INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT BILL COMMITTEE

Wednesday 8 March 2006

Session 2

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CONTENTS

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1st Meeting 2006, Session 2

CONVENER

Mrs Margaret Ewing (Moray) (SNP)

DEPUTY CONVENER

*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

COMMITTEE MEMBERS

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

COMMITTEE SUBSTITUTES

*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Brian Adam (Aberdeen North) (SNP)
Alasdair Morgan (South of Scotland) (SNP)
Tommy Sheridan (Glasgow) (SSP)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Sarah Robertson

LOCATION

Committee Room 5

Scottish Parliament

Interests of Members of the Scottish Parliament Bill Committee

Wednesday 8 March 2006

[THE OLDEST COMMITTEE MEMBER *opened the meeting at 10:00*]

Interests

Mr Jamie McGrigor (Oldest Committee Member): I open the first meeting of the Interests of Members of the Scottish Parliament Bill Committee. The first item on the agenda is to ask members for a declaration of interests. I shall begin by declaring my own interests.

As a member of the Scottish Parliament, I have entries in the register of members' interests under the headings of remuneration and heritable property.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): As a member of the Scottish Parliament, I have entries in the register of members' interests under the headings of remuneration, overseas visits and miscellaneous.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): As a member of the Scottish Parliament, I have entries in the register of members' interests under the headings of sponsorship, gifts, overseas visits and miscellaneous.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I have no registered interests to declare.

Stewart Stevenson (Banff and Buchan) (SNP): As a member of the Scottish Parliament, I have registered interests under the heading of miscellaneous.

Convener

10:02

Mr McGrigor: The next item is the election of the committee convener, who I believe is to come from the Scottish National Party. I seek nominations for convener.

Susan Deacon: I nominate Margaret Ewing.

Mrs Margaret Ewing was chosen as convener.

Deputy Convener

10:02

Mr McGrigor: I seek nominations for deputy convener, who is to come from the Labour Party.

Margaret Jamieson: I nominate Susan Deacon.

Susan Deacon was chosen as deputy convener.

Mr McGrigor: It now behoves me to hand the chair over to Susan Deacon.

Interests of Members of the Scottish Parliament Bill: Stage 2

The Deputy Convener (Susan Deacon): Committee members and members of the public and press might find it helpful if I briefly introduce the purpose of this committee.

The committee has been established specifically to consider at stage 2 the Interests of Members of the Scottish Parliament Bill, which has been introduced by the Parliament's Standards and Public Appointments Committee and, indeed, is the product of many years of discussion and consideration in both parliamentary sessions. Two meetings have been scheduled to allow the committee to consider the amendments that have been lodged.

I will now highlight some procedural points. Members should have the bill, the marshalled list of amendments and the groupings. If they do not have any of those, they should speak now or forever hold their peace. Amendments have been grouped to facilitate debate; however, as members will know, the marshalled list dictates the order in which amendments will be called and moved. All amendments will be called in turn from the marshalled list and will be disposed of in that order. We cannot move backwards in the marshalled list.

There will be one debate on each group of amendments. I will call the member who is to move the first amendment in each group, and he or she should speak to and move the amendment. I will then call other speakers, including the members who are to move the remaining amendments in the group. However, those members should note that their amendments should not be moved at that stage.

I will call members to move their amendments at the appropriate time. Other members should indicate their wish to speak in the normal way. As Brian Adam is the member in charge of the bill, he will be called to speak on each group.

After the debate on a group of amendments, I will clarify whether the member who moved the first amendment in the group still wishes to press it to a decision. If not, he or she may seek the committee's agreement to withdraw the amendment. If it is not withdrawn, I will put the question on the amendment. If any member disagrees, we will proceed to a division by a show of hands. I have been asked to remind members that it is important that they keep their hands raised until the clerk has fully recorded the vote. I also remind them that only members and substitute members of the committee may vote. If a member does not wish to move their amendment, they should simply say, "Not moved," when it is called.

The committee is required to decide whether to agree to each section of or schedule to the bill. Before I put the question on any section or schedule, I will be happy to allow a short general debate, which may be useful for allowing matters that have not been raised in amendments to be discussed. However, members will be aware that the only way in which it is permitted to oppose agreement to a section is by lodging an amendment to leave out that section.

Members will have seen the announcement in the *Business Bulletin* that we will not go beyond the end of section 7 today. We do not have to reach that point, but we cannot proceed beyond it.

As members do not have any questions or points of clarification, we will move on to consider the amendments.

Section 1 agreed to.

Section 2—Registrable interests

The Deputy Convener: Amendment 26, in the name of Mike Rumbles, is grouped with amendments 27, 28 and 34 to 39.

Mike Rumbles: I will speak to all nine amendments in the group, but only two of them—amendments 34 and 35, which I will deal with in a second—are important; the other amendments are consequential.

It is important that members put matters in perspective. The current members' interests order—the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (SI 1999/1350)—which the provisions will replace, simply deals with registrable financial interests. Schedule 2 to the bill, to which section 2 refers, represents a major step towards bringing into the ambit of the law members' non-financial interests, but my amendments aim for an alternative approach in the bill.

Why is the bill as it stands not fit for purpose in that respect? The problem with it is that it is not prescriptive about non-financial interests. Schedule 2 simply states:

> "A member has, or had, a registrable non-financial interest where that member has, or had, an interest which—
>
> (a) is not a financial interest; and
>
> (b) meets the prejudice test."

The bill contains very little guidance for members about what they need and do not need to declare in law. Should membership of a bowling club or the National Trust for Scotland be declared? There could be 129 different interpretations of what members should or should not declare if the bill remains as it is. Therefore, I foresee real practical problems.

The proposals are fine in theory. Everybody recognises that it would be useful to have a system for declaring non-financial interests, but I am worried about the practicalities that are involved. Let us consider the example of MSPs who are members of the National Trust for Scotland. Susan Deacon could declare that she is a member of the trust, but Jamie McGrigor could decide that he does not want to declare his membership of it because it is irrelevant to his duties as an MSP. There could be a debate on Scotland's natural heritage in which Jamie McGrigor does not declare his membership of the trust. A member of the general public could then lodge a complaint with the Scottish parliamentary standards commissioner that he did not do so, and it would be left to the standards commissioner to decide whether membership of the National Trust for Scotland should be declared. That should not happen.

If we are going to have a law, it should be clear, and the rules for MSPs should be as clear as possible and should not be open to any misunderstanding, so that we do not have different interpretations. If, rather than rely on statute law, we gave the standards commissioner the chance to create case law, that would be the wrong approach for MSPs to take. How we should approach interests in law is a fundamental issue.

My amendments set out two different approaches. Amendment 34 tries to tighten up the definition of non-financial interests. Paragraph 2 of the new schedule that amendment 34 would introduce states that,

"Where a member holds a position in any organisation, whether as the holder of an office, or as a director, partner or trustee or in any other capacity, which enables that member to direct or control, in whole or in part, the management or administration of that organisation or what that organisation does",

that should be declared. Simple membership of something should not be a declarable interest, but if a member is in a position of authority or control, that is a different kettle of fish. Amendment 34 seeks to make it clear to MSPs that they should declare their involvement in an organisation's management or decision-making process. With that amendment, there would be far less room for misunderstanding and misinterpretation.

On the other hand, amendment 35 seeks simply to leave out schedule 2, which would take us back to the situation that we are in at the moment, when we consider only financial interests and leave out non-financial interests altogether, because dealing with such interests would be an absolute minefield.

I hope that that explanation is helpful. As I said, my proposals rest on two amendments, 34 and 35, and all the other amendments are consequential, depending on which of those avenues we want to proceed down. Basically, we have three options: we can leave the bill as it is, which I think is a recipe for disaster; we can agree to amendment 35, to remove non-financial interests altogether; or we can agree to amendment 34, to make it clear what sort of non-financial interests we are talking about.

I move amendment 26.

The Deputy Convener: Thank you for setting out the key issues on a question that has been the subject of consideration in the Standards Committee for some time, including when you were its convener. It is helpful to hear the matter summarised in that way. This is one of the main issues that we have to resolve in relation to the bill, so I am keen that members should have as full an opportunity as possible to comment on it.

Stewart Stevenson: I would like to comment on amendment 34 first. Without taking any specific view on the substance of what Mike Rumbles is trying to achieve, I think that the drafting of amendment 34 does not achieve what he seeks to achieve. For example, paragraph 2 of the new schedule that amendment 34 would insert is entitled "Holding position of control etc". There are a number of clubs of which I am a member—private clubs, not commercial clubs—and I would certainly be caught by paragraph 2, as a member who is involved in such clubs "in any other capacity" and is able

"to direct or control, in whole or in part"

the activities of those clubs, simply because their constitutions—they will not be materially different from those of clubs of which many MSPs will be members—have provisions for the distribution of assets on winding up, for example. That is a matter for all members of a club, not just for elected officers. That is why I suspect that the drafting of amendment 34 does not achieve what Mike Rumbles is trying to achieve, which is to focus on office bearers such as conveners, treasurers and secretaries. In fact, the drafting of the amendment actually draws in anybody who is a member of such clubs, and members of most voluntary clubs will be in a similar position. Therefore, on drafting grounds, unless I can be shown the error of my ways in my reading of the amendments, I will have difficulty supporting them.

My broader, more fundamental difficulty is that by being prescriptive in describing the particular non-financial interests that should be registered, we implicitly allow people not to register others that might be material. The prejudice test in the bill is as good a way as any of requiring people to register things. I will listen carefully to what colleagues say, but, at the moment, I am not inclined to support either amendment 34 or amendment 35.

I have included in the miscellaneous section in the present register virtually every organisation of which I am a member, because the Parliament's work has touched on them. For example, the Smoking, Health and Social Care (Scotland) Bill has affected most of the organisations of which I am a member; the same will be true for many other members. The prejudice test is reasonable.

10:15

Margaret Jamieson: Mike Rumbles was right to lodge his amendments, because we needed to have the opportunity to discuss the issue. Some of us find it difficult to determine what has to be registered under the miscellaneous heading in the register. In some instances, things can get ridiculous. We need to be absolutely clear.

My concern is about interpretation by members of the public and press of what is registered and what is not registered. Members always have to face that difficulty. If we can make things crystal clear for members, they will also be clear for members of the public.

In recent weeks, we have seen individuals writing in to complain about friendships not being declared. It would be a step too far for us to have to tell people that we were required to declare the fact that we had been friendly with them for X years. If we meet and strike up a relationship or friendship with someone after we are elected, when should that be declared? It would be ridiculous for us to take that step.

I do not know about the listing proposed in amendment 34; I am more inclined to support amendment 35 and the total removal of schedule 2.

Mr Jamie McGrigor (Highlands and Islands) (Con): Having a list of non-financial interests would make things far too difficult. How could we possibly cover everything? It is important that, if a member is taking part in a debate, there is the flexibility to allow him to get to his feet and say, "I declare an interest in such and such an organisation, because it might influence what I have to say today." As long as a member has done that in the debate, that is perfectly all right. I think I am right in saying that that is encapsulated in the bill.

The Deputy Convener: I will add my thoughts before we hear from other members or from Brian Adam. A lot of us have agonised about this issue. I was a member of the Standards Committee, where some of the earlier discussion on it took place. Our intentions in this area have been good, but in trying to work out how things would operate in practice we have seen the difficulties that would emerge.

I worry that the bill will not be workable and will lead to a disproportionate approach that does not achieve the high standards that we all want to achieve. Mike Rumbles said that the bill is a recipe for disaster. I am not sure that I would go that far, but it is certainly a recipe for interminable disputes, which will not add to openness and transparency.

I am interested in what Mike Rumbles and the member in charge of the bill will say about my next point. There is all sorts of scope for us to encourage and urge members to maintain high standards of openness and transparency. I know that the Standards and Public Appointments Committee is examining the code of conduct for members. It is interesting that Stewart Stevenson mentioned the miscellaneous section of the register of members' interests, entries under which are voluntary anyway. I have no difficulty with encouraging people to put more information in that section, but it would be wise not to legislate on the issue.

What are other members' views? It is important to consider the matter carefully.

Stewart Stevenson: It is always down to the individual member to exercise judgment. We must not persuade ourselves that we can write a bill that relieves members of the obligation to exercise judgment. Margaret Jamieson made good points on friendship, but the reality is that it will be appropriate in some circumstances to refer to friendship. I cannot name circumstances from recent history, because I do not believe that any has arisen of which I am aware—I say that in case Margaret Jamieson thinks that I am trying to make a point other than the one that I am making.

Not everything that one might have to declare will be in the register of interests, because in debate, something might arise to which one wishes to refer, although one has had no notice of it. We must therefore remember that individual members' judgment remains at the core. It is important not to forget that.

Margaret Jamieson: I may be missing something, but I understand that a verbal declaration is made only to draw attention to what is written in the register. Members cannot make a verbal declaration without having lodged an interest in writing. That is my understanding, but I stand to be corrected.

Mike Rumbles: What Jamie McGrigor said is inaccurate, because he has misunderstood the terms of the bill. We are talking about not a code of conduct, but the law. It is already a criminal offence not to register a financial interest and, under the bill, it will be an offence in law not to register non-financial interests. If someone simply mentions in a debate that they are a member of whatever organisation is relevant to that debate,

that will be insufficient if that membership is not on their entry in the register. That is the problem with the bill. As I said, the bill is a recipe for disaster, because we will have 129 interpretations of what needs to be declared. We will be heading for trouble.

Mr McGrigor: In that case, I have been under a misapprehension. I thought that the point of declaring an interest in a debate was to do so when membership of something might be prejudicial. If doing that is illegal, that is nonsense.

Mike Rumbles: That is what I am saying.

Margaret Jamieson: That is the point.

Mr McGrigor: If a member wants to take part in a debate but has not registered a relevant interest, does that mean that they cannot take part in the debate?

The Deputy Convener: No doubt we will come back to some of those points. Alasdair Morgan wants to come in, although I do not know whether he wants to comment on the same points.

Alasdair Morgan (South of Scotland) (SNP): Having listened to the discussion, I think that we are getting into murky waters. Jamie McGrigor talked about membership of an organisation, but the definition of non-financial interests is far wider than that and, frankly, could encompass almost anything. The more we leave matters open to interpretation, which is what the bill currently does, the more we make rods for our own backs. We will open up the potential for endless wrangling over whether a member should have declared a particular non-financial interest if malignly disposed individuals want to get into that. One just needs to consider the current case of Tessa Jowell: a financial interest is clearly involved, but there is still a great deal of wrangling over whether something should or should not have been declared.

Frankly, if we go down this road, we are in danger of creating a system that will give the public less, rather than more, confidence in what we do. Surely the point of being an MSP is that we have interests in the matters that are debated in front of us. Nearly every debate in which we participate—unless I whip myself severely—is about something in which we have an interest. We are in danger of putting ourselves in the ridiculous position of having to declare on the register everything about which we are liable to speak because we are interested in it in some way. I wonder where we are going with this. For example, it occurred to me that if a friendship must be declared on the register, do we remove that entry from the register if we cease to be someone's friend? I would like answers to such questions.

The Deputy Convener: It may be appropriate if I now bring in Brian Adam, who is the member in charge of the bill, to address the points that members have raised.

Brian Adam (Aberdeen North) (SNP): Thank you for the opportunity. As you rightly pointed out, it has been a long journey to get to this point. It was interesting that both committees arrived at bills that are not only similar but, as I understand it, identical in respect of the matter that we are debating. I am delighted that Mike Rumbles lodged these amendments to stimulate debate. We have seen such a debate this morning. On behalf of the Standards and Public Appointments Committee, I welcome the opportunity for today's debate. It is healthy for us to test the bill's provisions and consider alternative approaches. That is precisely what the Standards and Public Appointments Committee did in deciding to include the registration of non-financial interests. That committee arrived at the same conclusion as its predecessor committee did. However, I am happy to accept that members can have a change of viewpoint.

The members' interests order has no requirement for registration of non-financial interests, although some members voluntarily register a variety of such interests. In 2000, Scottish ministers imposed such a requirement on councillors when they issued a code of conduct under the Ethical Standards in Public Life etc (Scotland) Act 2000. That act specifically required that the code of conduct for councillors should include pecuniary and non-pecuniary interests. The consultative steering group also recommended that such interests be registered. I am not aware that that requirement on councillors has caused a particular problem, nor has it led to the disaster that Mike Rumbles suggests might happen if we accept the bill as it stands.

There are a number of reasons why the previous Standards Committee determined that non-financial interests should be registered. The tenor of today's debate is that we could all be in trouble, but interests are not always negative. The declaration of interests will provide information about a member's experience and expertise, setting the member's contribution to political debate in context.

10:30

In addition, non-financial interests can wield as much influence as financial interests. Registration of non-financial interests is consistent with the consultative steering group's recommendations. Of the limited number of responses to the committee's consultation, by far the largest number were provoked by this issue. More than half highlighted the need to disclose non-financial interests.

It is worth taking a few moments to read what will be required under the bill. For good reasons—some of which we have heard today—the bill does not list specific matters that must be registered but concentrates on interests that may influence a member. The underpinning ethos of the bill emanates from paragraph 4.1.1 of the "Code of Conduct for Members of the Scottish Parliament", which states:

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

Surely, if a financial interest could influence a member's actions, a non-financial interest could, as successive standards committees have agreed, have a similar effect. It did not take my committee long—I have no idea how long it took the previous Standards Committee—to reach that conclusion. I suspect that Mike Rumbles does not disagree with our conclusion.

A far harder issue to grapple with was how to make registration relevant in a way that avoided long lists of interests requiring registration. Mike Rumbles has offered us the option of just dropping the requirement altogether or of producing such lists. Subjective judgment would be involved in compiling a list of interests, which would require constant review and updating. Although such provision is superficially attractive on the basis that it purports to create certainty—I note that Mike Rumbles felt rather strongly about the need for certainty in such matters—it is practically impossible to capture all the possible types of non-financial interest that should be covered.

Accepting that the purpose of the register is, according to the code of conduct, to address influence, we set out to devise a requirement that is consistent with that approach. That led us to the objective prejudice test. As with many an awkward issue, the solution was extremely neat in legislative terms.

Under the bill, any and all non-financial interests that meet the prejudice test will need to be registered. Rather than a list that would require updating, the bill provides just a test that members already utilise and are used to. The very same test applies at present when we decide whether we need to make a declaration of interest prior to participating in proceedings.

It might be convenient at this point to clarify which interests are declarable, given that a number of members debated that issue. Members must declare a relevant registrable interest, but they may also declare non-registrable interests if they wish to do so—the fact that such an interest has not been registered does not put members in any particular difficulty. What must be declared is covered in section 12(3). The bill makes a major distinction between financial and non-financial interests in that the consequences of failing to register or declare a non-financial matter do not involve the criminal sanctions that apply to failure to register or declare a non-financial interest. Members generally take a cautious approach to declarations. If they have any doubts about the matter, they declare an interest. I see nothing wrong with that.

I understand that Mike Rumbles's preferred approach is encapsulated in amendments 28, 34 and 36, which specify when a non-financial interest has to be registered, but do they do that in a way that is consistent with the objectives of having a register of members' interests? Are the requirements consistent and relevant to parliamentary duties? I think that there are problems on both counts.

Rather than being consistent, the amendments are extremely selective. As Stewart Stevenson pointed out, they are based on the concept of

"control, in whole or in part",

but I am not sure how far the idea of control extends. Would it be necessary for a member to register the fact that they hold a position in connection with their child's school or the fact that they assist at its annual bring-and-buy sale? It seems to me that paragraph 3(1) of the schedule that amendment 34 proposes would require me to register every donation that I make to an organisation unless it is a charity. What if I give a donation to a beggar in the street or a tip to a *Big Issue* seller? Does that allow me in part to control what those individuals do? I do not know, but I suspect not.

Given the purpose of the register, what is the rationale behind the exemption of registered charities? Influence is influence and I do not think that an MSP's opportunity to influence an organisation is limited just because it is regulated. The converse also applies. The fact that I hold a position in an organisation does not mean that that will affect my work as an MSP. The organisation might operate entirely in areas that are unconnected to my work in the Parliament. It might work on reserved matters, which I could not influence even if I wanted to. Do we really want to set up a requirement to register actions that do not and could not have any bearing on our lives as MSPs? That is exactly what we are seeking to avoid. The registration requirements must be relevant and they must not intrude unduly into areas of MSPs' lives that have no bearing on their work.

As I said, there was much consideration of non-financial interests. The Standards Committee wanted to address the issue of influence; to seek

openness and transparency within reason; and to reflect the responses to the consultation. We saw merit in having a system that is consistent with the system that applies to councillors. We considered a list-based approach, but we decided against it because a list would be prescriptive and there would be potential for organisations—or, under the approach proposed by Mike Rumbles, a position in an organisation—to be omitted. Also, the list would need to be reviewed continually.

That brings me neatly on to amendment 28, which seeks to insert:

"The Parliament may, by a determination, make any modifications of schedule 2 which the Parliament considers necessary or expedient."

If the amendment is agreed to, I envisage that valuable parliamentary time will be used to deal with the situations that will inevitably arise in relation to modifications of schedule 2. The Standards Committee decided that such an approach is not required and produced a scheme that avoids the need for it. In the stage 1 debate, I gave notice of my intention to bring forward guidance on the registration and declaration of non-financial interests. That guidance will contain an indicative list—rather than a prescriptive list—that will help members to decide whether they should register a particular interest. The guidance will be incorporated into the code of conduct. I hope that that is sufficient to reassure the ad hoc committee and I encourage its members to play an active part in helping to draw up the indicative list.

I contend that amendments 28, 34 and 36 are unnecessary and that they have the potential to undermine the principles of the bill. I therefore call on members to reject those amendments.

Amendments 26, 27, 35, 37, 38 and 39, also in the name of Mike Rumbles, seek to remove the requirement to register non-financial interests under schedule 2. I have already explained the reasons why we decided that registration of such interests is essential, the purpose and benefits of their registration, and the safeguards that will be in place to ensure that only relevant interests need to be registered.

Amendments 26, 27, 35, 37, 38 and 39 clearly undermine the principles of the bill and would establish double standards for those in public life in Scotland. I implore members to think seriously about the effect that the amendments would have on the public's perception of MSPs. I ask members to reject the amendments in favour of the status quo. They can do so in the full knowledge that what the amendments propose would cut deeply into the founding principles of the Parliament.

The Deputy Convener: Thank you. I look to the clerks to tell me whether I am veering from set procedure, but it is important to stress, particularly with a committee bill of this nature, that we are all striving to get the most effective legislation that we can. I sense that there is a general recognition that non-financial interests can have influence and the question is how we deal with that in the bill and in other guidance and codes that might affect us.

It is important that we continue to explore the matter, so I think that it is acceptable if members want to clarify points further with Brian Adam, given the work that the Standards and Public Appointments Committee has done, before I allow Mike Rumbles to respond.

Margaret Jamieson: Brian Adam spoke about the code of conduct by which councillors must abide. It was created by an act of the Parliament rather than an instruction by Executive ministers. My understanding is that councillors are required to give consideration to declaring financial and non-financial interests, which is somewhat different from what Brian Adam said. Will he clarify that for me?

Brian Adam: Although I said that the code was given to the councillors by ministers, I immediately recognised that it was provided for in a bill passed by Parliament—it was a combination of both.

Margaret Jamieson: Set the record straight.

Brian Adam: I am more than happy to be corrected for my sin of omission. What I said was absolutely accurate, but it did not recognise that Parliament passed a bill. I was not attempting to blame ministers; I was attempting to explain how they arrived at that point.

There is no evidence that councillors are being tripped up by their code. I know that some members are concerned that we are sometimes tripped up by the detail in our code of conduct and rules on interests. That point was made by my colleague Mr Morgan. That is not the intention and it does not appear to have happened in practice with regard to councillors.

As far as I am aware, councillors are required to register non-financial interests, but the circumstances in which they must do so are the same as those in which MSPs would find themselves, in that they are subject to the prejudice test. People are sometimes concerned about the serious consequences of the failure to register interests. I emphasise that there is a big distinction between the provisions on the registration of non-financial interests and those on the registration of financial interests, in that there is no criminal sanction at the back of the provisions on non-financial interests.

Paragraph 4.21 of the code of conduct for councillors says:

"relevant interests such as membership or holding office in public bodies, companies, clubs, societies and

organisations such as trades unions and voluntary organisations, are registered and described."

The Deputy Convener: I note that Mike Rumbles wants to speak, but other members have indicated that they want to raise points of clarification. I am sorry—has Brian Adam finished addressing those points?

Brian Adam: I think that I have dealt with them, although I do not know whether I dealt with that last point to Margaret Jamieson's satisfaction.

The Deputy Convener: Two members want to raise points of clarification, but does Mike Rumbles want to clarify something specifically?

Mike Rumbles: Yes, on the very point that Brian Adam just raised. He will confirm that the Scottish Executive's code of conduct goes down the precise route that he did not want and has not gone down. Is the Scottish Executive's code not a list of individual organisations?

10:45

Brian Adam: It does not give individual organisations. I am quite happy to repeat what it says, but I do not think that that code of conduct can be interpreted as anything other than indicative, rather than prescriptive. If it were prescriptive, it would name individual trade unions.

Mike Rumbles: The point that I am making is that it is a list. That is the route that Brian Adam decided that he did not want MSPs to go down.

Brian Adam: The Standards and Public Appointments Committee has decided that it does not want a prescriptive list. We have offered to give an indicative list. The code says:

"relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described."

The word "relevant" is important. The phrase "such as" means that the list is not prescriptive.

Mike Rumbles: It is a list.

Brian Adam: It is an indicative list.

Margaret Jamieson: It is still a list.

The Deputy Convener: I think that Brian Adam has addressed that point.

Brian Adam: This is a difficulty that anyone who has been a minister and who has sat at this side of the committee table will have encountered. There is always a great desire to have everything spelled out in the bill. At this stage, we do not have the code. The code will not be in the legislation; it will be the equivalent of guidance.

I undertook to the Parliament to produce an indicative list. I reiterate today my offer to take the committee's views into account in drawing up such an indicative list—rather than the prescriptive one that Mike Rumbles is proposing. Amendment 34 would bring us a prescriptive list, not an indicative one. The indicative one would be part and parcel of the code of conduct that is currently under revision. That revision is being carried out partly as a consequence of the production of the bill, but also because it is time that the code was reviewed, in light of our experience over the past seven years.

The Deputy Convener: Are there any other points of clarification—I stress clarification—on that specific point about the list?

Mr McGrigor: I hope that this is on the same point. I am confused about this. Mike Rumbles has told me that if the subject of a declaration that I make is not included in my register of interests, I would be breaking the law, should the bill as introduced be passed. Brian Adam has told me that I would not be breaking the law as long as I made that declaration. For cases of a declaration concerning something that has not been registered, surely Mike Rumbles has a point and he is quite correct.

Brian Adam: Mike Rumbles would be correct only if the interest declared was something that was due to be registered.

Mr McGrigor: Yes, but how would I know—

Brian Adam: The circumstances—

Mr McGrigor: With the greatest respect, this is a serious point.

Brian Adam: The point that Alasdair Morgan made is that many things can and do influence the actions of members. Not all of them are registrable. If a member fails to register something and declares it late, there are consequences to that, as at least one member has discovered to their cost. If a member declares something that they have not registered but which is registrable, they are admitting that they have failed to comply with the law.

I suggest that what we are debating now is whether we should register non-financial interests and, if we are to do so, whether that should be in the terms of the bill or in the terms of a prescriptive list, which Mike Rumbles has tried to offer us. In the instance that Jamie McGrigor cited, the consequences of failing to register would be different. No criminal offence is involved. If a member does something inadvertently, they may be interviewed by the standards commissioner as a result. However, the prejudice test should cover the member's actions in such instances.

The standards commissioner does not make decisions in isolation. Certainly, he will not issue a report without discussing the matter with the

member against whom an accusation has been made. He will only then decide whether there is substance in the accusation. Although there is no defence in the bill against such an accusation, the prejudice test should give members some protection. The Standards and Public Appointments Committee thought that the sanction for a breach relating to non-financial interests should not be of a similar order to one relating to financial interests.

We cannot get away from the point that Stewart Stevenson raised, which is that members have to accept their responsibility in this regard. Things have been uncomfortable for members in recent times—and for some more than for others—but we should not look at these things only in the light of that experience. We must not shy away from the fact that non-financial interests can be just as influential as financial ones are.

The roof has not fallen in as yet on local government as a consequence of councillors having to declare non-pecuniary interests—I do not believe that it will fall in on MSPs either. There are positive as well as negative reasons for registering those interests. At the very least, it offers the prospect that our reputations will be enhanced. In making these declarations, we will be telling the world where our experience and expertise lie.

I understand members' concerns. In the first instance, I am happy to leave the decision to the ad hoc committee, but my preference is for it to be taken by the whole Parliament. A decision that is taken by seven members of the Standards and Public Appointments Committee or by five members of an ad hoc committee is one thing, but a decision that is taken by the whole Parliament is another. All members of the Parliament should get to address the issue.

Members should not be afraid of what may happen as a consequence of the provision. I do not agree with Mike Rumbles that this is a disaster waiting to happen—I think that that is how he put it. I do not believe that that is the case. My evidence for saying so is that such a disaster has not happened in local government. As part and parcel of a review of the code of conduct, I will be happy to work with members of the ad hoc committee, and all MSPs, to produce the appropriate indicative list.

The Deputy Convener: Thank you. Alasdair Morgan has waited very patiently to put a further question to you.

Alasdair Morgan: I return to what was, I think, the penultimate point that Brian Adam raised. He also raised it in his substantive speech on the amendments in the group. He said that it would be useful for the public to have a list of our interests, but that is not the point. The point is that the register of interests will be used for a purpose; it is not a curriculum vitae or an election manifesto. The Parliament website already has a section in which Alasdair Morgan or Brian Adam can say that they are good chaps who are interested in X, Y and Z issues. My view of the purpose of the provision is that it is all about the way in which a non-financial interest could influence—in a way that it should not—our conduct in the Parliament.

Brian Adam said that we are all agreed that non-financial interests influence members—that is absolutely the case. However, let us take my interest in renewable energy. Is it reasonable to say that that interest will prejudice my ability to participate in a disinterested manner in the proceedings of the Parliament? Clearly, I do not suspend my critical faculties in a debate just because I am interested in renewable energy. However, I would be hard pushed to say that, in a debate on energy—for example, the debate that we will have tomorrow morning—I would be disinterested in that aspect of the debate. I have a bias in favour of renewable energy. If I have to register that sort of thing in the register of interests, my list will indeed be a long one but, whatever its length, I will always have forgotten something. Although it will not be a criminal offence for me not to have declared it, it may suit somebody to make a claim against me, which would open me up to all sorts of opprobrium. The registering of non-financial interests is a problem.

Brian Adam: My response would be that the intention is that membership of organisations rather than general interests should be registered. The issue is whether such membership ought to be in the public domain. Given that we felt in 2000 that it was appropriate for local government representatives to have such a duty placed on them, we will be engaging in double standards if we suggest in 2006 that it is not appropriate for such a duty to be placed on us. If it is recognised that non-financial interests such as membership of organisations have the potential to influence us as much as financial interests do, how do members suggest that we can address that, other than through the prescriptive list that Mike Rumbles has proposed or the indicative list that I have proposed?

We have three choices. If we choose the option that Mike Rumbles is offering—although I am not aware that he is recommending it—of deleting from the bill references to non-financial interests, we will be accused of practising double standards; indeed, I think that we will be guilty of that. That was the main area of interest of the folk who took the trouble to participate in the consultation. If we want such exercises to be given credence, we should not reject a consultation on the basis that its recommendations might make us

uncomfortable. There is a worry that if we have to declare non-financial interests, there might be a certain lack of clarity and we might be putting our futures in the hands of some malevolent or malicious people who are out to get us because of a code. Indeed, we might be putting ourselves in the hands of the standards commissioner, who may choose to interpret the proposed provisions and any subsequent changes to the code of conduct in a way that we are not happy with.

However, I think that we should have a little more confidence in ourselves and the system that we are setting up than the members at the table appear to have. If we have an indicative list—I am more than happy to work with others on producing such a list, to provide as much clarity as possible—I think that we will be able to satisfy the needs of openness, which is a founding principle of the Parliament. We should not run away, hide in a corner and turn our backs on openness. I have not heard anyone say that non-financial interests do not influence us. How do members suggest that we address the issue other than by deleting all reference to such interests or by including in the bill a prescriptive list? There are a number of technical flaws associated with a prescriptive list, which Mr Stevenson and I have pointed out.

The Deputy Convener: We have had a reasonable airing of views, so I invite Mike Rumbles to wind up. I think that it is appropriate to allow him some leeway if he wishes to take further soundings from members of the committee.

11:00

Mike Rumbles: My first reaction is that we have had an excellent debate on the amendments, which we needed to have. Brian Adam has given a valiant defence of the Standards and Public Appointments Committee's position. He is right to point out that I was in his position three years ago, when I produced the draft bill that contained the same words that are in the bill that Brian Adam has introduced. The wording is identical; the present committee has not changed the wording that I adopted when I was convener of the Standards Committee. However, there is more joy in heaven over a sinner that repenteth— [*Laughter.*]

The theory is good. I do not disagree with Brian Adam's position in theory—it is the same position that I took. However, I have spent some time considering the practical implications of the theory. Above all else, we need clarity not confusion, which is why I said that the terms that I recommended in the previous session of Parliament and which Brian Adam is recommending in this session will result in 129 different interpretations of what needs to be registered and what needs to be declared.

To deal with Stewart Stevenson's points, which were reinforced by Brian Adam's, I say that there are no technical flaws in amendment 56. I have the utmost confidence in the officials who have produced the amendments and who are sitting beside Brian Adam. The issue is one of scale. The argument was that the amendment that proposed a prescriptive list is flawed because that approach could leave something out. However, it is better than the approach that is suggested by the Standards and Public Appointments Committee because it is narrower, so the logic of that argument does not stand.

Jamie McGrigor raised a valid point—if someone gets something wrong with regard to non-financial interests, it will not be a criminal offence but an offence against the eventual legislation, for which they can be suspended and, I think, fined, although I am not sure about that.

Brian Adam: Can I help you with that?

The Deputy Convener: Do you want to accept a point of clarification, Mr Rumbles?

Mike Rumbles: No, I think that Mr Adam has had his say and I want to finish this point.

The bill says that if a member thinks that something could influence his or her behaviour in Parliament, it must be registered and declared. If Jamie McGrigor stands up in a debate in Parliament and declares an interest that is influencing his position but he has not registered it beforehand, he will be committing an offence.

On local government, Brian Adam said that the Scottish Parliament and the Scottish Executive set standards for councillors. I say to Brian Adam that he cannot have it both ways. The list is a list that Brian Adam brought forward; it is not what he is asking MSPs to operate under.

Brian Adam: It is in the code—

Mike Rumbles: You had your chance, Brian.

My point is that schedule 1 to the bill, which deals with financial interests, has four full pages of instructions to MSPs about their financial interests. Schedule 2, which deals with non-financial interests, contains two lines of instructions.

The theory is good and there is no dispute about that. Non-financial interests affect how members behave and vote, so we should be as open as possible about them. The question is, however, whether we should make it an offence for MSPs not to declare and register any possible non-financial interest that might bear on them.

In retrospect—having had three years to consider the matter—I think that the bill goes too far, which is why I have said that there are two alternatives to what we have in the bill. One is to amend the bill and tighten what is required to be

declared in relation to non-financial interests, in which case members should support amendment 34. If members want to delete schedule 2, because they think that it goes too far and that we should not go down that route, they should consider amendment 35. I am not recommending one or the other; I am giving members the alternative.

Before we vote, I would like to know what the other four members of the committee think. Should we stick with what is in the bill, amend the provision on registrable non-financial interests, or delete that provision?

The Deputy Convener: I think that that would be appropriate.

Stewart Stevenson: There is a place for registering non-financial interests. I am clear about that.

The Deputy Convener: Do you wish to clarify what that place might be?

Stewart Stevenson: I was not being asked for that kind of detail.

The Deputy Convener: I was not pressing you.

Stewart Stevenson: We should not imagine that members are influenced only by financial interests. There is a wide variety of non-financial interests that will from time to time bear on subjects that members are debating or voting on. There is a place for requiring such interests to be registered when the prejudice test is met. You can work out where I am coming from.

Mike Rumbles: You want the status quo.

Stewart Stevenson: I was just going to make the point that although my first preference is for the status quo, my second preference is for the list that Mike Rumbles prescribes, although I continue to have issues with the drafting; however I can deal with those at stage 3. I would certainly not be comfortable with the deletion of schedule 2. I hope that that helps.

Margaret Jamieson: I think—having listened to members—that the question is extremely difficult. I wonder whether we have been painted into a corner and whether the issue is for the whole Parliament to discuss. I would favour the deletion of schedule 2, but I have not discussed that with colleagues in my party. If we have to vote, I will go for removal of schedule 2. Will there be an opportunity for us to test that and bring it back at stage 3 for a wider discussion in Parliament? What leeway will the Presiding Officer give the committee at that stage? We have never discussed the matter before, so it would be remiss of us not to take the opportunity to have a wider discussion. As Brian Adam said, we should hear views beyond those that have been expressed by members of the former Standards Committee and this ad hoc committee.

Stewart Stevenson: I want to clarify something important: my party group has no position on the question but considers it to be a matter for individual members. Therefore, when I speak at this committee, I speak as an individual; no one is telling me what to say. I suspect that that position is shared by others. At stage 3, the whole Parliament will have to express its view. The public expect us to speak at this committee as individual members and it is important that we all sign up to that.

Mr McGrigor: I am certainly all for transparency and I do not believe in double standards, but our having made one law for councillors does not necessarily mean that it is a good law. We have heard Mike Rumbles say that he was involved in making that law and that he does not think, in retrospect, that it is good law, although perhaps I misapprehended what he said.

I return to the point that I made earlier about declarations. I understand and agree that non-financial interests can be just as prejudicial as financial ones—I do not think that there is any dispute over that. However, I fail to understand why there cannot be flexibility that would enable members to make declarations that would cover such interests so that they do not commit an offence. It is all very well to say that members will not be sent to prison, but they will be suspended because of something that just happens not to be on the list that they registered before they knew that there would be a debate about a subject. How on earth can that be sensible? It does not seem sensible; it would prohibit some members from taking part in debates. I would prefer to see the whole of schedule 2 go rather than have it in its present state, unless Brian Adam can assure me that the point that I am making is not valid.

The Deputy Convener: Thanks, Jamie. I offer my thoughts on the matter to Mike Rumbles. I feel that there is a shared objective across the different committees and the wider Parliament to have a good and robust system—I mean not just the bill, but the system in its widest sense—that genuinely ensures the highest possible standards of openness and transparency. It is important that any disagreements around how that is achieved do not mask that shared objective.

I have not moved from the view that I expressed earlier, although I have found the discussion to be informative. If pressed to jump one way or another, I would rather leave the provision for non-financial interests out of the bill because of the difficulties of making it workable. It is important that we live and learn. I sat on the former Standards Committee for two years; I signed up to and contributed to much of the direction of travel

at an early stage. I genuinely believed then that that direction was what would work and that it was the right way to go. However, I have thought long and hard about it over recent months, not least since I was appointed to this committee, and I think that there are other better ways to achieve our ends. We must be willing to acknowledge that.

I have a great deal of sympathy with something that Margaret Jamieson and Brian Adam said earlier, around which I am finding grounds for consensus. I wonder about the extent to which the committee should—we can, technically—reach a view on the matter, whichever way we go on the issue today. That is important. There will be an opportunity for members to be more widely involved at stage 3, so it is important that we try to facilitate that opportunity as effectively as we can. That is one of the aims of the committee. I hope that is helpful.

Mike Rumbles: Thank you very much, convener. I have found members' views to be very helpful. We have a duty to amend the bill if we think that it needs amendment—that is what the committee was set up to do. It will go to stage 3, which is when Parliament will debate it, but that debate needs a starting point.

I was not recommending either of the two options at the beginning of the discussion but, following that discussion, I think that we need, above all, clarity and not confusion. Members need to know exactly what they need to declare and what they do not need to declare. I do not think that it is right for us to proceed, at this stage, with non-financial interests. I therefore recommend that members support the removal of references to such interests, as per amendments 26, 27, 35, 36, 37, 38 and 39.

The Deputy Convener: So, you are pressing amendment 26.

Mike Rumbles: Yes.

11:15

The Deputy Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

The Deputy Convener: The result of the division is: For 3, Against 1, Abstentions 1.

Amendment 26 agreed to.

The Deputy Convener: Amendment 27, in the name of Mike Rumbles, has already been debated with amendment 26. Does Mike Rumbles wish to move amendment 27?

Mike Rumbles: I will move it, because it fits in with amendment 26. I think that we need to support the changes that have been made by amendment 26 with the provisions in amendment 27.

Amendment 27 moved—[Mike Rumbles]—and agreed to.

Amendment 28 not moved.

Section 2, as amended, agreed to.

The Deputy Convener: I thank members for their co-operation in that discussion. Before we move on to the next group of amendments, it is important to reinforce the point that there will be an opportunity for all members of Parliament to engage in the debate at stage 3; any member can lodge an amendment.

Schedule 1

REGISTRABLE FINANCIAL INTERESTS

The Deputy Convener: Amendment 22, in the name of Margaret Jamieson, is in a group of its own.

Margaret Jamieson: Amendment 22 aims to widen the registration requirements to cover, in addition to interests from which he or she receives remuneration, activities in which the member has a financial interest. It provides for registration of an interest when the member is said to have a financial interest, but for which he or she does not receive monetary remuneration or any tangible benefit in kind. For example, a member could be a sleeping partner in a private business or a trustee in an offshore family trust. In such circumstances the member could have a large asset that is accumulating in value, but they may receive a payment only when the business or trust is wound up or when they leave Parliament. I believe that the bill as it stands does not require a member to register such an interest, so I have lodged the amendment.

I move amendment 22.

Stewart Stevenson: I see where Margaret Jamieson is coming from and I support what she is trying to achieve. However, the wording of amendment 22 presents a substantial difficulty. In proposed new paragraph 3(1)(d) of schedule 1, she seeks to include circumstances in which a member is a

"creditor or debtor of an undertaking or a firm."

The way in which the amendment is drafted means that it would catch my indebtedness to

Scottish Power for my use of gas and electricity, and it would catch my mortgage provider and so on.

When Margaret Jamieson sums up on amendment 22, it would be useful if she could explain further what she is trying to cover in the proposed new paragraph 3(1)(d) because I think that what it would likely catch is different from what the member intends. I have come up with a list of at least a dozen interests that I would have to declare under the amendment. I would therefore have difficulty in voting for it, although if it goes to a vote, I might abstain because I do not wish to vote against the principle that Margaret Jamieson is trying to espouse.

Alasdair Morgan: I, too, seek clarification. I am puzzled about what the phrase "the creditor or debtor" means, and whether electricity bills, water bills and so on would be caught by the amendment. Stewart Stevenson mentioned mortgages, which was interesting. Registration of mortgages, which can be substantial, could well be suitable for inclusion because they might substantially influence members' deliberations. Perhaps the solution lies in amendments that I will move later, because most people's electricity or power bills would not fall foul of the higher limit on financial interests that I will propose.

Mike Rumbles: I thought that amendment 22 was a good amendment until Stewart Stevenson spoke. I wonder whether Margaret Jamieson would consider lodging a suitably altered amendment at stage 3.

Margaret Jamieson: I would like to hear the views of the convener of the Standards and Public Appointments Committee because I am at a loss.

Brian Adam: I will give my views on the particular technical point if the member has a little forbearance. Convener, do you want me to give a general response to what has been said now?

The Deputy Convener: That would be helpful while the technicalities are being checked.

Brian Adam: Amendment 22 is linked in some ways to Margaret Jamieson's other amendments that seek to clarify registration requirements for members and to explore how the bill deals with interests that are held in partnership.

The new paragraph would replace existing paragraph 3 of schedule 1. In doing so, it would widen the scope of the bill beyond people who are directors in a related undertaking. Amendment 22 includes the requirement to register interests in which a member can be said to have a financial interest other than remuneration. The new paragraph seeks to include interests that are held by a member

"by virtue of being … the holder of an office (including the office of trustee) … a director in a related undertaking … a partner in a firm; or … the creditor or debtor of an undertaking or a firm."

I hope that we will have clarification of the implications of that paragraph by the time I reach the end of what I want to say.

The former Standards Committee considered the matter of related undertakings and recommended the extension of the provision to allow for the prejudice test to be applied where a member had held a directorship but had disposed of it prior to an election. Obviously, the prejudice test is important with respect to the points that Mr Stevenson and Mr Morgan have made. Under the current arrangements, other unremunerated directorships that do not require to be registered may be registered voluntarily under section 7 of the bill.

I can envisage situations in which the additional provision would apply; an example would perhaps assist the committee. A member may have an unremunerated financial interest in a family business. As a result, they could have a large asset that could result in a payment to them if the business were wound up—I think Margaret Jamieson alluded to that earlier. There would be no requirement on the member to register the interest because they would not be receiving any remuneration from it. The committee did not consider that matter, but I recognise amendment 22's aim. It could be argued that amendment 22 would assist the bill's transparency and sit comfortably with the policy on registration of members' interests. It would be best to leave it to the Interests of Members of the Scottish Parliament Bill Committee to make up its own mind about the amendment's acceptability.

The main decision for the committee relates to whether the right balance has been struck between the increased clarity that would be brought about by extending the provision, and the additional intrusion that amendment 22 would inevitably bring into members' personal affairs. If members accept the principle behind the amendment, I will undertake to bring it back at stage 3, having taken into account the points that Stewart Stevenson has made, with which I sympathise. We need clarification, so perhaps we could leave the matter today. I will come back with a stage 3 amendment that will address whether it is appropriate for a member to register their phone bill, electricity bill or sundry other bills.

The Deputy Convener: Does Margaret Jamieson wish to press amendment 22?

Margaret Jamieson: Can I just make a comment? There is no way I wanted amendment 22 to have the effect of finding out how much someone's leccy bill was or whether they were still with Scottish Gas, Scottish Power or somebody

else. Amendment 22 was an attempt to make much clearer the position about directorships, partnerships and so on. I am concerned about the ambiguity that has been brought in around the points in proposed paragraph 3(1)(d) of amendment 22. I want to reserve the right to come back with another amendment at stage 3, rather than press amendment 22 at this stage, in respect of which there is a fundamental issue still outstanding.

I will not press amendment 22. I will discuss matters with Brian Adam and people who have legal brains to ensure that we lodge an appropriate amendment at stage 3. I hope that that is acceptable to the committee. I apologise for any inconvenience.

The Deputy Convener: On that basis, I take it that the committee is content for amendment 22 to be withdrawn.

Amendment 22, by agreement, withdrawn.

The Deputy Convener: Amendment 29, in the name of Margaret Jamieson, is the only amendment in the group.

Margaret Jamieson: Amendment 29 has come about because of the requirement of members to declare election expenses elsewhere under legislation that is applicable throughout the United Kingdom. I believe that it is inappropriate for a further and different declaration to be made by members of the Scottish Parliament. I have lodged amendment 29 because I believe that it is the right and honest way in which to proceed.

I move amendment 29.

The Deputy Convener: Do other members wish to come in on this issue?

Stewart Stevenson: I am not at all comfortable about removing paragraph 4 of schedule 1, partly because it would perhaps leave independent members adrift and free from the kind of scrutiny that members of political parties might be under. Unless and until we can resolve that issue, I would not be comfortable with what amendment 29 proposes.

The information that we are talking about being shown in the register is, of course, available to people in other ways, in that for six months after an election someone can ask to see election expenses.

Margaret Jamieson: It is two years.

Stewart Stevenson: Is it two years? I stand corrected. I have been at this for 41 years and it was certainly six months when I first got involved. However long the period is, it is limited.

In addition, the expenses information is not readily accessible; one must go away and work out for whom to ask and for what period. However, I simply think that that is a more open and accountable way to lay the information before the public. It also takes account of the position of members of Parliament who stood and were elected as independents.

11:30

Brian Adam: I am grateful to Margaret Jamieson for bringing this issue forward for debate. It might surprise the committee to learn that the Standards Committee discussed it and that, as a result, we decided to provide a direct continuation of the existing requirement in the members' interests order.

I appreciate that—as I think Margaret Jamieson is pointing out—the provision is pure duplication. After all, under the Political Parties, Elections and Referendums Act 2000, members are already required, on a United Kingdom basis, to register donations to political parties and individuals; to report donations over certain values to the Electoral Commission; and to record any donation to a political party that in aggregate exceeds £5,000. Donations that are made to individual party members for the party's benefit are regarded as donations to the party, but specific requirements apply to donations that are made to individual members in connection with their own political activities: any donation to an individual member from one individual that amounts to more that £1,000 requires to be reported within 30 days.

The requirements in paragraph 4 of schedule 1 are additional to requirements under the 2000 act. Where donations from one source exceed 25 per cent of a member's election expenses, they require to be registered as a separate registrable financial interest. Amendment 29 would remove the necessity to consider any donation for election purposes as a separate registrable interest. However, Alex Neil reminded the Standards Committee about a certain exception: persons who stand as independent candidates are not registered in advance with the Electoral Commission, unless they are currently MSPs, so any donations that they receive before declaring their candidacy need not be reported. The receipt of expenses becomes registrable only after they declare their candidacy, and there are no retrospective reporting requirements. However, under the bill, earlier donations would require to be registered in our register of members' interests if they exceed the 25 per cent limit.

I accept that, as a result of the 2000 act, that information is publicly available—at least to those who know where to look. That is one of the key issues here. Registration is partly about making political influences transparent, or at least about making transparent something that might give the appearance of influence. If the committee accepts

that purpose, such information should be available in one place.

Under the bill, registration requirements are very restricted. Donations from registered political parties are excluded and do not need to be registered and small donations do not need to be registered. Registration is required only when a donation provides a member with 25 per cent or more of their election expenses. Not many members are required to register anything. Indeed, only a handful of members—or fewer than that—have registered under that category, so the task is not widespread. Moreover, it is not onerous for those who must register, as they still need to register the information elsewhere.

However, we must be careful about people or companies that seek to obtain influence—or at least give the perception of seeking to obtain influence—by making a number of donations across a range of headings. That is at the heart of my opposition to amendment 29. We need to avoid situations in which such adverse inferences might be drawn, and the easiest way to do that is to be open and transparent in our dealings. By stipulating that contributions towards election expenses should be registered, we are doing exactly that. That should cause little difficulty, as the information must be reported anyway.

I urge the committee to exercise caution here. The provision need not be onerous and, in fact, it would affect very few of us. However, the perception might be different. The provision, which has been in place for almost seven years, has caused no difficulties and it serves an essential purpose with regard to independent candidates. By retaining it, we will demonstrate our openness, highlight how very few members receive large donations, demonstrably assist those who seek such information and show that we have nothing to hide.

On this occasion, I ask members to reject amendment 29.

Margaret Jamieson: Amendment 29 will not remove anything or allow us to hide any information that is already in the public domain. In fact, it will provide more access to information, as people will be able simply to click on an electronic link. That addresses Brian Adam's point that unless someone knows how to go about obtaining an individual's election expenses they will not find that information.

Amendment 29 is primarily a means of providing further information and reducing duplication. However, I am concerned about independent members and members who become independent during their period of office. I had not thought about that, and I am grateful to Brian Adam for bringing it to my attention. Some of my points about accessibility still stand, but Brian Adam might well be right about independent members so, on balance, I will withdraw amendment 29. However, I reserve the right to reconsider the matter, to ensure that the rules apply to everyone who stands for the Parliament.

Amendment 29, by agreement, withdrawn.

The Deputy Convener: Amendment 1, in the name of Alasdair Morgan, is grouped with amendment 3.

Alasdair Morgan: Amendments 1 and 3 deal with the financial limit below which sponsorship and gifts need not be registered. I apologise to the committee for talking rubbish earlier: the amendments would not affect amendment 29, which Margaret Jamieson has withdrawn.

The bill sets the limit at 0.5 per cent of a member's salary, which is about £258. I suggest that the limit be changed to 1 per cent, which is £516. When it drafted the bill, the Standards Committee in the first session of the Parliament agreed that there would be no requirement to register all sponsorship and gifts. The principle that there should be a lower limit below which registration is not necessary is therefore accepted.

I presume that the following points were influential in the committee's decision. First, a balance must be struck between transparency and unjustified intrusion. Secondly, a balance must be struck between procedures that are necessary to promote the public interest and unjustified bureaucracy. Thirdly, consideration must be given to the danger of an accidental breach of the rule if the bill is enacted: the lower the limit, the more items need to be registered and the greater the chance of a member inadvertently omitting something from the register.

We must judge where to pitch the lower limit. To some extent, any figure will be arbitrary. When I looked through the register of interests I noticed that members who were invited to participate in a conference in London had registered the invitation, because the legitimate expenses of participation—air fare, overnight accommodation and perhaps a meal—easily exceeded 0.5 per cent of a member's salary. Attendance at conferences is part and parcel of members' everyday activity and non-financial interests—however we choose to define non-financial interests. Conference attendance is the kind of reasonable activity that we want members to undertake without being subject to the bureaucracy of registering every conference they attend in the register of members' interests.

I move amendment 1.

Stewart Stevenson: I am afraid that I must part company with my colleague. He seems to be

arguing for a general exclusion for speaking engagements or participation in conferences.

This is a side issue, and one that I have not raised directly, but I see no need to make a distinction between activities that take place in and outwith the state in which we live—the activity is more important than where it takes place.

I suspect, although perhaps I am being unreasonable, that Alasdair Morgan has been led to the 1 per cent limit because that is the one that Westminster uses—I see that he is shaking his head. Perversely, of course, I wish to have a different limit just to show that we are different. Alasdair does not make a particularly convincing case that the present level of 0.5 per cent has been unduly onerous for members. The matter should not exercise us greatly, but I am inclined to go for the status quo, as expressed in the bill.

Mike Rumbles: I understand why Alasdair Morgan has made his proposal. I believe that the present rule has affected at least one member. My only point is that, if the committee decided to change the level, I would be concerned that we would be raising the trigger level for MSPs when the trigger for the registration of interests of members' staff is set at a much lower level in the code of conduct. It would therefore be inconsistent to change the level for MSPs. Perhaps Alasdair Morgan will comment on that in summing up.

Brian Adam: I point out to Mr Rumbles that only one member has been affected by the present level of 0.5 per cent and they would not have been affected had the level been 1 per cent. I hope that that clarifies the matter.

I welcome the debate on Alasdair Morgan's amendments 1 and 3, because it is important that members have an opportunity to explore the trigger level for the registration of gifts and sponsorship. The amendments seek to move the level at which sponsorship and gifts are required to be registered from 0.5 per cent of a member's salary to 1 per cent. As Mr Morgan rightly said, the current figure is £258 and his amendments would raise that to £516.

Under paragraph 5 of schedule 1, sponsorship will be a registrable interest. Sponsorship is defined as when a member receives as a member any financial or material support from the same person on more than one occasion that, over a parliamentary session, amounts in aggregate to more than 0.5 per cent of the member's salary. The definition is new and has been altered from the existing requirement in the members' interests order in the light of experience. The principal effect of the change is to remove the need to register volunteer assistance. Under paragraph 6 of schedule 1, a gift of a value that exceeds 0.5 per cent of the member's salary on the date it was received will be a registrable interest, if the prejudice test is met. The inclusion of the prejudice test is also new, and is designed to restrict the registration requirement to gifts that could give the appearance of prejudicing the member's ability to participate in a disinterested manner in any proceedings of the Parliament.

The Standards Committee debated the threshold in relation to gifts, although the policy applies equally to the registration of sponsorship. The committee considered whether, and on what basis, the current threshold of £258 for the registration of gifts should be reviewed. To seek views on the issue, the committee included in its consultation paper a question on whether the threshold should be 0.5 per cent or 1 per cent of an MSP's salary. The vast majority of respondents to the question thought that all gifts should be registered regardless of value, as they could have a prejudicial effect on members. However, that must be put in context: only 23 parties responded to the committee's consultation.

We noted that the House of Commons code of conduct sets the threshold at 1 per cent of an MP's salary, but that the consultative steering group working group recommended the lower threshold of 0.5 per cent. In arriving at our decision to retain the 0.5 per cent level, we had to have regard to all that evidence and to strike the right balance between placing an unreasonable administrative burden on members and being transparent. The bill will not do nothing on the issue because, as I said, changes have been made to restrict the matters that must be registered. In relation to gifts, the prejudice test will be key.

As I said, I welcome the debate. It is important for members to have an opportunity to explore the trigger levels that have been set for registering gifts and sponsorship and, in doing so, to take the definitive decision. I am happy to be guided by the Parliament's will. In the light of the deputy convener's comments in another debate, I suspect that it is best that the matter be decided by all 129 members, rather than a smaller number. However, I will make no particular recommendation.

11:45

Stewart Stevenson: Brian Adam referred to amounts in aggregate. Over a parliamentary session of four years, are we saying that registration will be required when the aggregate sum reaches the percentage of the salary for four years or the salary for a single year?

Brian Adam: The intention was to refer to a single year's salary. The figure is 0.5 per cent of the annual salary in any year.

Stewart Stevenson: To be absolutely clear, is it the intention that if the aggregate from a single

source over four years reached 0.5 per cent of a single year's salary, it would fall to be registered?

Brian Adam: Yes, that is the intention.

Stewart Stevenson: We can consider later whether the bill delivers that intention.

Margaret Jamieson: What is the definition of a year? Is it the Parliament's financial year or a calendar year?

Brian Adam: One change is that the present reference to a fixed sum is to be changed to a percentage of a member's salary. As members' salaries change from year to year, the financial year will be relevant.

Margaret Jamieson: Thank you for that clarification.

Brian Adam: Of course, that will make no difference. If members in their wisdom decided to award themselves a series of pay rises during the year, the aggregate over that year would apply. The actual year is not terribly important, but members' salaries are normally reviewed.

Margaret Jamieson: It is important for individuals to understand exactly when the triggers apply.

Brian Adam: The figure is 0.5 per cent of the member's salary. If the member's salary varies, that figure will vary.

Mike Rumbles: There is confusion over the word "salary". Lodging a stage 3 amendment to make the bill read "annual salary" would suffice.

Brian Adam: We do not believe that any amendment is necessary. Registration is required when the aggregate meets the lower limit, whenever that occurs during the parliamentary session.

Mike Rumbles: Hang on—Stewart Stevenson's question suggested that a defence could be that, as members are elected for four years, the word "salary" means a four-year salary. If the word "annual" were added at stage 3, that would solve the problem.

Brian Adam: The advice that I have received is that that is not required. I am happy to consider that, but I give no guarantee that I will lodge anything. As far as I am aware the wording is not a problem but, as members have expressed concern about it, I will give the matter some thought between now and stage 3.

Alasdair Morgan: My response to Stewart Stevenson is that I did not choose the example of a trip to London specifically because I wanted to address an issue; I just wanted to exemplify what the limits in the bill would catch, and to make it clear that catching such activity is unnecessary. The same applies to any other category about which we care to argue.

The point was made about the measure that applies to MSPs being different from that which applies to MSPs' staff. We cannot decide what is going to be in the bill by reference to a code of conduct that is currently subject to change. We have to make a decision on the bill and let the code of conduct look after itself.

The bill is relatively clear that sponsorship should be registered when its value exceeds 0.5 per cent of a member's salary at the beginning of the parliamentary session. However, the fact that it is sponsorship in aggregate strengthens my case. Aggregate sponsorship that exceeds 0.5 per cent does not sound like a big deal, and I respectfully suggest that raising the limit to 1 per cent would make a lot more sense and cut out a lot of bureaucracy.

On the limits on gifts, Brian Adam mentioned that gifts would be subject to the prejudice test. For most members that would not be particularly helpful. I do not know how we would decide whether a gift of £250, for example, would prejudice a member. We would have to ask whether the member likes the gift or whether it is like a wedding present that they put away in the cupboard and never take out again. Who would make that judgment? The standards commissioner? I do not think so. We should not be guided positively or perversely by what the House of Commons does. We should set a limit that we think is good, not because we are trying to be the same as or more open than the House of Commons. A 0.5 per cent level would be too bureaucratic. It would create more work for people and unnecessary worry for members. I do not think that anyone in the Parliament can be bought. There should not be an impression that we might be bought for between 0.5 and 1 per cent of our salary.

The Deputy Convener: The question is, that amendment 1, in the name of Alasdair Morgan, be agreed to. Is that agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

McGrigor, Mr Jamie (Highlands and Islands) (Con)

AGAINST

Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

The Deputy Convener: The result of the division is: For 1, Against 1, Abstentions 3. We

have a tied vote, in which case the casting vote falls to me. I shall opt for the status quo.

Amendment 1 disagreed to.

The Deputy Convener: I thank members for their co-operation so far. We have covered quite a lot of ground in a fairly short time. I suspect that members could do with a comfort break before we move on. I suggest that we reconvene as close to 12 o'clock as possible.

11:53

Meeting suspended.

12:05

On resuming—

The Deputy Convener: We move on to consider a number of amendments in my name. Members will note that I lodged them before I was aware that I would be convening the meeting. Unless any member disagrees, I propose to speak to and move my amendments. I understand that it is in order for me to do that, although it is not normal practice.

Amendment 41, in my name, is grouped with amendments 2, 4, 42, 5, 23A, 23B, 43, 6, 7, 44, 8, 45, 9, 46, 10, 11, 47, 12, 13, 25A, 25B, 48, 14, 49, 15, 50, 16, 17, 18, 20 and 21. If amendment 41 is agreed to, amendment 2 will be pre-empted. If other amendments in the group that seek to leave out

"or a member's spouse or cohabitee"

are agreed to, some of Brian Adam's amendments that seek to leave out "or cohabitee" and insert ", civil partner or cohabitant" will be pre-empted. They will be dealt with as they arise in the marshalled list. I assure members that the procedure is not as complicated as it might sound.

Despite the number of amendments that are required to address the policy point, the issues are relatively clear. I lodged my amendments after a substantial issue was raised in the stage 1 debate. A number of members expressed concern about the extent to which the bill will oblige members to ensure that the interests of their spouse, co-habiting partner or civil partner are registered. I will keep my remarks brief because I know that other members will want to comment.

The matter is topical. There is serious concern about the extent to which members should be expected to know—and do know—the details of their partner's financial arrangements. I use the word partner in a generic sense for the purposes of this discussion.

The second issue—again, the point was made persuasively and powerfully by one member in particular in the stage 1 debate—is that there is an emergent concern about how we create the conditions in Scotland to encourage the widest range of individuals with ability, experience and talent to come forward and seek election through the democratic process. At the very least, there is anecdotal evidence that the partners of potential candidates for elected office—again, I use the word "partners" generically—sometimes ask why their financial affairs should be brought into the public domain. It can be a disincentive for an individual to seek elected office if their partner is concerned that their financial affairs will be brought into the public domain by dint of their spouse, cohabiting partner or civil partner standing for election.

When we stand as individuals for election, we all have certain obligations and standards to which we must adhere and we must take responsibility for our own actions. However, the bill seeks to increase the requirements on members to register information about the interests of their spouse or partner, especially in respect of heritable property. I, for one, have serious concerns about that. It is the wrong direction of travel.

Finally, I will make a wider point that perhaps gets to the historical roots of why the provisions have been set out in this way. I feel that the approach adopted in the bill is rather anachronistic. It is a product of a bygone era in which—I will stick my neck out on this—elected office was sought largely by men, whose wives did other things elsewhere. I am pleased that we now live in a society in which men and women are financially, economically and politically active in their own right. We have a number of couples who are members of the Parliament, including one couple who belong to different political parties.

The point of principle involves the extent to which we can or should deal with couples in this way. Of course we are all influenced by a range of friendships and relationships, but deep down I think that the bill is drafted in a way that does not recognise that the individuals who make up a couple—whether they be married, cohabiting or in a civil partnership—should be recognised as individuals. That lack of recognition is certainly not the direction in which our legislation should go.

I hope that I have provided a helpful summary for colleagues of the reasons why I lodged the amendments. I am grateful to members for allowing me some leeway as convener so that I can speak to the amendments.

I move amendment 41.

Brian Adam: We are dealing with two competing principles: the principle of openness and the principle that people have a right to a private and family life. The decision on which of

those principles is more important is for the Parliament to take collectively. That decision will be made by committee members today and perhaps by the rest of us on a future occasion.

Echoing the views that some members expressed in the stage 1 debate, Susan Deacon argues that the registration requirements relating to a member's spouse, partner or cohabitant are an unnecessary intrusion into a member's right to a private and family life.

Such concerns are not new to members of the Standards and Public Appointments Committee; we have been mindful throughout our deliberations about keeping intrusion to a minimum. I remind members that no more than six years ago it was considered necessary to introduce a bill to restore public confidence in elected representatives and public institutions. At that time, members of all parties felt that it was important that the public have confidence in all tiers of government and all public bodies. The Ethical Standards in Public Life etc (Scotland) Act 2000 was viewed as the start of the process of rebuilding such confidence. The 2000 act established a new ethical framework to ensure that the highest standards are maintained in public life. I will show today why the amendments in the name of Susan Deacon are at odds with those standards and potentially leave the Parliament open to substantial criticism.

Amendment 41 seeks to remove the requirement for a member to register a gift received by that member's spouse, cohabitee or civil partner—if I inadvertently miss out one of the different types of partner, members can take it as read on each occasion that I mean all three—under paragraph 6 of schedule 1 to the bill. The current members' interests order requires any gift over £250 received by a member's spouse or cohabitee to be registered. The Standards Committee considered carefully the registration requirements for gifts and was concerned about the requirement for a blanket registration of gifts over £250 received by a member's spouse or cohabitant. No account is taken of intra-family gifts or of the reason why the gift was given to the spouse. The committee agreed that that could be an unreasonable intrusion into a member's private and family life.

12:15

How do we address that? One way is to opt for no registration at all, as Susan Deacon proposes, and leave members of the Parliament open to criticism. The alternative approach is to find a legislative solution that could take account of the many and varied circumstances in which gifts are received. By introducing a prejudice test for gifts received by the member or a member's spouse or cohabitant we address many of the concerns expressed previously about intrusion into private affairs that are unconnected to a member's parliamentary activities and, at the same time, seek to maintain the high standards of probity that members of the public have come to expect from MSPs. The prejudice test is not a new test; the very same test applies at present when we decide whether we need to make a declaration of interests prior to participating in proceedings. Under our proposals, only gifts that exceed the financial limit and meet the prejudice test require to be registered.

Amendments 42 to 46 seek to remove the requirement for a member to register heritable property owned or held solely by their spouse or cohabitee. The committee considered those provisions in detail and decided to bring the registration of heritable property into line with the registration of shareholdings and now gifts.

Where the heritable property held by a member's spouse or cohabitee meets the financial test, which is that it must be worth more than 50 per cent of a member's salary—roughly £26,000 at present—it must also meet the prejudice test before it is required to be registered. In other words, the holding must be over the limits and the member must believe, after taking into account all the circumstances, that the interest is reasonably considered to prejudice, or to give the appearance of prejudicing, their ability to participate in a disinterested manner in any of the Parliament's proceedings.

I turn to Susan Deacon's amendments on shareholdings. Amendments 47 to 50 remove the requirement for a member to register an interest in shares held solely by their spouse or cohabitee. Currently, under the members' interests order, members have to register shareholdings held by their spouse or cohabitee where they pass the financial threshold. The bill redresses the balance for those that pass the threshold by introducing the prejudice test for shareholdings of a member's spouse, partner or cohabitee. If the interest does not meet the test, the holding need not be registered.

One of the benefits of using the prejudice test is that it can be triggered—and the requirement to register applies—only when the member can reasonably be expected to know about the shareholdings, the heritable property or the gift. That would address the situation, which was raised in the stage 1 debate, where a member is separated from their spouse. If a member has no knowledge of a gift, a shareholding or an interest in heritable property it is difficult to see how that could affect their actions and thus trigger the requirement to register.

Given the changes that the bill has made to the members' interests order, particularly the prejudice

test, it is difficult to argue that the legislative solutions that we have found do not work to safeguard a member's right to a private and family life. Only if a gift, heritable property or shareholding is determined by the member to have some influence does it require to be registered. Susan Deacon's amendments are a rather blunt instrument to address a complex area where a more delicate balance has to be struck to ensure privacy and probity.

The Standards Committee acknowledged that the existing order was drawn too widely and addressed areas where there was no potential for prejudice in the member's actions. Only interests of spouses and cohabitants that could reasonably give the appearance of prejudicing the member's ability to participate in a disinterested manner in any proceedings of the Parliament will require to be registered. That includes the necessity for the member to know of the potential interest.

Members need look no further than the recent events down south that highlight the need for some registration requirement for interests held by spouses, partners and cohabitants. I contend that Susan Deacon's amendments clearly undermine the principles of the bill and would establish a two-tier system for those in public life that would be founded on double standards. Further, they leave members of the Parliament wide open to criticism. I implore members to think seriously about the effect that these amendments will have on the public's perception of members of this Parliament and reject amendments 41, 42, 23A, 23B, 43 to 47, 25A, 25B and 48 to 50 in the full knowledge that what is proposed cuts deeply into one of the four founding principles of the Scottish Parliament, namely that of openness.

The amendments in my name give effect to the changes that were introduced by the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006 and will ensure that all the provisions in the bill that apply to spouses will apply equally to civil partners. Similarly, the term "cohabitant" will replace "cohabitee". This new term includes a man and a woman living together as if they were man and wife and two persons of the same sex living together as if they were civil partners. The amendments alter all relevant references throughout the bill and adjust existing definitions appropriately.

Amendments 20 and 21 make it clear that the definition of civil partner does not include a civil partner who has separated permanently from a member, in the same way that reference to a spouse does not include a spouse in the same situation. Amendment 21 replaces the existing definition of "cohabitee" with a new definition of "cohabitant".

Amendments 2 and 4 to 18 change all the references to "cohabitee" to references to "civil partner or cohabitant". Those technical amendments are necessary as a consequence of the changes that were made to Scots law by the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006.

Stewart Stevenson: Given my previous comments, convener, it will come as no surprise to you to hear that I profoundly disagree with your amendments.

I think that we are misled if we think that we are placing onerous obligations on members of Parliament that do not apply to people elsewhere. During my business life, my spouse and I operated under the requirements of the Financial Services Authority, which were considerably more onerous, in relation to criminal law, than anything that we are discussing. However, curiously enough, that carried with it obligations that my spouse and I not talk to each other about certain things. If we did, we would be subject to disciplinary procedures and legal challenges. Under the Financial Services Act 1986, which prevailed when we were both in employment, both our employers had to know about the shareholdings of the spouse who worked for another company. That was absolutely unambiguous. Neither we nor any other people in that industry found that requirement particularly onerous or difficult.

Quite properly, the convener pointed to the way in which society has changed in relation to the independence—particularly in financial matters—of people's partners. That is a good point. However, the difficulty is that, as yet, other extremely significant parts of the relevant legal framework have not caught up with the situation. For example, in the miscellaneous part of the register of member' interests, I have significant shareholdings, which I will be required to move up to the registrable interests part if the bill is passed. If Susan Deacon's amendment 41 were agreed to, I could simply transfer them to my spouse—at no cost and with no particular risk to myself—as there is no capital gains tax, for example, that would inhibit or create difficulties in transfers between spouses or civil partners, although there is a distinction between those and cohabitants.

As members will know, I am always reluctant to support anything that would introduce legal ways of avoiding the intent of what is going on. If amendment 41 were agreed to, I would be able to adjust my affairs with no practical effect on the day-to-day living or future prospects of my wife or myself by transferring many of the assets that would be registrable under the bill to my spouse. That is wholly undesirable, as my constituents and the wider public in Scotland are entitled to know my significant interests in, for example, shareholding. The argument might be put that the prejudice test could apply, even though my wife

owned the shareholding; however, I am not certain that that would catch it, especially if we deleted

"or a member's spouse or cohabitee".

That would signal that we were not taking an interest in what the spouse or cohabitee did.

When we stand for Parliament, there are rewards—a salary and some degree of status that comes with the position—but, equally, there are responsibilities and an understanding that we and our families should have of what it means to stand for election and be elected as MSPs. The same is true for those who stand for election as MPs or for other public positions of that kind. We come into this with our eyes open; therefore, we should not mump and grump once we get here because some requirements of the job are a little bit onerous to some people under some circumstances. Those requirements are, to some degree, less onerous than the requirements placed on many people in other professions, as my professional experience and that of my spouse suggests.

I cannot support the amendments in Susan Deacon's name, but I can support those in Brian Adam's name, which are essentially technical and tidy things up.

Mike Rumbles: I am delighted that the provision on gifts from family members, under which we have been operating for the past seven years and which has given rise to a ridiculous situation, is now being put right. I understand the two approaches that are being taken in the amendments, both of which are honourable. It is important that any gift has to meet the prejudice test. That is my personal view, but I would like the whole Parliament to consider the provision at stage 3. Susan Deacon raises an interesting and important subject but I hope that, rather than change the bill at stage 2, she will leave it as it is and allow the Parliament to address the issue again at stage 3.

12:30

Margaret Jamieson: I wholly accept the way in which Susan Deacon has approached the matter in her amendments. I do not have a spouse, partner, cohabitee or whatever, so I am somewhat divorced from the issue.

We need to consider what impact the provision would have on individuals. The Parliament wants to encourage all people to participate, but having a stringent test that obliges individuals to disclose their partner, cohabitee or whatever may well impinge on their relationship. To a large extent, the partner of the person who is elected will be covered by the same rules. That needs to be borne in mind. What is proposed would constitute an invasion of their individual rights to privacy and to family life. I do not think that the bill has achieved the right balance between protecting those rights and ensuring that relevant interests are declared.

I would like some more information about the declaration that Stewart Stevenson said he had to make in his professional life. Was it a public document? Could someone go and look at it or find it on the web, as is the case with the register of members' interests? There is a difference between preventing insider trading and doing what we are discussing. The issue is topical and there is a gender element to it. I very much doubt that the amount of media attention that has been paid to Tessa Jowell would have been paid to a male member of Parliament who found himself in such circumstances—although that is perhaps a subject for another debate.

The big test for us is not what a fair-minded member of the Scottish public thinks, but what the perception might be of the unfair-minded sections of the Scottish media, of which a number of members at the table have been victims.

A double test must be applied. We need to balance what elected members are required to undertake against what the bill proposes to impose on our partners in the generic sense. Susan Deacon is right to pursue the issue. Given the huge implications of the proposals for the 129 members of the Scottish Parliament and in light of the discussion that took place at stage 1 and the diverse views that are held by the members present, I believe that those 129 individuals should have their say.

Stewart Stevenson: I was asked a question to which I wish to respond. I accept that the comparison that I made is not perfect. Shareholdings can be examined by the public because shares that are registered in public companies must be open to scrutiny. However, I accept that one needs to know where to look.

I re-emphasise my other point, which is that the constraints on the practical actions that partners can take in the situation that I have cited are substantially more severe than they are in any of the circumstances that we are talking about in relation to the bill. Members will have their own views. I merely suggest that the subject does not exercise only MSPs; it affects people more widely. The principle of imposing on relationships conditions that relate to assets is in no sense new.

Mr McGrigor: I agree with Susan Deacon—and not just because it is international women's day. Her suggestion is that what the bill is proposing is old-fashioned and relates to a time when men were dominant in political life. That means that it is not only intrusive, but patronising.

What happens when a member asks their cohabitee for certain information, but the cohabitee says, "I don't want to tell you"?

Brian Adam: Do you want an answer to that?

The Deputy Convener: We will come back to that.

Mr McGrigor: My feeling is that such disclosure is not necessary. I think that members' individuality should be respected and that it is intrusive to delve into the affairs of spouses or cohabitees.

The Deputy Convener: It is slightly out of order to ask Brian Adam to respond, but I think that it would be helpful to hear what he has to say. The issue of knowing about one's partner's interests was discussed during the stage 1 debate. Do you wish to clarify that?

Brian Adam: Absolutely. If you do not know about the interests of your spouse or partner, you are not accountable. If your partner refuses to tell you, you are not accountable.

Margaret Jamieson: The problem is that you will still be splattered all over the papers.

Brian Adam: There is a difference between being splattered all over the papers and being liable to the procedures. All we can be responsible for is what we are responsible for. We do not—and probably should not—control others outwith this place if they choose to behave irresponsibly.

The answer to Jamie McGrigor's question is that if you do not know about others' interests, you are not liable. If your partner of whatever description refuses to tell you about their interests, you will not be liable in any way. The papers will splatter you whether you have registered it or not.

The Deputy Convener: We do not want to go back into the debate; we just want clarification.

Alasdair Morgan: I take the point that there are arguments on both sides, but as relationships between the sexes develop, this sort of provision becomes increasingly difficult to justify. The bill covers spouses and cohabitees, but not close friends. One wonders exactly where to draw the boundary.

It might be that my next question can be answered only later on, but why does schedule 1 say, under "Gifts", that we should catch in the register gifts to a member and, if the amendments are not passed, gifts to a member's spouse or cohabitee and gifts to a company in which the member has interests, but not gifts to a company in which the member's spouse has a controlling interest? Is that an omission or a commission?

Brian Adam: If you will forgive me, I will take advice and then answer that perfectly legitimate question. I do not have the answer immediately to hand.

The Deputy Convener: To aid our understanding of the issues, to inform our thinking on the way forward and to inform the chamber when we look at the bill again, will you clarify the Standards and Public Appointments Committee's approach to gifts, heritable property and shareholdings?

The Standards and Public Appointments Committee decided to level up additional provisions so that declaring a spouse's interests would apply in all three areas. Am I right to say that it is equally true that the Parliament could opt to equalise some of those requirements by levelling down, if you like, or by taking a different approach in those areas, as is the case under the current members' interests order?

Brian Adam: That is a perfectly legitimate point. Yes, the committee decided to level up, as you put it, because the current requirements differentiate between the three classes of gifts, shareholdings and heritable property. The committee felt that there was a lack of consistency and that we ought to be consistent across the board.

Mr Morgan brought up an area that we might not have looked at yet, so I will look for guidance on it. If there is a problem, I guarantee that I will revisit the matter at stage 3.

It is perfectly legitimate to consider whether we should have levelled down, as you put it. We will have to decide which of the two competing principles we will adhere to.

There is no doubt but that family and personal relationships have changed significantly and that the law of the land has recognised those changes, but I do not know that we have got to the point at which there is general public acceptance that people in relationships, whether marriage, civil partnership or cohabitation, lead separate lives financially. We might eventually get to that point. The Standards and Public Appointments Committee and I took the view that we have not reached that point. We felt that, in the interests of probity, disclosure of interests was more important than individual rights and that the public has an expectation of high standards. If MSPs' rights to a private life are infringed—they are—so be it.

I accept Margaret Jamieson's and the convener's point that this provision may discourage others from participating in public life, but if someone participates in public life they make sacrifices in any case. I am happy to accept Parliament's judgment on this key principle. It is right to say that the provision could be levelled up as well as levelled down.

The Deputy Convener: Thank you for those points of clarification. I am conscious, however,

that Alasdair Morgan's question is still hanging in the air.

Alasdair Morgan: It can wait.

The Deputy Convener: It might be helpful if Brian Adam writes to the committee. An answer that would inform the stage 3 debate could be recorded appropriately.

Brian Adam: I am happy to provide a little clarification in areas that require it. The advice that I have been given is that a member's spouse's controlling interest in a company is a stage further removed from a member. The further away the interest is from the member, the more it is diluted. A gift, for example, could be a gift to the company and not to the member's spouse directly.

The provision would apply only to companies in which the member had a controlling interest or a partnership. That is a judgment call and it is certainly something that we could consider. I am happy to give that further thought. After our consideration of stage 2 and prior to the lodging of amendments for stage 3, the Standards and Public Appointments Committee will meet. I will certainly raise this issue with it to ascertain its view. I will get back to this committee on that, if that is satisfactory. It is an interesting point. The question is how far out we take the gift and the interests before they become so diluted that they are not important.

The Deputy Convener: Stewart Stevenson indicated that he wanted to come back in.

Stewart Stevenson: Just to respond to a point about dominant men. In my marriage, I was always substantially the financially junior partner from well before the Equal Pay Act 1975 was passed.

Mike Rumbles: Do we want to know that?

Stewart Stevenson: So this is perhaps not as gender specific in the generality as some members have suggested.

The Deputy Convener: I thank the member for those comments. Members' comments about dealing with individuals were not based on who was the wealthier in the partnership; the point was that individuals should be considered in their own right.

I know that other members want to comment, but I want to wind up the debate with some comments that I hope will be helpful. I will respond, first, to a couple of the substantive points that Brian Adam made. He described the amendments as a "blunt instrument". It could equally be argued that the bill is a blunt instrument on this point. There is much that we could do outwith the bill—for example, through the members' code of conduct—to encourage high standards of transparency.

I have opted to declare my partner's occupation when I have thought that that information was relevant to discussions in the Parliament, although I am not required to do so and would not be required to do so if the bill were enacted. Such declarations are a matter of judgment. I am all for openness and for pushing at the boundaries of what we encourage members to declare, but that is quite different from enshrining in statute a requirement to put in full public view the extensive financial affairs of an elected member's partner, whether they work in financial services or in other walks of life.

12:45

The degree of public scrutiny of the Scottish Parliament and members of the Parliament is exceptionally high. That is not necessarily a bad thing, but we must be cognisant of the practical implications of it for the spouses of elected members and people who seek elected office. We should be concerned if an unintended consequence of the approach in the bill is the creation of a disincentive to people who might want to seek office.

I am not convinced that Brian Adam explained why the provision applies only to spouses and partners. Many other close relationships are important and close financial relationships can exist between individuals who are close friends or between family members such as mothers, fathers, brothers and sisters. I remain concerned about singling out one relationship—albeit a special relationship—and requiring so much financial information to be put in the public domain.

I am content to leave my comments at that and not to press the amendments in my name. It is important that we have had the opportunity to discuss the amendments—I know that many members have views on the matter. I say this as an individual member of the committee but, with members' agreement and if it is not out of order, I would like to do so in my capacity as deputy convener: I hope that if any member of the Parliament lodges amendments on the matter at stage 3, the Presiding Officer will be minded to select those amendments, so that the issue can be debated by the Parliament. For the avoidance of doubt, I indicate that I intend to withdraw amendment 41 and to not move the other amendments in my name.

Amendment 41, by agreement, withdrawn.

The Deputy Convener: I have been looking at my colleagues—[*Interruption.*] The clerk has reminded me that we must consider amendment 2. I am conscious of the time and suggest that we end the meeting after we have dealt with the next two amendments.

Amendment 2, in the name of Brian Adam, was debated with amendment 41. Do you want to move that amendment?

Brian Adam: There is a need to do so. Amendment 2 and the other amendments in my name are technical amendments that take cognisance of the fact that the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006 have been enacted since the bill was drafted.

Amendment 2 moved—[Brian Adam]—and agreed to.

The Deputy Convener: Amendment 3 has already been debated with amendment 1.

Alasdair Morgan: Amendment 3 deals with a different issue from amendment 1, which was disagreed to on the casting vote.

Amendment 3 moved—[Alasdair Morgan].

The Deputy Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

McGrigor, Mr Jamie (Highlands and Islands) (Con)

AGAINST

Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

The Deputy Convener: The result of the division is: For 1, Against 3, Abstentions 1.

Amendment 3 disagreed to.

The Deputy Convener: I propose to end our consideration at this point. I am conscious that one member in particular has waited patiently throughout the meeting to speak to his amendment, but I think that we have reached a reasonable point at which to stop for the day. Are members content with that proposal?

Tommy Sheridan (Glasgow) (SSP): There is nothing that we can do about time restrictions. I want to assure members that I have been working hard while I have been listening to their discussions, so my time has not been entirely wasted.

The Deputy Convener: We were in no doubt about that. I thank members of the committee and other members for their contributions and remind members that our next meeting will be on 15 March.

Meeting closed at 12:51.

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