill include:

- ending the dual reporting by Members to both the Electoral Commission and the Scottish Parliament
- giving responsibility for the investigations of all complaints on breaches and non-compliance to the Commissioner for Ethical Standards in Public Life in Scotland
- extending the offence of paid advocacy to include agreeing to receive inducements as well as actually receiving them
- increasing the length of time registers are held from five to ten years
- increasing the forms of sanctions available to impose on members who breach the disclosure requirements.
BACKGROUND

The Standards, Procedures and Public Appointments (SPPA) Committee of the Scottish Parliament is responsible for setting standards of behaviour for Members of the Scottish Parliament (MSPs).

Between 24 April and 22 July 2013, the Committee carried out a consultation on a potential Committee Bill to amend the Interests of Members of the Scottish Parliament Act 2006.

Scotland Act 1998

Section 39 of the 1998 Act imposed a statutory duty upon the Scottish Parliament to make provision by or under an Act of the Scottish Parliament about members' interests. Provision is currently made in the Interests of Members of the Scottish Parliament Act 2006 (asp 12).

Interests of Members of the Scottish Parliament Act 2006

The Interests of Members of the Scottish Parliament Act 2006 (Interests Act) sets out the requirements for the registration of certain financial interests held by MSPs.

The Register of Interests for current MSPs is available on the biography page of each MSP on the Parliament’s website.

Under the terms of the Interests Act, the Parliament is required to keep a copy of each Register of Interests for a period of five years from the date the last amendment is made. Copies of the Register of Interests for each MSP in those five preceding parliamentary years are also made available on the Parliament’s website.

Some of the detail required for registration and declaration is contained in determinations made by the Parliament. Determinations are a type of subordinate legislation (the power to make the determination is contained in primary legislation) and are legally binding. The Parliament may modify the schedule to the Interests Act by resolution and the rule governing the making of such a resolution is set out in the Standing Orders of the Parliament, Rule 1.8.

For example, the schedule to the Interests Act and the determination on form and content of written statements were amended, by resolution of Parliament, at the end of session 3 (20 January 2011), including reducing the number of categories of registrable interest from eight to five.

Code of Conduct for MSPs

Volume 2 of the Code of Conduct for MSPs sets out the requirements on MSPs with regard to the registering of their interests. The requirements include the timescales within which Members must complete their registration.

GRECO

The Group of States against Corruption (GRECO: groupe d’États contre la corruption) was established in 1999 by the Council of Europe to monitor States’ compliance with the organisation’s anti-corruption standards.

GRECO’s objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms.
In March 2013, GRECO published its fourth evaluation report on the United Kingdom (UK). The main objective of the report was to evaluate the effectiveness of measures, adopted by the authorities in the UK (including the Scottish Parliament), which were designed to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality.

The report contained a critical analysis of the situation in the UK, reflecting on the efforts made and the results achieved. The report also identified possible shortcomings and made recommendations for further improvement. In keeping with the practice of GRECO, the recommendations were addressed to the authorities of the UK (including the Scottish Parliament), in order that the relevant institutions/bodies take the necessary action.

The GRECO recommendations were that the authorities:

- should consider lowering the thresholds for reporting financial holdings (such as stocks and shares)
- should consider lowering the current thresholds for registering accepted gifts
- provide clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts.

Although the recommendations were specifically addressed to the UK Parliament GRECO recommended that the devolved institutions in Scotland, Wales and Northern Ireland be invited to take similar action.

Within 18 months of the adoption of the evaluation report, the United Kingdom authorities had to report back on the action taken in response to the recommendations.

In its compliance paper for the UK (GRECO 2015) GRECO reported on how the authorities had addressed its recommendations.

The compliance paper noted that in Scotland the SPPA Committee had considered:

- the threshold for registering financial holdings (shares) on 5 June 2014 and agreed not to recommend any changes to the current threshold of a market value of £28,760 or where the total nominal value of the shares was greater than 1% of the total nominal value of the issued shares [sic] capital, as this was considered sufficient to capture significant interests. GRECO concluded that its recommendation had been dealt with in a satisfactory manner
- the recommendation on lowering the current thresholds for registering accepted gifts on 10 October 2013 and 19 December 2013, when it agreed to recommend that the Scottish Parliament reduce the threshold from 1% of a member’s salary at the start of the parliamentary session (currently £570) to half of that value.

In reporting back to GRECO the Scottish Parliament pointed out that the guidance on accepting gifts was already included in its Code of Conduct for Members.

In its compliance report GRECO stated that it was pleased to note that the Scottish Parliament had presented a more developed guidance on the acceptance of gifts in its Code of Conduct (Section 7(2.6)), in line with the evaluation report recommendation, and that the Scottish Parliament should be commended.
Scotland Act 2012

On the 3 July 2012, section 7 of the Scotland Act 2012 (SA12) come into effect to amend section 39 of the Scotland Act 1998 (SA98), to give greater flexibility to the Scottish Parliament when setting out its scheme for registering members’ interests.

For example, a new subsection (4A) to section 39 of the SA98 enables the Scottish Parliament to make provision, that if an excuse for non-compliance is considered to be reasonable by the Parliament, then it can be found there had not been a contravention or a failure to comply by the Member.

Another new subsection (5) allows the Scottish Parliament to make provision to impose on a MSP such sanctions as it considers appropriate if the MSP has failed to comply with or contravened any provision regarding registration.

Section 39(6) of the SA98 originally provided that any MSP who contravened provisions regarding registration of interests was guilty of an offence. The new subsection (6) replaced this with a power for the Parliament to decide how to deal with such contraventions.

The penalty for any offence relating to registration has remained the same: a person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, currently £5000.

Changes proposed to registration of members’ financial interests

In April 2013, following the changes to the Scottish Parliament’s powers set out in section 7 of the SA12, and the recommendations in the GRECO report, the SPPA Committee launched a consultation on a potential Members Interests Bill.

The Committee put forward proposals for changes to the system including ones which sought to:

- improve the public accessibility of information reported by MSPs, allowing for effective public scrutiny
- ensure a wide range of parliamentary sanctions are available
- replace the criminal offences for failure to declare or register financial interests – which have never been used in 14 years of the Parliament – with wider parliamentary sanctions.

When the consultation closed, on 22 July 2013, the Committee had only received three responses: from the Scottish Government, the Electoral Reform Society Scotland and the Commissioner for Ethical Standards in Public Life in Scotland.

Following the consultation, the Committee agreed not to make any changes to the existing criminal offences for failure to register or declare financial interests.

In its 2nd Report of 2015, published on 6 March 2015, the SPPA Committee set out a draft Members’ Interest Bill.

The draft bill proposed:

- expansion of the Parliament’s register of members’ financial interests to include the political donations. Under the terms of the Political Parties, Elections and Referendum Act 2000 (PPERA) MSPs must report such donations to the Electoral Commission.
Under the proposals in the draft bill relevant Members would no longer have to report their interests in two places, and all the information on their interests would be available to the public on the Parliament’s website and any relevant information could be passed on to the Electoral Commission.

- that sanctions for breaches of the registration requirements could include motions of censure and withdrawal of salary or privileges, as well as the current exclusion from parliamentary proceedings

- extending the criminal offence of paid advocacy to include agreeing to receive inducements as well as actually receiving them.

The SPPA Committee’s Convener led a debate on a draft bill in the Chamber on 22 April 2015. In his contribution to the debate (Official Report 22 April 2015, column 47) the Convener noted that:

“the bill that we are to introduce will look complex. However, the changes can be boiled down to a number of key questions that members must ask themselves. Has anyone given them a gift or donation of money, goods or services? Has anyone funded an overseas visit for them? Have they been paid for any work that they have done outside Parliament? Do they own shares or property, apart from their own home? In all those cases, there could be a registrable interest.”

The Convener promised Members that the proposals would mean a more streamlined system for them. They would only have to seek advice in one place – from the standards clerks in Parliament; they would only have to register interests in one place – in the Parliament; and the public would be able to find all of a MSP’s interests in one place – the parliamentary register.

He added that one more benefit of ending dual reporting would be that complaints about failing to register would all be dealt with by the Commissioner for Ethical Standards in Public Life in Scotland.

Under the present systems of registration a complaint of breaching, or non-compliance, could be investigated by the Commissioner, or by the Electoral Commission or even by both at the same time. This could mean that a MSP had to deal with two separate investigations into what was essentially the same complaint.

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL

The SPPA Committee introduced its Interests of Members of the Scottish Parliament (Amendment) Bill in the Parliament on 27 May 2015. The content is very similar to the draft bill set out in the Committee’s 2nd report, although some sections have been re-ordered, for example, section 2 in the draft bill has become section 6 in the Bill as introduced.

The provisions in the Bill will introduce amendments to the 2006 Act which will combine the currently separate processes of members declaring their financial interests in accordance with Parliament’s members’ interests regime and the reporting of political donations and loans to the Electoral Commission.

The Bill amends PPERA 2000 so that the dual reporting is no longer required for MSPs who are not members of a registered political party, as well as MSPs who are members of a registered political party. The intention is that the dual reporting will stop after the next ordinary general election to the Parliament in May 2016, but secondary legislation is required to introduce the
change to PPERA, which will only be made by the UK Government once it has been informed by the Electoral Commission that the Commission is satisfied that that it will receive from the Parliament all the information it requires relating to political donations.

These changes are intended to streamline the process for MSPs and to make all the information available in one place, on the Parliament’s website. The provisions in the Bill will also extend the length of time that records are retained by the Parliament from five to ten years.

Other changes to the 2006 Interests Act include broadening the range of sanctions that can be imposed on members who breach the disclosure requirements. The new sanctions will include the ability to:

- exclude a member from the Parliament
- withdraw the member’s right to use the facilities and services provided for MSPs
- censure the member.

The offence of paid advocacy will be extended by the provisions in the Bill to include agreeing to receive inducements as well as actually receiving them.

The Bill also addresses the recommendation in the GRECO evaluation report so that the specified limit for the threshold for exemption from registration, of, for example, remuneration, stocks and shares or gifts, should be reduced. The Bill proposed that specified limit would drop to 0.5% of a Member’s salary (£280), instead of 1% (£560).

**Commissioner for Ethical Standards in Public Life in Scotland**

The Commissioner for Ethical Standards in Public Life in Scotland investigates complaints about MSPs who have allegedly breached the Code of Conduct, which includes the registration of interests.

Any complaint that the Commissioner takes to full investigation is reported to the SPPA Committee which must then publish a report on its findings and can, when necessary, recommend sanctions to be imposed on the MSP in question by the Parliament as a whole.

Under the provisions in the Bill, the Commissioner’s Office would take over responsibility, from the Electoral Commission, for the investigation of complaints about the failure to register political donations.

**Financial memorandum**

On 8 September 2015, the Finance Committee reported on the Bill's Financial Memorandum. The Committee received written evidence from the Commissioner, the SPCB and the Electoral Commission.

The Financial Memorandum estimated that there would be a small increase in the number of cases requiring full investigations by the Commissioner, of about one per year. The Memorandum expected that the Commissioner’s Office would require £6,000 to deal with the potential increased workload, while the SPPA Clerks could absorb the costs of the increased registration of political donations.

The Finance Committee was content that the information in the Financial Memorandum is an accurate reflection of the costs that would arise from the Bill. The Committee welcomed the SPCB’s commitment to review the budget of the Commissioner for Ethical Standards in Public
Life in Scotland once accurate information on the volume and complexity of cases which require to be investigated is available.
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