



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL COMMITTEE

Tuesday 10 November 2015

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**INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) BILL
COMMITTEE**

2nd Meeting 2015, Session 4

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mary Fee (West Scotland) (Lab)

COMMITTEE MEMBERS

*Graeme Dey (Angus South) (SNP)

*James Dornan (Glasgow Cathcart) (SNP)

*Mary Scanlon (Highlands and Islands) (Con)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

The Robert Burns Room (CR1)

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.

It is worth noting that no MSP has ever been found to have breached that rule. The Standards, Procedures and Public Appointments Committee is very clear that, given the gravity with which paid advocacy should be treated, it remains appropriate for it to be a criminal offence.

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.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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