Passage of the Bill

The Interests of Members of the Scottish Parliament Bill [SP Bill 44] was introduced in the Parliament on 12 September 2005. As it was a Committee Bill, Stage 1 Committee consideration was effectively completed by the work which the Standards and Public Appointments Committee did prior to introduction of the Bill. The Stage 1 (general principles) debate took place on 14 December 2005. Stage 2 consideration was undertaken by the specially convened Interests of Members of the Scottish Parliament Bill Committee. The Bill was passed on 8 June 2006 following the Stage 3 parliamentary debate.

Purpose and objectives of the Bill

The Bill replaces the transitional Members Interests Order (SI 1999/1350). Provision is made for the creation, maintenance and amendment of a public register of Members’ interests. The Bill sets out the definition of both registrable and declarable interests and existing provisions prohibiting paid advocacy are clarified. Certain offences and sanctions are set out in the Bill.

The Bill makes use of a ‘prejudice test’ to determine whether particular interests require to be registered. In certain parts of the Bill, use is made of tests expressed as a percentage of Members’ salaries in order to protect its provisions from inflation.

Provisions of the Bill

The Bill provides for the existence of a public register of Interests of Members of the Scottish Parliament, to be maintained and kept by the Clerk of the Parliament. The Register must contain information on those financial interests deemed registrable by virtue of the Schedule to the Bill, that are held by a Member on the date he or she became a Member of the Scottish Parliament - and prior to that date where certain interests meet the prejudice test. This test applies to some interests, such as gifts and overseas visits, discussed below.
“An interest meets the prejudice test if, after taking into account of the circumstances, that interest is reasonably 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.” (s3(2)) The Schedule requires Members to register the following interests (it is possible for the Parliament to amend the Schedule by resolution):

- Remuneration and related undertakings
- Donations to election expenses in excess of 25% of total expenses
- Sponsorship comprising more than 1% of a member’s salary
- Gifts of a value in excess of 1% of a Member’s salary and overseas visits that also meet the prejudice test
- Heritable property with a market value of more than 50% of a Member’s salary
- Interests in shares with a nominal value greater than 1% of the total nominal value of the issued share capital of the company or where the market value of the shares exceeds 50% of a Member’s salary.

An interest in a matter is declarable if it is a registrable interest. Members must declare that they hold such an interest before taking part in proceedings in a matter to which that interest applies.

The provision on paid advocacy prohibits members from advocating or initiating any matter or urging another to do so in consideration of any payment or benefit in kind.

Two forms of sanction are set out in the Bill: parliamentary and criminal. A Member may be prevented or restricted from participating in parliamentary proceedings or excluded from parliament in certain circumstances. Breach of some provisions (such as s14 on paid advocacy) may attract criminal charges.

**Parliamentary consideration**

The Bill was initially drafted by the Standards Committee of the first parliamentary session, and redrafted in similar terms by that of the second session. Stages 2 and 3 of the passage of the Bill were undertaken by the Interests of Members of the Scottish Parliament Bill Committee, although many of the amendments were proposed by the conveners of the Standards committees in both sessions.

Several amendments which were disagreed to, not moved or withdrawn at Stage 2, were brought again at Stage 3, for example the requirement to register election expenses and a raised threshold for registration of sponsorship and gifts. In relation to the latter, this was initially set at 0.5% of a Member’s salary, and while an amendment to raise the threshold to 1% was defeated at Stage 2, it was carried at Stage 3.

A Stage 2 amendment to remove the prejudice test from the requirement to register overseas visits was withdrawn and an amendment to extend the requirement to include hospitality was not moved. The prejudice test applied
to heritable property and to interest in shares in the Bill as Introduced, and in the Bill as amended at Stage 2. This provision was removed from the Bill as amended at Stage 3 and is not contained in the Bill as passed.

The most substantive and debated amendment agreed to at Stage 2 was the successful deletion of Schedule 2 to the Bill as introduced, so removing the requirement to register non-financial interests. An amendment to reintroduce Schedule 2 was brought at Stage 3, but was defeated, meaning that there is no requirement to register non-financial interests.

Further substantive amendments brought at Stage 3 include the power of the Parliament to amend the Schedule. This amendment was successful following redrafting and further clarification in the Chamber on the meaning of ‘determination’ and ‘resolution’ (see Official Report for 26 April 2006 and 8 June 2006).