Passage of the

Interests of Members of the Scottish Parliament (Amendment) Bill

SPPB 226
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Interests of Members of the Scottish Parliament (Amendment) Bill

SP Bill 70 (Session 4), subsequently 2016 asp 4

SPPB 226
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates was a Committee Bill. Committee Bills are Public Bills introduced by the convener of a committee on the committee’s behalf, rather than by the Scottish Government or by an individual backbench MSP. Such a Bill can be introduced only after the Parliament has agreed to a proposal prepared by the relevant committee (which may follow an inquiry by the committee into the general topic). A Stage 1 report by a lead committee is not required. These procedural differences are reflected in the structure of this volume.

Although under Standing Orders a Policy Memorandum is not required for a Committee Bill, in this case the Committee published one.

The Delegated Powers and Law Reform Committee’s report at Stage 1 is included in this volume. The Delegated Powers and Law Reform Committee took oral evidence on the Bill and the extracts from the minutes and the Official Report of the relevant meeting of the Committee are, therefore, included in this volume. The Finance Committee considered the Financial Memorandum. That Committee’s report is also included in this volume.
At Stage 2, an ad hoc committee, the Interests of Members of the Scottish Parliament (Amendment) Bill Committee was formed to scrutinise the Bill. The Committee considered and agreed amendments lodged by Stewart Stevenson MSP, then Convener of the Standards, Procedures and Public Appointments Committee.

Stage 3 proceedings followed the normal procedure for public bills. No amendments were lodged at Stage 3. Therefore no Marshalled List or Groupings were produced for Stage 3 proceedings on the Bill. Accordingly, the Bill as amended after Stage 2 was the Bill that was passed by the Parliament, and no “as passed” version appears in this volume.
Interests of Members of the Scottish Parliament
(Amendment) Bill
[AS INTRODUCED]

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SP Bill 70 Session 4 (2015)
Interests of Members of the Scottish Parliament (Amendment) Bill

[AS INTRODUCED]


Amendment of the Interests of Members of the Scottish Parliament Act 2006

1 Amendment of the Interests of Members of the Scottish Parliament Act 2006

The Interests of Members of the Scottish Parliament Act 2006 is amended as in sections 2 to 14.

Registrable financial interests

2 Exempt expenses

In the definition of “specified limit” in sub-paragraph (5) of paragraph 2 of the schedule (which, among other things, exempts from registration certain expenses expressed as a percentage of salary), for “1%” there is substituted “0.5%”.

3 Gifts

For paragraph 6 of the schedule (registrable gifts) there is substituted—

“Gifts

6 (1) Where the circumstances are as described in sub-paragraph (2) or (3).

(2) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds the specified limit; or

(b) in the case where gifts were received from that person on more than one occasion during the current parliamentary session, the aggregate value of those gifts, each valued at the date on which it was received, exceeds the specified limit; and, in either case,
(c) that gift or those gifts meet the prejudice test.

(3) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds £1,500; or

(b) in the case where—

(i) the value of the gift, at the date on which it was received, exceeds £500 (but does not exceed £1,500); and

(ii) the aggregate value of the gift and any aggregable benefit or benefits, each valued at the date on which it was received, exceeds £1,500; and, in either case,

(c) that gift is—

(i) offered to the member; or

(ii) having been accepted, retained by the member, for use by or the benefit of the member in connection with the member’s political activities.

(4) Sub-paragraph (2) 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—

(a) the organiser of that conference; or

(b) one of the other parties attending that meeting, as the case may be.

(5) Sub-paragraphs (2) and (3) do not apply to—

(a) any support (of any kind) provided by the services of a volunteer which are provided in that volunteer’s own time and free of charge; or

(b) a donation (of any kind) which is intended by the donor to be used for the purposes of meeting—

(i) the election expenses of the member in relation to the election at which that member was returned as a member of the Scottish Parliament; or

(ii) the election expenses of the member in relation to any UK parliamentary election at which that member stands as a candidate, but this exemption ceases to apply if the donation is not used for its intended purpose by the expiry of the 35th day after the election result is declared.

(6) Sub-paragraph (3) does not apply to a gift or other benefit which the member has returned (or repaid) or sent to the Electoral Commission in accordance with sections 56 and 57 of the Political Parties, Elections and Referendums Act 2000 (c.41) (as applied by paragraph 8 of Schedule 7 to that Act).

(7) The reference in sub-paragraph (3)(b)(ii) to a benefit being valued at the date on which it was received is, in the case of a controlled transaction, a reference to its being valued at the date on which it was entered into.
(8) For the purposes of this paragraph—

“aggregable benefit” means any of the following that is accepted by the member from the same person as gave the gift and in the same calendar year as the member accepted it—

(a) any other gift of a kind to which sub-paragraph (3)(b)(i) and (c) applies;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with any of the member’s political activities; or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500);

“candidate” has the same meaning as in section 118A, as read with section 90ZA(5) of the Representation of the People Act 1983 (c.2);

“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;

“current parliamentary session” means the parliamentary session which begins immediately after, or in which, the member is returned;

“election expenses”, in relation to a member, has the same meaning for the purposes of—

(a) sub-paragraph (5)(b)(i) as “election expenses” has in relation to a candidate in the order under section 12 of the 1998 Act which is in force for the purposes of the election at which the member was returned; and

(b) sub-paragraph (5)(b)(ii) as “election expenses” has in section 90ZA of the Representation of the People Act 1983 (c.2);

“political activities”, in relation to a member, means the political activities of the member as such or as a member of a registered political party or both;

“specified limit” means 0.5% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.”.

4 Loans, credit facilities etc

After paragraph 6 of the schedule, there is inserted—
“Loans, credit facilities etc

6A(1) Where a member enters into a controlled transaction and—

(a) the value of the transaction is more than £1,500; or

(b) if not, the aggregate value of it and any aggregable benefit or benefits exceeds £1,500.

(2) Sub-paragraphs (3) to (10) define and provide further about controlled transactions.

(3) An agreement between the member and another person by which that person lends money to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(4) An agreement between the member and another person by which that person provides a credit facility to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(5) A credit facility is an agreement whereby a member is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the member) as is specified in or determined in accordance with the agreement.

(6) Where—

(a) the member and another person enter into a controlled transaction of a kind mentioned in sub-paragraph (3) or (4) or a transaction under which any property, services or facilities are provided for the use or benefit of the member (including the services of any person);

(b) the other person also enters into an arrangement where a third person gives any form of security for a sum owed to the other person by the member under a transaction mentioned in paragraph (a); and

(c) the use condition (see sub-paragraph (9)) is satisfied,

the arrangement is a controlled transaction.

(7) But the agreement or arrangement is not a controlled transaction—

(a) to the extent that, in accordance with any enactment, a payment made in pursuance of the agreement or arrangement falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election;

(b) to the extent that it is entered into by the member and a person—

(i) in connection with the provision of goods or services to the member; and

(ii) in the normal course of that person’s trade or business and on its normal terms;

(c) if its value does not exceed £500; or

(d) despite section 3(1)(b), it was entered into by the person who is the member before the date the member was returned.

(8) For the purposes of sections 3 and 5 and sub-paragraph (1) of this paragraph, if—
(a) the value of a controlled transaction as first entered into is such that it is not registrable; but

(b) the terms of the transaction are subsequently varied in such a way that it becomes registrable,

the member is to be treated as having entered into a registrable transaction on the date when the variation takes effect.

(9) The use condition is that the member intends, at the time the member enters into the loan or credit facility agreement or the transaction second mentioned in sub-paragraph (6)(a), to use any money or benefit obtained in consequence of it in connection with the member’s political activities (either as a member or as a member of a registered political party or both).

(10) For the purposes of sub-paragraph (9), it is immaterial that only part of the money or benefit is intended to be used in connection with the member’s political activities.

(11) In sub-paragraph (1)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person, being a party to the controlled transaction, and in the same calendar year as the member accepted the controlled transaction—

(a) any other controlled transaction having a value not exceeding £1,500;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both); or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500).

Value of loans, credit facilities etc

6B(1) The value of a controlled transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a controlled transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a controlled transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.”.
5 Overseas visits

For paragraph 7 of the schedule (overseas visits) there is substituted—

“Overseas visits

7 (1) Where the circumstances are as described in sub-paragraph (2) or (4).

(2) Where the member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.

(3) Sub-paragraph (2) 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, civil partner or cohabitant;

(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.

(4) Where a member makes, or has made, a visit outside the United Kingdom in connection with any of the member’s political activities (as a member or as a member of a registered political party or both) (an “overseas political visit”) and—

(a) the costs of the visit exceed £1,500; or

(b) those costs exceed £500 (but do not exceed £1,500) and the aggregate value of them and any aggregable benefit or benefits exceeds £1,500.

(5) Sub-paragraph (4) does not apply to a visit the travel and other costs of which—

(a) are wholly met—

(i) by the member;

(ii) by the Parliamentary corporation; or

(iii) out of the Scottish Consolidated Fund; or

(b) were approved prior to the visit by the Parliamentary corporation.

(6) In sub-paragraph (4)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person as met the costs of the visit and in the same calendar year as the member accepted it—

(a) any other overseas political visit having a value exceeding £500 (but not exceeding £1,500);

(b) any remuneration that is registrable by virtue of paragraph 2, having such a value and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both);
(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500.”.

Time periods

6 Changes to certain time periods

(1) In section 3 (initial registration of financial interests: 30 day limit), there is added—

“(5) But where the member acquired the registrable interest on the same date as the member was returned, the relevant date for the purposes of subsection (3) is the last day of the period of 30 days beginning with the date of the return.”.

(2) In section 5(2) (subsequent registration: 30 day limit), for “after” there is substituted “beginning with”.

(3) In section 10(1) (retention of old entries in the register for 5 years) for “5” there is substituted “at least 10”.

Written statements of interests: registration of addresses

7 Written statements: registration of individuals’ addresses

In section 4 (registration of statements of registrable interests), there is added—

“(6) However, the Clerk need not register the address of any individual named or referred to in a written statement.”.

The register of interests

8 Reporting and registration of changes to controlled transactions

After section 8 there is inserted—

“8A Reporting and registration of changes to controlled transactions

(1) For the purposes of this section, there is a change to a registered interest that is a controlled transaction if—

(a) another person becomes party to the transaction (whether in place of or in addition to any existing party to it);

(b) there is a change to anything about which information was (or should have been) provided by the member in the written statement lodged by the member when registering the transaction;

(c) the transaction comes to an end.

(2) The reference in subsection (1)(b) to information provided is a reference to information—

(a) about or relating to the transaction; and

(b) provided in accordance with a determination under section 4(2).

(3) For the purposes of subsection (1)(c), a loan comes to an end if—
(a) the whole debt (or all the remaining debt) is repaid;
(b) the creditor releases the whole debt (or all the remaining debt).

(4) A member who has registered a controlled transaction shall notify the Clerk of any change to the transaction.

(5) A member shall comply with subsection (4) by lodging a written notice with the Clerk not later than the last day of the period of 30 days beginning with the day on which the change takes effect.

(6) A written notice shall—
(a) be in such form; and
(b) contain such information about the change or relating to it, as the Parliament may determine.

(7) Within 30 days after a member has lodged a written notice in accordance with this section, the Clerk shall—
(a) amend the entry relating to that member in the register so as to record the change and the date when it took effect; and
(b) send a copy of the amended entry to the member.”.

Sanctions

9 Prohibition of paid advocacy
In section 14 (prohibition of paid advocacy etc.)—
(a) in subsection (2)(b)(i) and (ii) after “receives”, in each place where that word occurs, there is inserted “or agrees to receive”,
(b) in subsection (3) after “receiving” there is inserted “or agreeing to receive”.

10 Exclusion from Parliamentary proceedings
In section 16 (exclusion from proceedings of the Parliament), for the words from “any” to “15” there is substituted “section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15”.

11 Offences
For section 17 (offences) there is substituted—

“17 Offences
(1) Any member who—
(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, section 3, 5, 6, 8A(4) and (5) or 13 or 14 or a measure taken by the Parliament under section 15 or 16; or
(b) contravenes section 14,
is guilty of an offence.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.
12 Other sanctions

After section 17 there is inserted—

“17A Other sanctions

(1) If a member fails to comply with, or contravenes, section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16, the Parliament may, by resolution, do one or more of the following—

(a) exclude the member, for such period as the Parliament determines, from the premises of the Parliament or such part of them as it determines;

(b) withdraw, for such period as the Parliament determines, the member’s right to use the facilities and services provided for members by the Parliamentary corporation or such of them as the Parliament determines;

(c) censure the member.

(2) Where a member is to be excluded from proceedings in the Parliament under section 16 or from the premises of the Parliament (or a part of them) under subsection (1)(a), the Parliament may also, by resolution, disallow payment of—

(a) the salary that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines;

(b) the allowances that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines; or

(c) both.

(3) In this section—

(a) “premises” includes places to which the public has access;

(b) “salary of the member” means the salary payable to the member by virtue of section 81(1) of the 1998 Act (including any salary payable because of section 83(4) of that Act (membership during dissolution));

(c) the references to a period not exceeding the duration of an exclusion are, where there are two exclusions of different lengths, references to the longer one.”.

Scottish Law Officers

In section 18(4) (modifications in relation to a Scottish Law Officer who is not a member), after “3(4)” there is inserted “and (5)”. 

Interpretation of 2006 Act

14 Meaning of “member” and “registered political party” and interpretation of “accepted”

In section 19 (interpretation)—

(a) in subsection (1)—
(i) in the definition of “member”, after “‘member’” there is inserted “(except in references to a member of a registered political party)”; and

(ii) after the definition of “the register” there is inserted—

“‘registered political party’ means a political party registered under Part II of the Political Parties, Elections and Referendums Act 2000 (c.41)”;

(b) there is added—

“(4) For the purposes of the schedule, a member is to be taken as accepting a controlled transaction when it is entered into (even although, in the case of an arrangement of the kind mentioned in paragraph 6A(6) of the schedule, the member is not a party to the arrangement).”.

Amendment of Political Parties, Elections and Referendums Act 2000

15 Amendment of 2000 Act: MSPs who are not members of a registered party

In—

(a) paragraph 10(8) of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 (donation reports under that Act by, among others, MSPs who are not members of a registered political party), and

(b) section 59(2) of the Electoral Administration Act 2006 (which inserted that paragraph into the 2000 Act),

the words from “either” to “(b)” are repealed.

General

16 Commencement

(1) This Act comes into force as follows.

(2) Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016 (but see section 17).

(3) Sections 2, 6(3) and 9 to 12 come into force on 5 May 2016 (and see section 18).

(4) Sections 8, 15, 17 to 19 and this section come into force on the day after Royal Assent.

(5) Section 1 comes into force—

(a) so far as it relates to sections 3 to 7 (but not 6(3)), 13 and 14, on the same date as those provisions,

(b) so far as it relates to sections 2, 6(3) and 9 to 12, on 5 May 2016,

(c) so far as it relates to section 8, on the day after Royal Assent.

17 Commencement: alternative and supplementary provisions

(1) If, on 4 May 2016, the provisions mentioned in subsection (2) are not all in force so far as relating to members of the Parliament, then sections 3 to 7 (but not 6(3)) and 13 and 14 do not come into force on 5 May 2016 but instead on such date as the Parliament may designate by resolution.

(2) Those provisions are the following—
(a) section 59 of the Electoral Administration Act 2006 and paragraphs 10(8) and (9) and 15A of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 as inserted into that Schedule by that section, and

(b) paragraph 99 of Schedule 1 to the Electoral Administration Act 2006 and paragraph 16 of Schedule 7A to the Political Parties, Elections and Referendums Act 2000 as inserted into Schedule 7A by paragraph 99.

(3) A resolution under subsection (1) may contain such transitional, transitory and savings provision as the Parliament considers necessary or expedient.

(4) Paragraph 10(2) to (5) of the schedule to the Interests of Members of the Scottish Parliament Act 2006 (Parliamentary resolution modifying that schedule to be treated for certain purposes as if it were a Scottish statutory instrument) applies also to a resolution under subsection (1).

18 Commencement: further supplementary provision

Section 17A of the Interests of Members of the Scottish Parliament Act 2006 (as inserted into that Act by section 12) does not apply to any failure to comply or contravention occurring before 5 May 2016.

19 Short title

The short title of this Act is the Interests of Members of the Scottish Parliament (Amendment) Act 2015.
Interests of Members of the Scottish Parliament
(Amendment) Bill
[AS INTRODUCED]


Introduced by: Stewart Stevenson
On: 27 May 2015
Bill type: Committee Bill
INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Interests of Members of the Scottish Parliament (Amendment) Bill introduced in the Scottish Parliament on 27 May 2015:

- Explanatory Notes;
- a Financial Memorandum;
- Stewart Stevenson’s statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 70–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by Scottish Parliament officials to support the Standards, Procedures and Public Appointments (SPPA) Committee, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

THE BILL

3. The Bill amends the Interests of Members of the Scottish Parliament Act 2006 (‘the Interests Act’). It incorporates the donations and loans that are currently reportable to the Electoral Commission, under Schedules 7 and 7A to the Political Parties, Elections and Referendums Act 2000 (‘PPERA’), within the Parliament’s members’ interests regime. These changes will allow for the elimination of the dual reporting of certain financial interests, to both the Electoral Commission and the Scottish Parliament. Section 59 of the Electoral Administration Act 2006 created a mechanism for ending this dual reporting. Where the Electoral Commission is satisfied with corresponding reporting arrangements that the Scottish Parliament has put in place, the relevant UK Secretary of State can commence statutory exemptions1 from reporting directly to the Electoral Commission.

4. In particular, the Bill amends what amounts to a “registrable financial interest” for the purposes of registering and declaring financial interests, ensuring that relevant PPERA donations and loans are captured. It makes adjustments to relevant time periods, and introduces a requirement to report changes to any registrable interest falling within a new controlled transactions category. The Bill also amends PPERA (with associated amendment of section 59 of the Electoral Administration Act 2006) to allow dual reporting to be ended for members of the Scottish Parliament who are not members of registered political parties (e.g. independent MSPs).

5. The Bill also enhances the sanctions available to the Parliament to impose on members who breach the registration and declaration requirements in Interests Act, broadens the existing paid advocacy offence, adjusts the threshold for an exemption to the remuneration category for certain expenses, and amends provisions relating to the retention of members’ registers of interests.

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1 PPERA, paragraphs 10(8), 10(9) and 15A of Schedule 7, and paragraph 16 of Schedule 7A.
COMMENTARY ON SECTIONS

Section 2 – Exempt expenses

6. Paragraph 2 of the schedule to the Interests Act makes provision for registering remuneration and in particular provides at paragraph 2(3) that remuneration which consists solely of expenses does not require to be registered unless it is above a specified limit in value. The specified limit, defined in paragraph 2(5) is currently 1% of a member’s salary (rounded down to the nearest £10) at the start of the current parliamentary session.

7. Section 2 of the Bill reduces the specified limit for registering remuneration received solely as expenses to 0.5% of a member’s salary (rounded down to the nearest £10) at the start of the current parliamentary session (currently £280).

Section 3 – Gifts

8. Section 3 replaces the existing paragraph 6 in the schedule to the Interests Act with a new paragraph 6. Paragraph 6 sets out the requirement to register gifts (subject to certain criteria).

9. The new sub-paragraph (1) requires that members register any gifts which meet the requirements of sub-paragraphs (2) or (3).

10. The new sub-paragraph (2) replicates the existing provision, which requires a gift or aggregated gifts valued in excess of the “specified limit” (further defined at sub-paragraph (8)) that meet the prejudice test set out in section 3(2) of the Interests Act to be registered.

11. New sub-paragraphs (3)(a) and (b) insert new provisions which incorporate the PPERA requirements on members to register certain donations for political activities. Sub-paragraph (3)(a) (when read with sub-paragraph (3)(c)), requires members to register gifts for the member’s political activities (as a member of the Parliament or a registered political party or both), the value of which is over £1,500.

12. Sub-paragraph (3)(b) makes equivalent provision for the registration of a gift for the member’s political activities (valued above £500) which when aggregated with other aggregable benefits, accepted from the same person in the course of a calendar year, exceeds £1,500. For the purposes of the gifts category, paragraph 6(8) defines “aggregable benefit”. It includes any other gift, overseas visit, certain remuneration received as expenses or controlled transaction, for the member’s political activities and individually valued in excess of £500 (but not exceeding £1,500), and accepted from the same person in the same calendar year. Equivalent provision on the aggregation of aggregable benefits can be found in the overseas visits and controlled transactions categories.

13. New sub-paragraph (3)(c) sets out new political activities related criteria, applying to gifts received by members that fall within paragraph 6(3)(a) or 6(3)(b). These criteria are met where a gift is offered to the member for their use or benefit in connection with their political activities or retained by the member for those purposes or both. In assessing whether a gift is for
a member’s use or benefit in connection with their political activities, regard is had to the intent of the donor in offering it or the intent of the member in retaining it.

14. New sub-paragraph (4) retains the existing exemption from registering the costs and travel and subsistence in connection with a member’s attendance at a conference or meeting (where those costs are borne by the organiser of the conference or one of the other parties attending the meeting). This means that such gifts will only be registrable where they are over the value of £1,500 (singly or cumulatively) and for the member’s political activities (further to sub-paragraph (3)). This provision ensures that the existing exemption continues to apply in most cases but that gifts covered by PPERA (i.e. over £1,500 for political activities) require to be registered.

15. New sub-paragraph (5)(a) ensures that the existing exemption from registering the services of a volunteer which are provided in that volunteer’s own time and free of charge is retained. Members are not required to register the services of a volunteer under the existing Interests Act, nor are they required to do so under PPERA.

16. Sub-paragraph (5)(b) largely replicates an existing exemption for certain election income. This provision ensures that members are exempt from registering donations towards election expenses (whether for election to the Scottish Parliament or the UK Parliament). Such donations would usually be included in electoral returns submitted to the Returning Officer after an election. The exemption does not apply to any donation which has not been used for election expense purposes by the end of the 35th day after the election result is declared (i.e. if the member has some donations towards election expenses left over after the election and uses them for other purposes).

17. In one respect, sub-paragraph (5)(b) represents a narrowing of the previous exemption, which had exempted campaign expenditure in connection with a member's campaign for election to a party office from registration. Such expenditure will now be registrable if it meets the registration criteria set out in sub-paragraph (2) or (3).

18. PPERA requires that members only accept donations over £500 from a permissible source (see section 54 of, and paragraphs 6 to 9 of Schedule 7 to, PPERA). If the donation is not from a permissible source it must be returned to the donor or forwarded to the Electoral Commission where the donor cannot be identified, on which there is further provision in sections 56 and 57 of PPERA (as applied by paragraph 8 of Schedule 7 to that Act). New sub-paragraph (6) excepts from registration under the Interests Act any gift or other benefit that is returned to the donor (or repaid), or forwarded to the Electoral Commission, under those provisions.

19. New sub-paragraph (7) makes clear that for the purposes of aggregating a gift or gifts with other aggregable benefits under sub-paragraph (3)(b)(ii), any controlled transaction is valued at the date on which it is entered into.

20. New sub-paragraph (8) sets out the definitions of the terms used in paragraph 6. Most of these simply replicate what is currently in the Interests Act. The three changes to the existing definitions in sub-paragraph (8) are:
The addition of the definition of “aggregable benefits” (see paragraph 12 of these notes);

The addition of a definition of “political activities” in so far as it relates to a member of the Scottish Parliament;

The definition of “specified limit” sets the threshold for registering gifts (that meet the prejudice test) under the Interests Act. This threshold was previously set at 1% of a member’s salary at the start of a parliamentary session (currently £570) and is being lowered to 0.5% of a member’s salary at the start of a parliamentary session (rounded down to the nearest £10) (currently £280).

Section 4 – Loans, credit facilities etc.

New paragraph 6A

21. Section 4 inserts a new paragraph 6A into the schedule to the Interests Act, which adds a new category of interest to the register known as a controlled transaction (certain loans, credit facilities and connected transactions). This brings the controlled transactions covered by Schedule 7A to PPERA within “registrable financial interest” for the purposes of registration under the Interests Act. Sub-paragraphs (1)(a) and (b) set out the requirement to register controlled transactions over the value of £1,500.

22. Sub-paragraphs (3) to (10) provide further definition of “controlled transaction” and this concept incorporates a political activities related “use condition” which must be met for a controlled transaction to be registered (further set out at sub-paragraph (9)). A controlled transaction is registrable where its value exceeds £1,500, either singly or when aggregated with other “aggregable benefits” accepted from the same person in the same calendar year. Sub-paragraph (11) defines “aggregable benefit” to include gifts, certain remuneration received as expenses, overseas visits, or other controlled transactions; provided they are for the member’s political activities and individually exceed £500 (but not exceeding £1,500).

23. New sub-paragraphs (3) and (4) define a controlled transaction as an agreement between the member and another person where that person lends money or provides a credit facility to the member, where the political activities related “use condition”, set out in sub-paragraph (9), is satisfied. Sub-paragraph (5) defines a credit facility. An example of a controlled transaction that is a credit facility would be where a member enters into a credit card agreement with the intention of using that wholly or partly for their political activities.

24. New sub-paragraph (6) provides that certain transactions that are connected to a controlled transaction or a transaction under which any property, services or facilities are provided for the member’s use or benefit are also registrable if the “use condition” (see sub-paragraph (9)) is met. A connected transaction is one under which a third party gives security in relation to the sum owed by the member under the initial loan or credit agreement (or other transaction mentioned in sub-paragraph (6)(a)). An example of such a connected transaction is where a third person gives a personal guarantee to a bank in respect of a loan or credit facility provided to the member (and for registration purposes the “use condition” would also need to be met).
25. New sub-paragraph (7) sets out certain agreements or arrangements that do not amount to a controlled transaction. Sub-paragraph (7)(a) provides that members are not required to register payments, made in pursuance of an agreement or arrangement, which in accordance with any enactment form part of an Electoral Return for an election. Sub-paragraph (7)(b) makes clear that members are not required to register trade credit, given on normal (rather than preferential to the member) terms. Sub-paragraphs (7)(c) and (d) make clear that loans, credit facilities or connected transactions do not fall within the definition of “controlled transaction” and are therefore not registrable if:

- they do not exceed £500;
- they were entered into before the member was returned as a member (this applies despite section 3(1)(b) of the Interests Act which provides for the registration of other registrable financial interests previously held – but no longer held at the date of return – if the prejudice test is met).

26. New sub-paragraph (8) provides for the situation where a controlled transaction was not registrable when first entered into as its value was not sufficient to trigger registration, but it is subsequently varied so as to become registrable (either singly or when aggregated with other aggregable benefits). For example, where the terms of a loan agreement are subsequently varied to take its value above £1500. In such circumstances the date on which the controlled transaction is considered to be entered into for the purposes of the Interests Act (e.g. in relation to registration and aggregation) is the date on which that variation takes effect.

27. New sub-paragraph (9) explains that the “use condition” is that the member intends, at the time they enter into the loan or credit facility agreement, or a transaction mentioned in sub-paragraph (6)(a) (for the provision of property, services or facilities), to use any money or benefit obtained in connection with their political activities. New sub-paragraph (10) sets out that a controlled transaction is registrable, even if only part of the money or benefit obtained is intended to be used in connection with the member’s political activities.

**New paragraph 6B – Value of loans, credit facilities etc.**

28. New paragraph 6B(1) to (3) makes provision in relation to how a controlled transaction should be valued, depending on whether it involves a loan, credit facility or a connected transaction involving an arrangement under which security is given. In the case of a loan, the value is the value of the total amount to be lent under the loan agreement. For a credit facility, the value is the maximum amount which may be borrowed under the agreement for the facility. And, where a third party gives security to a member for a controlled transaction (i.e. where it is a connected transaction), the value is the contingent liability under the security provided.

29. Sub-paragraph (4) sets out that (for the purposes of valuing a controlled transaction that is a loan or a credit facility) no account is to be taken of any provision in the loan or credit facility agreement, as entered into, that would allow the adding of outstanding interest to any sum, for the time being owed, when calculating the value of the controlled transaction.
Section 5 – Overseas visits

30. Section 5 of the Bill replaces paragraph 7 of the schedule to the Interests Act with an amended version. Sub-paragraphs (1) and (2) restate the existing requirements to register certain “overseas visits” (i.e. that members are required to register visits outside of the United Kingdom which meet the prejudice test – subject to the exemptions from registration set out in sub-paragraph (3)).

31. Sub-paragraph (4) introduces a new requirement for members to register overseas visits over the value of £1,500 (singly or in aggregate) in connection with the member’s political activities. Sub-paragraph (5) replicates the exemptions from registering overseas visits set out in sub-paragraph (3) with the exception that members are not exempt from registering an overseas visit paid for by their spouse, civil partner, cohabitant, mother, father, son or daughter if it is over the value of £1,500 and for political activities. Such overseas visits are required to be registered under PPERA.

32. Sub-paragraph (6) sets out the definition of “aggregable benefit” for the purposes of aggregating an overseas visit for political activities with other benefits for political activities accepted from the same person in the same calendar year, further to sub-paragraph (4)(b). The aggregable benefits that can be aggregated include other overseas political visits, other gifts, certain remuneration received as expenses or controlled transactions, where they are for political activities and are individually valued in excess of £500 (but not exceeding £1,500).

Section 6 – Changes to certain time periods

33. Section 3(1) of the Interests Act requires members to register any registrable interest which the member had on the date on which the member was returned. Section 5(1) of the Interests Act requires members to register any registrable interest which a member acquires after the date on which the member is returned. This means that the Interests Act does not fully capture registrable interests acquired on the date of return. Section 6(1) of the Bill therefore amends section 3 of the Interests Act to deal with any interest that is acquired on the date on which a member is returned.

34. Section 6(1) makes an adjustment to the registration deadline so that members have a 30 day period to register an interest starting with the date of return in the case of any interest acquired on that date.

35. Under PPERA, a member must report a donation within the period of 30 days beginning with the date of acceptance of the donation. Under section 5 of the Interests Act, a member must register an interest with the Clerk within 30 days after the date on which the member acquired the interest. The 30 day period runs from the following day in the case of the Interests Act. The amendment made in section 6(2) of the Bill, brings the starting point of the 30 day period into line with the PPERA requirement, so that it begins on the date on which an interest is acquired.

36. Section 6(3) amends section 10 of the Interests Act so that old entries in a member’s register are to be kept for at least 10 years from the date of the last amendment to the member’s register (the existing provision requires them to be kept for 5 years).
Section 7 – Registration of individuals’ addresses

37. A written statement is the means by which a member is required to register their interests with the Clerk. The Interests Act specifies the nature of written statements and sets out certain obligations on the Clerk for their registration and publication. Section 7 of the Bill states that the Clerk is not obliged to register the address of any individual named or referred to in the written statement, so as to avoid any unnecessary publication of personal data.

Section 8 – Reporting and registration of changes to controlled transactions

38. Section 8 inserts a new section 8A into the Interests Act. New subsections (4) and (5) place a requirement on a member who has registered a controlled transaction to notify the Clerk of any change to it, no later than the last day of the period of 30 days beginning with the date on which the change takes effect. Subsections (1) to (3) provide further definition for the purposes of this section of what amounts to a change to a registered controlled transaction. There is such a change where: another person becomes a party to the transaction; there is a change to anything about the transaction on which the member provided (or should have provided) information (see further definition in subsection (2)) in the written statement when registering it; or where the transaction comes to an end.

39. New subsections (5) to (7) set out the process for members to register any changes to controlled transactions. A member notifies the Clerk by submitting a written notice (within 30 days of the change taking effect). The Clerk will then have 30 days in which to amend the entry in the member’s register of interests, to record the change and the date on which it took effect, sending a copy of the amended entry to the member (subsection (7)). Under subsection (6), the written notice must be in such form and contain such information about or relating to the change as the Parliament may determine. Under the Standing Orders similar determinations under the Interests Act are made by a resolution of the Parliament further to a motion of the SPPA Committee (e.g. in relation to the written statement under section 4 of the Interests Act).

Section 9 – Prohibition of paid advocacy

40. Section 14 of the Interests Act prohibits paid advocacy (i.e. advocating or initiating any cause or matter on behalf of any person or urging any other member to do so) in consideration of any payment or benefit in kind. This includes any payment or benefit in kind which the member’s spouse, civil partner or cohabitant receives in connection with the Parliamentary duties of the member and which results in some benefit to the member. Paid advocacy is a criminal offence.

41. Section 9 of the Bill extends the offence of paid advocacy so that it applies not just where the member (or their spouse, civil partner or cohabitant) receives a payment or benefit in kind, but also where they agree to receive a payment or benefit in kind (regardless of whether payment is ultimately received).

Section 10 – Exclusion from Parliamentary proceedings

42. Section 10 of the Bill makes minor amendments to section 16 of the Interests Act (Exclusion from proceedings of the Parliament). It adds in references to new section 8A(4) and
These documents relate to the Interests of Members of the Scottish Parliament (Amendment) Bill (SP Bill 70) as introduced in the Scottish Parliament on 27 May 2015

(5), allowing the Parliament to exclude a member from proceedings in the Parliament where there has been a failure to comply with, or contravention of, the requirements in those provisions on notifying the Clerk of a change to a registered controlled transaction. Section 10 also makes minor changes to the wording used in section 16 to cross-reference to other sections of the Interests Act. This ensures consistency with the wording used in new section 17 of the Interests Act (which relates to the offences associated with breaches of the Act), as replaced by section 11 of the Bill.

Section 11 – Offences

43. Section 11 of the Bill replaces the existing section 17 of the Interests Act, which relates to offences, with a new section 17. This is required because the existing provisions are only preserved until the coming into force of further provision by the Parliament on sanctions (under section 7(3) of the Scotland Act 2012). New section 17 largely restates the existing criminal offence as previously set out in section 39(6) of the Scotland Act 1998, read with section 17 of the Interests Act.

44. Subsection (1) of the new section 17 sets out the criminal offence associated with breaching the Interests Act. It is an offence to take part in proceedings without having complied with or in contravention of the requirements of:

- section 3 (initial registration of interests), section 5 (registration of interests acquired after date of return), section 6 (late registration) or section 8A(4) and (5) (notifying the Clerk of changes to controlled transactions);
- section 13 (declaration of interests);
- a measure taken by the Parliament under section 15 (preventing or restricting participation in proceedings of the Parliament); or
- a measure taken by the Parliament under section 16 (exclusion from proceedings of the Parliament).

Contraventions of section 14 (prohibition of paid advocacy) also form part of the section 17(1) offence.

45. There are a couple of minor substantive changes to the overall scope of the criminal offence. It now captures breaches of the new provision on notifying the Clerk of changes to a controlled transaction (section 8A(4) and (5)) and the scope of the paid advocacy prohibition to which the criminal offence attaches is widened by section 9 of the Bill to cover agreeing to receive any payment or benefit in kind.

46. Subsection (2) makes provision on the available penalty, reiterating the penalty found in section 39(7) of the Scotland Act. A person found guilty of an offence under section 17 is liable on summary conviction to a fine not exceeding level 5 on the standard scale (which currently amounts to £5,000).

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2 Available at: http://www.legislation.gov.uk/ukpga/2012/11/section/7/enacted

Section 12 – Other sanctions

47. Section 12 of the Bill inserts a new section 17A into the Interests Act. This section sets out other sanctions available to the Parliament to impose on members who fail to comply with or contravene the provisions of the Interests Act mentioned at new section 17A(1) (section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16 of the Interests Act). Where there is such a contravention or failure to comply, section 17A(1) enables the Parliament, by resolution, to: exclude a member from the premises of the Parliament or such part of them as it determines and for such period as it determines; withdraw the member’s right to use parliamentary facilities and services or such of them as the Parliament determines; censure a member.

48. Section 17A(2) makes additional sanctions available to the Parliament where a member is to be excluded from proceedings in the Parliament under section 16 of the Interests Act or excluded from some or all of the premises under section 17A(1). In such cases, the Parliament may also, by resolution, disallow payment of salary or allowances (or both) to a member in respect of such period (not exceeding the duration of the exclusion) as the Parliament determines.

49. The sanctions set out at section 17A draw on some of the measures currently available to the Parliament (e.g. exclusion from the proceedings and the wider premises of the Parliament, withdrawal of salary and allowances, withdrawal of access to parliamentary facilities) where it withdraws a member’s rights and privileges under Rule 1.7 of the Standing Orders, e.g. in relation to Code of Conduct breaches. Specifying these sanctions at section 17A for the purposes of Interests Act breaches is consistent with section 39(8) of the Scotland Act 1998 which envisages legislative provision being made by or under an Act of the Scottish Parliament.

Section 13 – Scottish Law Officers

50. Section 13 is a consequential amendment to section 18(4) of the Interests Act arising from the insertion (by section 6 of the Bill) of new section 3(5) on the meaning of the relevant date where an interest is acquired on the date of return. Section 18 applies the provisions in the Interests Act with certain modifications to the Scottish Law Officers where they are not members of the Scottish Parliament. Section 18(4) makes bespoke provision on the relevant date for the purposes of initial registration by a Scottish Law Officer who is not a member of the Parliament and new section 3(5) is not required for the purposes of defining relevant date in such cases. Section 13 makes a small adjustment to section 18(4) to disapply section 3(5).

Section 14 - Meaning of “member” and registered political party and interpretation of “accepted”

51. Section 14(a) clarifies the definition of “member” in section 19 of the Interests Act. This is necessary because the phrase “member of a registered political party” is being inserted into the Act by the Bill. Section 14(a) also gives the meaning of “registered political party”.

52. Section 14(b) also amends section 19, inserting new subsection (4). It clarifies that the point in time at which a member is considered to have accepted a controlled transaction is when it is entered into. This applies even though in the case of a controlled transaction that is a
connected transaction (i.e. one falling within paragraph 6A(6) of the schedule) the member is not a party to the arrangement. Paragraph 24 of these notes sets out further detail about connected transactions.

Section 15 – Amendment of 2000 Act: MSPs who are not members of a registered party

53. When it came to light that there was significant overlap in reporting requirements on individual members (i.e. to the Parliament under the Interests Act and the Electoral Commission under PPERA), section 59 of the Electoral Administration Act 2006 was brought in to remove the requirement for holders of relevant elective office to report donations to the Electoral Commission. Section 59 and the necessary exemptions it inserts into Schedule 7 of PPERA, do not, however, extend to members of the Scottish Parliament who are not members of a registered political party (a political party registered under Part II of PPERA). If this section is commenced for MSPs as it stands, dual reporting would end for MSPs who are members of registered parties, but independent members would still be required to report donations to both the Electoral Commission and the Parliament.

54. Section 15 of the Bill amends paragraph 10(8) of Schedule 7 to PPERA, and section 59(2) of the Electoral Administration Act 2006 (which inserts paragraph 10(8) into Schedule 7), to delete an express exception for members of the Scottish Parliament who are not members of a registered party. This makes the necessary changes to PPERA and the Electoral Administration Act 2006 to allow dual reporting to be ended for any MSP who is not a member of a registered party – independent MSPs for example.

Section 16 – Commencement

55. Section 16 sets out the commencement provisions for the Bill. Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016, but see also the alternative commencement arrangements set out in section 17 of the Bill in relation to these provisions. These provisions cover the majority of the changes needed to allow dual reporting to be ended.

56. Sections 2, 6(3), 9 to 12, which cover a minor adjustment to the remuneration category, the retention period relative to old register entries and provision on sanctions (including an adjustment to the paid advocacy prohibition) come into force on 5 May 2016. This will allow these changes all to come into force at the start of the new parliamentary session.

57. Sections 8 (reporting and registration of changes to controlled transactions), 15 (amendment to the 2000 Act to end dual reporting for independent MSPs) and 19 (short title) will come into force on the day after Royal Assent.

Section 17 - Commencement: alternative and supplementary provisions

58. Section 17 sets out alternative and supplementary commencement provision applying in the event that the provisions of PPERA and the Electoral Administration Act 2006 mentioned at section 1(2) - i.e. the provisions that trigger an end to dual reporting - are not commenced in relation to MSPs before 5 May 2016. In such circumstances section 17(1) permits the
Parliament, by resolution, to designate an alternative date for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14 of the Bill.

59. Subsection (3) allows for the making of transitional, transitory and savings provision in any resolution made under section 17(1). Subsection (4) applies provision in paragraphs 10(2) to (5) of the schedule to the Interests Act to any such resolution. This requires the Clerk to send a copy of it to the Queen’s Printer for Scotland immediately after it is passed, and applies with modifications provision (in 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)) on numbering, publication and citation of Scottish statutory instruments to such a resolution as if it were a Scottish statutory instrument.

Section 18 – Commencement (further supplementary provision)

60. Section 18 clarifies that the provision on other parliamentary sanctions in new section 17A does not apply to any failure to comply or contravention occurring before 5 May 2016.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Interests of Members of the Scottish Parliament (Amendment) (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 27 May 2015. It has been prepared by Scottish Parliament Officials on behalf of the Standards, Procedures and Public Appointments Committee, the Committee introducing the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The purpose of this Financial Memorandum is to set out the best estimates of the administrative and other costs to which the provisions of the Bill will give rise and an indication of uncertainty in these estimates.

3. The costs detailed below relate to the increased investigating responsibility being given by the Bill to the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”).

4. The other measures in the Bill enhance the Parliament’s regime for dealing with the conduct of members but are unlikely to give rise to any additional costs. These measures are:
   - An increase in the range of sanctions available to the Parliament for dealing with any breaches of the Interests of Members of the Scottish Parliament Act 2006 (“the Interests Act”);
   - Lowering the threshold for the registration of gifts;
   - An extension to the definition of the paid advocacy offence;
   - An extension to the length of time that members’ entries in the register of interests will be retained by the Parliament.

COSTS ON THE SCOTTISH PARLIAMENT

5. The Bill will incorporate requirements on members to register certain donations and transactions for political activities, which are currently registrable with the Electoral Commission under the Political Parties, Elections and Referendums Act 2000 (PPERA), into the Parliament’s own interests regime, in order to remove the need for MSPs to register the same information in both places (so-called “dual reporting”).

6. The volume of donations registered by MSPs with the Electoral Commission is six per year on average. It is anticipated therefore that the Parliament’s Standards Clerks would absorb any increase in work arising from these additional registration requirements as part of their existing work in updating the register and giving advice to members on registration of financial interests. Therefore, no additional costs are expected to arise from this aspect of the Bill.
COSTS ON THE COMMISSIONER’S OFFICE

7. The Commissioner investigates any complaints made about alleged failures to register an interest with the Parliament. Complaints about alleged failures to register donations and transactions under PPERA are currently investigated by the Electoral Commission. Under the Bill’s provisions, these donations and transactions will become registrable financial interests for the purposes of the Interests Act. As a result the Commissioner will be charged with investigating a broader range of financial interests than at present, to include those currently under the supervision of the Electoral Commission. The budget for the Commissioner’s Office is provided by the SPCB.

8. The Commissioner has provided the Committee with estimates based on an analysis of the staff time involved in dealing with a number of complaints which have been investigated over the course of the current year. In providing the figures, the Commissioner focussed on the resources required for investigating and reporting on complaints which are more complex, based on the view that in the early period of a new regime, before the rules have been tested and had time to settle down, complaints may be difficult to assess.

9. The salary costs of an Investigating Officer in the Commissioner’s Office working on a complaint is, on average, around £1,000 per case. However, the more complex complaints cost between £4,000 and £6,000 each in Investigating Officer salary costs. The Commissioner has suggested that it would be reasonable to add on an approximate figure of £1,000 per investigation to cover his own time and that of the administrative staff in his office. Taking the midpoint for Investigating Officer costs, this gives a total staff cost for a more complex complaint of around £6,000.

10. The Commissioner was unable to say whether these potential, additional costs could be absorbed within budgeted expenditure, as this would depend on the volume of complaints.

11. The Electoral Commission has indicated that on average it deals with around one case a year concerning MSPs who are alleged to have breached PPERA. Over the last three years it has had four such cases, two of which were closed without investigation, two were investigated by the Commission, and one resulted in sanctions being imposed.

12. Under the Interests Act, the Commissioner is required to investigate every admissible complaint. The average one MSP case per year currently dealt with by the Electoral Commission will become – once the Bill is in force – a possible one additional MSP case to be dealt with by the Commissioner. This means that, based on the figures from the Electoral Commission, there may be an increase of about one admissible complaint per year which the Commissioner would be required to investigate.

13. Based on the figures provided by the Commissioner, and assuming that such additional cases are likely (at least initially) to be complex, this would amount to an additional cost of around £6,000 per annum.

14. The Commissioner’s office budget for 2013/14 was £797,000 (as agreed with the Scottish Parliament). However, expenditure during the year was £811,000 – £14,000 over the allocated
budget. The additional resources were required to investigate the significantly increased number of complaints about the conduct of local authority councillors (which is a separate function of the Commissioner’s Office in addition to investigating complaints about MSPs).

15. Bearing this in mind, it is assumed that the Commissioner’s budget could not absorb the extra cost associated with this Bill and it is therefore likely to result in a requirement for the SPCB to increase the budget by around £6,000 per annum to provide for any complaints arising from the reporting requirements being brought into the Parliament’s interests regime. The estimated additional cost of around £6,000 per annum is a very small proportion of the Commissioner’s overall budget of £800,000 (less than 1%).

16. There is some uncertainty around these estimated costs. They are dependent on the conduct of MSPs (i.e. whether a member fails to register a donation which is registrable under PPERA) and on whether there are any complaints (the Commissioner will only conduct an investigation on receipt of an admissible complaint). It is worth noting, in this context, that the Commissioner has only had to report on one complaint about an MSP’s register of interests during the current parliamentary session. However, the Committee considers that it is reasonable to provide for this modest increase in the Commissioner’s budget for investigating complaints.

COSTS ON THE SCOTTISH ADMINISTRATION

17. It is not anticipated that there will be any additional costs on the Scottish Administration.

COSTS ON LOCAL AUTHORITIES

18. There are no cost implications for local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

19. There are no cost implications for other bodies, individuals and businesses.
MEMBER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 21 May 2015, the member in charge of the Bill (Stewart Stevenson MSP) made the following statement:

“In my view, the provisions of the Interests of Members of the Scottish Parliament (Amendment) Bill would be within the legislative competence of the Scottish Parliament.”


PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 27 May 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Interests of Members of the Scottish Parliament (Amendment) Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Interests of Members of the Scottish Parliament (Amendment) Bill (SP Bill 70) as introduced in the Scottish Parliament on 27 May 2015

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Interests of Members of the Scottish Parliament (Amendment) Bill introduced in the Scottish Parliament on 27 May 2015. It has been prepared by Scottish Parliament officials on behalf of Stewart Stevenson (Convener of the Standards, Procedures and Public Appointments (SPPA) Committee), in accordance with Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 70–EN.

2. Further details about the Committee’s policy can be found in its report on the proposal for the Bill, which was agreed by the Parliament on 22 April 2015.1

POLICY OBJECTIVES OF THE BILL

3. The Interests of Members of the Scottish Parliament Act 2006 (the Interests Act) sets out the requirements for MSPs to register and declare certain financial interests, and also proscribes paid advocacy. The sanctions for breaching these rules are also set out in that Act.

4. The overall aim of the Bill is to amend the Interests Act to ensure that information about MSPs’ financial interests is transparent and accessible, and to combine two existing reporting processes to assist MSPs in complying with requirements to report donations. The proposals in the Bill would also strengthen the sanctions available to the Parliament to deal with any breaches to the rules set out in the Interests Act, widen the scope of the offence of paid advocacy, and extend the length of time that the Parliament may retain members’ registers of interest.

GRECO

5. The Bill lowers the threshold for registering gifts under the Interests Act. The threshold is currently set at 1% of a member’s salary at the start of the parliamentary session (currently £570). The Group of States against Corruption (GRECO), a body which monitors States’ compliance with anti-corruption standards, published a report in March 2013 called, “Corruption prevention in respect of members of Parliament, judges and prosecutors”. It made a wide range of recommendations aimed at the parliaments and devolved institutions across the UK. It

This document relates to the Interests of Members of the Scottish Parliament (Amendment) Bill (SP Bill 70) as introduced in the Scottish Parliament on 27 May 2015

recommended that the Scottish Parliament should lower its threshold for registering gifts. The threshold had been set at its current level as the previous SPPA Committee wanted to capture “significant” financial interests. However, the Committee recognises that there are moves across the UK to lower the threshold for registering gifts in order to increase transparency for the public. The Committee has therefore decided to accept GRECO’s recommendation and to lower the threshold for registering gifts to 0.5% of a member’s salary at the start of the session (rounded down to the nearest £10 – currently £280).

Streamlining reporting requirements for MSPs

6. MSPs currently have to report financial interests in two places: to the Electoral Commission (under the Political Parties, Elections and Referendums Act 2000 or PPERA) and to the Parliament. There is an overlap between the two regimes, which results in the “dual reporting” of certain financial interests. The Bill makes the necessary changes to the Parliament’s register so that dual reporting can be ended and bringing the reporting requirements into one place for MSPs. This would make information about MSPs’ financial interests more easily available to the public. Benefits include:

- information on MSPs’ financial interests could be found in one place, on the Parliament’s website;
- MSPs would only have to register in one place, and could receive advice on all their interests from Parliamentary officials;
- all complaints about an MSP not meeting the reporting requirements would be dealt with in the same way, by the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner).

7. The Electoral Commission would continue to be responsible for investigating impermissible donations or loans, and would still have its own sanctions for breaches in this area.

8. The relevant exemptions from reporting directly to the Electoral Commission can only be commenced once the Electoral Commission is satisfied with the Parliament’s alternative reporting arrangements. Officials at the Parliament have been working closely with the Electoral Commission to make sure that the Bill will meet the relevant PPERA requirements.


By the relevant UK Secretary of State in commencing section 59 of, and paragraph 99 of Schedule 1 to, the Electoral Administration Act 2006.

Further to section 59(4) of the Electoral Administration Act 2006 which provides that the Secretary of State must not make an order unless he is informed by the Commission that they are satisfied that they will continue to receive the required information on donations.
Changes required to the Register of Interests

9. The Parliament’s register includes significant financial interests that might influence or prejudice MSPs’ parliamentary activities. The PPERA scheme involves the registration of donations and transactions to MSPs for political activities, above a £1500 value threshold.

10. The approach in the Bill has been to leave the Parliament’s existing regime as undisturbed as possible while incorporating the donations and transactions that are currently reportable under PPERA. However, the changes included in the Bill to bring the two regimes together in one place do make the Interests Act more complex. The Bill adjusts the definitions of gifts and overseas visits and a new category has been added for loans and certain other transactions. The Bill also adds an additional layer of rules on the aggregation of interests with a combined value of over £1500. The overall approach has been to limit these changes, wherever possible, to interests with a single or combined value in excess of the £1500 threshold.

11. The Interests Act requires members to register interests within 30 days of acquiring them. Under PPERA, members have 30 days to check if they may accept a donation and a further 30 days to report it once accepted. The Committee has decided that for simplicity all interests should be registered within 30 days, even though this is less than PPERA allows.

Enforcement

12. At present PPERA breaches are investigated by the Electoral Commission. Sometimes alleged breaches are covered by both regimes and are investigated by the Electoral Commission and the Commissioner. Under the changes in the Bill all complaints about registration breaches will be investigated by the Commissioner, rather than potentially both the Commissioner and the Electoral Commission. As at present, the Crown will continue to have a role in investigating potentially criminal conduct.

Independent members

13. The current framework for ending dual reporting in the Electoral Administration Act 2006 does not extend to independent MSPs. As that Act stands, dual reporting can only be ended for members of registered political parties and not for independent members. The Bill contains an amendment to that Act which would allow dual reporting to be ended for all MSPs. The Committee has included this provision in the Bill so that all MSPs are treated in the same way. It would not seem fair if independent members were required to continue with dual reporting when the system had been streamlined for MSPs who are members of political parties.

Dual reporting - conclusion

14. The changes required to end dual reporting are complex. PPERA is a complex piece of legislation. However, members have to comply with PPERA at the moment and the changes made by the Bill should make it easier for members to meet the requirements that are set out in PPERA at the moment. The changes in the Bill will ensure that members’ financial interests will be available for the public to read in one place. The Committee believes that one regime, with one set of sanctions, will be clearer and more effective.
Sanctions

Extending sanctions

15. The Scotland Act 2012\(^6\) introduced changes to section 39 of the Scotland Act 1998\(^7\), to give the Parliament greater flexibility in determining what sanctions are appropriate for breaches of the members’ interests regime and the paid advocacy prohibition. The Bill largely restates the existing criminal offence.

16. The provisions on parliamentary sanctions in the Interests Act are currently limited to excluding a member from proceedings in the Parliament or restricting participation in proceedings on matters in relation to which there has been a breach. The Bill makes clear that a full range of parliamentary sanctions will be available if an MSP fails to register or declare an interest or undertakes paid advocacy. It includes provision for a range of parliamentary sanctions that are broadly equivalent to some of the measures that are available to the Parliament where it withdraws a member’s rights and privileges (e.g. in respect of a breach of the Code of Conduct). This approach ensures consistency with section 39 which envisages further provision on sanctions being made in or under an Act of the Scottish Parliament.

17. The Committee believes that it is vital that a wide range of sanctions is available to the Parliament for dealing with breaches of the Interests Act and the Code of Conduct. The sanctions available to the Parliament must be sufficiently stringent for it to respond effectively to breaches of the rules and to discourage such breaches in the first place. The Bill ensures that a broad range of sanctions is available to the Parliament, including potentially removing all allowances or salary. This change demonstrates that the Parliament has the tools to deal effectively with any breaches to the Interests Act.

Wider criminal offence for paid advocacy

18. Paid advocacy is where an individual uses their position as an MSP to advocate a particular matter in return for payment (including a benefit in kind) or to urge any other MSP to do so. It is a criminal offence and a breach of the Interests Act for an MSP to undertake paid advocacy. No MSP has ever been found to have breached these rules.

19. The Committee is very clear, given the gravity with which paid advocacy should be treated, that the criminal offence for paid advocacy is appropriate. The Committee’s consultation paper proposed that the definition of paid advocacy should be amended for greater consistency with the Bribery Act 2010. What was of particular note to the Committee was the incorporation of the act of agreeing to receive inducements within the offence of being bribed under section 2 of the Bribery Act. The paid advocacy offence currently requires actual receipt of an inducement by an MSP (or by an MSP’s partner, where this results in some benefit to the MSP). It does not currently incorporate payments or benefits in kind that a member agrees to receive.

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\(^6\) The Scotland Act 2012, Section 7. Available at: http://www.legislation.gov.uk/ukpga/2012/11/section/7/enacted

20. The Bill amends the definition of paid advocacy so that agreeing to receive inducements, as well as actually receiving them, would be an offence (and a breach of the Interests Act).

**Motion of censure**

21. The Bill introduces a new sanction - that the Parliament should be able to agree a motion of censure – a form of public “naming and shaming” agreed by the Parliament as a whole. A motion of censure could serve as a useful middle ground where the SPPA Committee found a member to be in breach but where it did not consider the breach to be sufficiently serious to justify a sanction such as exclusion or removal of other Parliamentary privileges. Such a motion could be debated, providing the MSP who is the subject of the motion with a public opportunity to apologise in person.

**Keeping previous registers**

22. At present the Parliament is required by the Interests Act to dispose of old register entries 5 years after they were last amended. The Bill extends this timescale to 10 years. The Committee considers this more appropriate, to ensure that information from the previous two sessions is easily available on the Parliament’s website. There are also practical reasons for extending this time period, to assist members in ensuring that information about their previously held interests is available at the start of a new session (as outlined in paragraphs 33 and 34 below). This change will also increase transparency in relation to members’ interests as the information will be easily accessible to the public for a longer period than at present.

**ALTERNATIVE APPROACHES**

**Maintaining threshold at current level**

23. An alternative approach to lowering the threshold from £570 to £280 for registering gifts would have been to keep the threshold at its current level. However, the Committee believes that now is the time to lower the threshold. The House of Commons and House of Lords are both lowering their thresholds for registering gifts in response to the GRECO report. The current threshold for registering gifts in the Northern Ireland Assembly is £240 (0.5% of an Assembly Member’s salary); at the Welsh Assembly the threshold is also 0.5% of a Member’s salary (£269).

24. The Committee believes that lowering the threshold would increase transparency and would keep the Scottish Parliament in step with developments elsewhere in the United Kingdom.

**Maintaining existing reporting requirements for MSPs**

25. An alternative approach to making the changes required to end dual reporting would have been to maintain the status quo where members are required to report their financial interests to both the Electoral Commission and the Scottish Parliament (depending on the nature of the interest).

26. The Committee considered this approach but agreed that making the necessary changes to end dual reporting is a step forward in streamlining the process for members, and, more
importantly, in making members’ financial interests more transparent to members of the public. The Committee also noted that dual reporting has already been ended for members of the House of Commons and that discussions are under way on ending dual reporting for members of the other devolved institutions in the UK.

27. Incorporating the donations and transactions that are reportable under PPERA within the Parliament’s Interests Act has been a challenging job. The result is a fairly complex Bill. The Parliament’s officials have explored whether there would be a more straightforward way of achieving the goal of ending dual reporting. However, the fact that the Parliament has a statutory regime that requires amendment makes incorporating these changes a complex exercise.

28. The Committee is proposing to amend the Code of Conduct for MSPs to set out the new requirements for members. This would make the rules easier for members to follow. In addition, the Committee has recommended joint briefings for MSPs from the Parliament’s Standards Clerks and officials from the Electoral Commission on the new regime (when it is implemented).

Sanctions

29. In its consultation on the proposals for the Bill, the Committee sought views on removing the criminal offence for failing to register or declare an interest. The Committee noted that, to date, breaches of the Interests Act have generally been minor and inadvertent in nature and that more serious breaches would be likely to be caught by other criminal offences, such as fraud or bribery. The Committee also emphasised the existing mechanisms within the Parliament’s own complaints procedures for sanctioning MSPs. The Committee also noted that the Crown Office has never commenced criminal proceedings on any complaint since the Parliament’s inception in 1999, presumably because it has decided that it is not in the public interest to do so.

30. However, the Committee received responses from the Scottish Government and the Electoral Reform Society which argued that there is no appropriate foundation upon which to justify the removal of the criminal offences and that the public interest is best served in maintaining the role of the Procurator Fiscal and the criminal courts by retaining the existing offences. Although the Committee believes that there are valid reasons for considering this issue, it accepts that the proposal to remove the criminal offence would not enhance the public perception of elected members at this time.

31. Section 39 of the Scotland Act 2012 gave the Parliament greater flexibility in determining the sanctions to be applied to breaches of the Interests Act and that has given the Parliament an opportunity to look afresh at what sanctions should be applied. Section 39 envisaged further provision on sanctions being made in or under an Act of the Scottish Parliament which is why additional sanctions have been set out in the Bill itself.

32. The alternative approach would have been to simply maintain the existing sanctions set out in the Interests Act. However, the Committee wanted to ensure that the Parliament had a broad range of sanctions available for any breach of the rules. It is for that same reason that the

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Committee decided to introduce a motion of censure to the range of sanctions available to the Parliament.

**Keeping previous registers**

33. The Committee considered a number of timescales for keeping members’ registers. The current timescale of five years generally allows members’ registers for the previous session to be publically available when a member is re-elected, which can be useful for returning members when considering what to register at initial registration of interests after an election.

34. However, the Committee felt that this timescale was too short and that retaining registers for a longer period would be more transparent and also be of practical use for members. For example, where a member is not re-elected after one session but returns having been out of the Parliament for a session, the ten year period would allow that member to refer back to their previous register (and provide an additional layer of transparency).

**CONSULTATION**

35. The Committee consulted on its proposal for a Committee Bill in April 2013.9

36. The Committee received three responses to its initial consultation, from the Scottish Government, the Electoral Reform Society Scotland and the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner).10

37. In addition, members of the Committee held discussions with individual MSPs and with party groups to inform the Committee’s thinking on its proposals. In January 2014, the Convener wrote to all MSPs informing them of the Committee’s proposals in relation to making changes to the Parliament’s register of interests to allow dual reporting to be ended and lowering the threshold for registering gifts.11

38. Scottish Parliament officials have liaised with officials from the Electoral Commission in developing the provisions aimed at ending dual reporting (to ensure that they would capture the financial interests which are currently registered with the Electoral Commission under PPERA).

39. The Committee wrote to the Commissioner for Ethical Standards in Public Life in Scotland regarding the financial impact on his office of the proposals aimed at ending dual

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11 Letter from the Convener of the SPPA Committee to all MSPs. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62116.aspx
reporting. The Committee received two responses from the Commissioner on this matter. These responses are reflected in the Bill’s financial memorandum.

40. The Convener held meetings with independent members on two occasions to discuss the Committee’s approach to ending dual reporting and the impact on independent members. The Convener reported the views of the independent members back to the Committee.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

41. The Bill would ensure that dual reporting ends for all members, including independent members, to avoid any inequality of treatment between independent members and other MSPs.

Human rights

42. An assessment of the Bill’s compatibility with Convention rights has been made. No incompatibility with any of the rights under the European Convention on Human Rights (“Convention rights”) has been identified.

43. The parliamentary sanctions provided for in section 12 of the Bill (new section 17A of the Interests Act) have been considered against relevant Convention rights. New section 17A includes, among other things, powers to exclude a member from the parliamentary premises, withdraw a member’s access to parliamentary facilities and services and withdraw salary and allowances.

44. Consideration has been given to the impact of these measures on the rights guaranteed in Article 10 (the right to freedom of expression) and Article 1 of Protocol 1 (a person’s right to enjoy their possessions). If any of the new sanctions amounted to an interference with these rights, this could be justified as being necessary in a democratic society and in the public interest. An effective and enforceable members’ interests regime, supported by appropriate sanctions, has a necessary role to play in the proper functioning of a legislature. It helps ensure transparency on MSPs’ financial interests as they participate in the Parliament’s processes. It is essential that any interference with Article 10 or Article 1 of Protocol 1 is proportionate, and it is considered that the parliamentary sanctions set out at new section 17A meet this requirement. For example, the power to withdraw salary is not unlimited and is restricted to the duration of any exclusion from the proceedings or the parliamentary premises. It is also worth noting that these sanctions can only be applied by a resolution of the Parliament and would form part of a wider complaints process (following investigation by the Commissioner for Ethical Standards in Public Life in Scotland and consideration by the SPPA Committee).

Island communities

45. The provisions in the Bill would not have a differential effect on island communities.

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Local government

46. The provisions in the Bill would not have an effect on local government.

Sustainable development

47. The UK Shared Framework for Sustainable Development\(^\text{13}\) was adopted by the Scottish Government in 2005. Commitment to the Framework was reaffirmed in the recent draft Scottish Planning Policy.\(^\text{14}\) The Framework includes the principle: “Ensuring a Strong, Healthy and Just Society – meeting the diverse needs of all people in existing and future communities, promoting well-being, social cohesion and creating equal opportunity for all”. Within this principle sits the following aim “promoting good governance: for society to be fair, and for the environment to be safeguarded and economic activity properly regulated, we must have good governance systems that work well and serve all members of society”.

48. Participation, openness and transparency and fairness are the key elements of good governance and sustainable development calls for a system of governance that is fair, open and transparent. The Scottish Parliament is a key institution and the measures in the Bill will promote transparency by making it simpler for citizens to access information about their elected representatives. The Bill’s measures also enhance governance by strengthening the censures for breaches of the Parliament’s rules.

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Delegated Powers and Law Reform Committee

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

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Web
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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?
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).
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.
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
Interests of Members of the Scottish Parliament (Amendment) Bill: The Committee considered its approach to the delegated powers provisions in this Bill at Stage 1 and agreed the contents of a report to the Standards, Procedures and Public Appointments Committee.
Present:

Richard Baker  
John Mason (Deputy Convener)  
Stewart Stevenson

Nigel Don (Convener)  
John Scott

Also present: Rob Gibson (for item 4)

**Interests of Members of the Scottish Parliament (Amendment) Bill:** The Committee noted the response from the Standards, Procedures and Public Appointments Committee to points raised on the delegated powers provisions in this Bill at Stage 1.
Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 September 2015

[The Convener opened the meeting at 11:15]
Interests of Members of the Scottish Parliament (Amendment) Bill: Stage 1

11:33

The Convener: We come to agenda item 8.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Convener, it would be appropriate for me to declare that, as the introducer of the bill that the committee is about to discuss, I will not take any part in the discussion.

The Convener: Thank you. I take it that you do that as the convener of the relevant committee—I am struggling to remember its full name.

Stewart Stevenson: The Standards, Procedures and Public Appointments Committee.

The Convener: Thank you. It is in that capacity that you have made that declaration.

Members are invited to consider the delegated powers contained in the Interests of Members of the Scottish Parliament (Amendment) Bill. If members are content with the recommendations in the paper, they will form the basis of a report to Parliament and the committee will not discuss the draft report before it is published.

Is the committee content with the delegated power in section 17?

Members indicated agreement.

The Convener: Does the committee agree to refer to the Standards, Procedures and Public Appointments Committee the following questions? First, do we agree to ask whether any changes to 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 standing orders in respect of motions seeking modification of the parliamentary pension scheme or grants scheme.

Secondly, does the committee agree to ask whether any changes to 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?

Members indicated agreement.
Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 15 September 2015

[The Convener opened the meeting at 10:06]
Interests of Members of the Scottish Parliament (Amendment) Bill: Stage 1

13:12

The Convener: The purpose of agenda item 9 is for the committee to consider the response from the Standards, Procedures and Public Appointments Committee to its stage 1 report. Do members have any comments?

Stewart Stevenson: I merely draw the committee’s attention to the fact that I am the convener who wrote to it.

The Convener: Are we content to note the response and, if necessary, to reconsider the bill after stage 2?

Members indicated agreement.

The Convener: That completes the public items, so I move the meeting into private.

13:13

Meeting continued in private until 13:30.
Finance Committee

Report on the Financial Memorandum of the Interests of Members of the Scottish Parliament (Amendment) Bill
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1. The remit of the Finance Committee is to consider and report on-
   a. any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;
   b. any report made by a committee setting out proposals concerning public expenditure;
   c. Budget Bills; and
   d. any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.
2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.
3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

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Committee Membership

Convener
Kenneth Gibson
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

Jackie Baillie
Scottish Labour

Gavin Brown
Scottish Conservative and Unionist Party

Mark McDonald
Scottish National Party

Jean Urquhart
Independent
Introduction

1. The Interests of Members of the Scottish Parliament (Amendment) Bill¹ (“the Bill”) was introduced in the Scottish Parliament on 27 May 2015 by Stewart Stevenson MSP, Convener of the Standards, Procedures and Public Appointments Committee.

2. The procedure for scrutiny of a Committee Bill is set out in Rule 9.15 of Standing Orders. Under that Rule, the Finance Committee is required to consider and report to the Parliament on the Financial Memorandum (FM). The Parliament can only consider, and decide whether to agree to, the general principles of the Bill once the Finance Committee (and, if applicable, the Delegated Powers and Law Reform Committee) has reported on the Bill.

3. At its meeting on 3 June 2015² the Finance Committee agreed to write to the Electoral Commission, the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) and the Scottish Parliamentary Corporate Body seeking clarity on points around the estimated figures provided in the FM. The correspondence can be found in Annexe A of this report.

The Bill

4. The purpose of the Bill is to amend the Interests of Members of the Scottish Parliament Act 2006 (“the 2006 Act”) to—

   • end the requirement for members to register certain donations with the Electoral Commission and the Register of Members’ Interests (“dual-reporting”)
   • an increase in the range of sanctions available to the Parliament for dealing with any breaches of the 2006 Act
   • lower the threshold for the registration of gifts
   • an extension to the definition of the paid advocacy offence
   • an extension to the length of time that members’ entries in the register of interests will be retained by the Parliament.

5. The FM sets out costs that are likely to arise in relation to the end of dual-reporting. The Bill’s proposals would charge the Commissioner with investigating complaints about alleged failures to register the donations and transactions under the Political Parties, Elections and Referendums Act 2000 (“PPERA”). Currently these investigations are undertaken by the Electoral Commission.
6. To determine the estimated costs of transferring these responsibilities, the FM uses information provided by the Commissioner “based on an analysis of the staff time involved in dealing with a number of complaints which have been investigated over the course of the current year.”

7. The FM sets out that the average cost per case of an Investigating Officer in the Commissioner’s office working on a complaint is £1,000. For more complex complaints, Investigating Officer costs of between £4,000 and £6,000 arise. The FM states that the Commissioner has “suggested that it would be reasonable to add on an approximate figure of £1,000 per investigation to cover his own time and that of the administrative staff in his office.”

8. To provide an estimate for a complex investigation, the FM takes the mid-point of the Investigating Officer costs giving a total staff cost of £6,000 per case. The FM states that the Commissioner “was unable to say whether these potential, additional costs could be absorbed within budgeted expenditure, as this would depend on the volume of complaints.”

9. To estimate the volume of complaints, the FM notes that the Electoral Commission “has indicated that on average it deals with around one case a year concerning MSPs who are alleged to have breached PPERA.” Taking the period of the last three years, the Electoral Commission has had four cases relating to MSPs. The FM states that two of these were closed without investigation. Of the other two cases that were investigated, one resulted in sanctions being imposed.

10. Under the 2006 Act, the Commissioner is required to investigate all admissible complaints that are made. Using the average number of complaints against MSPs received by the Electoral Commission, the FM estimates that the additional workload on the Commissioner’s office would be one case per year, leading to additional costs per year of £6,000.

Summary of written evidence

The Electoral Commission

11. The estimate of the volume of complaints in the FM is based on the number of cases of alleged breaches of PPERA by MSPs that the Electoral Commission has dealt with in the past 3 years. The Committee sought further information on whether the average number of PPERA cases had been the same over a longer period of time and, specifically, whether there has previously been any increase in the number of cases considered in the period around a Scottish General Election.

12. The Electoral Commission confirmed the number of cases involving MSPs had remained broadly the same since the sanctions regime was introduced in 2010 and provided detail on the number of cases per year since then. It also confirmed that while there was an increase in the number of cases considered by the
Commission in 2011, from 0 to 3, none were “related to or arose as a result of the Scottish Parliamentary elections” held that year.

The Commissioner for Ethical Standards in Public Life in Scotland

13. The FM uses estimates, provided by the Commissioner, on the cost of investigating cases where MSPs are alleged to have breached PPERA. These are based on the Investigating Officer costs incurred from the most complex cases dealt with by the Commissioner at the present time. The Committee sought further information from the Commissioner on whether or not any benchmarking has been undertaken to compare the activities involved in his office investigating a complex case and the activities currently undertaken by the Electoral Commission when investigating alleged breaches of PPERA.

14. The Commissioner confirmed he had made contact with the Electoral Commission with a view to obtaining comparative information. The Commissioner was of the view that the area most likely to give rise to complaints would be around the failure to properly register donations and other transactions providing funding for political activities. His enquiries indicated that the Electoral Commission receives a small number of complaints of this nature, most of which were investigated without the need for interviews and if this position was to remain the same after the proposed amendments to the 2006 Act then it was likely that very little additional resource would be required to investigate complaints.

15. However, the Commissioner stresses the importance of recognising that the powers and procedures followed by the Electoral Commission are different from those which he is required to follow under the Scottish Parliamentary Standards Commissioner Act 2002, as amended. On this basis he considers it prudent to budget for some additional full investigations, at least in the initial period following the change. In the absence of any direct comparable costs with the Electoral Commission the Commissioner has based his estimate, as set out in the FM, on the historical costs of investigation of the more complex complaints that fall under his existing remit.

Scottish Parliamentary Corporate Body (SPCB)

16. The Committee wrote to the SPCB seeking its view on the estimated costs in the FM and the implications for the budget of the Commissioner for Ethical Standards. The SPCB note the estimated costs provided in the FM and that the anticipated additional cost for the Commissioner’s office is likely to be in the region of £6k. In light of the Commissioner’s work being demand led the SPCB concluded that it would not be possible to predict whether any additional costs could be absorbed within his annual approved budget.

17. The SPCB confirmed that in order to prevent its overall budget increasing it intends to initially invite the Commissioner to seek contingency funding at the end of a financial year based on the number of cases dealt with. This will allow statistics on the volume of complaints to be collected and information gathered to
enable the SPCB to determine more accurately whether the Commissioner’s budget should be increased.

Conclusion

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

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1 Interests of Members of the Scottish Parliament (Amendment) Bill: [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/89730.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/89730.aspx)

2 Scottish Parliament Finance Committee Minutes 3 June 2015. As at: [http://www.scottish.parliament.uk/S4_FinanceCommittee/Meeting%20Papers/Public_papers(5).pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/Meeting%20Papers/Public_papers(5).pdf)
Annexe A

Written submission from the Commissioner for Ethical Standards in Public Life in Scotland dated 18 June 2015

Thank you for your letter of 5 June.

I can confirm that I made contact with the Electoral Commission with a view to obtaining comparative information before submitting estimates for the cost of investigating complaints which might be made in respect of the amended rules for registration of interests.

I considered that the area most likely to give rise to complaints, and therefore to additional investigative work, would be complaints about failure properly to register donations and other transactions providing funding for political activities. My enquiries disclosed that the Electoral Commission receives only a small number of complaints of this nature and that most of these are investigated without the need for interviews. Were that also to be the position here following the proposed amendments to the Members Interests Act, very little additional resource would be required to investigate complaints. However, it is important to recognise that the Electoral Commission’s powers and procedures are different from those which I am required to follow in terms of the Scottish Parliamentary Standards Commissioner Act 2002 as amended. For example, the Commission has power to deal with complaints which they regard as minor by issuing advice and guidance.

I therefore concluded, given the complexity of some of the amended rules, that it would be prudent to budget for some additional, full investigations, at least in the initial period following the change. In the absence of directly comparable information, I have based my estimate on the historical cost of investigating the more complex complaints which fall within my existing remit.

I hope this is helpful to the Committee in considering the Financial Memorandum.

Bill Thomson
Commissioner

Written submission from the SPCB dated 25 June 2015

Thank you for your letter of 5 June 2015 seeking the SPCB’s views on the Financial Memorandum for the above mentioned Bill.

We note that for the purposes of estimating costs that both the Electoral Commission and the Commissioner for Ethical Standards have been consulted and on the basis of the average number of complaints dealt with by the Commission and the average cost of investigating a complex complaint, it is anticipated that the additional cost for the Commissioner will be in the region of £6K.
As the Committee will be aware, the Commissioner’s work is demand led and it is not possible to predict whether he will be able to absorb any additional costs from his annual approved budget. To prevent the SPCB’s contingency funding at the end of a financial year based on the number of cases he has dealt with.

Once we have statistics on the volume of complaints, we will consider whether the Commissioner’s budget should be increased to include these additional costs.

Tricia Marwick

Written submission from The Electoral Commission dated 15 July 2015

Thank you for your letter dated 5 June 2015 regarding the average number of alleged breaches of PPERA by MSPs.

In our earlier comments we said that, on average, we have around one case a year concerning MSPs who are alleged to have breached PPERA. We advised that, over the last three years, (2011 to 2014) we had four potential cases. Two of these were closed without investigation and two went to investigation, with one of the latter proceeding to sanctioning.

We can confirm that the number of cases involving MSPs has remained broadly the same since the sanctions regime was introduced in 2010. The table below includes the number of cases per year.

<table>
<thead>
<tr>
<th>Year</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
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There was an increase in the number of cases considered by the Commission on the period around the Scottish Parliamentary elections in 2011. However, the number of potential cases remained low and although potential cases arose in 2011, none were related to or arose as a result of the Scottish Parliamentary elections of that year.

I hope this letter is helpful. If you require any further information, please do not hesitate to contact Suzanne King in our public affairs team.

Andy O’Neill
Head of Office Scotland
Present:

Richard Baker
Malcolm Chisholm
John Mason (Deputy Convener)
Jean Urquhart
Gavin Brown
Kenneth Gibson (Convener)
Mark McDonald

Interests of Members of the Scottish Parliament (Amendment) Bill (in private):
The Committee agreed a draft report on the Financial Memorandum of the Bill.

James Johnston
Clerk to the Finance Committee
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EXTRACT FROM THE MINUTES OF PROCEEDINGS

Parliamentary Year 5, No. 34 Session 4

Meeting of the Parliament

Tuesday 29 September 2015

Interests of Members of the Scottish Parliament (Amendment) Bill: Stewart Stevenson, on behalf of the Standards, Procedures and Public Appointments Committee, moved S4M-14375—That the Parliament agrees to the general principles of the Interests of Members of the Scottish Parliament (Amendment) Bill.

After debate, the motion was agreed to (DT).

P E Grice
Clerk of the Parliament
29 September 2015
Interests of Members of the Scottish Parliament (Amendment) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-14375, in the name of Stewart Stevenson, on the Interests of Members of the Scottish Parliament (Amendment) Bill. I call Stewart Stevenson to speak to and move the motion on behalf of the Standards, Procedures and Public Appointments Committee.

14:16

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Back in April, the Parliament agreed to the Standards, Procedures and Public Appointments Committee’s proposal for a committee bill to amend the Interests of Members of the Scottish Parliament Act 2006. The bill and its accompanying documents were introduced on 27 May. I am very pleased to come to the chamber to invite the Parliament to agree to the bill’s general principles.

The bill’s overall aim is to amend the Interests of Members of the Scottish Parliament Act 2006 to ensure that information about MSPs’ financial interests is transparent and accessible. The bill combines two existing reporting processes to assist MSPs in complying with requirements to report donations. The proposals in the bill will also strengthen the sanctions available to the Parliament to deal with any breaches of the rules set out in the legislation. I will speak about that aspect of the bill in my closing remarks.

First, I turn to the proposals to eliminate dual reporting. MSPs currently have to report financial interests to two places: to the Electoral Commission, under the Political Parties, Elections and Referendums Act 2000, otherwise known as PPERA; and to the Parliament. There is an overlap between the two regimes, which results in the dual reporting of certain financial interests. The bill makes the necessary changes to the Parliament’s register so that dual reporting can be ended, bringing the reporting requirements for MSPs into a single place. That will make information about MSPs’ financial interests more easily available to the public. It will also be beneficial for a number of reasons: information on MSPs’ financial interests will be found in one place, on the Parliament’s website, which is where one would expect to find it; MSPs will have to register in only one place, and will be able to receive advice on all their interests from parliamentary officials; and all complaints about an MSP not meeting the reporting requirements will be dealt with in a single way, by the Commissioner for Ethical Standards in Public Life in Scotland. That will make the process easier to navigate, for the public, for MSPs and for anyone with an interest in the process. There will be a single process for all MSPs, for complaints and for compliance.

The approach in the bill has been to leave the Parliament’s existing regime as undisturbed as possible while incorporating the donations and transactions that are currently reportable under PPERA. However, the changes in the bill that will bring the two regimes together in one place make the legislation much more complex.

The bill will adjust the definitions of “gift” and “overseas visit”, and a new category will be added for loans and certain other transactions. The bill also provides for an additional layer of rules on the aggregation of interests with a combined value of more than £1,500. The overall approach has been to limit the proposed changes, wherever possible, to interests with a single or combined value in excess of the £1,500 threshold, which comes from PPERA.

The current framework for ending dual reporting in the Electoral Administration Act 2006 does not extend to independent MSPs. As that act stands, dual reporting can be ended only for members of registered political parties, and not for independent members. The bill will amend the Electoral Administration Act 2006 to allow dual reporting to be ended for all MSPs. The committee included such a provision so that all MSPs would be treated in the same way—I know that you feel strongly about that, Presiding Officer.

As convener of the SPPA Committee, I have talked to all members in the current parliamentary session who are affected. Indeed, my last meeting with the late Margo MacDonald MSP, when I visited her at home a month before she died, was precisely to discuss the effect of what we are proposing. I have to say that Margo was in remarkably good spirits and my three minutes on the proposal extended to a full hour of discussions of current political topics—no surprise there. It would be unfair to require independent members to continue with dual reporting when the system has been streamlined for MSPs who are members of political parties.

I move on to the bill’s provisions on sanctions. The Scotland Act 2012 amended section 39 of the Scotland Act 1998 to give the Parliament greater flexibility in determining what sanctions are appropriate for breaches of the members’ interests regime and the paid advocacy prohibition. The bill largely restates the existing criminal offence. The provisions on parliamentary sanctions in the
Interests of Members of the Scottish Parliament Act 2006 are currently limited to excluding a member from proceedings in the Parliament or restricting participation in proceedings on matters in relation to which there has been a breach.

The bill makes it clear that a full range of parliamentary sanctions will be available if an MSP fails to register or declare an interest or undertakes paid advocacy. It makes provision for a range of parliamentary sanctions that are broadly equivalent to some of the measures that are available to the Parliament when it withdraws a member’s rights and privileges, for example in respect of a breach of the Code of Conduct. The approach ensures consistency with section 39, which envisages further provision on sanctions being made in or under an act of the Scottish Parliament.

The committee thought it vital that a wide range of sanctions should be available to the Parliament when dealing with breaches of the interests legislation and the code of conduct for MSPs. The available sanctions must be sufficiently stringent to enable the Parliament to respond effectively to breaches of the rules—and to discourage such breaches in the first place.

The bill will ensure that a broad range of sanctions is available to the Parliament, including the potential removal of all allowances or salary. That change will demonstrate that the Parliament has the tools to deal effectively with breaches of the legislation.

Paid advocacy is where an individual uses their position as an MSP to advocate for a particular matter in return for payment, including a benefit in kind, or urges any other MSP to do so. It is a criminal offence and a breach of the Interests of Members of the Scottish Parliament Act 2006 for an MSP to undertake paid advocacy, although no MSP has ever been found to have breached those rules.

The committee is very clear, given the gravity with which paid advocacy should be treated, that the criminal offence for paid advocacy is appropriate. Our consultation paper proposed that the definition of paid advocacy should be amended for greater consistency with the Bribery Act 2010. Of particular note to the committee was the incorporation of the act of agreeing to receive inducements within the offence of being bribed under section 2 of the Bribery Act 2010. The paid advocacy offence currently requires actual receipt; it does not incorporate payments or benefits in kind that a member agrees to receive. Our bill amends the definition of paid advocacy so that agreeing to receive inducements, as well as actually receiving them, will be an offence and a breach of the interests legislation.

The bill introduces a new sanction—that the Parliament should be able to agree a motion of censure. I will say more about that in my closing remarks.

I believe that the provisions of the bill will increase transparency for the public, make it easier for members to ensure that they comply with the rules and create a more robust standards regime.

I move,

That the Parliament agrees to the general principles of the Interests of Members of the Scottish Parliament (Amendment) Bill.

14:26

The Minister for Parliamentary Business (Joe FitzPatrick): When Parliament debated the committee report back in April, we talked about how implementation of the Scotland Act 2012 had paved the way for the committee to update the members’ interests statute in full. I will not miss the opportunity that today’s debate offers me to stress once again the importance and benefits of this Parliament being responsible for all matters relevant to its internal operations. It is not just a matter of ownership. It is a realisation that the Scottish public would quite reasonably expect the Parliament to be responsible for its own internal affairs.

The bill will also help to reinforce the accountability of the Parliament to the people of Scotland. It is only right that the rules under which we, as members, operate are conceived wholly in this Parliament, and that Parliament can be judged wholly on the robustness of the framework that it chooses to put in place. I therefore welcome the bill that is being promoted by the Standards, Procedures and Public Appointments Committee to amend the existing members’ interests statute.

More generally, I want to reflect on the fact that the measures are being implemented by a committee bill. In total, there have been six committee bills since devolution—one in session 1, one in session 2, and two in session 3. As this one is, most have been parliamentary in nature. Such issues do not come around every week, so I want to take the opportunity to reaffirm the Government’s support for committees being able to bring forward legislative proposals. That arrangement helps to characterise us as a modern, healthy and proactive legislature. The Government therefore encourages committees to consider proposals that might be suitable for promotion via the committee bill process.

I want once again to put on the record the Government’s recognition that the bill’s subject is clearly parliamentary in nature. The Government
does, however, wish to offer its views on the proposals in their current form.

I commend the committee on the suite of reform proposals in the bill, which delivers on three fronts. First, it seeks to establish measures to enhance members’ accountability to the public, reflecting the latest views on what constitute appropriate probity standards. Secondly, it looks to standardise arrangements for reporting interests and to streamline the activity that is required of members, and it offers the public a single point of reference. Thirdly, it offers Parliament flexibility in the event that circumstances arise that necessitate enforcement activity.

I consider each of those elements to be significant in themselves. To seek to deliver them in a joined-up approach via the bill demonstrates the committee’s level of ambition on and commitment to reform; the committee’s members should be commended for taking that approach.

I turn to the specific reforms that the bill seeks to implement. The reduction of the financial threshold for registering gifts from 1 per cent to 0.5 per cent of a member’s salary will clearly enhance transparency. I welcome the committee’s consideration of the report that was published by the group of states against corruption—GRECO—which promoted a reduction in the registration threshold. I note the moves across legislatures and assemblies in the United Kingdom to reduce the gifts threshold, and think that it is appropriate for our Parliament to have the opportunity to keep in step with such changes.

The backbone of the bill is the aim to end dual reporting of members’ financial interests to Parliament and to the Electoral Commission—a move that is supported by the Electoral Commission. The Government notes that the bill tackles the complex interaction of the current members’ interests regime with the regime on reporting donations and loans under the Political Parties, Elections and Referendums Act 2000. The Government supports the principle that dual reporting should end. The creation of a single reporting regime will be beneficial in terms of transparency and, more generally, in terms of improved governance in Scotland.

It is right to ensure that elected members have a clear and unambiguous system for registering their interests, and it is right that such improvements can equally benefit the public through review of those interests and the seeking of assurances over the integrity of the registration scheme. I commend the committee, its clerking team and the Electoral Commission for tackling the topic and for delivering a clear reform proposal for Parliament’s consideration.

The last policy strand in the bill that I will offer comment on is the proposal that Parliament be given full flexibility over the imposition of sanctions in respect of the members’ interests regime. The Government sees merit in such a move. It would allow Parliament to consider any breach on its merits and to apply whatever sanction it deems appropriate in respect of that breach. In the current situation, the only sanction that is available to Parliament is exclusion of a member, which could be viewed as being disproportionate in some cases. The ability to apply a proportionate sanction could ultimately encourage more enforcement action. The proposal to add a new sanction—Parliament agreeing to a motion of censure—also seems to be sensible in that regard.

The Government welcomes the commitment that has been shown by the Standards, Procedures and Public Appointments Committee to reviewing and updating the current members’ interests legislation. The benefits of conducting that review in the context of wider competence have, I believe, shone through in the significant and helpful reforms that are proposed in the bill. It should not surprise Parliament that the Government welcomes and supports this committee bill.

14:32

Margaret McDougall (West Scotland) (Lab): I am pleased to open the debate for Labour, having been a member of the Standards, Procedures and Public Appointments Committee while it consulted on the changes to the way in which members register outside interests, gifts and political donations, which are proposed in the bill. It is a technical bill that comes from Parliament having been given greater flexibility, through the provisions of the Scotland Act 2012, over the scheme for registering members’ interests.

Members of the public want assurances that elected representatives are working in their interests. The register of members’ interests is an important tool in holding members to account on that. Our system must hold the public’s confidence that MSPs’ activities are not being influenced by outside financial interests and that they are transparent and open. The bill contains significant amendments to the current system; they will strengthen it and lead to greater confidence in it. Although the threshold for registering a financial interest will remain the same, we welcome the important change to how we, as members, will report any financial interests and how members of the public will be able access the register.

The current system of reporting financial interests to both the Electoral Commission and Parliament means not only more administrative
duties for members, but that financial interests are recorded in two places. We welcome for two reasons the bill’s proposal to end that dual reporting. Although members will still be required to register financial interests that come within the existing financial thresholds, the move to a system whereby one report is to be made to Parliament, within the current limit of 30 days that has been set by the Electoral Commission, will streamline the registration scheme for members and make it easier for us to comply with the requirements that have been set. It will also give members of the public one platform from which to seek information about members’ interests that they wish to access, which will produce a more efficient system.

We also welcome the proposal to create a more robust enforcement and sanctions regime, which will increase the public’s confidence in our register of interests system. It is absolutely correct that a full range of sanctions for registration breaches will be available. The current system of Parliament having the right to withdraw a member’s rights and privileges over a registration breach is too limited in scope and cannot be an appropriate response in all cases. I believe that a range of options must be open to Parliament—a range that covers minor breaches and more serious cases.

As members, we should also welcome the move to have the Commissioner for Ethical Standards in Public Life in Scotland investigate all breaches. Currently, some breaches are investigated by both the commissioner and the Electoral Commission; the bill’s proposal will simplify matters. The change will also allow the Crown Office and Procurator Fiscal Service to investigate all breaches: some minor breaches can currently be pursued on a civil rather than criminal basis.

That takes me to the committee’s decision to retain the criminal offence part of the existing system. That is absolutely the right decision for a system that must hold the confidence of the public. It would be wrong for us in Parliament to be seen to be taking breaches of the rules on the registration of interests less seriously, so I fully support the retention of the relevant provision in the committee’s bill.

We also welcome other proposals in the bill, including enactment of the recommendation of the Council of Europe group of states against corruption to lower the threshold for registering gifts to 0.5 per cent of a member’s salary. We also whole-heartedly support the proposed ban on paid advocacy. Members are here to represent constituents in our constituencies and regions and should not be paid to advocate for causes on behalf of outside organisations. The bill makes important changes in that regard.

Members are often lobbied by groups, but the current system is not transparent. While we wait for the Government to introduce the lobbying bill, which will hopefully meet the aims of my colleague Neil Findlay’s proposed member’s bill, the bill proposes a significant amendment to the definition of paid advocacy and will make it an offence for members of the Scottish Parliament to agree to receive financial inducement for advocacy work. That is a significant change from the current definition, whereby only receiving money for advocacy work is an offence. We are sending a clear message that accepting paid advocacy work is not acceptable conduct for any member of the Parliament. We welcome the strengthened definition of paid advocacy.

Labour members are pleased to support the proposals in the committee’s bill.

14:37

**John Scott (Ayr) (Con):** I, too, am pleased to speak in support of the bill. I pay tribute to Stewart Stevenson in his role as convener of the Standards, Procedures and Public Appointments Committee. As well as introducing the bill on behalf of the committee, he has co-ordinated a considerable amount of the preparatory work that has been required to bring the bill to this stage.

I would also like to offer my appreciation to some of the others who laid the ground for the bill’s introduction. In this instance, it is appropriate to consider the extensive co-operation that took place between our Parliament’s officials and the Electoral Commission to create compatibility between their respective registers of interests. We thank them for their efforts in handling what the committee has recognised are complex areas of law and administration. That work will enable the ending of dual reporting and its replacement with a single register, as envisaged by the Electoral Administration Act 2006, which we hope will provide clarity—not just in reporting terms, but in making information convenient and straightforward for the public to access.

Conservative members also take note of the GRECO recommendations on gifts, which we believe have been well accommodated in the bill. That follows the taking of similar action in the House of Commons and the House of Lords in the light of GRECO’s 2013 report on the UK. The committee examined the guidance to members on gifts to ensure that it is clear and compliant. It was the committee’s conclusion that that area is already well covered by the information that is provided. The UK has been an active member of GRECO since 1999, so it is right that that body will continue to be an effective forum for evaluating our efforts to prevent corruption and to ensure public sector transparency.
We also support ensuring that the legislative framework that underpins the interests of Members of the Scottish Parliament Act 2006 is sufficiently robust. Although it is a positive thing that no member has been convicted of offences in this area—that is a record that we undoubtedly hope to maintain—it is important that we have rigorous measures in place to accommodate all circumstances and to enable us to deal with them appropriately.

It is sensible to extend the prohibition of paid advocacy to better mirror the offence of bribery, as has been put in place across the UK by the Bribery Act 2010, which is itself the consequence of examination of our anti-corruption work at home and internationally. In both circumstances, it is justifiable that the requirements of the offence should relate to agreement to receive an inducement, rather than actual receipt of an inducement being necessary. In December last year, the UK Government published its wide-ranging “UK Anti-Corruption Plan”. Although the UK has always been seen as being among the least corrupt nations in the world, the plan made it clear that there is more to do. We have seen our international anti-corruption rankings improve as a consequence of our willingness to make sensible changes to our laws and practices.

Parliament should be mindful of its responsibilities and the direction of travel under that plan. The provisions of the bill will form a substantial part of our response. The bill has undergone detailed consideration before the committee and it is clear from those deliberations and from responses to the consultation that the bill’s contents are sensible and reasonable proposals to ensure that Parliament remains transparent, while providing us with the tools to address situations in which we fall short of the standards that may be expected.

14:41

Tavish Scott (Shetland Islands) (LD): I want to make two or three points on the bill, the first of which is to acknowledge the role of the committee and the convener in its introduction.

As the convener and one or two other members mentioned, it is important to acknowledge what has not happened since 1999, which is that there have been no breaches. The tightening up of measures should be seen in that context: we are tightening up a measure that has, in large part, worked. As far as I am aware, apart from one or two issues of timescale, the reporting responsibilities of members of all political parties in this chamber have been complied with at all times.

What has come to light is an issue that the convener pointed out in his opening remarks—dual reporting. The bill will tighten that up and deals with it—and not before time, because some of us have been caught by that. It is no one’s fault. As far as I can see, it was just one of those things that needed to shake out during alterations to perfectly sensible proposals. At least in resolving that matter the bill creates a one-stop shop, as it were, which is eminently sensible in respect of the Parliament’s procedures for upholding standards.

I say gently to the minister that it struck me that we should apply to ministers the same principles that we apply to members. I am sure that he will wish to point out that ministers have to comply with even higher standards in respect of financial transparency. It is very important indeed that that should be the case.

I will put two issues to the convener to deal with when he winds up. On the first issue, I may just not have seen the detail. It is, by definition, wrong and an offence for any member to be offered money for advocacy. However, similar should also apply were someone to be so stupid as to ask for money for advocacy. The convener may wish to clarify that. I am sure that no one but the lawyers has given any thought to it.

The second issue struck me when the convener was speaking about donations. He rightly set out the donation limit that all members will have to comply with and include in the register of interests. However, donations do not just come from individuals to individual politicians—they also come through political parties. The convener might want to address whether the register deals with the fact that much money that flows into politics flows into political parties and is then spent in regions and constituencies in Scotland. I genuinely do not know whether the bill does anything about transparency in that respect.

14:44

John Scott: This has been a welcome debate. In a democracy, it is right that there is proper scrutiny when representatives are, in essence, deliberating on how best to regulate themselves and their conduct. Given the justifiable public interest in transparency, I am pleased to see that the proposals in the bill will serve to enhance how this Parliament operates.

As has been touched on, this has been a lengthy process. The end of dual reporting was envisaged in the Electoral Administration Act 2006 and it was removed from the House of Commons in 2009. In spring 2013, the consultation for the bill that is before us now was opened. That consultation highlighted some of the benefits that members have mentioned in their speeches today. For example, the Commissioner for Ethical Standards in Public Life in Scotland pointed to the
significance of the reporting changes not only in terms of simplifying the regulatory framework but for the purposes of public transparency, too.

In its evidence, the Electoral Reform Society used the opportunity to call for a full review of all procedures in this Parliament to take place. It envisaged such a review taking place before any legislation on the content of this bill was brought forward—a proposition that must have been seen as unlikely. However, such a review is perhaps worthy of consideration for the future. We sometimes forget that this Parliament is still a young institution, although perhaps no longer a fledgling one.

It would be no bad thing for us to examine how the Parliament has evolved from what was envisaged at the outset. The Electoral Reform Society proposes that we go back to our founding principles and the reports of the consultative steering group to consider holistically where we are and what the effects have been of our reforms. That is important as this Parliament is evolving. Earlier this year, we saw Scotland’s first tax levied since 1707. Income tax will follow next year, with the extensive powers of the Scotland Bill on the near horizon.

In any case, at the risk of labouring the points that I made in my opening speech about the process of bringing forward this bill, I would like to make a further observation. It is extremely positive that this Parliament is moving forward to make changes to its standards and privileges in a way that is as consensual as possible.

The bill contains a number of sensible measures that will improve how we operate and, I hope, ensure that this Parliament is seen as an open, transparent and responsible institution in the future. I hope that the proposals that are brought forward today will go some way towards satisfying those principles.

I state again my appreciation for the work of Stewart Stevenson, his fellow committee members and the officials in laying the extensive groundwork that the bill required. I am pleased to say that the bill will gain the support of this side of the chamber.

14:47

Mary Fee (West Scotland) (Lab): I thank Stewart Stevenson and the Standards, Procedures and Public Appointments Committee, and the clerks for the work that they have done to progress this important piece of legislation.

I am pleased that across the chamber we all agree that we need robust, accountable and transparent mechanisms for reporting members’ interests. This Parliament rightly prides itself on its openness and accountability, and the bill gives Parliament the opportunity to revisit the legislation surrounding members’ interests.

The committee considers the regime to be robust, but we must maintain standards to ensure that sufficient checks and balances exist. The bill will help to increase transparency and the accessibility of information about members’ financial interests, and will ensure that the Parliament has a robust set of sanctions to deal with any breaches to its rules.

Stewart Stevenson spoke of the provision that will create a new sanction, allowing the Parliament to agree a motion of censure. A motion of censure will serve as a useful middle ground if a member is found to be in breach of the rules but that breach is not serious enough to justify the removal of parliamentary privilege. A motion of censure would allow debate and would give the member in question the opportunity to explain the breach and apologise.

Another useful change is the length of time for which information on members’ interests will be kept. The committee considered it more appropriate to keep register entries for 10 years instead of five. There are a number of practical reasons for that. It will assist members by ensuring that information about their previously held interests is available at the start of a session. Similarly, if a member is not returned to Parliament but returns at a subsequent election, it will be easier for them to check the interests that were previously recorded. The change will also increase transparency in relation to members’ interests, as the information will be easily accessible to the public for much longer. Those changes, combined with the changes to the register, will provide an additional layer of transparency to the public seeking to access information on members’ interests.

The ending of dual reporting is an important step. At the moment, information is on the Parliament’s website and the Electoral Commission’s website, depending on the nature of the interest. Streamlining the process will assist people in accessing the information and will help members to comply with the regime.

I am pleased that no member has been found to be in breach of the rules on paid advocacy, but we must keep those rules under review, so it is right to strengthen them through the bill. Most members of the public would expect there to be a breach if a member agreed to undertake paid advocacy, even when cash did not change hands. The bill will ensure that such behaviour will be caught.

I am pleased to close the debate for Scottish Labour and to support the motion, which seeks the Parliament’s agreement to the general principles
of this committee bill. The provisions will increase transparency and strengthen the standards regime in the Scottish Parliament. Openness, transparency and accountability must be at the forefront of the way in which the Parliament operates. I am happy to support the motion in Stewart Stevenson’s name.

14:51

Joe FitzPatrick: Margaret McDougall referred to the bill as technical. She is right about that, and I earlier put on record my thanks to the Standards, Procedures and Public Appointments Committee and its clerks for their work to introduce such a technical bill. However, I hope that the debate has made the bill a little less technical for anyone who is listening or who reads the Official Report so that they can understand what it is about and what we hope to do through it. It is good that we have cross-party support for the committee’s proposals.

The bill sends out a strong message about the Parliament’s commitment to a modern and flexible approach to the registration system that can deliver benefits for the Parliament, its members and the public.

Tavish Scott is absolutely right that we need to ensure that we are all subject to the same high standards, and that goes for ministers and other members in equal measure. We have a pretty good record, going back across the years to 1999, of having robust procedures in place. I agree that we must continue to ensure that we keep the standard as high as we can, and that is partly what the bill does.

The committee will no doubt appreciate the constructive comments from across the chamber. The proposal to end dual reporting is a significant step forward. I commend the committee for its commitment to that move, which should deliver benefits for members and the public.

It might have been easier for the committee not to tackle the specific issue of independent members, so we are all grateful that the committee took the time to introduce a bill that tackles that appropriately and to everyone’s benefit.

The bill demonstrates that the committee is alert to the importance of transparency in public affairs, and that it is very much aware of the outward facing nature of the bill. The proposed reforms demonstrate how the Parliament can make better use of the greater competence that is coming to it. Under the original devolution settlement, the competence that was offered in the area was unnecessarily constraining. For example, why were limitations ever placed on the type of sanctions that the Parliament could impose in response to non-compliance? Now that such barriers have been removed, the new arrangements that the committee proposes are better and offer more flexibility. Sanctions are more likely to be imposed if more proportionate ones are available rather than the nuclear option, which is all that exists at the moment.

It is important that our Parliament is seen as continuously willing to deliver tangible improvements in its operation—in this case, building on the robust members’ interests system that is already in place. The proposals seek to further enhance the measures that play a key role in ensuring that Scotland has confidence in its MSPs and its Parliament.

It is in our collective interest to ensure that the public consider that we as MSPs are meeting the highest possible standards of probity as we undertake our parliamentary duties. These measures will above all ensure that the electorate will be left in no doubt that their elected representatives act on their behalf and in their interests.

Building public confidence—and ultimately trust—will help to reinforce the Parliament’s integrity and the bill represents an important further development for this Parliament. As the Scottish Parliament grows in stature, so does public expectation. The Scottish Parliament was founded on the principles of transparency, cooperation and inclusiveness for all the people of Scotland, and the measures that are before us today will help to support and reinforce those principles.

14:55

Stewart Stevenson: We as a Parliament pride ourselves on openness and accountability in relation to the behaviour of all our MSPs. The question is, of course, whether we could do more to build public trust and ensure that we have a regime that is fit for purpose. Robust standards are essential to ensure that, if wrongdoing should occur, there are sufficient checks and balances to hold MSPs to account.

The bill seeks to increase transparency and accessibility. The matters that it deals with are important, and the Parliament must always keep them under review and make improvements where the opportunity arises.

I thank the Parliament for establishing a committee to take the bill forward, provided that the bill receives members’ support at 5 o’clock tonight. I thank those who have participated in the debate for engaging with a topic that is so important for our future probity and reputation.

I turn to some of the points that have been raised in the debate. The minister mentioned the reduction in the gifts threshold from 1 per cent to
0.5 per cent of a member's salary. We first discussed that subject in committee on 10 October 2013; it stems from the establishment of the groupe d'états contre la corruption, which is a development that we are following.

The minister referred to the Electoral Commission, from which we have received a helpful briefing that makes clear that the commission is satisfied with what we are doing. In particular, the commission is satisfied that it will be able to obtain the necessary information that it requires from the Standards, Procedures and Public Appointments Committee clerks in the Parliament to meet its future publication, compliance and enforcement obligation.

I welcome the fact that Tavish Scott has come along to the debate and brought his considerable experience to bear on the subject. I will pick up a couple of the points that he made in a moment.

The minister has already indicated that ministers will be caught by the legislation—I was going to raise that point, but the bill will certainly apply in respect of their behaviour as MSPs.

Tavish Scott made an interesting point with regard to soliciting. Section 9 of the bill introduces the phrase, "or agreeing to receive". We certainly intend that provision to catch soliciting, but I will take further advice from the clerks to see whether any further amendments could be made to clarify it beyond misapprehension. It is clear that soliciting would be as unacceptable to any of us as "agreeing to receive" would be.

With regard to political parties funding members' activities in their constituencies and elsewhere, we are seeking to catch the whole issue of the funding of political activities by members with some of the amendments that we have lodged. However, in relation to elections in particular, the Electoral Commission's requirements on reporting by political parties already catch such activity, and parties' responses are published on the commission's website. Equally, the bill refers to the period of election in which financial returns must be made, and it makes provision for when money that is solicited for that purpose is not spent within 35 days of an election.

I want to say a little bit more about one or two points that have arisen. I promised that I would say something about the motion of censure. It would serve as a useful middle ground when the Standards, Procedures and Public Appointments Committee found a member to be in breach but did not consider the breach to be sufficiently serious to justify a sanction such as exclusion or removal of other parliamentary privileges. Such a motion could be debated, which would provide the MSP who was the subject of the motion with a public opportunity to apologise in person. A motion of censure would be a useful addition to the Parliament's toolkit of sanctions.

I also mentioned the bill's provisions for the retention of members' registers and we heard a great deal about that from Mary Fee. Keeping the register for 10 years as opposed to five years will be particularly useful in general, and specifically when members have what might be termed as broken service and come back to the Parliament. There are practical reasons for extending the time period, in that it will allow members to see what they said previously. The change will also increase transparency overall. The current five-year term was set in relation to the time for which members were elected but it is reasonable to extend it. Additional transparency for the public has to be good news and keeping the register for longer will help with that by letting the public see what is going on.

At the moment, all the information that we are referring to is on the Parliament's website and held by the Electoral Commission. However, depending on the nature of the interest, the bill will mean that people will be able to come to one place much more readily. It will also help members to comply with the two regimes. Most of us have comparatively modest operations that involve the Electoral Commission but when it occurs, we will be unfamiliar with it and we do not have sources of advice in the Parliament. That will change.

As other members have said, we have never seen the rules on paid advocacy breached. The changes that we want to make today are important because they signal to everyone how important the rules are but, at the end of the day, it is down the personal probity of each and every one of us, not just to the rules that appear in the book. The provisions in the bill will ensure that we are in both places and that is a comfortable place to be.

I am delighted to close the debate and that we have had the opportunity to take the bill through stage 1. I confirm that I seek the Parliament's agreement on the general principles of this committee bill. As the minister suggested, I hope that we might see a greater number of committee bills in future sessions, not all of which will be related to our internal business.

The bill is an important one that increases transparency and ensures that our procedures will remain robust.
Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 19  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 9

Stewart Stevenson

1 In section 9, page 8, leave out lines 20 and 21 and insert—

<(a) in subsection (2)(b), for sub-paragraphs (i) and (ii) there is substituted—

“(i) which the member receives, agrees to receive or requests and which falls within subsection (2A); or

(ii) which the member’s spouse, civil partner or cohabitant receives, agrees to receive or requests and which falls within subsection (2B).

(2A) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit results (or, if and when made or given, would result) in some benefit to the member, other than a vote for that member in any election to the Parliament.

(2B) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit—

(a) is being provided (or, if and when made or given, would be provided) in connection with the Parliamentary duties of the member; and

(b) results (or, if and when made or given, would result) in some benefit to that member.”>

Stewart Stevenson

2 In section 9, page 8, line 22, leave out <“or agreeing to receive”> and insert <“, agreeing to receive or requesting”>
Interests of Members of the Scottish Parliament
(Amendment) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Prohibition of paid advocacy
1, 2
INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL COMMITTEE

EXTRACT FROM THE MINUTES

2nd Meeting, 2015 (Session 4)

Tuesday 10 November 2015

Present:
Graeme Dey
James Dornan
Mary Fee (Deputy Convener)
Bill Kidd (Convener)
Mary Scanlon
Tavish Scott

Also present: Stewart Stevenson (member in charge of the Interests of Members of the Scottish Parliament (Amendment) Bill)

Interests of Members of the Scottish Parliament (Amendment) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1 and 2.

The following provisions were agreed to without amendment: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 and the long title.

Section 9 was agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.

Andrew Mylne
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Scottish Parliament

Interests of Members of the Scottish Parliament (Amendment) Bill Committee

Tuesday 10 November 2015

[The Convener opened the meeting at 13:16]

Interests of Members of the Scottish Parliament (Amendment) Bill: Stage 2

The Convener (Bill Kidd): Welcome to the second meeting of the Interests of Members of the Scottish Parliament (Amendment) Bill Committee. I remind everyone to turn off their mobile phones, as I have just done, because they can interfere with the sound system. We have received no apologies, although I know that two of our members are due to arrive at any moment—I will have a word with them afterwards.

The only item on today's agenda is stage 2 of the Interests of Members of the Scottish Parliament (Amendment) Bill. I welcome to the meeting Stewart Stevenson, who is the convener of the Standards, Procedures and Public Appointments Committee and the member in charge of the bill. Everyone should have a copy of the bill, the marshalled list of amendments and the groupings list. It is quite straightforward. There are two amendments to be disposed of today, which have been grouped together, as you will know.

Sections 1 to 8 agreed to.

Section 9—Prohibition of paid advocacy

The Convener: Amendment 1, in the name of Stewart Stevenson, is grouped with amendment 2.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will start by outlining the context of these amendments. The present position is that paid advocacy is where an individual uses their position as an MSP to advocate a particular matter in return for a payment, including a benefit in kind, or to urge any other MSP to do so. It is a criminal offence and a breach of the Interests of Members of the Scottish Parliament Act 2006 for an MSP to undertake paid advocacy.

The committee's consultation paper proposed that the definition of paid advocacy should be amended to provide greater consistency with the Bribery Act 2010. In particular, we noted that the 2010 act incorporated within the offence of being bribed the act of agreeing to receive inducements. The paid advocacy offence currently requires actual receipt of an inducement by an MSP or by an MSP's partner, where that is in connection with the member's parliamentary role and results in some benefit to the MSP. It does not currently incorporate payments or benefits in kind that a member agrees to receive. The bill amends the definition of paid advocacy so that agreeing to receive inducements, as well as actually receiving them, would be an offence and thus a breach of the 2006 act.

During the stage 1 debate, Tavish Scott asked whether the offence of paid advocacy, as expanded by the provisions in the bill, would cover a scenario in which a member requested payment to undertake advocacy.

There is no doubt that receiving, agreeing to receive, or requesting an inducement in exchange for carrying out paid advocacy, before or after the event, is an offence under section 2 of the Bribery Act 2010. That is a complex but comprehensive provision covering corruption in a wide range of public and private sector settings. The paid advocacy offence in the bill is a simpler provision that is more specifically geared towards abuses of the procedures of the Scottish Parliament.

Requesting an inducement is also covered by the paid advocacy offence as amended by section 9 of the bill, but only where some form of agreement flows from it and action is taken by the member on the basis of that. In other words, it does not matter who made the initial approach in that context.

A purely unilateral request for an inducement, however, would not be covered. That is partly because of the absence of any specific reference to requesting, as opposed to receiving or agreeing to receive. It is also because undertaking the “advocacy” part of “paid advocacy” is an essential element of the offence.

It is not currently an offence to receive an inducement, as long as the member does not do anything in response to receipt of the inducement or urge another member to do something.

Similarly, even if the bill is enacted, it will still not be an offence to agree to receive an inducement, as long as nothing thereafter is done on the basis of that. Where a unilateral request for an inducement is concerned, it is unlikely that the requirements of the section will be satisfied, because, if the member is rebuffed or simply ignored, he or she is not likely to proceed to do
anything on the basis of an inducement that he or she could have no expectation of receiving.

There are possible alternatives. One is to do nothing, on the basis that all of that is criminal under the Bribery Act 2010 and the paid advocacy offence is specifically about abuse of Holyrood procedures and facilities. However, I have decided to propose amendments to ensure that the offence covers a member requesting an inducement to carry out advocacy, but only where the advocacy actually takes place. I believe that the amendments put these matters beyond doubt.

Specifically, the first amendment amends section 9 of the bill, which in turn amends section 14 of the 2006 act. The amendment restructures section 14(2)(b) and does two things. First, it adds the reference to “requesting” a payment or benefit in kind for carrying out paid advocacy. Secondly, it introduces a conditional element to the provision, namely that the payment or benefit in kind results “or, if and when made or given, would result” in some benefit to the member. That puts beyond doubt that the payment or benefit does not actually have to be received for the offence to be committed. It ensures that, where a member “agrees to receive or requests” a payment or benefit, the offence is committed even when the inducement has not been received. It tidies up the provision in the bill so that it sits better with the additions of “agreeing to receive” and “requesting” a payment or benefit.

The second amendment adds a reference to “requesting” to section 14(3) of the 2006 act, which sets out the exceptions to the provisions. Assistance in the preparation of a member’s bill or assistance with amendments to a bill, or a debate on subordinate legislation or a legislative consent motion will not be considered as paid advocacy.

I move amendment 1.

Mary Scanlon (Highlands and Islands) (Con): I thank Mr Stevenson for the very comprehensive explanation of the amendments in his name—I would expect nothing less.

We are all absolutely clear about advocacy in return for payment, but I would like more information on the inclusion of benefits in kind, which are more of a grey area. I will give you an example. Somewhere in my diary it says that I have a dinner with the British Medical Association, at which people are likely to be suggesting things for the national health service. If I accept dinner from the BMA and the next week I ask a question on something in Parliament that resulted from a conversation that I had at that dinner, I will have had a benefit in kind.

It would be helpful for all MSPs if the member could give us some examples of benefits in kind. What is just a communication flow or a briefing? If a member sits down and has that briefing over coffee or dinner, they will have received a benefit in kind and they may then ask something that advocates on that organisation’s behalf. I just seek clarity on the issue of benefit in kind.

The Convener: Thank you. If there are no other questions for Mr Stevenson, perhaps he can enlighten us on Mary Scanlon’s point.

Stewart Stevenson: It is a good question to ask. I make the general point that, should members have any doubt about the provisions of the 2006 act or the general standards that apply to members, they should seek the advice of the clerks, who are always very happy to advise in advance.

Turning to the specific circumstances that Mrs Scanlon describes, I think that the important point to bear in mind is that, for the provisions to be relevant, the benefit must be conditional on an act. First, there has to be an offer or a solicitation of a benefit—that is the first test before the paid advocacy rules kick in. Secondly, the paid advocacy needs to be consequential on that agreement and to have been undertaken. However, the benefit does not need to be delivered. The benefit in the example that Mrs Scanlon describes—being at a dinner—is incidental to the action that is taken; the dinner would have taken place in any event, and what happened at that dinner as a result of a conversation is not linked to the provision of the dinner, which is the benefit that the member would have received. That is the test.

At the end of the day, it is always a good idea for members to drop by room TG.1, where the clerks are happy to answer questions. I hope that that answers the question. I see that the solicitor and the clerk are nodding their heads, so I think that I have captured the essence of Mrs Scanlon’s question.

It is the conditionality—the link between the benefit that is delivered and the action that the member has taken—that is important. In the common circumstances that the member describes, that link is absent and therefore the dinner would not be caught by the provisions that we are seeking to introduce.

Mary Scanlon: That is very helpful.

The Convener: I thank Mary Scanlon and Stewart Stevenson for that.

Amendment 1 agreed to.

Amendment 2 moved—[Stewart Stevenson]—and agreed to.
Section 9, as amended, agreed to.
Sections 10 to 19 agreed to.
Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank everyone who has undertaken the onerous task of attending the committee today.

Meeting closed at 13:29.
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Interests of Members of the Scottish Parliament (Amendment) Bill
[AS AMENDED AT STAGE 2]


Amendment of the Interests of Members of the Scottish Parliament Act 2006

The Interests of Members of the Scottish Parliament Act 2006 is amended as in sections 2 to 14.

Registrable financial interests

Exempt expenses

In the definition of “specified limit” in sub-paragraph (5) of paragraph 2 of the schedule (which, among other things, exempts from registration certain expenses expressed as a percentage of salary), for “1%” there is substituted “0.5%”.

Gifts

For paragraph 6 of the schedule (registrable gifts) there is substituted—

“Gifts

Where the circumstances are as described in sub-paragraph (2) or (3).

Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds the specified limit; or

(b) in the case where gifts were received from that person on more than one occasion during the current parliamentary session, the aggregate value of those gifts, each valued at the date on which it was received, exceeds the specified limit; and, in either case,
(c) that gift or those gifts meet the prejudice test.

(3) Where a member or a company in which the member has a controlling interest or a partnership of which the member is a partner receives, or has received, a gift of heritable or moveable property or a gift of a benefit in kind and—

(a) in the case where the gift was received from a person on a single occasion, the value of that gift, at the date on which it was received, exceeds £1,500; or

(b) in the case where—

(i) the value of the gift, at the date on which it was received, exceeds £500 (but does not exceed £1,500); and

(ii) the aggregate value of the gift and any aggregable benefit or benefits, each valued at the date on which it was received, exceeds £1,500; and, in either case,

(c) that gift is—

(i) offered to the member; or

(ii) having been accepted, retained by the member, for use by or the benefit of the member in connection with the member’s political activities.

(4) Sub-paragraph (2) 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—

(a) the organiser of that conference; or

(b) one of the other parties attending that meeting, as the case may be.

(5) Sub-paragraphs (2) and (3) do not apply to—

(a) any support (of any kind) provided by the services of a volunteer which are provided in that volunteer’s own time and free of charge; or

(b) a donation (of any kind) which is intended by the donor to be used for the purposes of meeting—

(i) the election expenses of the member in relation to the election at which that member was returned as a member of the Scottish Parliament; or

(ii) the election expenses of the member in relation to any UK parliamentary election at which that member stands as a candidate, but this exemption ceases to apply if the donation is not used for its intended purpose by the expiry of the 35th day after the election result is declared.

(6) Sub-paragraph (3) does not apply to a gift or other benefit which the member has returned (or repaid) or sent to the Electoral Commission in accordance with sections 56 and 57 of the Political Parties, Elections and Referendums Act 2000 (c.41) (as applied by paragraph 8 of Schedule 7 to that Act).

(7) The reference in sub-paragraph (3)(b)(ii) to a benefit being valued at the date on which it was received is, in the case of a controlled transaction, a reference to its being valued at the date on which it was entered into.
(8) For the purposes of this paragraph—

“aggregable benefit” means any of the following that is accepted by the member from the same person as gave the gift and in the same calendar year as the member accepted it—

(a) any other gift of a kind to which sub-paragraph (3)(b)(i) and (c) applies;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with any of the member’s political activities; or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500);

“candidate” has the same meaning as in section 118A, as read with section 90ZA(5) of the Representation of the People Act 1983 (c.2);

“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;

“current parliamentary session” means the parliamentary session which begins immediately after, or in which, the member is returned;

“election expenses”, in relation to a member, has the same meaning for the purposes of—

(a) sub-paragraph (5)(b)(i) as “election expenses” has in relation to a candidate in the order under section 12 of the 1998 Act which is in force for the purposes of the election at which the member was returned; and

(b) sub-paragraph (5)(b)(ii) as “election expenses” has in section 90ZA of the Representation of the People Act 1983 (c.2);

“political activities”, in relation to a member, means the political activities of the member as such or as a member of a registered political party or both;

“specified limit” means 0.5% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.”.

4 Loans, credit facilities etc

After paragraph 6 of the schedule, there is inserted—
“Loans, credit facilities etc

6A(1) Where a member enters into a controlled transaction and—

(a) the value of the transaction is more than £1,500; or

(b) if not, the aggregate value of it and any aggregable benefit or benefits exceeds £1,500.

(2) Sub-paragraphs (3) to (10) define and provide further about controlled transactions.

(3) An agreement between the member and another person by which that person lends money to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(4) An agreement between the member and another person by which that person provides a credit facility to the member is a controlled transaction if the use condition (see sub-paragraph (9)) is satisfied.

(5) A credit facility is an agreement whereby a member is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the member) as is specified in or determined in accordance with the agreement.

(6) Where—

(a) the member and another person enter into a controlled transaction of a kind mentioned in sub-paragraph (3) or (4) or a transaction under which any property, services or facilities are provided for the use or benefit of the member (including the services of any person);

(b) the other person also enters into an arrangement where a third person gives any form of security for a sum owed to the other person by the member under a transaction mentioned in paragraph (a); and

(c) the use condition (see sub-paragraph (9)) is satisfied,

the arrangement is a controlled transaction.

(7) But the agreement or arrangement is not a controlled transaction—

(a) to the extent that, in accordance with any enactment, a payment made in pursuance of the agreement or arrangement falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election;

(b) to the extent that it is entered into by the member and a person—

(i) in connection with the provision of goods or services to the member; and

(ii) in the normal course of that person’s trade or business and on its normal terms;

(c) if its value does not exceed £500; or

(d) despite section 3(1)(b), it was entered into by the person who is the member before the date the member was returned.

(8) For the purposes of sections 3 and 5 and sub-paragraph (1) of this paragraph, if—
(a) the value of a controlled transaction as first entered into is such that it is not registrable; but
(b) the terms of the transaction are subsequently varied in such a way that it becomes registrable,

the member is to be treated as having entered into a registrable transaction on the date when the variation takes effect.

(9) The use condition is that the member intends, at the time the member enters into the loan or credit facility agreement or the transaction second mentioned in sub-paragraph (6)(a), to use any money or benefit obtained in consequence of it in connection with the member’s political activities (either as a member or as a member of a registered political party or both).

(10) For the purposes of sub-paragraph (9), it is immaterial that only part of the money or benefit is intended to be used in connection with the member’s political activities.

(11) In sub-paragraph (1)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person, being a party to the controlled transaction, and in the same calendar year as the member accepted the controlled transaction—

(a) any other controlled transaction having a value not exceeding £1,500;

(b) any remuneration that is registrable by virtue of paragraph 2, and has a value exceeding £500 (but not exceeding £1,500) and consisting of—

(i) the payment to the member of expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both); or

(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any overseas political visit (within the meaning given by sub-paragraph (4), as read with sub-paragraph (5), of paragraph 7) having a value exceeding £500 (but not exceeding £1,500).

Value of loans, credit facilities etc

6B(1) The value of a controlled transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a controlled transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a controlled transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.”. 
5 Overseas visits

For paragraph 7 of the schedule (overseas visits) there is substituted—

“Overseas visits

7 (1) Where the circumstances are as described in sub-paragraph (2) or (4).

(2) Where the member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.

(3) Sub-paragraph (2) 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, civil partner or cohabitant;

(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.

(4) Where a member makes, or has made, a visit outside the United Kingdom in connection with any of the member’s political activities (as a member or as a member of a registered political party or both) (an “overseas political visit”) and—

(a) the costs of the visit exceed £1,500; or

(b) those costs exceed £500 (but do not exceed £1,500) and the aggregate value of them and any aggregable benefit or benefits exceeds £1,500.

(5) Sub-paragraph (4) does not apply to a visit the travel and other costs of which—

(a) are wholly met—

(i) by the member;

(ii) by the Parliamentary corporation; or

(iii) out of the Scottish Consolidated Fund; or

(b) were approved prior to the visit by the Parliamentary corporation.

(6) In sub-paragraph (4)(b), “aggregable benefit” means any of the following that is accepted by the member from the same person as met the costs of the visit and in the same calendar year as the member accepted it—

(a) any other overseas political visit having a value exceeding £500 (but not exceeding £1,500);

(b) any remuneration that is registrable by virtue of paragraph 2, having such a value and consisting of—

(i) the payment to the member of any expenses incurred directly or indirectly by the member in connection with the member’s political activities (as a member or as a member of a registered political party or both);
(ii) a benefit in kind deriving from the payment by a person (other than the member) to a third party of expenses attributable to the member in connection with those activities;

(c) any gift to which paragraph 6(3)(b)(i) and (c) applies;

(d) any controlled transaction (construed in accordance with paragraph 6A) having a value not exceeding £1,500.”.

**Time periods**

6 Changes to certain time periods

(1) In section 3 (initial registration of financial interests: 30 day limit), there is added—

“(5) But where the member acquired the registrable interest on the same date as the member was returned, the relevant date for the purposes of subsection (3) is the last day of the period of 30 days beginning with the date of the return.”.

(2) In section 5(2) (subsequent registration: 30 day limit), for “after” there is substituted “beginning with”.

(3) In section 10(1) (retention of old entries in the register for 5 years) for “5” there is substituted “at least 10”.

**Written statements of interests: registration of addresses**

7 Written statements: registration of individuals’ addresses

In section 4 (registration of statements of registrable interests), there is added—

“(6) However, the Clerk need not register the address of any individual named or referred to in a written statement.”.

**The register of interests**

8 Reporting and registration of changes to controlled transactions

After section 8 there is inserted—

“8A Reporting and registration of changes to controlled transactions

(1) For the purposes of this section, there is a change to a registered interest that is a controlled transaction if—

(a) another person becomes party to the transaction (whether in place of or in addition to any existing party to it);

(b) there is a change to anything about which information was (or should have been) provided by the member in the written statement lodged by the member when registering the transaction;

(c) the transaction comes to an end.

(2) The reference in subsection (1)(b) to information provided is a reference to information—

(a) about or relating to the transaction; and

(b) provided in accordance with a determination under section 4(2).

(3) For the purposes of subsection (1)(c), a loan comes to an end if—
(a) the whole debt (or all the remaining debt) is repaid;
(b) the creditor releases the whole debt (or all the remaining debt).

(4) A member who has registered a controlled transaction shall notify the Clerk of any change to the transaction.

(5) A member shall comply with subsection (4) by lodging a written notice with the Clerk not later than the last day of the period of 30 days beginning with the day on which the change takes effect.

(6) A written notice shall—
(a) be in such form; and
(b) contain such information about the change or relating to it, as the Parliament may determine.

(7) Within 30 days after a member has lodged a written notice in accordance with this section, the Clerk shall—
(a) amend the entry relating to that member in the register so as to record the change and the date when it took effect; and
(b) send a copy of the amended entry to the member.”.

Sanctions

9 Prohibition of paid advocacy

In section 14 (prohibition of paid advocacy etc.)—

(2A) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit results (or, if and when made or given, would result) in some benefit to the member, other than a vote for that member in any election to the Parliament.

(2B) A payment or benefit in kind falls within this subsection if, after taking account of all the circumstances, it may reasonably be considered that the payment or benefit—
(a) is being provided (or, if and when made or given, would be provided) in connection with the Parliamentary duties of the member; and
(b) results (or, if and when made or given, would result) in some benefit to that member.”,

(b) in subsection (3) after “receiving” there is inserted “, agreeing to receive or requesting”.
10 Exclusion from Parliamentary proceedings

In section 16 (exclusion from proceedings of the Parliament), for the words from “any” to “15” there is substituted “section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15”.

11 Offences

For section 17 (offences) there is substituted—

“17 Offences

(1) Any member who—

(a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, section 3, 5, 6, 8A(4) and (5) or 13 or a measure taken by the Parliament under section 15 or 16; or

(b) contravenes section 14,

is guilty of an offence.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

12 Other sanctions

After section 17 there is inserted—

“17A Other sanctions

(1) If a member fails to comply with, or contravenes, section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16, the Parliament may, by resolution, do one or more of the following—

(a) exclude the member, for such period as the Parliament determines, from the premises of the Parliament or such part of them as it determines;

(b) withdraw, for such period as the Parliament determines, the member’s right to use the facilities and services provided for members by the Parliamentary corporation or such of them as the Parliament determines;

(c) censure the member.

(2) Where a member is to be excluded from proceedings in the Parliament under section 16 or from the premises of the Parliament (or a part of them) under subsection (1)(a), the Parliament may also, by resolution, disallow payment of—

(a) the salary that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines;

(b) the allowances that would otherwise be payable to the member in respect of such period (not exceeding the duration of the exclusion) as it determines; or

(c) both.

(3) In this section—

(a) “premises” includes places to which the public has access;
(b) “salary of the member” means the salary payable to the member by virtue of section 81(1) of the 1998 Act (including any salary payable because of section 83(4) of that Act (membership during dissolution));

(c) the references to a period not exceeding the duration of an exclusion are, where there are two exclusions of different lengths, references to the longer one.”.

Scottish Law Officers

13 Scottish Law Officers

In section 18(4) (modifications in relation to a Scottish Law Officer who is not a member), after “3(4)” there is inserted “and (5)”.

Interpretation of 2006 Act

14 Meaning of “member” and “registered political party” and interpretation of “accepted”

In section 19 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “member”, after “‘member’” there is inserted “(except in references to a member of a registered political party)”, and

(ii) after the definition of “the register” there is inserted—

“‘registered political party’ means a political party registered under Part II of the Political Parties, Elections and Referendums Act 2000 (c.41)”;

(b) there is added—

“(4) For the purposes of the schedule, a member is to be taken as accepting a controlled transaction when it is entered into (even although, in the case of an arrangement of the kind mentioned in paragraph 6A(6) of the schedule, the member is not a party to the arrangement).”.

Amendment of Political Parties, Elections and Referendums Act 2000

15 Amendment of 2000 Act: MSPs who are not members of a registered party

In—

(a) paragraph 10(8) of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 (donation reports under that Act by, among others, MSPs who are not members of a registered political party), and

(b) section 59(2) of the Electoral Administration Act 2006 (which inserted that paragraph into the 2000 Act),

the words from “either” to “(b)” are repealed.

General

16 Commencement

(1) This Act comes into force as follows.
(2) Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016 (but see section 17).

(3) Sections 2, 6(3) and 9 to 12 come into force on 5 May 2016 (and see section 18).

(4) Sections 8, 15, 17 to 19 and this section come into force on the day after Royal Assent.

(5) Section 1 comes into force—
   (a) so far as it relates to sections 3 to 7 (but not 6(3)), 13 and 14, on the same date as those provisions,
   (b) so far as it relates to sections 2, 6(3) and 9 to 12, on 5 May 2016,
   (c) so far as it relates to section 8, on the day after Royal Assent.

17 Commencement: alternative and supplementary provisions

(1) If, on 4 May 2016, the provisions mentioned in subsection (2) are not all in force so far as relating to members of the Parliament, then sections 3 to 7 (but not 6(3)) and 13 and 14 do not come into force on 5 May 2016 but instead on such date as the Parliament may designate by resolution.

(2) Those provisions are the following—
   (a) section 59 of the Electoral Administration Act 2006 and paragraphs 10(8) and (9) and 15A of Schedule 7 to the Political Parties, Elections and Referendums Act 2000 as inserted into that Schedule by that section, and
   (b) paragraph 99 of Schedule 1 to the Electoral Administration Act 2006 and paragraph 16 of Schedule 7A to the Political Parties, Elections and Referendums Act 2000 as inserted into Schedule 7A by paragraph 99.

(3) A resolution under subsection (1) may contain such transitional, transitory and savings provision as the Parliament considers necessary or expedient.

(4) Paragraph 10(2) to (5) of the schedule to the Interests of Members of the Scottish Parliament Act 2006 (Parliamentary resolution modifying that schedule to be treated for certain purposes as if it were a Scottish statutory instrument) applies also to a resolution under subsection (1).

18 Commencement: further supplementary provision

Section 17A of the Interests of Members of the Scottish Parliament Act 2006 (as inserted into that Act by section 12) does not apply to any failure to comply or contravention occurring before 5 May 2016.

19 Short title

The short title of this Act is the Interests of Members of the Scottish Parliament (Amendment) Act 2015.
Interests of Members of the Scottish Parliament
(Amendment) Bill
[AS AMENDED AT STAGE 2]


Introduced by: Stewart Stevenson
On: 27 May 2015
Bill type: Committee Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Interests of Members of the Scottish Parliament (Amendment) Bill (introduced in the Scottish Parliament on 27 May 2015) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sideling in the right margin. Paragraphs 34 and 35 have also been amended to clarify the changes being brought about by the Bill to certain time periods for registering interests.

2. These Explanatory Notes have been prepared by Scottish Parliament officials to support the Standards, Procedures and Public Appointments (SPPA) Committee, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

THE BILL

4. The Bill amends the Interests of Members of the Scottish Parliament Act 2006 (‘the Interests Act’). It incorporates the donations and loans that are currently reportable to the Electoral Commission, under Schedules 7 and 7A to the Political Parties, Elections and Referendums Act 2000 (‘PPERA’), within the Parliament’s members’ interests regime. These changes will allow for the elimination of the dual reporting of certain financial interests, to both the Electoral Commission and the Scottish Parliament. Section 59 of the Electoral Administration Act 2006 created a mechanism for ending this dual reporting. Where the Electoral Commission is satisfied with corresponding reporting arrangements that the Scottish Parliament has put in place, the relevant UK Secretary of State can commence statutory exemptions from reporting directly to the Electoral Commission.

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1 PPERA, paragraphs 10(8), 10(9) and 15A of Schedule 7, and paragraph 16 of Schedule 7A
5. In particular, the Bill amends what amounts to a “registrable financial interest” for the purposes of registering and declaring financial interests, ensuring that relevant PPERA donations and loans are captured. It makes adjustments to relevant time periods, and introduces a requirement to report changes to any registrable interest falling within a new controlled transactions category. The Bill also amends PPERA (with associated amendment of section 59 of the Electoral Administration Act 2006) to allow dual reporting to be ended for members of the Scottish Parliament who are not members of registered political parties (e.g. independent MSPs).

6. The Bill also enhances the sanctions available to the Parliament to impose on members who breach the registration and declaration requirements in Interests Act, broadens the existing paid advocacy offence, adjusts the threshold for an exemption to the remuneration category for certain expenses, and amends provisions relating to the retention of members’ registers of interests.

COMMENTARY ON SECTIONS

Section 2 – Exempt expenses

7. Paragraph 2 of the schedule to the Interests Act makes provision for registering remuneration and in particular provides at paragraph 2(3) that remuneration which consists solely of expenses does not require to be registered unless it is above a specified limit in value. The specified limit, defined in paragraph 2(5) is currently 1% of a member’s salary (rounded down to the nearest £10) at the start of the current parliamentary session.

8. Section 2 of the Bill reduces the specified limit for registering remuneration received solely as expenses to 0.5% of a member’s salary (rounded down to the nearest £10) at the start of the current parliamentary session (currently £280).

Section 3 – Gifts

9. Section 3 replaces the existing paragraph 6 in the schedule to the Interests Act with a new paragraph 6. Paragraph 6 sets out the requirement to register gifts (subject to certain criteria).

10. The new sub-paragraph (1) requires that members register any gifts which meet the requirements of sub-paragraphs (2) or (3).

11. The new sub-paragraph (2) replicates the existing provision, which requires a gift or aggregated gifts valued in excess of the “specified limit” (further defined at sub-paragraph (8)) that meet the prejudice test set out in section 3(2) of the Interests Act to be registered.

12. New sub-paragraphs (3)(a) and (b) insert new provisions which incorporate the PPERA requirements on members to register certain donations for political activities. Sub-paragraph (3)(a) (when read with sub-paragraph (3)(c)), requires members to register gifts for the member’s political activities (as a member of the Parliament or a registered political party or both), the value of which is over £1,500.
13. Sub-paragraph (3)(b) makes equivalent provision for the registration of a gift for the member’s political activities (valued above £500) which when aggregated with other aggregable benefits, accepted from the same person in the course of a calendar year, exceeds £1,500. For the purposes of the gifts category, paragraph 6(8) defines “aggregable benefit”. It includes any other gift, overseas visit, certain remuneration received as expenses or controlled transaction, for the member’s political activities and individually valued in excess of £500 (but not exceeding £1,500), and accepted from the same person in the same calendar year. Equivalent provision on the aggregation of aggregable benefits can be found in the overseas visits and controlled transactions categories.

14. New sub-paragraph (3)(c) sets out new political activities related criteria, applying to gifts received by members that fall within paragraph 6(3)(a) or 6(3)(b). These criteria are met where a gift is offered to the member for their use or benefit in connection with their political activities or retained by the member for those purposes or both. In assessing whether a gift is for a member’s use or benefit in connection with their political activities, regard is had to the intent of the donor in offering it or the intent of the member in retaining it.

15. New sub-paragraph (4) retains the existing exemption from registering the costs and travel and subsistence in connection with a member’s attendance at a conference or meeting (where those costs are borne by the organiser of the conference or one of the other parties attending the meeting). This means that such gifts will only be registrable where they are over the value of £1,500 (singly or cumulatively) and for the member’s political activities (further to sub-paragraph (3)). This provision ensures that the existing exemption continues to apply in most cases but that gifts covered by PPERA (i.e. over £1,500 for political activities) require to be registered.

16. New sub-paragraph (5)(a) ensures that the existing exemption from registering the services of a volunteer which are provided in that volunteer’s own time and free of charge is retained. Members are not required to register the services of a volunteer under the existing Interests Act, nor are they required to do so under PPERA.

17. Sub-paragraph (5)(b) largely replicates an existing exemption for certain election income. This provision ensures that members are exempt from registering donations towards election expenses (whether for election to the Scottish Parliament or the UK Parliament). Such donations would usually be included in electoral returns submitted to the Returning Officer after an election. The exemption does not apply to any donation which has not been used for election expense purposes by the end of the 35th day after the election result is declared (i.e. if the member has some donations towards election expenses left over after the election and uses them for other purposes).

18. In one respect, sub-paragraph (5)(b) represents a narrowing of the previous exemption, which had exempted campaign expenditure in connection with a member’s campaign for election to a party office from registration. Such expenditure will now be registrable if it meets the registration criteria set out in sub-paragraph (2) or (3).

19. PPERA requires that members only accept donations over £500 from a permissible source (see section 54 of, and paragraphs 6 to 9 of Schedule 7 to, PPERA). If the donation is not
from a permissible source it must be returned to the donor or forwarded to the Electoral Commission where the donor cannot be identified, on which there is further provision in sections 56 and 57 of PPERA (as applied by paragraph 8 of Schedule 7 to that Act). New sub-paragraph (6) excepts from registration under the Interests Act any gift or other benefit that is returned to the donor (or repaid), or forwarded to the Electoral Commission, under those provisions.

20. New sub-paragraph (7) makes clear that for the purposes of aggregating a gift or gifts with other aggregable benefits under sub-paragraph (3)(b)(ii), any controlled transaction is valued at the date on which it is entered into.

21. New sub-paragraph (8) sets out the definitions of the terms used in paragraph 6. Most of these simply replicate what is currently in the Interests Act. The three changes to the existing definitions in sub-paragraph (8) are:

- The addition of the definition of “aggregable benefits” (see paragraph 12 of these notes);
- The addition of a definition of “political activities” in so far as it relates to a member of the Scottish Parliament;
- The definition of “specified limit” sets the threshold for registering gifts (that meet the prejudice test) under the Interests Act. This threshold was previously set at 1% of a member’s salary at the start of a parliamentary session (currently £570) and is being lowered to 0.5% of a member’s salary at the start of a parliamentary session (rounded down to the nearest £10) (currently £280).

Section 4 – Loans, credit facilities etc.

New paragraph 6A

22. Section 4 inserts a new paragraph 6A into the schedule to the Interests Act, which adds a new category of interest to the register known as a controlled transaction (certain loans, credit facilities and connected transactions). This brings the controlled transactions covered by Schedule 7A to PPERA within “registrable financial interest” for the purposes of registration under the Interests Act. Sub-paragraphs (1)(a) and (b) set out the requirement to register controlled transactions over the value of £1,500.

23. Sub-paragraphs (3) to (10) provide further definition of “controlled transaction” and this concept incorporates a political activities related “use condition” which must be met for a controlled transaction to be registered (further set out at sub-paragraph (9)). A controlled transaction is registrable where its value exceeds £1,500, either singly or when aggregated with other “aggregable benefits” accepted from the same person in the same calendar year. Sub-paragraph (11) defines “aggregable benefit” to include gifts, certain remuneration received as expenses, overseas visits, or other controlled transactions; provided they are for the member’s political activities and individually exceed £500 (but not exceeding £1,500).

24. New sub-paragraphs (3) and (4) define a controlled transaction as an agreement between the member and another person where that person lends money or provides a credit facility to the member, where the political activities related “use condition”, set out in sub-paragraph (9), is
satisfied. Sub-paragraph (5) defines a credit facility. An example of a controlled transaction that is a credit facility would be where a member enters into a credit card agreement with the intention of using that wholly or partly for their political activities.

25. New sub-paragraph (6) provides that certain transactions that are connected to a controlled transaction or a transaction under which any property, services or facilities are provided for the member’s use or benefit are also registrable if the “use condition” (see sub-paragraph (9)) is met. A connected transaction is one under which a third party gives security in relation to the sum owed by the member under the initial loan or credit agreement (or other transaction mentioned in sub-paragraph (6)(a)). An example of such a connected transaction is where a third person gives a personal guarantee to a bank in respect of a loan or credit facility provided to the member (and for registration purposes the “use condition” would also need to be met).

26. New sub-paragraph (7) sets out certain agreements or arrangements that do not amount to a controlled transaction. Sub-paragraph (7)(a) provides that members are not required to register payments, made in pursuance of an agreement or arrangement, which in accordance with any enactment form part of an Electoral Return for an election. Sub-paragraph (7)(b) makes clear that members are not required to register trade credit, given on normal (rather than preferential to the member) terms. Sub-paragraphs (7)(c) and (d) make clear that loans, credit facilities or connected transactions do not fall within the definition of “controlled transaction” and are therefore not registrable if:

- they do not exceed £500;
- they were entered into before the member was returned as a member (this applies despite section 3(1)(b) of the Interests Act which provides for the registration of other registrable financial interests previously held – but no longer held at the date of return – if the prejudice test is met).

27. New sub-paragraph (8) provides for the situation where a controlled transaction was not registrable when first entered into as its value was not sufficient to trigger registration, but it is subsequently varied so as to become registrable (either singly or when aggregated with other aggregable benefits). For example, where the terms of a loan agreement are subsequently varied to take its value above £1500. In such circumstances the date on which the controlled transaction is considered to be entered into for the purposes of the Interests Act (e.g. in relation to registration and aggregation) is the date on which that variation takes effect.

28. New sub-paragraph (9) explains that the “use condition” is that the member intends, at the time they enter into the loan or credit facility agreement, or a transaction mentioned in sub-paragraph (6)(a) (for the provision of property, services or facilities), to use any money or benefit obtained in connection with their political activities. New sub-paragraph (10) sets out that a controlled transaction is registrable, even if only part of the money or benefit obtained is intended to be used in connection with the member’s political activities.

**New paragraph 6B – Value of loans, credit facilities etc.**

29. New paragraph 6B(1) to (3) makes provision in relation to how a controlled transaction should be valued, depending on whether it involves a loan, credit facility or a connected
transaction involving an arrangement under which security is given. In the case of a loan, the value is the value of the total amount to be lent under the loan agreement. For a credit facility, the value is the maximum amount which may be borrowed under the agreement for the facility. And, where a third party gives security to a member for a controlled transaction (i.e. where it is a connected transaction), the value is the contingent liability under the security provided.

30. Sub-paragraph (4) sets out that (for the purposes of valuing a controlled transaction that is a loan or a credit facility) no account is to be taken of any provision in the loan or credit facility agreement, as entered into, that would allow the adding of outstanding interest to any sum, for the time being owed, when calculating the value of the controlled transaction.

Section 5 – Overseas visits

31. Section 5 of the Bill replaces paragraph 7 of the schedule to the Interests Act with an amended version. Sub-paragraphs (1) and (2) restate the existing requirements to register certain “overseas visits” (i.e. that members are required to register visits outside of the United Kingdom which meet the prejudice test – subject to the exemptions from registration set out in sub-paragraph (3)).

32. Sub-paragraph (4) introduces a new requirement for members to register overseas visits over the value of £1,500 (singly or in aggregate) in connection with the member’s political activities. Sub-paragraph (5) replicates the exemptions from registering overseas visits set out in sub-paragraph (3) with the exception that members are not exempt from registering an overseas visit paid for by their spouse, civil partner, cohabitant, mother, father, son or daughter if it is over the value of £1,500 and for political activities. Such overseas visits are required to be registered under PPERA.

33. Sub-paragraph (6) sets out the definition of “aggregable benefit” for the purposes of aggregating an overseas visit for political activities with other benefits for political activities accepted from the same person in the same calendar year, further to sub-paragraph (4)(b). The aggregable benefits that can be aggregated include other overseas political visits, other gifts, certain remuneration received as expenses or controlled transactions, where they are for political activities and are individually valued in excess of £500 (but not exceeding £1,500).

Section 6 – Changes to certain time periods

34. Section 3(1) of the Interests Act requires members to register any registrable interest which the member had on the date on which the member was returned. This would include an interest acquired on the date of return. The member must register such interests no later than the date which is 30 days after the day on which the member took the oath of allegiance or made a solemn affirmation in accordance with section 84(1) of the Scotland Act 1998. The oath is normally taken several days after the date of return. PPERA on the other hand requires a donation received on the date of return to be reported within 30 days beginning with the date of acceptance of the donation. Where a donation received on the date of return is accepted quickly, section 3 therefore potentially allows longer than the maximum period under PPERA within which to register it.
35. Section 6(1) makes an adjustment to the registration deadline so that members have a 30 day period to register an interest starting with the date of return in the case of any interest acquired on that date. This aligns the time limit with the maximum period permitted under PPERA.

36. Under PPERA, a member must report a donation within the period of 30 days beginning with the date of acceptance of the donation. Under section 5 of the Interests Act, a member must register an interest with the Clerk within 30 days after the date on which the member acquired the interest. The 30 day period runs from the following day in the case of the Interests Act. The amendment made in section 6(2) of the Bill, brings the starting point of the 30 day period into line with the PPERA requirement, so that it begins on the date on which an interest is acquired.

37. Section 6(3) amends section 10 of the Interests Act so that old entries in a member’s register are to be kept for at least 10 years from the date of the last amendment to the member’s register (the existing provision requires them to be kept for 5 years).

Section 7 – Registration of individuals’ addresses

38. A written statement is the means by which a member is required to register their interests with the Clerk. The Interests Act specifies the nature of written statements and sets out certain obligations on the Clerk for their registration and publication. Section 7 of the Bill states that the Clerk is not obliged to register the address of any individual named or referred to in the written statement, so as to avoid any unnecessary publication of personal data.

Section 8 – Reporting and registration of changes to controlled transactions

39. Section 8 inserts a new section 8A into the Interests Act. New subsections (4) and (5) place a requirement on a member who has registered a controlled transaction to notify the Clerk of any change to it, no later than the last day of the period of 30 days beginning with the date on which the change takes effect. Subsections (1) to (3) provide further definition for the purposes of this section of what amounts to a change to a registered controlled transaction. There is such a change where: another person becomes a party to the transaction; there is a change to anything about the transaction on which the member provided (or should have provided) information (see further definition in subsection (2)) in the written statement when registering it; or where the transaction comes to an end.

40. New subsections (5) to (7) set out the process for members to register any changes to controlled transactions. A member notifies the Clerk by submitting a written notice (within 30 days of the change taking effect). The Clerk will then have 30 days in which to amend the entry in the member’s register of interests, to record the change and the date on which it took effect, sending a copy of the amended entry to the member (subsection (7)). Under subsection (6), the written notice must be in such form and contain such information about or relating to the change as the Parliament may determine. Under the Standing Orders similar determinations under the Interests Act are made by a resolution of the Parliament further to a motion of the SPPA Committee (e.g. in relation to the written statement under section 4 of the Interests Act).
Section 9 – Prohibition of paid advocacy

41. Section 14 of the Interests Act prohibits paid advocacy (i.e. advocating or initiating any cause or matter on behalf of any person or urging any other member to do so) in consideration of any payment or benefit in kind. This includes any payment or benefit in kind which the member’s spouse, civil partner or cohabitant receives in connection with the Parliamentary duties of the member and which results in some benefit to the member. Paid advocacy is a criminal offence.

42. Section 9 of the Bill extends the offence of paid advocacy so that it applies not just where the member (or their spouse, civil partner or cohabitant) receives a payment or benefit in kind, but also where they agree to receive a payment or benefit in kind (regardless of whether payment is ultimately received). The Bill was amended at Stage 2 to extend the offence further to ensure that it covers a member or their spouse, civil partner or cohabitant requesting an inducement for the member to carry out advocacy.

Section 10 – Exclusion from Parliamentary proceedings

43. Section 10 of the Bill makes minor amendments to section 16 of the Interests Act (Exclusion from proceedings of the Parliament). It adds in references to new section 8A(4) and (5), allowing the Parliament to exclude a member from proceedings in the Parliament where there has been a failure to comply with, or contravention of, the requirements in those provisions on notifying the Clerk of a change to a registered controlled transaction. Section 10 also makes minor changes to the wording used in section 16 to cross-refer to other sections of the Interests Act. This ensures consistency with the wording used in new section 17 of the Interests Act (which relates to the offences associated with breaches of the Act), as replaced by section 11 of the Bill.

Section 11 – Offences

44. Section 11 of the Bill replaces the existing section 17 of the Interests Act, which relates to offences, with a new section 17. This is required because the existing provisions are only preserved until the coming into force of further provision by the Parliament on sanctions (under section 7(3) of the Scotland Act 2012). New section 17 largely restates the existing criminal offence as previously set out in section 39(6) of the Scotland Act 1998, read with section 17 of the Interests Act.

45. Subsection (1) of the new section 17 sets out the criminal offence associated with breaching the Interests Act. It is an offence to take part in proceedings without having complied with or in contravention of the requirements of:

- section 3 (initial registration of interests), section 5 (registration of interests acquired after date of return), section 6 (late registration) or section 8A(4) and (5) (notifying the Clerk of changes to controlled transactions);
- section 13 (declaration of interests);
- a measure taken by the Parliament under section 15 (preventing or restricting participation in proceedings of the Parliament); or
- a measure taken by the Parliament under section 16 (exclusion from proceedings of the Parliament).

Contraventions of section 14 (prohibition of paid advocacy) also form part of the section 17(1) offence.

46. There are a couple of minor substantive changes to the overall scope of the criminal offence. It now captures breaches of the new provision on notifying the Clerk of changes to a controlled transaction (section 8A(4) and (5)) and the scope of the paid advocacy prohibition to which the criminal offence attaches is widened by section 9 of the Bill to cover requesting or agreeing to receive any payment or benefit in kind.

47. Subsection (2) makes provision on the available penalty, reiterating the penalty found in section 39(7) of the Scotland Act. A person found guilty of an offence under section 17 is liable on summary conviction to a fine not exceeding level 5 on the standard scale (which currently amounts to £5,000).

Section 12 – Other sanctions

48. Section 12 of the Bill inserts a new section 17A into the Interests Act. This section sets out other sanctions available to the Parliament to impose on members who fail to comply with or contravene the provisions of the Interests Act mentioned at new section 17A(1) (section 3, 5, 6, 8A(4) and (5), 13 or 14 or a measure taken by the Parliament under section 15 or 16 of the Interests Act). Where there is such a contravention or failure to comply, section 17A(1) enables the Parliament, by resolution, to: exclude a member from the premises of the Parliament or such part of them as it determines and for such period as it determines; withdraw the member’s right to use parliamentary facilities and services or such of them as the Parliament determines; censure a member.

49. Section 17A(2) makes additional sanctions available to the Parliament where a member is to be excluded from proceedings in the Parliament under section 16 of the Interests Act or excluded from some or all of the premises under section 17A(1). In such cases, the Parliament may also, by resolution, disallow payment of salary or allowances (or both) to a member in respect of such period (not exceeding the duration of the exclusion) as the Parliament determines.

50. The sanctions set out at section 17A draw on some of the measures currently available to the Parliament (e.g. exclusion from the proceedings and the wider premises of the Parliament, withdrawal of salary and allowances, withdrawal of access to parliamentary facilities) where it withdraws a member’s rights and privileges under Rule 1.7 of the Standing Orders, e.g. in relation to Code of Conduct breaches. Specifying these sanctions at section 17A for the purposes of Interests Act breaches is consistent with section 39(8) of the Scotland Act 1998 which envisages legislative provision being made by or under an Act of the Scottish Parliament.
Section 13 – Scottish Law Officers

51. Section 13 is a consequential amendment to section 18(4) of the Interests Act arising from the insertion (by section 6 of the Bill) of new section 3(5) on the meaning of the relevant date where an interest is acquired on the date of return. Section 18 applies the provisions in the Interests Act with certain modifications to the Scottish Law Officers where they are not members of the Scottish Parliament. Section 18(4) makes bespoke provision on the relevant date for the purposes of initial registration by a Scottish Law Officer who is not a member of the Parliament and new section 3(5) is not required for the purposes of defining relevant date in such cases. Section 13 makes a small adjustment to section 18(4) to disapply section 3(5).

Section 14 - Meaning of “member” and registered political party and interpretation of “accepted”

52. Section 14(a) clarifies the definition of “member” in section 19 of the Interests Act. This is necessary because the phrase “member of a registered political party” is being inserted into the Act by the Bill. Section 14(a) also gives the meaning of “registered political party”.

53. Section 14(b) also amends section 19, inserting new subsection (4). It clarifies that the point in time at which a member is considered to have accepted a controlled transaction is when it is entered into. This applies even though in the case of a controlled transaction that is a connected transaction (i.e. one falling within paragraph 6A(6) of the schedule) the member is not a party to the arrangement. Paragraph 24 of these notes sets out further detail about connected transactions.

Section 15 – Amendment of 2000 Act: MSPs who are not members of a registered party

54. When it came to light that there was significant overlap in reporting requirements on individual members (i.e. to the Parliament under the Interests Act and the Electoral Commission under PPERA), section 59 of the Electoral Administration Act 2006 was brought in to remove the requirement for holders of relevant elective office to report donations to the Electoral Commission. Section 59 and the necessary exemptions it inserts into Schedule 7 of PPERA, do not, however, extend to members of the Scottish Parliament who are not members of a registered political party (a political party registered under Part II of PPERA). If this section is commenced for MSPs as it stands, dual reporting would end for MSPs who are members of registered parties, but independent members would still be required to report donations to both the Electoral Commission and the Parliament.

55. Section 15 of the Bill amends paragraph 10(8) of Schedule 7 to PPERA, and section 59(2) of the Electoral Administration Act 2006 (which inserts paragraph 10(8) into Schedule 7), to delete an express exception for members of the Scottish Parliament who are not members of a registered party. This makes the necessary changes to PPERA and the Electoral Administration Act 2006 to allow dual reporting to be ended for any MSP who is not a member of a registered party – independent MSPs for example.
Section 16 – Commencement

56. Section 16 sets out the commencement provisions for the Bill. Sections 3 to 7 (but not 6(3)) and 13 and 14 come into force on 5 May 2016, but see also the alternative commencement arrangements set out in section 17 of the Bill in relation to these provisions. These provisions cover the majority of the changes needed to allow dual reporting to be ended.

57. Sections 2, 6(3), 9 to 12, which cover a minor adjustment to the remuneration category, the retention period relative to old register entries and provision on sanctions (including an adjustment to the paid advocacy prohibition) come into force on 5 May 2016. This will allow these changes all to come into force at the start of the new parliamentary session.

58. Sections 8 (reporting and registration of changes to controlled transactions), 15 (amendment to the 2000 Act to end dual reporting for independent MSPs) and 19 (short title) will come into force on the day after Royal Assent.

Section 17 - Commencement: alternative and supplementary provisions

59. Section 17 sets out alternative and supplementary commencement provision applying in the event that the provisions of PPERA and the Electoral Administration Act 2006 mentioned at section 1(2) - i.e. the provisions that trigger an end to dual reporting - are not commenced in relation to MSPs before 5 May 2016. In such circumstances section 17(1) permits the Parliament, by resolution, to designate an alternative date for the commencement of sections 3 to 7 (but not 6(3)), 13 and 14 of the Bill.

60. Subsection (3) allows for the making of transitional, transitory and savings provision in any resolution made under section 17(1). Subsection (4) applies provision in paragraphs 10(2) to (5) of the schedule to the Interests Act to any such resolution. This requires the Clerk to send a copy of it to the Queen’s Printer for Scotland immediately after it is passed, and applies with modifications provision (in 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)) on numbering, publication and citation of Scottish statutory instruments to such a resolution as if it were a Scottish statutory instrument.

Section 18 – Commencement (further supplementary provision)

61. Section 18 clarifies that the provision on other parliamentary sanctions in new section 17A does not apply to any failure to comply or contravention occurring before 5 May 2016.
Interests of Members of the Scottish Parliament (Amendment) Bill: Stewart Stevenson, on behalf of the Standards, Procedures and Public Appointments Committee, moved S4M-15201—That the Parliament agrees that the Interests of Members of the Scottish Parliament (Amendment) Bill be passed.

After debate, the motion was agreed to (DT)

P E Grice
Clerk of the Parliament
17 December 2015
Interests of Members of the Scottish Parliament (Amendment) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on S4M-15201, in the name of Stewart Stevenson, on the Interests of Members of the Scottish Parliament (Amendment) Bill. I invite members who wish to speak in the debate to press their request-to-speak buttons now or as soon as possible. I call Stewart Stevenson to speak to and move the motion on behalf of the Standards, Procedures and Public Appointments Committee.

15:54

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): There is always a benefit in reviewing, with a critical eye, the regimes that govern our work and that of individual members here in Parliament.

The bill’s proposals seek to improve the public accessibility of information reported by MSPs, allowing for effective public scrutiny. The bill will also ensure that a wide range of parliamentary sanctions are available and will broaden the definition of the serious criminal offence of paid advocacy.

Due to partial overlaps in the reporting requirements on MSPs under the Parliament’s register of interests and the Political Parties, Elections and Referendums Act 2000—otherwise known as PPERA—certain financial interests must be reported to both the Electoral Commission and to the Parliament. That is known as dual reporting. The PPERA requirements are defined in terms of donations to political activities, which include parliamentary activities, whereas the Parliament is interested solely in financial interests that could be perceived to influence MSPs in carrying out their parliamentary duties.

The two regimes have different criteria for registration, which can make the system complex. There are also two separate complaints processes depending on whether an MSP is reported to the Electoral Commission or to the Commissioner for Ethical Standards in Public Life in Scotland for failure to register a financial interest.

Removing dual reporting will provide for simpler reporting requirements for financial interests overall for MSPs and greater transparency and accountability to the public than is the case at present. That will make details of MSPs’ financial interests more transparent, as they will be more easily accessible in a single place, on our Parliament’s website; the means of pursuing a
The bill makes the necessary adjustments to the categories of registrable interest to enable the Electoral Commission to draw all the information that it needs from the Parliament’s register.

When dual reporting ends, the Commissioner for Ethical Standards in Public Life in Scotland will take on sole responsibility for investigating breaches of those PPERA requirements that are currently investigated by the Electoral Commission. The bill will incorporate that into our revised register of categories. It will broaden the commissioner’s remit and simplify the process for the public, providing one place to direct complaints.

The group of states against corruption—GRECO—published a report in 2013 that recommended that consideration be given to lowering the thresholds for registering gifts. At present, members must register gifts over the value of 1 per cent of a member’s salary at the start of the parliamentary session. That makes the current figure £570. The qualification is that it excludes gifts that do not meet the prejudice test, for example, gifts between members of the MSP’s family.

Other jurisdictions have lower levels of registration. The House of Commons proposes to lower the threshold to £300, the House of Lords will go to £140, and the threshold in the Northern Ireland Assembly is £240. With those developments in mind, and the desire to increase transparency of members’ interests in this place, the committee decided to include a measure in the bill to lower the threshold for registering gifts to 0.5% of a member’s salary, rounded down to the nearest £10, at the beginning of the current parliamentary session. That would presently be £280.

I turn to the paid advocacy provisions. Paid advocacy is where an individual uses their position as an MSP to advocate a particular matter in return for payment, including a benefit in kind, or to urge any other MSP to do so. It is a criminal offence and a breach of the Interests of Members of the Scottish Parliament Act 2006 for an MSP to undertake paid advocacy.

As I have stated in previous debates—we first debated the subject in April—no MSP has ever been found to be in breach of the paid advocacy provisions. Given the gravity with which paid advocacy should be treated, the committee is very clear that there is a case for increasing the scope of the criminal offence. To that end, the bill amends the existing paid advocacy offence to ensure greater consistency with the Bribery Act 2010. The paid advocacy offence currently requires actual receipt of an inducement by an MSP or an MSP’s partner where that results in some benefit to the MSP. The Bribery Act 2010 goes further than that: it does not require an individual actually to receive inducements in order to commit an offence; they must only agree to receive such inducements.

The committee considers that if an MSP is found to have agreed to undertake advocacy for financial gain or to have encouraged a fellow MSP to do so, they should be considered to be guilty of an offence regardless of whether inducements have actually been received. During the stage 1 debate, Tavish Scott asked me whether that would cover a scenario in which a member requested an inducement for advocating a cause. I took the opportunity to amend the bill at stage 2 to put beyond doubt that that scenario, too, should be covered by the paid advocacy offence.

I move,

That the Parliament agrees that the Interests of Members of the Scottish Parliament (Amendment) Bill be passed.

16:01

The Minister for Parliamentary Business (Joe FitzPatrick): I do not propose to take too much time to comment on the details of the Interests of Members of the Scottish Parliament (Amendment) Bill.

It will probably come as no surprise to hear that the Government continues to give the bill its full support. I congratulate the members of the Standards, Procedures and Public Appointments Committee and, indeed, its clerks. The committee has made excellent and rapid use of the relevant powers that have been made available to the Parliament under the Scotland Act 2012.

The preparatory work to underpin the policy reforms in the bill was carefully considered and has led to a robust framework. That was added to by the amendments that the convener of the committee mentioned. Obviously, it is worth noting that the bill is a committee bill. We do not have such bills too often, so it is useful to highlight that fact. Committee bills are a useful tool in our parliamentary processes, and it was appropriate that a committee bill was introduced.

During the stage 1 debate, members across the chamber stood together behind the proposals, and I have no reason to consider that that position will change today. It is not often that a bill receives such unified support, and that deserves special mention.

At stage 1, I summarised my broad assessment of what the bill delivers. There are three main things from the Government’s perspective.
First, the bill seeks to establish measures to enhance members’ accountability to the public and to reflect the latest views on what constitutes appropriate probity standards. Secondly, in looking to standardise arrangements for reporting interests, it streamlines the activity that is required of members and offers the public a single point of reference. It ends the dual reporting that the convener talked about. Thirdly, it offers the Parliament flexibility in the event that circumstances ever arise that necessitate enforcement activity.

The bill aimed high in seeking to produce a comprehensive review of existing practices. Any one of those three major areas would have been significant in the first place, so we really cannot overestimate the amount of work that went into producing the bill and pulling together the three different strands.

I consider that every member of the Parliament will benefit as a result of the changes, be that in demonstrating their accountability to their electorate or from the streamlined reporting processes.

The proposal to end dual reporting is a significant step forward. I commend the committee for its commitment to that move and the benefits that it should deliver for members of the Scottish Parliament and members of the public.

The measures in the bill are not just symbolic reforms; they can be characterised as practical improvements that can be realised from the start of the next parliamentary session.

The Government welcomes the commitment that the Standards, Procedures and Public Appointments Committee has shown, and I look forward to the bill being passed at decision time.

16:04

**Mary Fee (West Scotland) (Lab):** This is a short but nevertheless important debate on the interests of members of the Scottish Parliament. Across the chamber we all agree that we need robust, accountable and transparent mechanisms for reporting members’ interests.

The Parliament rightly prides itself on its openness and accountability, and the bill gives the opportunity to revisit the existing legislation on members’ interests. The bill will help to increase the transparency and accessibility of information about members’ financial interests and it will ensure that the Parliament has a robust set of sanctions to deal with any breaches of its rules.

A useful measure included in the bill is the motion of censure, which will serve as a useful middle ground if a member is found to be in breach of the rules but that breach is not serious enough to justify the removal of parliamentary privilege. A motion of censure would allow debate and would give the member in question the opportunity to explain the breach and to apologise.

Another useful change is the length of time for which information on members’ interests will be kept. The committee considered it more appropriate to keep register entries for 10 years instead of five. There are a number of practical reasons for that. It will assist members by ensuring that information about their previously held interests is available at the start of a session. Similarly, if a member is not returned to Parliament but returns at a subsequent election, it will be easier for them to check the interests that were previously recorded.

The change will also increase transparency in relation to members’ interests, as the information will be easily accessible to the public for longer. Those changes, combined with the changes to the register, will provide an additional layer of transparency to the public in seeking to access information on members’ interests.

As Stewart Stevenson said in his opening comments, the ending of dual reporting is an important step. At the moment, information is on the Parliament’s website and the Electoral Commission’s website, depending on the nature of the interest. Streamlining the process will assist people in accessing the information and it will help members to comply more easily with the regime.

I am pleased that no member has ever been found to be in breach of the rules on paid advocacy, but we must keep those rules under review, so it is right to strengthen them through the bill. Most members of the public would expect there to be a breach if a member agreed to undertake paid advocacy, even when cash does not change hands. The bill will ensure that such behaviour will be caught.

The amendments that were lodged by Stewart Stevenson at stage 2, which extend section 9 of the bill so that it covers a member or their partner requesting an inducement for the member to carry out paid advocacy, were a further and very useful clarification, and a welcome addition to the bill.

I take this opportunity to thank Stewart Stevenson, the Standards, Procedures and Public Appointments Committee and the clerks for the work that they have done to progress this important piece of legislation.

I am pleased to speak today for Scottish Labour and to support the motion, which seeks the Parliament’s agreement to the principles of the bill. The provisions will increase transparency and strengthen the standards regime in the Scottish Parliament. Openness, transparency and accountability must be at the forefront of the way
in which the Parliament operates. I am happy to support the motion in Stewart Stevenson’s name and to support the Interests of Members of the Scottish Parliament (Amendment) Bill.

16:08

Mary Scanlon (Highlands and Islands) (Con): I associate myself with the comments made by Mary Fee. I also thank Stewart Stevenson and the Standards, Procedures and Public Appointments Committee for bringing forward the Interests of Members of the Scottish Parliament (Amendment) Bill. Can I say, Presiding Officer, that it is very nice to have the last debate of the year on a consensual note?

Anything that brings greater transparency to this issue has to be welcomed. In the interests of clarity, transparency and consistency, I take the opportunity to raise the same question that I raised at stage 2, which relates to benefits in kind. Given that we have the opportunity for the full chamber to hear, it would be appropriate to get some clarity on the issue.

Stewart Stevenson said at stage 2:

“It is not currently an offence to receive an inducement, as long as the member does not do anything in response to receipt of the inducement”.

That is fine. He also said:

“It is the conditionality—the link between the benefit that is delivered and the action that the member has taken—that is important.”—[Official Report, Interests of Members of the Scottish Parliament (Amendment) Bill Committee, 10 November 2015; c 2, 4.]

Each and every one of us across the chamber will have been invited out to dinner quite regularly by hosts who tend to take full advantage of their time with us to let us know exactly what their concerns are. The example that I would like to use today relates to the University of the Highlands and Islands college lecturers. If I were still a lecturer, I might be telling Mr Matheson to keep quiet as I speak—it was never easy as a teacher when someone chattered in the background, cabinet secretary or no cabinet secretary.

The Presiding Officer (Tricia Marwick): We all need to learn from you, Mrs Scanlon.

Mary Scanlon: If I am invited out to dinner and my UHI hosts highlight the fact that lecturers in the Highlands are paid £7,000 below lecturers elsewhere in Scotland, and the following week I come into Parliament and raise the issue of unfair pay for lecturers in the Highlands, have I received a benefit in kind—that is to say, dinner—and then become a paid advocate, or have I just received information? I seek clarity on that issue, and I think that we would all welcome such clarity.

The Presiding Officer: I call Stewart Stevenson to wind up the debate.

16:11

Stewart Stevenson: Let me start with the point that Mary Scanlon has made, which is a fair and proper one, by addressing the example that she gives of any of us being out to dinner with someone who wishes to put a point to us. That is not caught by the Interests of Members of the Scottish Parliament (Amendment) Bill unless the dinner is provided on condition that we take an action. It is that conditionality that is important.

Parliament will be likely to be returning to the broader issue that Mary Scanlon has captured when we discuss the Lobbying (Scotland) Bill, because that may well be a matter of lobbying that is caught, and the people who are lobbying would be likely to have to register under the Lobbying (Scotland) Bill. That is for another day but, in response to Mary Scanlon’s point, I say that it is the conditionality that is important. We can still go out to dinner. I am going out tonight, although I think that I am paying, so that certainly will not be caught.

Mark McDonald (Aberdeen Donside) (SNP): Are we all invited?

Stewart Stevenson: Invitations are now closed.

Mary Fee dealt more than adequately with the subject of the sanctions that are being introduced and with the broad sanction regime. In particular, she addressed the issue of a motion of censure, so I do not propose to say anything more that is material about that.

I do, however, want to talk about the removal of dual reporting. Although we will be passing a bill today, it cannot proceed as a new part of our law and our procedures until the Electoral Commission is satisfied that the information in the register of interests will be sufficient to meet its needs. The clerks to the committee have been working with the Electoral Commission to ensure that the provisions in the bill are satisfactory, and I, like other members, thank officials in the Parliament and at the Electoral Commission for their assistance in that matter.

The current framework for ending dual reporting in the Electoral Administration Act 2006 does not extend to independent MSPs, and I want to say a word or two about that. As that act stands, dual reporting can be ended only for members of registered political parties, and not for independent members. Our bill contains an amendment to that act that will allow dual reporting to be ended for all MSPs, and I am pleased to have been able to work with each of the independent members in this Parliament to ensure that the provisions in that
regard are understood and agreed. Indeed, I saw Margo MacDonald towards the end of her life; I had a three-minute discussion on this subject and an hour of updates on what was going on in Parliament. I will not reveal what I told her about what everyone was up to, as that would be a breach of confidence beyond what would be proper.

In closing, I am pleased that the committee has been able to bring forward this committee bill, which I believe will streamline processes for dealing with financial interests, increase transparency and ensure that we have robust sanctions. I encourage all colleagues to support this change in the next few minutes.

**The Presiding Officer:** Thank you very much, Mr Stevenson. I do not expect an answer just now, but perhaps when the Lobbying (Scotland) Bill is debated you can tell me whether, if Santa brings me presents, I will be a paid advocate for him.

That concludes the debate on the Interests of Members of the Scottish Parliament (Amendment) Bill.