THE INTERESTS OF MEMBERS OF THE
SCOTTISH PARLIAMENT BILL

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This paper outlines the measures proposed in the Bill introduced by the Standards and Public Appointments Committee. The Bill is to be debated on Motion S2M-3633 in the name of Brian Adam on behalf of the Standards and Public Appointments Committee.

This Briefing provides some background to the provisions relating to the register of Members’ interests, based on the existing Members’ Interests Order. The provisions of the Interests of Members of the Scottish Parliament Bill (SP Bill 44) are considered in relation to that order. Where relevant, comparisons have been made with equivalent provisions in Canada and Australia.
KEY POINTS TO THIS BRIEFING

- The interest of Members of the Scottish Parliament Bill has formed part of the work of the Standards Committee in the first session and the Standards and Public Appointments Committee in the second session of the Scottish Parliament.

- Because it is a Committee Bill, Stage 1 has effectively been completed by the Standards and Public Appointments Committee. This briefing is therefore intended to inform the Stage 1 debate of the whole Parliament.

- The Bill is to replace the current Members Interests Order, which is a Transitional Order made under the Scotland Act 1998.

- Provision is made for the creation, maintenance and amendment of a register of Members’ interests.

- The Bill sets out the definition of both registrable and declarable interests, as well as applying these definitions to both financial and non-financial interests.

- Existing provisions prohibiting paid advocacy have been clarified.

- The registration of prior holdings is required by the Bill.

- The Bill makes use of a ‘prejudice test’ to determine whether particular interests require to be registered. This applies to prior interests, gifts and heritable property and shares of a spouse or cohabitee.

- 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. This applies to interest in shares, sponsorship and gifts.

- Registration of donations towards election expenses depends on those donations having contributed to 25% or more of those expenses.

- Certain offences and sanctions are set out in the Bill.
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BACKGROUND

The Interests of Members of the Scottish Parliament Bill (SP Bill 44) was introduced by Brian Adam MSP on behalf of the Standards and Public Appointments Committee. Its long title is A Bill to make provision about the registration and declaration of interests of members of the Scottish Parliament and the prohibition of advocacy by such members in return for payment or benefit in kind and for connected purposes.

It will continue to be a requirement to register and declare certain interests. It will be required to register prior holdings and current interests. Registrable interests include remuneration, election expenses, sponsorship, gifts, heritable property, interest in shares and non-financial interests. The Bill introduces a ‘prejudice test’ to determine whether particular interests require to be registered. This applies to prior interests, gifts and heritable property and shares of a spouse or cohabitee. It also makes use of tests expressed as a percentage of Members’ salaries in order to protect its provisions from inflation. This applies to election expenses, interest in shares, sponsorship and gifts.

Certain offences and sanctions are set out in the Bill. It is an absolute requirement of s39(6) of the Scotland Act to provide that breach of the requirements relating to registration or declaration will constitute an offence. The Scotland Act also makes provision for the penalty.

Section 39, Members’ interests\(^1\) of the Scotland Act 1998 requires provision to be made for a register of interests of Members of the Scottish Parliament. Section 39 does not allow discretion in requiring the registration and declaration of financial interests, prohibiting paid advocacy and providing for the penalty on summary conviction for breach of the provisions. The Members Interests Order (MIO) was made under sections 112(1), 113 and 129(1) of the Scotland Act and was not constrained by section 39. It is for this reason that it is currently possible to exempt voting from the declaration requirements. The MIO (Statutory Instrument 1999 No. 1350, The Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999\(^2\)) is subordinate to the Scotland Act 1998. It is a Westminster provision that will cease to have effect on a day appointed by an Act of the Scottish Parliament. It is also a transitional measure.\(^4\)

The Code of Conduct for Members of The Scottish Parliament (Scottish Parliament 2003a) provides guidance to Members on the statutory requirements on registration and declaration of interests, paid advocacy and offences and sanctions. The guidance in the Code of Conduct will be updated in light of the new provisions. Because the MIO is a transitory provision, its replacement with an Act of the Scottish Parliament has formed part of the work of the Standards Committee in both sessions of the Scottish Parliament.

The resultant Interests of Members of the Scottish Parliament Bill is a Committee bill. As such, Stage 1 scrutiny has been of a slightly different character insofar as the Standards and Public Appointments Committee 1\(^{st}\) Report 2005 (session 2) Replacing the Members’ Interests Order serves as the Committee’s Stage 1 Report. To see the Bill in context, the Report should be read together with the Interests of Members of the Scottish Parliament Bill as introduced, the Explanatory Notes (and other accompanying documents) and the Standards Committee 1\(^{st}\) Report 2003 Replacing the Members’ Interests Order: Draft Committee Bill, which was the Report of the Standards Committee in Session 1. Following a plenary debate in February 2005, the policy of the previous Standards Committee was unanimously endorsed (Scottish Parliament 2005c).

\(^1\) Reproduced at Annex A, below.
\(^2\) Reproduced at Annex B, below.
\(^3\) Article 10 of the 1999 Order, discussed below in respect of paras 20 and 21 of the Bill.
\(^4\) Made under powers conferred by s129(1) of the Scotland Act 1998 (c.46).
TIMETABLE

Following preliminary discussion by the Standards and Public Appointments Committee on 28 June and 8 September 2005, the Bill was introduced on 12 September 2005. It was discussed by the Finance Committee on 20 September 2005 (Scottish Parliament 2005d). At that meeting Members agreed that the Convener should seek comments from the Scottish Parliamentary Corporate Body about the accuracy of the figures on the amount of money involved and produce a short report, which the Finance Committee is obliged to do by Rule 9.15.8 of Standing Orders. On 18 October 2005 the Finance Committee published its Report on the Financial Memorandum of the Interests of Members of the Scottish Parliament Bill (Scottish Parliament 2005b) to the effect that it had no comment to make further to what the SPCB had provided (published as the ANNEXE to the Report). The SPCB had noted that there would be no costs to the Scottish Parliament because the proposed replacement to the MIO would be administered within the existing structure and resources and that staff costs, “would be subsumed within the budget of the Standards Committee”.

A Stage 1 debate will be held on 14 December. Stage 2 is likely to be complete by the end of January 2006. In order to avoid conflict of interest, the committee that drafted the Bill will not be the committee that considers the Bill at Stage 2. This work will be undertaken by an ad hoc committee established by the Parliamentary Bureau. Stage three is expected to be completed by the end of March 2006.

PREVIOUS WORK OF THE STANDARDS COMMITTEES

In the Standards Committee’s 2nd Report 2002: Report on Replacing the Members' Interests Order: Interim Proposals for Consultation (Scottish Parliament 2002b), the Committee sought views on their initial proposals. Eight responses were received (Explanatory Notes para 10), which helped form the basis for the Committee’s 7th Report 2002 (Scottish Parliament 2002a), which made recommendations as to the content of the new legislation. The present Standards and Public Appointments Committee carried this work forward and discussed the legislative proposals of its predecessor Committee on 9 March, 20 April, 25 May and 29 June 2004. The present Committee then consulted on issues arising from the initial consideration of the proposed legislation. The (32) responses received formed the basis for consideration that led to publication of the Committee’s the 1st Report 2005 (Scottish Parliament 2005a).

The provisions contained in the Bill as introduced will be considered in the following paragraphs in light of analogous Committee views set out in the 7th Report 2002, provisions set out in the Draft Bill contained in the annex to the Committee’s 1st Report 2003 and those contained in the Members' Interests Order (MIO).

THE BILL AS INTRODUCED

BACKGROUND

The proposed Committee Bill was debated in the Chamber on 3 October 2002 (Scottish Parliament 2002c). Although the issue was debated, this was not effectively a Stage 1 debate; it was a debate seeking the Parliament’s agreement on the introduction of a Committee Bill. This was on the back of the Standards Committee’s Report on Replacing the Members' Interests Order: Proposal for a Committee Bill (Scottish Parliament 2002a). This Report was followed by the Standards Committee’s 1st Report 2003: Replacing the Members’ Interests Order: Draft Committee Bill (Scottish Parliament 2003b) and, on 14 January 2005, the 1st Report 2005: Replacing the Members' Interests Order (Scottish Parliament 2005a). This latter report focussed on changes from the last draft Committee Bill, because this last Bill was
adopted in principle with some changes which form part of the Bill as introduced (Scottish Parliament 2005c). These are set out in the Explanatory Notes to the Bill (para 12) and set out those discrete policy areas on which the Report focussed, that is:

- the test to be applied when declaring or registering interests
- registration of interests at the date of return
- deletion of interests from the register
- declaration of interests outwith parliamentary proceedings
- paid advocacy
- gifts
- heritable property
- interest in shares
- future interests
- non-financial interests.

The Motion S2M-2417 in the name of Brian Adam MSP proposing a Committee Bill was debated and agreed to by the Parliament on 24 February 2005 (Scottish Parliament 2005c). This means that the structure and general principles of the Bill providing for a register of interests of Members of the Parliament, as required by The Scotland Act 1998, was agreed by the Scottish Parliament. The Parliament also agreed to the more objective ‘prejudice’ test applied to certain interests, the tests linking certain registrable interests to a proportion of Members’ salaries and the existence of a new category of non-pecuniary interests.

The passing of the Bill will cause the current MIO to cease to have effect. Section 20 of the Bill refers to Article 10 of the Order, which provides that it (the MIO) shall cease to have effect “…under an act of the Scottish Parliament.” Certain provisions are set to come into force the day after Royal Assent. The provisions are those that relate to parliamentary determinations to be made on written statements (s 4), the role of the Clerk in publication of the Register (s 11), parliamentary determination of the circumstances in which an interest is to be declared (s 13) and the interpretive definitions contained in section 19. Other provisions of the Bill are set to come into force on the day after the dissolution of the Parliament that immediately follows Royal Assent.

THE REGISTER

Section 1 of the Bill applies to the Register itself. This part of the Bill provides for the establishment of a register of interests to replace paragraph 3 of the MIO. Section 1 provides for the existence of a register of interests of Members of the Scottish Parliament to be kept by the Clerk and containing information required by the Bill. The Clerk must keep the register in his or her office, but has discretion as regards its form. It may be otherwise than documentary, but if so must show its contents when printed or displayed.

Amendment to, deletions from and publication of the register

Provisions applicable to amendment to and publication of the register are set out in sections 8 to 11 of the Bill. Interests may be deleted where the interest has ceased or where it is a voluntarily registered interest that the Member no longer wishes to be registered (s8). A ‘ceased interest’ is one that although registered at the time, would require to be registered had it not already been registered, that is an interest that by implication no longer meets the prejudice test.

What this means is:

1. For a Member to delete an item from the register, it has to be a ‘ceased interest’
2. To be a ceased interest, that interest must be of a class requiring it to be registered in the first place.
3. Interests requiring to be registered in the first place are those that meet the prejudice test, require registration under sections 3, 5 or 6 or require mandatory registration under Schedule 1.

4. The Member then lodges with the Clerk written notice identifying the interest and giving the date on which it became a ceased interest.

Within 30 days the Clerk is to record this in the Member’s entry and send a copy to that Member. This amendment must remain in the register for a further 12 months.

Other amendments may be made to the register (s9), such as updating information pertaining to an interest. As is the case in s8, the Clerk must amend the register within 30 days of the notice having been lodged and send a copy to the Member. It will not be possible to delete, without replacing or amending), the entry in the written statement lodged under s4(2), except where a Member ceases to be a Member of the Scottish Parliament. A Member cannot remove everything from their record. This is because under s4 Members must make a written statement, even if that statement indicated that they hold no registrable interest.

Even so, the Clerk is required (s10) to keep all old entries, in their pre-amended state, for a period of 5 years from the date of any amendment. This is the current practice, although it is not part of the MIO. The Clerk may choose the form in which these entries are to be kept.

It will be for Parliament to determine the frequency with which and manner in which the register is to be published (s11), but old copies are to be kept and made available for public inspection at times when the Clerk’s office is open. Old entries are available to the public; they also remain on the register for 12 months.

**Registrable interests**

The purpose of the Register is not set out expressly in the Bill, but the Code of Conduct (para 4.1.1., as set out in the 1st Report 2005 of the Standards and Public Appointments Committee, para 9) states:

> The main purpose of the Register is to provide information about certain financial interests of Members which might reasonably be thought by others to influence Members’ actions, speeches or votes in the Parliament or other actions taken in their capacity as Members.

Schedule 2 to the Bill adds non-financial interests to the interests that are to be subject to the objective ‘prejudice test’ set out in s3(2), along with prior interests, gifts and heritable property and shares of a spouse or cohabitee. It should be stressed that the prejudice test does not apply for the most part to the registrable interests set out in Schedule 1. It applies only to prior interests, gifts and holdings of spouses or / cohabitees.

**The tests to be Applied**

The Standards and Public Appointments Committee (Scottish Parliament 2005a) felt an objective influence test to be appropriate and that assessment of likely perception of influence should be left to the Member. The Member should form that assessment relative to “whether a fair minded and informed observer would conclude that their impartiality would be or appear to be prejudiced by the interest.” It was felt that an objective test would be able to distinguish among different descriptions of interest without having a different test for each. The alternative would be to publish comprehensive lists of registrable items, alongside definitions. It is arguably more expedient to use a test that can be applied to particular classes of interests.

A similar objective test is used in both Canada and Australia, but it applies to a broader category of interests than those in the proposed Bill. In Canada the equivalent principle in the [Conflict of Interest Code](#) is that a Member should not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this Code. In Australia, there is a requirement under the [Registration of Members’ Interests](#) resolution to declare specific interests as well as any
other interests where a conflict of interest with a Member’s public duties could foreseeably arise or be seen to arise.”

Other interests will be subject to a different test to determine whether they will be registrable. In order to allow the provisions of the Bill some flexibility to account for inflation in the value of interests, the requirement to register certain interests is relative to a percentage of Members’ salaries. In the case of sponsorship and gifts, this is 0.5%; in the case of heritable property this is 50%. A donation towards election expenses will be registrable where it contributes to 25% or more of those expenses. The test to be applied to whether an interest in shares (held by a Member or their spouse or cohabitee) should be registered is whether the nominal value is greater than 1% of the total value of issued shares or the market value exceeds 50% of an MSP’s salary.

Both the prejudice test and the inflation-proof test are to be applied to gifts. These and other interests will be discussed in turn below.

**INTERESTS OF MEMBERS**

**Registrable Interests**

Section 2 of the Bill makes a change to the MIO by adding non-financial interests to the definition of “registrable interest”. It refers to Schedule 1 of the Bill on financial interests and Schedule 2 of the Bill on non-financial interests, as well as to s39 of the Scotland Act 1998.

The provisions on registrable and declarable interests have been drafted in such a way as to avoid the complexities involved in providing for a defence to allegation of having committed an offence under the provisions. Section 39 of the Scotland Act allows no leeway in the creation of an offence. Indeed, s39(6) and (7) read:

(6) Any member of the Parliament who-
(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of subsection (2) or (3), or
(b) contravenes any provision made in pursuance of subsection (4), is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Section 6(2) requires provision to be made for the registration and declaration of financial interests. Section 6(3) requires there to be sanctions for contravention of 6(2) preventing or restricting the participation in proceedings of the Parliament. Section 6(4) requires provision to be made prohibiting paid advocacy.

Section 39 of The Scotland Act 1998 requires provision to be made that will require the registration of financial interests. Financial interests are defined in s19 of the Bill. They are to be construed in accordance with section 2 and the Schedules to the Bill. Section 2 refers to both Schedules 1 (financial interests) and 2 (non-financial interests). These Schedules specify what will constitute registrable financial or non-financial interests.

The Committee (Scottish Parliament 2005a) considered that different tests might be applicable to different categories of interest, but that in most cases such as remuneration and sponsorship, “the description of the interest itself will be sufficient to trigger the requirement for registration.” For other interests such as an interest in shares or heritable property, a monetary limit was proposed, and for gifts, non-pecuniary interests and ceased interests the Committee (Scottish Parliament 2005a para 16) recommended the application of an objective test. As the offence is specified in the Scotland Act and is an absolute one, it is not open to the Scottish Parliament to make provision for a defence to allegations of breach of the requirements. Lack of knowledge
of their existence may have been a defence, but the drafting of the provisions in the Bill aims to ensure that lack of knowledge is unlikely to exist and hence that the creation of a defence is unnecessary. The provisions of Schedule 1 on financial interests will be considered below.

Remuneration and Related Undertakings

According to paragraphs 2 and 3 of Schedule 1, both remunerated positions and related undertakings require to be registered. An unremunerated position does not require to be registered unless it falls within the definition of a related undertaking, that is where a Member holds a remunerated directorship of one enterprise as well as an unpaid directorship of a parent or subsidiary undertaking. Both positions constitute restatements of the provisions of the MIO (paragraphs 2 and 3 of the Schedule to the Order).

Election Expenses

Paragraph 4 of Schedule 1 provides that a donation from a person towards election expenses will be registrable where it contributes to 25% or greater of those expenses. Registered political parties are excluded from the definition of ‘person’. This provision has been made in relation to section 12 of the Scotland Act 1998 which allows the Secretary of State by Order to provide for the limitation of election expenses. Paragraph 4(2)(a) of the Schedule to the MIO specifies that, “the election expenses of a Member are the election expenses within the meaning of article 83 of the Scottish Parliament (Elections etc.) Order 1999.” The MIO contains the same provision but does not expressly exclude political parties from the definition of ‘person’. This avoids duplication, as registration of interests is already required under Part II of the Political Parties, Elections and Referendums Act 2000 (c.41).

Sponsorship

The Bill as introduced includes in para 5 of Schedule 1 a limit on sponsorship permissible without registration that is expressed as a percentage of Members' salaries. Sponsorship is the receipt of financial or material support as a Member from the same person on one or more occasions that aggregates over a single parliamentary session to 0.5% of a Member’s salary. This is taken to mean the salary of an ordinary Member of the Scottish Parliament (as defined in s19), rather than that of a Minister or Junior Minister. At present this “specified limit” will amount to £260. This provision is also inflation-linked.

Gifts and Overseas Visits

The Standards and Public Appointments Committee (Scottish Parliament 2005a para 17) argued that the purpose of having a test for the registration of gifts is to exclude intra-family gifts, the requirement to register which might be considered an intrusion into family life. Whereas the MIO requires the registration of gifts over a certain sum (£250) received by a Member or their spouse or cohabitee, the Standards and Public Appointments Committee took the view that, as with sponsorship, this should be expressed as a percentage of income (0.5% or £260). This has been written in to Paragraph 6(1) of Schedule 1 to the Bill and applies to Members, their spouse or cohabitee or a company in which the Member has a controlling interest or partnership. It was noted ((Scottish Parliament 2005a para 32) that the House of Commons set the income threshold at 1%, but that the Consultative Steering Group Working Group had recommended the lower proportion in order to achieve a balance between an unreasonable administrative burden and transparency.

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5 The sum is to be rounded up or down to the nearest £10. Whereas the Standards and Public Appointments Committee 1st Report January of 2005 put the figure at £250, the Explanatory Notes to the Bill put this figure at £240. The correct figure that follows from current MSP salaries is £260.
It is noteworthy that in addition to the application of an inflation-proof percentage test to determine whether an interest must be registered, gifts are, in addition to be subject to the ‘prejudice test’. The prejudice test is central to the working of this provision as it is through this test that intra-family gifts can be excluded from the requirements of registration. Gifts received by partners or cohabitees are subject to the prejudice test which itself is connected to the effect on objectivity in the performance of Parliamentary duties. It is unlikely that a Member will be able to claim lack of knowledge of having received a gift themselves, as a defence to a charge of having failed to register a gift.

Other jurisdictions (Canada and Australia) require the registration of gifts, but neither expresses this as a percentage of salary. In the Australian House of Representatives Resolution on Registration of Members’ Interests a distinction is drawn between gifts received from official sources, for which the threshold is $A500 (£216) and those received from other sources, for which the threshold is $A200 (£86). The same applies to the Member’s family, which in the case of Australia includes their spouse, dependent children and personal friends. An exception to the requirement of registration is where the “Member judges that an appearance of conflict of interest may be seen to exist”.

It is one of the Principles of the Conflict of Interest Code for Members of the Canadian House of Commons that Members are, “not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this Code.” This reads in a similar way to the objective prejudice test set out in section 3(2) of the Bill and applies to the Member and Members of their family, with the exception of gifts received as a “normal expression of courtesy or protocol”, as long as these do not exceed $C500 (£248). Gifts and benefits above this value require to be registered with the Ethics Commissioner.

As is the case in Canada, the provisions applicable to gifts do not apply to the costs of travel and subsistence in connection with conference attendance where the costs are met by the organiser or other attending parties – although in Canada the provision in clause 15(1) of the Code is broader, as is the definition of family Member, which includes dependent children under the age of 18.

The Bill requires that visits outside the United Kingdom should constitute registrable interests, unless the travel and other costs were wholly met by the Member, their spouse or cohabitee, mother, father, son or daughter, the Parliamentary Corporation or the Scottish Consolidated Fund or they had prior approval of the Parliamentary Corporation. Again, lack of knowledge of having been on an overseas visit will be difficult to assert, just as it will be relatively easy to determine whether that visit had Corporate Body approval.

In a similar provision, the Australian code requires the registration of “any sponsored travel or hospitality received”

**Heritable Property**

Interests in heritable property held anywhere in the world are required to be registered (para 8, Schedule 1). This includes land or rights and interests in land as well as including buildings. The provisions apply to heritable property owned by the Member’s spouse or cohabitee that also satisfies the prejudice test set out in section 3(2). They do not apply to heritable property used as a residential home by the Member or their spouse or cohabitee. Neither do they apply to heritable property that is a residential home unoccupied for up to 12 months for the purpose of sale. This last provision was not part of the MIO.

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6 If one were to express this as a percentage of income, it would be 0.45% and 0.18% respectively, based on the current rate of salary for Members of Parliament in Australia being $A111,150 per annum.
7 Expressed as a percentage of a Member’s salary (of $144,300), this would be 0.35%.
8 Note: definition of cohabite will change with the passage of the Family Law (Scotland) Bill.
The additional test to be applied is expressed as a proportion of a Member’s salary. The threshold in the MIO was a fixed monetary sum (£25,000 or an annual income of £4,000). However, the threshold in the Bill is where the market value is greater than 50% of a Member’s salary (currently £25,850) or where the gross income from that property in the 12 months prior to the relevant date exceeds that which the Parliament can determine (as opposed to the Presiding Officer making this determination). This can be made, for example, within certain bands of values and need not start at zero. If a Member retains such an interest, the value is to be reassessed annually. It also means that an interest falling below the threshold may in subsequent years become a registrable interest. (Explanatory Notes para 94)

The relevant date is the date of the Member’s return in respect of currently held property and the 5th of April in each succeeding year in respect of retained property. Where an interest in heritable property ceases to be held by the Member or the Member’s spouse or cohabitee before the date they were returned as a Member, the relevant date is when the property ceased to be held.

Broadly equivalent provisions exist in Canada and Australia in respect of assets held. The requirement in Australia is to register “real estate, including the location (suburb or area only) and the purpose for which it is owned” and “the nature of any other assets (excluding household and personal effects) each valued at over $5,000” (£2,160 or 4.5% of Members salaries). In Canada, by contrast, the requirement is to register the nature but not the value of assets and liabilities that are private interests. It is not required to set out in the summary heritable property used as a principal residence or any asset of value less than C$10,000 (£4,969 or 7% of salary).

Interest in Shares

The Bill (paragraph 9 of Schedule 1) requires the registration of interests in shares held by a Member or their spouse or cohabitee, or person subject to the Member’s direction or control. It also contains a provision not in the MIO to the effect that it applies where a Member has or had an interest in shares.

The criteria to be applied in determining whether an interest in shares is a registrable one are that the nominal value is greater than 1% of the total value of issued shares or the market value exceeds 50% of an MSP’s salary (currently £25,850). An interest in shares excludes an interest in government securities, fixed-interest bonds, fixed-interest securities and unit trusts (Scottish Parliament 2005a para 42). Where interests in shares is held by the Member’s spouse or cohabitee, the prejudice test is to be applied in addition to the inflation-proof test proportionate to a Member’s salary or to the total value of issued shares. Again, it is improbable that a Member would be able to claim lack of knowledge as a defence to failing to register an interest in shares as defined, particularly considering the relatively high threshold value and the fact that if the Member were unaware of such large holdings of a spouse or cohabitee, the prejudice test could not be satisfied.

An interest in shares for the purpose of this provision means an interest in the share capital of a company or body. To fall within this provision, shares must be held by the Member or a ‘relevant person’, meaning a person other than the Member’s spouse or cohabitee who is subject to the control or direction of a Member in respect of those shares (Sch 1, para 9(7)).

The same provisions applicable to date of acquisition that apply to heritable property, apply to interests in shares for the purpose of the legislation, that is the date the Member was returned or if later, the date the shares were acquired and, where the interest is retained, each succeeding 5th April. Where shares were disposed of before the Member was returned, the relevant date is the date when the interest ceased.” (Explanatory Notes para 97.)

The Canadian Code does not refer specifically to shares, as it operates on a definition of “furthering private interests”, which includes increasing personal assets. Members are
prohibited form furthering private interests in the performance of parliamentary duties. In contrast, the Australian Code requires the registration of shareholdings in public and private companies as well as directorships of companies. Both the Canadian and the Australian Codes recognise the importance of liabilities as well as assets. There is no requirement in the Scottish Bill to register liabilities as well as assets.

Future Interests

The Standards Committee (Scottish Parliament 2005a para 44-45) pointed out that with the exception of the provisions on paid advocacy, neither the MIO nor the Code of Conduct provide for the registration of future interests. Although the Standards Committee from the first session of the Parliament recommended that future interests should be registered, the present Standards and Public Appointments Committee observed that one reason given for not having such a requirement is that publication might breach commercial confidentiality. Another is that it would impose a burden disproportionate to the need for transparency.

Non-Financial Interests

The Code of Conduct encourages the registration of non-financial interests (para 4.2.12.) but does not require it. It is, however, required of councillors under the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7). Provisions on registrable non-financial interests are introduced by s 2(2) and defined succinctly in Schedule 2 as interests that are not financial and that meet the prejudice test. The provision in the Bill as introduced is intended to mirror that in the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) so as to achieve a consistency of approach (1st Report, para 47, and section 1(3), (8) of the 2000 Act).

It is evident from (para 32 of) the Standards Committee’s (Scottish Parliament 2002b) that an objective test has some advantages over the alternative of the, “complex definitional issues in setting out exactly which non-pecuniary interests should be registrable.” That Report went on to note that an objective test is used in some Australian legislatures and later that, “there was considerable opposition to the registration of non-pecuniary interests from a majority of MSPs who responded to the Committee's consultation paper.” (para 33). In Australia there is a requirement to register “membership of any organisation where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise”. The Canadian Code is silent on non-pecuniary interests.

The Standards Committee (Scottish Parliament 2002b) also noted that the Committee had considered extending the provisions relating to registrable interests to cover non-pecuniary interests (paras 23-24) and that, “Currently, paragraph 4.2.12 of the Code of Conduct encourages Members to register non-pecuniary interests which might be thought by others to influence their actions in the Parliament. Such interests are registered on a voluntary basis.” This suggests an objective test.

The Standards and Public Appointments Committee (Scottish Parliament 2005a) considered the matter after two consultations and in light of a definition of the prejudice test to be applied. It noted, however, that, “By far, this issue provoked the largest response from respondents to the Committee’s consultation.” (para 48) Many responses dealt with the disclosure of membership of the Freemasons and are set out in Annex A to the Report.

It would be required to register such membership only if it meets the prejudice test, which the provision in Schedule 2 of the Bill uses to determine influence. However, it might be argued that full membership of the Freemasons could be said to constitute a non-financial interest that meets the prejudice test if it could give the appearance of prejudicing the ability of a Member to participate in proceedings of the Parliament in a disinterested manner. Even so, breach of this provision does not constitute a criminal offence.
Declarable Interests

Under current rules (s39 of the Scotland Act and Art 5 of the MIO) a Member is required, prior to taking part in proceedings of the Parliament, to make an oral declaration of an interest where the existence of that interest would or would appear to prejudice that Member's objectivity as a participant in those proceedings. Failure to do so is a criminal offence. However, while the Standards and Public Appointments Committee (Scottish Parliament 2005a para 28) considered that there should remain a requirement to do so, it should not be a criminal offence to fail to do so. Instead, the Committee recommended (Scottish Parliament 2004) that this be dealt with under the Code of Conduct.

Sections 12 & 13 of the Bill set out provisions on “declarable interest”, that is interests declarable when speaking or interviewing in a debate in which the interest in question relates to the subject for debate. That interest may be financial or non-financial and qualified as a declarable interest if it would also qualify as a registrable interest relative to the prejudice test. Section 13 provides that a Member shall declare that interest by a method (oral or in writing) that may be determined by Parliament. However, failure to do so will constitute a criminal offence. Parliamentary sanctions will also be available insofar as the Parliament may prevent or restrict the Member from participating in proceedings of the Parliament (sanctions are discussed further below).

Of importance in this provision is that voting forms part of parliamentary proceedings. As such the provisions of the Bill require the declaration of an interest prior to voting where the issue on which a Member is voting relates to the matter in which an interest is held. Failure to do so is a criminal offence. Therefore failure to declare the interest prior to voting would in these circumstances be a criminal omission. The method of declaring interests prior to voting is likely to be the subject of a determination prior to the provisions coming into force.

In Australia a similar requirement was introduced in 1984, but abolished in 1988 amidst doubt that such a requirement served any useful purpose. Even so, Members remain free to make such declarations. Clause 12(1) of the Canadian Code reads:

“A Member who has reasonable grounds to believe that he or she or a member of his or her family has a private interest that might be affected by a matter that is before the House of Commons or a committee of which the Member is a member shall, if present during consideration of the matter, disclose orally or in writing the general nature of the private interest at the first opportunity. The general nature of the private interest shall be disclosed forthwith in writing to the Clerk of the House.”

Such disclosures are filed by the Clerk among that Member’s disclosure documents.

Because of the terms of the Scotland Act discussed above, the Scottish Parliament does not and will not have the option taken by the Australian House of Representatives to remove the requirement to declare as that would require an amendment to the Scotland Act.

Registration of Interests

Provisions applicable to the registration of interests are set out in sections 3 to 7 of the Bill. Section 3 sets out the requirement to register those interests held on the date of return. For constituency Members this is the date of election; for regional MSPs this will be the date they are returned to the Parliament. Interests held before that date and no longer held, must be registered if they satisfy the prejudice test. Interests acquired after the date of return must also be registered (s5) within 30 days of acquisition. This applies even if the interest was, “both acquired and disposed of before the expiry of the period for registration.” (Explanatory Notes para 35)

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The Bill requires Members to state that they hold no registrable interest, if this is indeed the case. This statement, and that of interests held, must be in writing. It must be submitted within 30 days of the Member taking the oath of allegiance or making solemn affirmation.

Provision for late registration is made by s6. Omissions must be registered with the Clerk within seven days of the Member becoming aware of that omission. This provision will apply even if the Member no longer holds that interest. Even so, late registration is still a strict criminal offence because the interest that was not registered ought to have been registered (s6(1)). A Member becoming aware of that fact does not alter the fact that an offence was committed by the initial failure. Registration will serve as no more than mitigation.

Members may register any interests they hold but which they are not required to register, should they consider the interest to be relevant to proceedings of the Parliament (s7). Such interests are not subject to the provisions on sanctions discussed below.

The Parliament must determine the form of the written statement and the information it is to contain (s4). This will allow account to be taken of technological advances. The Parliament may also specify that different information is to be recorded in respect of different interests, for example as between sponsorship and gifts (Explanatory Notes para 30). The Clerk must within 30 days of the lodging of that statement, enter it in the Register and send a copy of that entry to the Member so that the Member can check it for accuracy. (In Canada, by contrast, the Ethics Commissioner administers a Conflict of Interest Code for Members of the House of Commons.)

**PAID ADVOCACY**

The MIO contains a provision on paid advocacy (para 6) prohibiting a Member from acting in their capacity as a Member in proceedings of the Parliament where they have received or expect to receive any remuneration from a person or body whose interests relate to those proceedings. Actions envisaged include lodging a parliamentary question or proposing a Member’s Bill. It is this that gave rise to the case of Whaley and Others v Lord Watson of Invergowrie and Another which had to do with the proposed Protection of Wild Mammals (Scotland) Bill. The Court of Session commented adversely on the paid advocacy rule in the MIO, as its provisions are very wide, and hence the case turned on whether payments made and services made available could properly be regarded as “remuneration” within the terms of Articles 6 and 2(1). The following excerpt from the judgement illustrates the problem of definition of ‘remuneration’ and ‘benefit in kind’ in the MIO:

"In the present case, the expression 'other monetary benefit or benefit in kind' is to be read as being not merely concerned with benefits (as opposed to all receipts) but, in my opinion, with benefits which are remunerative, rewarding the recipient (as payment of an ordinary salary or fee would) for services rendered. The word 'expenses' may at first sight appear to go against such a construction, but in the real world it seems to me that it is familiar for payment of 'expenses' to exceed outlays and to bring personal gain. The list contained in the definition seems to me to be a list of ways in which a member might personally 'get something out of' his advocacy by way of personal gain."

The court went on to suggest:

"In any event, when the Scottish Parliament undertakes legislation in terms of that subsection, there will at least be an opportunity for a new provision which is clear in its intentions. The actions of the respondent, as averred by the petitioners, may be examples of this wider problem. I cannot see them as remunerated."

In its 1st Report 2005 (para 30), the Standards and Public Appointments Committee proposed that, “the replacement legislation should make it clear that paid advocacy only takes place where there is a connection between receipt of a payment or benefit which represents a

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personal gain to the Member and the Member undertaking action in his or her capacity as an MSP.”

The Committee went on to say (para 31) that the paid advocacy prohibition:

“should not prevent a Member from receiving assistance in connection with the preparation of a Member’s Bill or amendments to any Bill provided that such assistance is neither accepted by nor given to the Member in return for promoting the Bill or amendment. An MSP might also wish to seek assistance in relation to a debate concerning the approval or annulment of an item of subordinate legislation or a debate on a Sewel motion concerning whether or not Westminster should legislate for Scotland in relation to a devolved matter. Such assistance should also be excepted.”

These recommendations appear to differentiate between the definition of ‘remuneration’ and that of ‘assistance’

Section 14 of the Bill prohibits paid advocacy by specifying that it takes place where a Member acts, or urges another Member to act, by any means in their capacity as a Member of the Scottish Parliament, on behalf of another person or body, for payment or benefit in kind.

For the purpose of clarification, the wording of the MIO was changed to reflect the guidance of the court in the Whaley case. This clarification is in the definition of “any payment or benefit in kind”, which is defined in s14(b) in the following way:

(b) “any payment or benefit in kind” means any payment or benefit in kind—

(i) which the member receives and which may reasonably be considered, after taking into account all the circumstances, to result in some benefit to that member, other than a vote for that member in any election to the Parliament; or

(ii) which the member’s spouse or cohabitee receives and which may reasonably be considered, after taking into account all the circumstances, to be provided in connection with the Parliamentary duties of the member and to result in some benefit to that member.

‘Payment or benefit in kind’ is defined objectively (s14 (2)(b)) as something that in the circumstances might be reasonably expected to result in a benefit to that Member, other than a vote for that Member in an election. This applies to benefits received by the Member’s spouse or cohabitee. In an addition to the MIO, it does not apply to assistance in the preparation of a Member’s Bill or amendment to a Bill or any other matter relating to a Bill at any stage of its passage. This provision will also not apply to assistance in a debate on subordinate legislation or a Sewel motion (now known as a legislative consent motion).

SANCTIONS

There are two possible forms of sanction: parliamentary and criminal. Parliamentary sanctions involve excluding a Member from (s16) or preventing or restricting a Member from (s15) participating in proceedings of the Parliament. Criminal sanctions carry a penalty of up to level 5 on the standard scale (currently £5,000) (by virtue of s39(7) of the Scotland Act 1998).

Parliamentary sanctions

As required by s39(3) of the Scotland Act, there are provisions by which a Member may be prevented or restricted from participating in parliamentary proceedings (s15) if they fail to register a registrable interest or fail to declare a declarable interest. The Parliament has discretion as to the appropriate manner of restriction or exclusion. Failure to lodge a statement with the Clerk indicating the holding of (sections 3, 5 or 6) or cessation of (s8) an interest will constitute a failure to register.
A Member may be excluded from all proceedings of the Parliament, not only those to which the interest relates, for failure to comply with or contravention of provisions relating to s15 (where that Member has been prevented or restricted from participation in Parliamentary proceedings) as well as provisions relating to:

- Initial registration (s3)
- Registration of interests acquired after date of return or late registrations (s5, 6)
- Declaration of interests (s13)
- Paid advocacy (s14)
- Failure to comply with a sanction imposed under s15

As the Explanatory Notes to the Bill pointed out,

“It is envisaged that the Parliamentary Standards Commissioner (established by the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16)) (the Commissioner) will investigate such matters and report to the Standards and Public Appointments Committee who in turn will report to Parliament with a recommendation as to sanctions.”

Similar provisions exist in Canada by virtue of clause 28(6) of the Code, according to which, “… if the Ethics Commissioner concludes that a Member has not complied with an obligation under this Code, and that none of the circumstances in subsection (5) apply, the Ethics Commissioner shall so state in the report and may recommend appropriate sanctions.” In Australia, the failure to provide a statement of interests or notify alterations to the register or the provision of false or misleading information, will constitute a contempt of the House of Representatives.

**Offences: criminal sanctions**

Section 17 of the Bill sets out criminal sanctions for certain offences. This section should be read in conjunction with s39(6)(a) and (b) of the Scotland Act 1998 that requires its enactment. As such, these offences will on summary conviction (s39(7)) attract a penalty of up to level 5 on the standard scale (currently £5,000). There is no discretion allowed in this matter, which means that the Scottish Parliament is compelled by the Scotland Act to enact these provisions. An offence may be committed in relation to registrable financial interests, declarable financial; interests and paid advocacy.

The provisions on offences do not apply to non-pecuniary interests. Breach of the following provisions, insofar as they relate to registrable or declarable financial interests, will constitute an offence

- Initial registration (s3)
- Registration of interests acquired after date of return or late registrations (s5, 6)
- Declaration of interests (s13)
- Paid advocacy (s14)
- Preventing or restricting participation in parliamentary proceedings (s15)
- Exclusion from parliamentary proceedings (s16), and exclusion from proceedings insofar as that exclusion relates to failure to comply with sanction imposed for breach of s14 on paid advocacy

**SCOTTISH LAW OFFICERS**

The provisions of the Bill will apply to Scottish Law Officers (s 18). This is required by the Scotland Act and is provided for in the MIO. Section 39(8)(b) of the Scotland Act provides that “references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members” and s 2(1) of the MIO specifies that “member” means a member of the Scottish Parliament and includes the Lord
Advocate and the Solicitor General for Scotland even if they are not members of the Scottish Parliament”. Section 19 of the Bill provides that “Scottish law officer” means the Lord Advocate or the Solicitor General for Scotland.

Necessary modifications are made to the Bill to take account of law officers who are not Members of the Scottish Parliament and to whom ‘date of return’ would not otherwise apply. That date will be that on which a poll is held, if the law officer continues in post. Where a Scottish law officer has been appointed within 28 days of a poll or election, the existing law officer is to be regarded as remaining in post. Because of this 28 day period, the dates set out in s 3(4) do not apply to law officers. Instead the period within which interests are to be registered will be 60 days (28 + 30, rounded up) after the poll in respect of those continuing in post and 30 days after the poll for newly appointed law officers. A further modification is made to s9(5) of the Bill insofar as it will not apply to law officers, which means that the provision requiring the Clerk to delete a Member’s entry when they cease to be a Member, will not apply to law officers. Instead, the entry will be deleted when the law officer ceases to hold office.

CONCLUSION

The Register of Members of the Scottish Parliament Bill constitutes the conclusion of the work of the Standards Committee of the first Parliament and the Standards and Public Appointments Committee of the second Parliament. It is also the fulfilment of a statutory obligation to enact primary legislation to replace the Members Interests Order that is subordinate to the Scotland Act.

Its provisions apply to Members of the Scottish Parliament and law officers and relate to the establishment and maintenance of a register of financial and non-financial interests. The provisions apply to a Member’s spouse or cohabitee.

The Bill applies an objective prejudice test to the decision whether to register prior interests and the interests of gifts and heritable property and shares of a spouse or cohabitee. An inflation resistant test is used for other interests. Use is made of tests expressed as a percentage of Members’ salaries in order to protect its provisions from inflation. This applies to interest in shares, sponsorship and gifts. Donations towards election expenses are to be tested as a percentage of their contribution to those expenses. The existing provisions prohibiting paid advocacy have been retained and clarified. Breach of the provisions of the Bill may attract both parliamentary and criminal sanctions. These provisions were predetermined by the provisions of the Scotland Act 1998.
SOURCES


Canadian House of Commons Conflict of Interest Code for Members of the House of Commons. Available at: http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm

Canadian Senate Conflict of Interest Code. Available at: http://sen.parl.gc.ca/seo-cse/code_eng.html


Scottish Parliament *Proposed Committee Bill (Members’ Interests)*. Available at: http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-02/sor1003-02.htm#Col14350

ANNEX A

THE SCOTLAND ACT 1998, SECTION 39, MEMBERS' INTERESTS

39. - (1) Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.

(2) Provision shall be made-

(a) requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph,

(b) requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph, in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.

(3) Provision made in pursuance of subsection (2) shall include any provision which the Parliament considers appropriate for preventing or restricting the participation in proceedings of the Parliament of a member with an interest defined for the purposes of subsection (2)(a) or (b) in a matter to which the proceedings relate.

(4) Provision shall be made prohibiting a member of the Parliament from-

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or

(b) urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means.

(5) Provision made in pursuance of subsections (2) to (4) shall include any provision which the Parliament considers appropriate for excluding from proceedings of the Parliament any member who fails to comply with, or contravenes, any provision made in pursuance of those subsections.

(6) Any member of the Parliament who-

(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of subsection (2) or (3), or

(b) contravenes any provision made in pursuance of subsection (4),

is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) In this section-

(a) "provision" means provision made by or under an Act of the Scottish Parliament,

(b) references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members.
ANNEX B

THE SCOTLAND ACT 1998 (TRANSITORY AND TRANSITIONAL PROVISIONS)
(MEMBERS' INTERESTS) ORDER 1999 (SI 1999/1350)

Made 12th May 1999
Laid before Parliament 13th May 1999
Coming into force 4th June 1999

The Secretary of State, in exercise of the powers conferred on him by sections 112(1), 113 and 129(1) of the Scotland Act 1998\(^1\) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and shall come into force on 4th June 1999.

Interpretation

2. - (1) In this Order-

"the Act" means the Scotland Act 1998;

"the 1985 Act" means the Companies Act 1985\(^2\);

"associate" shall be construed in accordance with section 74 of the Bankruptcy (Scotland) Act 1985\(^3\);

"the Clerk" means the Clerk of the Parliament;

"cohabitee" in relation to a member includes a person, whether of the opposite sex or not, who is living with that member in a relationship similar to that of husband and wife;

"company" means a company within the meaning of the 1985 Act;

"member" means a member of the Scottish Parliament and includes the Lord Advocate and the Solicitor General for Scotland even if they are not members of the Scottish Parliament;

"parent undertaking" has the same meaning as in section 258 of the 1985 Act;

"the Register" means the Register of Interests of Members of the Scottish Parliament established under article 3;

"registrable interest" shall be construed in accordance with article 4(1);

"remuneration" includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind;

"shares" includes stock;

"spouse" in relation to a member does not include a former spouse or a spouse who is living separately and apart from the member;

"subsidiary undertaking" has the same meaning as in section 258 of the 1985 Act;

"undertaking" has the same meaning as in section 259 of the 1985 Act.

(2) Any reference in this Order to the date when a person is returned as a member shall, in relation to the Lord Advocate or the Solicitor General for Scotland if he is not a member of the Scottish Parliament, be construed as a reference to the date when he is appointed to that office.

(3) In this Order, unless the context otherwise requires-

(a) a reference to a numbered section is a reference to the section so numbered in the Act;

(b) a reference to a numbered article is a reference to the article of this Order so numbered;

(c) a reference to the Schedule is a reference to the Schedule to this Order; and
(d) a reference in an article or the Schedule to a numbered paragraph is a reference to the paragraph of that article or of the Schedule so numbered.

Register of Interests of Members of the Scottish Parliament

3. - (1) There shall be a Register of Interests of Members of the Scottish Parliament.

(2) The Register shall contain-

(a) an entry for each member which shall consist of-

(i) in the case of a statement lodged under article 4(2)(a)-
   a. such details as are mentioned in article 4(3)(a) to (d); and
   b. such other information disclosed by a member under article 4(3)(e) as the Presiding
      Officer may determine;

(ii) in the case of a statement lodged under article 4(2)(b) or (4), such details of that
    statement as the Presiding Officer may determine; and

(iii) the date on which any such statement was lodged; and

(b) any other matter which the Parliament may decide should be included in the Register.

(3) The Clerk shall, not later than 30 days after a statement is lodged under article 4(2)(a), (2)(b) or
(4), enter in the Register the matters specified in paragraph (2)(a) in respect of that statement and
shall send to each member a copy of the entry relating to him.

(4) The Register may be amended by the Clerk at any time to take account of a statement lodged
under article 4(5), (6) or (7) and the Clerk shall send to each member who has lodged such a
statement a copy of the amended entry.

(5) The Clerk may at any time alter the Register to correct any clerical or typographical error in any
entry.

(6) The Register shall be printed and published by the Clerk at such intervals and in such manner as
the Parliament may determine.

(7) A copy of the Register shall be kept by the Clerk at the office of the Clerk and shall be available
for inspection by any person on the days and at the times when the office of the Clerk is open.

(8) The Register may be kept in such form (which need not be documentary form) as the Clerk may
consider appropriate and, if it is kept otherwise than in documentary form, it shall be in such form
that when printed or displayed it shows the information mentioned in paragraph (2).

Registration of registrable interests

4. - (1) The Schedule sets out the circumstances in which a member has a registrable interest.

(2) Each member shall, not later than the relevant date mentioned in paragraph (8), lodge with
the Clerk a written statement-

(a) giving details of any registrable interest falling within any of the following categories-
    (i) any registrable interest which he had at the date on which he was returned as a
        member;
    (ii) any registrable interest which he has had at any time since that date;
    (iii) any registrable interest which he has at the date on which he lodges the statement
        with the Clerk; or

(b) declaring that-
    (i) he had no registrable interest on the date on which he was returned as a member;
    (ii) he has had no registrable interest at any time since that date; and
    (iii) he has no registrable interest at the date on which he lodges the statement with the
        Clerk.
(3) A statement lodged under paragraph (2)(a) shall be in such form as may be specified by the Presiding Officer and shall contain-

(a) such details of any registrable interest and such other information as, in the opinion of the Presiding Officer, are necessary to identify clearly the nature of the interest and, where relevant, its source;
(b) details of the monetary value of the interest;
(c) where the registrable interest falls within paragraph 2 or 3 of the Schedule, such details as the Presiding Officer may determine of any clients to whom the member provides services in his capacity as a member where those clients are-
   (i) clients of an undertaking of which he is a director as mentioned in paragraph 2 or 3 of the Schedule; or
   (ii) clients of the member (in any capacity) or any employer or firm as mentioned in paragraph 2 of the Schedule;
(d) where-
   (i) the registrable interest falls within paragraph 6 of the Schedule; and
   (ii) any gift is received by the member, his spouse or cohabitee, or a company or partnership as mentioned in that paragraph, from any other person whose principal residence or place of business, as the case may be, is outside the United Kingdom, such details as the Presiding Officer may determine of that person and principal residence or place of business; and
(e) such other information as the member wishes to disclose.

(4) A member who has an interest which may be relevant to the proceedings of the Parliament but which is not a registrable interest may at any time lodge with the Clerk a written statement giving details of the interest including the date on which he acquired the interest.

(5) If, after lodging a statement under paragraph (2)(a) or (b), a member becomes aware that he has a registrable interest in respect of which he has not lodged a statement under paragraph (2)(a), he shall forthwith lodge a statement under paragraph (2)(a) in respect of that interest.

(6) If, after lodging a statement under-
   (a) paragraph (2)(a), a member acquires an additional registrable interest; or
   (b) paragraph (2)(b), a member acquires a registrable interest,
the member shall, not later than 30 days after the date on which he acquired that interest, lodge a statement under paragraph (2)(a) in respect of that interest and shall also give notice of that date.

(7) If, after lodging a statement under paragraph (2)(a) or (4), a member ceases to have an interest detailed in that statement he may lodge with the Clerk a written statement-
   (a) identifying the interest in question; and
   (b) giving the date on which he ceased to have that interest.

(8) The relevant date for the purposes of paragraph (2) is-
   (a) in any case where a member has taken the oath of allegiance or made his solemn affirmation before the date of the coming into force of this Order, the date which is 15 days after that date;
   (b) in any other case, the date which is 30 days after the date on which he has taken his oath of allegiance or made his solemn affirmation.

Declaration of registrable interest in proceedings of the Parliament

5. - (1) Where a member has a registrable interest in respect of which he has lodged a statement under article 4(2)(a) which would prejudice or give the appearance of prejudicing his ability to participate in a disinterested manner in proceedings of the Parliament relating to any particular matter, he shall, before
otherwise participating in those proceedings, make an oral statement in those proceedings declaring the nature of that registrable interest.

(2) For the purpose of paragraph (1), a member participates in proceedings of the Parliament if he takes part in those proceedings in any way other than voting.

Advocacy

6. Where, at any time after the date on which he was returned as a member, a member receives or expects to receive any remuneration, he shall not-

(a) do anything in his capacity as a member in any proceedings of the Parliament which relates directly to the affairs or interests of, or which seeks to confer benefit upon, the person from whom the member received or expects to receive remuneration or to the affairs and interests of a client or an associate of that person; or

(b) encourage any other member to do anything mentioned in paragraph (a).

Participation in proceedings

7. (1) The Parliament may prevent or restrict any member from participating in proceedings of the Parliament to such extent and for such period as the Parliament may consider appropriate, where those proceedings relate to a matter in which a member has a registrable interest in respect of which the member has failed to-

(a) lodge a statement under article 4(2)(a); or

(b) make an oral statement in accordance with article 5(1).

(2) Where any member fails to comply with or contravenes the requirements of article 4(2)(a), 4(6), 5, 6 or paragraph (1), the Parliament may exclude him from proceedings of the Parliament for such period as the Parliament may consider appropriate.

Offences

8. (1) Any member who takes part in any proceedings of the Parliament without having complied with, or in contravention of, article 4(2)(a), 4(6), 5 or 6 is guilty of an offence.

(2) A member guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Complaints

9. Any person may inform the Presiding Officer if he considers that a member-

(a) has taken part in any proceedings of the Parliament without having complied with, or in contravention of, article 4(2)(a), 4(5), 5 or 6; or

(b) has contravened any resolution of the Parliament made in pursuance of article 7.

Duration

10. This Order, unless previously revoked by the Secretary of State, shall cease to have effect on the day appointed by or under an Act of the Scottish Parliament.

Henry McLeish

Minister of State, Scottish Office

St Andrew's House, Edinburgh

12th May 1999
Article 4

REGISTRABLE INTERESTS

1. A member has a registrable interest in the circumstances set out in the following paragraphs.

Remuneration etc.

2. - (1) Where a member receives remuneration by virtue of-
   (a) being employed;
   (b) being self-employed;
   (c) being the holder of an office;
   (d) being a director of an undertaking;
   (e) being a partner in a firm; or
   (f) undertaking a trade, profession or vocation or any other work.

   (2) A member does not fall within sub-paragraph (1) solely by virtue of being a member, a member of the Scottish Executive or a junior Scottish Minister or holding the office of Presiding Officer, deputy Presiding Officer or member of the Parliamentary corporation.

Related undertaking

3. - (1) Where a member is a director of a related undertaking but does not receive remuneration as such director.

   (2) For this purpose, a related undertaking is a parent or subsidiary undertaking of an undertaking of which the member is a director and receives remuneration as a director as mentioned in paragraph 2(1)(d).

Election expenses

4. - (1) Where contributions towards the election expenses of a member in relation to the election at which he was returned as a member included a donation or donations by a person, the aggregate of which exceeded 25% of those election expenses.

   (2) For this purpose-

   (a) the election expenses of a member are the election expenses within the meaning of article 83 of the Scottish Parliament (Elections etc.) Order 1999[4] in relation to that member's candidature where that member stood as a candidate for return as a constituency member or as an individual candidate for return as a regional member;

   (b) "a person" means a single individual or legal person and includes a group of companies; and

   (c) "group of companies" has the same meaning as "group" in section 262(1) of the 1985 Act.

Sponsorship

5. - (1) Where a member is sponsored as a member by any person.

   (2) For this purpose, a member is sponsored if he receives any financial or material support on a continuing basis to assist him as a member.

Gifts

6. - (1) Where a member or his spouse or cohabitee or a company in which the member has a controlling interest or a partnership of which the member is a partner, receives-

   (a) a gift of heritable or moveable property; or

   (b) a gift of a benefit in kind,

   the value of which, at the date on which it was received by the member or his spouse or cohabitee or the company or partnership, as the case may be, exceeds £250.
(2) Sub-paragraph (1) does not apply to the costs of travel and subsistence in connection with the member's attendance at a conference or meeting where those costs are borne in whole or in part by the organiser of the conference or by one of the other parties attending the meeting, as the case may be.

(3) For the purposes of sub-paragraph (1), "controlling interest" means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company.

**Overseas visits**

7. - (1) Where a member has made a visit outside the United Kingdom.

(2) Sub-paragraph (1) does not apply to a visit, the travel and other costs of which-

(a) are wholly met-
   (i) by the member;
   (ii) by the member's spouse or cohabitee;
   (iii) by the member's mother, father, son or daughter;
   (iv) by the Parliamentary corporation; or
   (v) out of the Scottish Consolidated Fund; or
(b) were approved prior to the visit by the Parliamentary corporation.

**Heritable property**

8. - (1) Where a member owns or has any other right or interest in heritable property-

(a) the market value of which, at the relevant date, is greater than £25,000; or

(b) the income from which for the period of twelve months prior to the relevant date is greater than £4,000.

(2) Sub-paragraph (1) does not apply to heritable property used as a residential home by the member or his spouse or cohabitee.

(3) Where a member owns or has any other right or interest in heritable property at the date on which he was returned as a member, the relevant date is-

(a) that date; and

(b) the 5th April immediately following that date and in each succeeding year, where he remains the owner of or retains that right or interest in heritable property on that 5th April.

(4) Where a member becomes the owner of or acquires any other right or interest in heritable property after the date on which he was returned as a member, the relevant date is-

(a) the date on which he became the owner of or acquired the right or interest; and

(b) the 5th April immediately following that date and in each succeeding year, where he remains the owner of or retains that right or interest in heritable property on that 5th April.

(5) For the purposes of this paragraph, "heritable property" means land or any right or interest in or over land.

**Interest in shares**

9. - (1) Where a member or his spouse or cohabitee has an interest in shares comprised in the share capital of a company or other body, whether that interest is held by the member, his spouse or cohabitee or by a relevant person, and the nominal value of the shares at the relevant date is-

(a) greater than 1% of the issued share capital of the company or other body; or

(b) greater than £25,000.

(2) Where a member or his spouse or cohabitee has an interest in shares comprised in the share capital of a company or other body at the date on which he was returned as a member, the relevant date is-
(a) that date; and
(b) the 5th April immediately following that date and in each succeeding year, where he retains the interest on that 5th April.

(3) Where a member acquires an interest in shares after the date on which he was returned as a member, the relevant date is-
(a) the date on which he acquired the interest in shares; and
(b) the 5th April immediately following that date and in each succeeding year, where he retains the interest on that 5th April.

(4) For the purposes of this paragraph, a "relevant person" is a person who is subject to the control or direction of a member in respect of an interest in shares.