Delegated Powers and Law Reform Committee

Interests of Members of the Scottish Parliament (Amendment) Bill at Stage 1

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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—

i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

ii. [deleted]

iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
Committee Membership

**Convener**
Nigel Don  
Scottish National Party

**Deputy Convener**
John Mason  
Scottish National Party

**Margaret McCulloch**  
Scottish Labour

**John Scott**  
Scottish Conservative and Unionist Party

**Stewart Stevenson**  
Scottish National Party
Introduction

1. At its meeting on 1 September 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Interests of Members of the Scottish Parliament (Amendment) Bill¹ (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Bill was introduced on 27 May 2015 by the Convener of the Standards, Procedures and Public Appointments Committee (“the SPPA Committee”). The Bill seeks to amend the Interests of Members of the Scottish Parliament Act 2006 and the Political Parties, Elections and Referendums Act 2000.
Overview of the Bill

3. The Bill makes provision to amend the members’ interest regime set out in the Interests of Members of the Scottish Parliament Act 2006 (“the Interests Act”), with the aim of facilitating the end of the dual reporting of certain financial interests of MSPs, to both the Electoral Commission under the Political Parties, Elections and Referendums Act 2000 (“PPERA”) and to the Scottish Parliament, under the Interests Act.

4. The Electoral Administration Act 2006 contains provision to amend PPERA to allow for dual reporting by MSPs to end. However, the relevant provisions cannot be commenced until the Electoral Commission is satisfied that appropriate alternative reporting arrangements are in place. Accordingly, the Bill makes changes to the Interests Act regime intended to mirror the PPERA reporting requirements for MSPs. These changes are designed to ensure that all information required by the Electoral Commission can be drawn from the Scottish Parliament’s register of interests, and thus facilitate the ending of dual reporting.

5. The Bill also makes provision in relation to the enforcement of the members’ interest regime, by broadening the scope of the existing offence of paid advocacy and strengthening the sanctions that may be applied by the Scottish Parliament when a breach occurs. Provision is also made to lower the threshold for registering certain gifts and expenses and to extend the length of time for which the Scottish Parliament retains members’ registers of interest.
Delegated Powers Provisions

6. As this is a Committee Bill, there is no obligation for a delegated powers memorandum to be produced. The Parliament’s Non-Government Bills Unit, on behalf of the SPPA Committee, has however provided an explanation of the provisions of section 17 of the Bill in correspondence to the Committee’s clerk. This can be found in the Annexe.

7. The Committee first considered the Bill at its meeting on 1 September 2015. At that meeting, the Committee agreed that it did not need to draw the attention of the Parliament to the following power:

- Section 17 – Commencement: alternative and supplementary provisions

8. At the same meeting, the Committee agreed to refer to the SPPA Committee the following questions:

whether any changes to the Standing Orders are contemplated in implementation of the Bill, in light of the resolution making power in section 17, to include specific provision for appropriate Parliamentary scrutiny of any such resolution? An example of such provision can be found in the Standing Orders, in respect of motions seeking modification of the parliamentary pension scheme or grants scheme.

whether any changes to the Standing Orders are contemplated in respect of a resolution of the Scottish Parliament to change the registrable interests set out in the Schedule to the Interests of Members of the Scottish Parliament Act 2006, to include specific provision for appropriate Parliamentary scrutiny of any such resolution?
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Annexe

Correspondence from the Non-Government Bills Unit (NGBU) 28 May 2015 to the Committee Clerk

The Interests of Members of the Scottish Parliament Amendment Bill (a Committee Bill) was introduced by Stewart Stevenson MSP, Convener of the Standards, Procedures and Public Appointments Committee, on 27 May 2015.

It is the policy of NGBU to prepare, in respect of any NGBU-drafted Bill that contains provision conferring power to make subordinate legislation, a Delegated Powers Memorandum equivalent to that required by Rule 9.4A for a Government Bill. While a DPM has not been prepared in this instance, as the Bill contains no such provisions, I understand that you would appreciate an explanation of the delegated power contained in section 17. In order to do that, it may be helpful first to give a brief overview of the Bill as a whole.

Overview of the Bill

The Bill has two main policy strands. One seeks to improve the transparency and effectiveness of the Parliament’s members’ interests regime. A number of the associated changes amend what amounts to a “registrable financial interest”, set out more particularly in the schedule to the Interests of Members of the Scottish Parliament Act 2006 (the “Interests Act”). This will facilitate an end to the dual reporting of certain financial interests, to both the Electoral Commission under the Political Parties, Elections and Referendums Act 2000 (“PPERA”) and the Parliament under the Interests Act. This dual reporting can be ended under arrangements in section 59 of the Electoral Administration Act 2006, where the Parliament has alternative arrangements in place for the registration of the donations and loans currently reportable by MSPs under PPERA.

The second policy strand relates to the enforcement of the members’ interests regime, broadening the scope of the current paid advocacy offence and making provision on the sanctions that may be applied where a breach occurs.

Sections 3 to 8 (with the exception of a change to the existing retention period for old register entries at section 6(3)) incorporate the aspects of PPERA needed to bring about an end to dual reporting. The amendments to PPERA and the Electoral Administration Act 2006, at section 15 of the Bill, are designed to enable dual reporting to be ended for all MSPs, including those who are not a member of a registered political party (e.g. independent MSPs). Sections 9 to 12 make provision on the paid advocacy offence and applicable sanctions for breaches of the Interests Act (including a range of parliamentary sanctions set out at section 12).
Section 17

Section 17 makes alternative provision for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14 of the Bill (which incorporate aspects of PPERA designed to facilitate an end to dual reporting) in the event that the provisions in PPERA and the Electoral Administration Act 2006 that end dual reporting have not been commenced at Westminster by the end of 4 May 2016.

It is intended that sections 3 to 7 (but not 6(3)), 13 and 14 of the Bill come into force on 5 May 2016, in time for the beginning of the forthcoming parliamentary session. The ending of dual reporting will involve the commencement at Westminster of relevant provisions in PPERA, paragraphs 10(8), 10(9), and 15A of Schedule 7 and paragraph 16 of Schedule 7A, as inserted by section 59 of, and paragraph 99 of Schedule 1 to, the Electoral Administration Act 2006. Section 16 of the Bill provides for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14 on 5 May 2016, subject to the alternative commencement provision in section 17.

Section 17(1) provides that if, on 4 May 2016, the relevant Westminster provisions (specified at section 17(2)) are not in force, sections 3 to 7 (but not 6(3)) and 13 and 14 do not come into force on 5 May 2016 but on such date as the Parliament may designate by resolution. Section 17(3) provides that such a resolution may contain such transitional, transitory and savings provision as the Parliament considers necessary or expedient.

Section 17(4) applies paragraphs 10(2) to (5) of the schedule to the Interests Act to a resolution made under section 17(1). These provisions require the Clerk to send a copy of the resolution to the Queen’s Printer for Scotland immediately after it is passed. They apply with modifications provision on the numbering, publication and citation of a Scottish statutory instrument (section 41(2) to (5) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195)), as if the resolution were a Scottish statutory instrument. This ensures that any such resolution is publicly available, numbered and can be cited appropriately.

Section 17 is needed so that the Parliament has a means of specifying an alternative date for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14, in the event that the relevant Westminster provisions are not commenced in time for commencement at 5 May 2016. The power to designate an alternative date for commencement by resolution is intended to give the Parliament some flexibility in setting that alternative date for commencement, the timing of which has to be synchronised with a future commencement order at Westminster. As the Bill concerns matters of the Parliament’s internal regulation it was not considered appropriate to confer this power on the Scottish Ministers (as might be the case for commencement powers in a Government Bill).
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Power to make transitional, transitory and savings provision is also conferred. Such provision will likely be required where there is an alternative commencement date, particularly where that falls during a parliamentary session. For example, to provide as necessary for the 30 day period (for registering a newly acquired interest) cutting across the old and new regimes.

A resolution approved by the Parliament under section 17(1) of the Bill would not be a Scottish statutory instrument for the purposes of Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010. Therefore, the provision on instruments subject to negative and affirmative procedures in sections 28 and 29 of that Act does not apply to resolutions made in exercise of this power. It is envisaged that the Standards, Procedures and Public Appointments Committee will consider what Standing Order rule changes are required in implementation of the Bill, including the need for any provision on the motion that would lead to such a resolution and appropriate parliamentary scrutiny of the terms of the motion.

I trust that this information will be of interest to your Committee. Please let me know if any further information is required.
1 Interests of Members of the Scottish Parliament (Amendment) Bill [as introduced] can be found at the following website:
http://www.scottish.parliament.uk/S4_Bills/Interests%20of%20Members%20of%20the%20Scottish%20Parliament%20(Amendment)%20Bill/b70s4-introd.pdf