

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Brian Adam, the convener of the Standards and Public Appointments Committee (the Committee). They have been prepared in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

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

BACKGROUND TO AND SUMMARY OF THE ACT

Background

3. The Bill for this Act was a Committee Bill initiated by a Parliamentary committee under Rule 9.15 of the Parliament's standing orders. The Bill arises from investigations and reports by the Committee and the Committee's predecessor in the first session of the Parliament (the Standards Committee). The Standards Committee published three reports during the first session:

- *Report on Replacing the Members' Interests Order: Interim Proposals for Consultation* (2nd Report 2002, SP Paper 512), published on 19th February 2002;
- *Report on Replacing the Members' Interests Order: Proposal for a draft Committee Bill* (7th Report 2002, SP Paper 621), published on 3rd July 2002; and
- *Replacing the Members' Interests Order: Draft Committee Bill* (1st Report 2003, SP Paper 821), published on 14th March 2003.

4. The Committee published a further report in the second session of the Parliament on 14 January 2005, *Replacing the Members' Interests Order* (1st Report 2005, SP Paper 266). The proposal for a Committee Bill was debated and approved by the Parliament on 24 February 2005.

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5. Section 39(1) of the Scotland Act 1998 (c.46) (the 1998 Act) requires provision to be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection. Section 39(8)(a) of the 1998 Act states that such “provision” must be made by or under an Act of the Scottish Parliament.
6. The Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (SI 1999/1350) (the Order) was made under powers conferred by section 129(1) of the 1998 Act as a transitional measure in connection with the coming into force of section 39 of the 1998 Act. The Order establishes the existing register of members’ interests for the registration of interests of members of the Scottish Parliament and the Lord Advocate and Solicitor General. The Order also provides for the declaration of interests, for prohibiting paid advocacy and for penalties for breach of any of the requirements. The Order will cease to have effect on the day after the date of the first dissolution of the Parliament following the date of Royal Assent of this Act. The provisions of the Act in so far as they are not fully in force also come fully into effect at that date. .
7. Rule 1.6 of the standing orders (the rules of procedure which govern the proceedings of the Parliament) provides that the Parliament may, on a motion of the Committee, lay down a Code of Conduct (the Code) for Members. The existing Code was approved by the Parliament on 24 February 2000. That Code adopts as part of its rules the requirements of the Order. A new Code will require to be in place to reflect the terms of the Act when the Order ceases to have effect
8. In their 2nd Report 2002 the Standards Committee sought written and oral submissions on their initial proposals for replacement legislation. They recognised the need for an appropriate balance between respect for individual privacy and the need to ensure transparency and high standards of probity in the Parliament. They also believed that the input of members and others was essential in developing the replacement legislation.
9. The Standards Committee received eight responses to its consultation on the 2nd Report and heard evidence on 24 April 2002. In July 2002, after reflecting on the evidence it received and finalising its recommendations, the Standard’s Committee published its 7th Report 2002 setting out recommendations on the content of the replacement legislation. It then produced the 1st Report 2003 which incorporated a draft Bill.
10. The present Committee for the current session was constituted on 4 June 2003 and has continued the work of the Standards Committee from the first session. The Committee published a consultation paper during July 2004 seeking comments on certain issues arising from the Committee’s initial consideration of proposals for legislation. A total of 32 responses were received and these were considered at the Committee’s meeting on 26 October 2004. The Committee then published the 1st Report 2005 on 14 January 2005.
11. The 1st Report 2005 adopted the former Standards Committee report in relation to the structure and layout of the draft Bill and the former Committee’s policy position where no comment was made in the report. The final Report focused on resolving discrete policy issues in relation to: the test to be applied when declaring or registering interests; registration of interests at the date of return; deletion of interests from the register; declaration of interests outwith

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Parliamentary proceedings; paid advocacy; gifts; heritable property; interest in shares; future interests; and non-financial interests.

Summary of the Act

12. The Act provides for the establishment of a register of interests for members of the Scottish Parliament. It provides a system for the registration and declaration of financial interests. It provides for entries in the register to be added, amended, corrected and deleted. It also prohibits advocacy by members in return for payment or benefit in kind. Finally, the Act enables parliamentary sanctions to be imposed if a member contravenes the provisions of the Act. Criminal penalties are already imposed for non-compliance with the provisions contained in section 39(6) of the 1998 Act in relation to the registration and declaration of financial interests and paid advocacy and the existence of the penalties is not a matter which the Scottish Parliament has the power to amend. The Act makes it clear which of its provisions fall within the ambit of the penalties imposed by section 39. The Act also appoints a day when the Order ceases to have effect.

COMMENTARY ON SECTIONS

Section 1: The register

13. Subsection (1) establishes a Register of Interests of Members of the Scottish Parliament (the register). This will replace the present Register under the Order. For the purpose of this Act, “member” is defined in section 19(1) and includes, subject to section 18, a Scottish Law Officer (the Lord Advocate and the Solicitor General for Scotland) where that person is not a member of the Parliament.

14. Subsection (2) requires the register to be kept at the office of the Clerk. The principal register will be kept at the Clerk’s office and copies will be made available for public inspection in accordance with section 11 of the Act.

15. Subsection (3) requires the register to contain an entry for each member and provides for the content of the entries. Paragraph (a) states that each entry must contain the information required by or under the provisions in this Act. Paragraph (b) provides for additional matters to be included in the entry as the Parliament may determine. This could, for example include information about amendments made to the register.

16. Subsection (4) gives the Clerk discretion in relation to the form of the register, which may include electronic form. However if kept other than in documentary form, the register must be able to show what it contains when printed or displayed. Allowing the Clerk to determine the form of the register gives greater flexibility to adapt to new technology.

Section 2: Registrable interests

17. Subsection (1) makes it clear that throughout the Act the term “registrable interest” covers registrable financial interests.

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18. Subsection (2) introduces the schedule to the Act. The schedule sets out the circumstances in which a member has, or had a financial interest which requires to be registered. The schedule details registrable financial interests under 8 separate headings.

19. Paragraph (a) of section 39(2) of the 1998 Act requires provision to be made requiring members to register financial interests (including benefits in kind) as defined for the purposes of that paragraph. Subsection (3) defines financial interests for this purpose as registrable financial interests. They are required to be registered by sections 3, 5 and 6 of the Act. Financial interests are further defined in section 19(1) of the Act as including benefits in kind.

Section 3: Initial registration of registrable interests

20. Subsection (1)(a) of section 3 requires each member to register those registrable interests held on the date that they were returned as members. In the case of constituency members, that is the date of their election and in the case of regional members, the date on which they were returned and in either case whether following a general election or by election. In addition, subsection (1)(b) requires each member to register any registrable interest, which the member had before the date of return but which the member no longer has at that date, if the interest meets the prejudice test in subsection (2). If a member does not have either of those interests, subsection (1) requires the member to declare that fact.

21. Subsection (2) specifies the prejudice test. A member must use this test to determine whether an interest which the member no longer holds on the date of return should be registered. The member has to decide whether to register an interest, if after taking into account all the circumstances, that interest would reasonably be considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament. Under Article 5 of the Order, Members already have a duty to apply such a prejudice test when deciding whether they need to make a declaration of interest prior to participating in proceedings such as speaking in a debate.

22. In applying the prejudice test in the Act, a member has to consider not just whether a registrable interest could in fact influence the member's actions in connection with the proceedings of the Parliament but also whether a fair minded and impartial observer would reasonably consider that the interest would prejudice or could appear to prejudice the actions of that member. The concept of prejudice has often been considered by the courts in the context of determining whether a tribunal is biased or impartial.

23. The prejudice test is used in the Act in a variety of different situations, such as where, for example, a member had held a relevant number or value of shares but sold them shortly prior to the date of return. Some of the registrable financial interests set out in the schedule make use of the prejudice test as a way of determining whether an interest should be registered or whether it no longer requires to be registered.

24. Subsection (3) requires a member to submit a written statement of registrable interests held, or a written declaration that no such interests are held, to the Clerk no later than the relevant date set out in subsection (4).

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25. Subsection (4) explains that the relevant date is 30 days after the date on which the member has taken the oath of allegiance or made a solemn affirmation in accordance with section 84(1) of the 1998 Act. That section requires every person who is returned as a member to take the oath or affirm.

Section 4: Written statement

26. Section 4 makes provision for written statements required under sections 3, 5, 6 or 7.

27. Subsection (1) allows the Parliament to determine the form of the written statement referred to in section 3(3). Conferring a power on the Parliament to make determinations will allow the form of the statement to be changed to take account of technology advances or other changes thought necessary in the light of experience and practice.

28. Subsection (2) provides that the written statement will contain such information about the interest or relating to it as Parliament may determine. It is envisaged that this may include how the registrable interest will be identified, its nature, source and how the value of the interest is expressed or calculated along with other details. For example, such a determination may cover whether members' shares should be recorded in the statement by reference to the number held, or their value, at the relevant date. The statement details must strike a balance between the confidentiality of the member's affairs and the right of the public to have sufficient information about that which might reasonably be considered to influence the actions of a member.

29. Subsection (3) provides that Parliament can make different determinations for different kinds of interests. This provides the Parliament with flexibility to determine both the form and type of information required for each category of interest. For example it may make different determinations for sponsorship, or gifts.

30. Subsection (4) allows the member to choose to include additional information in the written statement.

31. Subsection (5)(a) requires the Clerk, within 30 days from the date any written statement is lodged by the member, to enter the written statement into the register in the entry relating to that member along with the date on which the statement was lodged. The Clerk must also within the 30 day period send a copy of the entry in the register to the member who lodged the statement. Sending a copy of the entry allows the member to check the accuracy of the entry and assures the member that their interests are correctly registered.

Section 5: Registration of registrable interests acquired after date of return

32. Section 5 makes provision for registration of registrable interests acquired by a member after the date of return.

33. Subsection (2) requires the member to register an acquired interest, within 30 days of the date of acquisition. The member registers new interests by lodging with the Clerk a written statement containing the required information about the interest in the same way as the initial registration.

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34. This requirement to register applies even where that registrable interest is acquired and disposed of before the expiry of the period for registration.

Section 6: Late registrations

35. Section 6 makes provision for registration outwith the 30 day periods in sections 3 and 5.

36. Under subsection (2) the member must register any omitted interest by lodging a written statement with the Clerk within seven days of becoming aware of the omission. As with sections 3 and 5 above, that written statement must contain the required information about that interest. The obligation to register under subsection (2) applies even if the member now no longer holds the interest if the requirement of section 3, or, as the case may be, section 5 would have applied.

Section 7: Voluntary registration

37. Section 7 provides for the registration of any other interests which the member wishes to register. This covers interests not required to be registered under sections 3 or 5 if the member considers they are relevant to the proceedings of the Parliament and wishes to register them. As with other registrations, this is done by lodging a written statement with the Clerk.

38. An interest that is lodged under this section as a voluntary interest and is not subject to the provisions of sections 15 (prevention or restriction from participating in proceedings), 16 (exclusion from proceedings) and 17 (offences) of the Act.

Section 8: Deletion of interests from the register

39. This section provides for the deletion of interests from the register. This is permitted provided the interest is ceased. Subsection (1) defines a ceased interest as one which is registered but which, if it had not been registered, would not now require to be registered. To meet this requirement the interest must no longer be a registrable interest under section 3, 5 or 6. Where an interest was one which only required to be registered initially as it met the prejudice test, a member must decide whether the prejudice test is still met in determining whether an interest is a ceased interest. The second type of interest which can be deleted as ceased, is one registered under section 7.

40. Subsection (2) sets out the procedure for deleting the interest and requires a written notice to be lodged by a member with the Clerk. The notice must identify the interest in question; state that it is a ceased interest and the date on which it ceased.

41. Subsection (3) sets out the procedure that the Clerk must follow when a member lodges a written notice identifying a ceased interest. The Clerk is required, within 30 days after the notice was lodged, to record in the entry in relation to that member that the interest is a ceased interest, the date it became a ceased interest and the date the amendment was made. A copy of the amended entry is required to be sent to the member.

42. Notwithstanding the amendment of an entry under subsection (3), the entry remains in the register for a further 12 months after a ceased interest notice is lodged. After that period has

elapsed the Clerk deletes that interest and associated information from the register. A copy of the amended entry in the register is required to be sent to the member.

Section 9: Other amendments to the register

43. Section 9 provides for other amendments to the register such as providing further or updated information about an interest. An example of such an amendment may be where a member owns shares in a company and the name of that company changes. Section 9(1) would allow the member to amend the entry in the register to reflect the new name of the company. The member can amend details of an interest in the register at any time by lodging with the Clerk a written notice of the proposed amendment.

44. Subsection (2) requires the Clerk, within 30 days of the notice being lodged, to make the amendment in the register and to record the date when the notice is lodged. Paragraph (b) of subsection (2) requires the Clerk, within 30 days of the date on which the notice was lodged, to send a copy of the amended entry to the member. This allows the member to check the accuracy of the entry.

45. Subsection (3) allows the Clerk to correct any clerical or typographical errors in a member's entry in the register. This provision is intended for use with simple errors, for example, spelling mistakes. A revised version of the entry must be sent to the member concerned.

46. Subsection (4) makes it clear that no amendment made under this section, except under subsection (5), can delete an entire entry relating to a registrable interest. An amended entry must still comprise the information that the Parliament has determined should be included in a written statement as provided for by section 4(2).

47. Where a member ceases to be a member of the Scottish Parliament, for whatever reason, subsection (5) requires the Clerk to delete the entry in the register of interests relating to that member. As amendments to the register are kept by the Clerk (see paragraph 49 below) all entries relating to that member will be accessible for a further period of five years.

Section 10: Old entries

48. This section requires that when the Clerk amends an entry in the register, the Clerk retains a copy of the original entry and any subsequent amendments for a period of five years from the date on which the last amendment is made.

49. Subsection (2) applies section 1(4) to old entries and allows the Clerk to choose the appropriate form that amended entries will be kept in. However, if the old entries are kept other than in documentary form, the old entries must, when printed or displayed, be able to show what they contain. Subsection (3) defines "old entries" as the original entry and any subsequent amended entry in the state in which it was before it was amended.

Section 11: Publication of the register etc.

50. Subsection (1) requires the Clerk to publish the register. It shall be for the Parliament to determine how often and how the register is published.

51. Subsection (2) requires a copy of the register and the old entries to be available for public inspection. These copies may be kept in a form and manner that the Clerk considers appropriate, although these must by virtue of section 1(4) be capable of displaying to anyone inspecting it what is contained in them.

52. Public inspection of the register and the old entries is only available when the office of the Clerk is open. These are most working days.

Section 12: Declarable interests

53. Section 12 defines a declarable interest and defines the circumstances in which a member has a declarable interest in relation to any particular matter. A declarable interest is defined as being a declarable financial interest. A member has a declarable interest in relation to any matter if that member has, or had, a registrable financial interest relating to that matter. A member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated.

54. The effect of subsection (2) of this section is that if the member has registered a registrable financial interest under sections 3 (initial registration), 5 (registration of additional interests) or 6 (late registration) of the Act, then this is a declarable interest. If the interest is no longer registered because it is a ceased interest a member will no longer be required to declare it. An interest which could be deleted under section 8 but has not been must be declared until such time as it is deleted from the register. Financial interests are dealt with under section 39(6) of the 1998 Act which creates an offence in relation to any failure to comply with the provisions for declaration.

55. Section 39(2) of the 1998 Act requires provision to be made by the Parliament requiring a member who has a financial interest as defined for the purpose of paragraph (b) of that section to declare that interest. Subsection (4) defines a financial interest for the purpose of paragraph (b) of section 39(2) of the 1998 Act as a declarable financial interest.

Section 13: Declaration of interests

56. This section sets out when and how members must make declarations of their interests in proceedings of the Parliament. Subsection (1) places a duty on any member, who has a declarable financial interest in a matter, to declare that interest before taking part in proceedings of the Parliament relating to that matter. Members do not have to declare their interests in a matter every time they participate in proceedings of the Parliament, but they must do so if those proceedings are related in any way to their registrable interests.

57. Subsection (2) provides for a declarable interest to be declared either orally or in writing. This subsection provides for the Parliament to determine the method by which the interest should

declared. It is likely that in many circumstances an oral declaration will be required, for example at the beginning of a debate. However there are some situations where oral declarations of an interest may not be appropriate, for example when voting, in which case the Parliament may determine that declaration in such instances should be in writing.

Section 14: Prohibition of paid advocacy etc.

58. Section 14 sets out the requirements and restrictions in relation to paid advocacy. Paid advocacy occurs when a member undertakes an action in their capacity as a member, on behalf of any person or group for which they receive a payment or benefit in kind. Subsection (1) prevents a member by any means from advocating or initiating any cause or matter on behalf of any person or urging any other member to do so in return for any payment or any benefit in kind.

59. Paragraph (a) of subsection (2) defines “any means” as anything done by a member in the capacity of a member whether or not in any proceedings of the Parliament.

60. Paragraph (b) of subsection (2) defines what is meant by “any payment or benefit in kind”. Paragraph (b)(i) makes clear that it includes all payments or benefits in kind which the member receives and which may be reasonably considered to result in some benefit for that member, except a vote for that member in an election to the Parliament. Paragraph (b) (ii) also makes it clear that it includes any payments or benefit in kind which the member’s spouse, civil partner or cohabitant receives and which may reasonably be considered to be provided in connection with the Parliamentary duties of that member and to benefit that member in some way.

61. Subsection (3) sets out the exceptions to these provisions. Assistance in the preparation of a Members’ Bill, or assistance with amendments to any Bill, or a debate on subordinate legislation or a legislative consent motion will not be considered as paid advocacy. A legislative consent motion signifies the agreement of the Scottish Parliament that the UK Parliament may legislate in relation to a devolved matter, the legislative competence of the Parliament or the executive competence of Scottish Ministers. Such a motion was formerly known as a Sewel motion).

Section 15: Preventing or restricting participation in proceedings of the Parliament

62. Section 15 sets out the sanctions that may be imposed on a member by the Parliament who fails to register or declare interests when required to do so. Subsection (1) allows the Parliament to prevent or restrict a member from participating in proceedings relating to a registrable interest which they failed to register or declare.

63. The manner of the prevention or restriction of a member from participating in Parliamentary proceedings relating to that matter will be determined by the Parliament itself. It is envisaged that the Parliamentary Standards Commissioner (established by the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16)) (the Commissioner) will investigate such matters and report to the Standards and Public Appointments Committee who in turn will report to Parliament with a recommendation as to sanctions.

64. Section 39(3) of the 1998 Act requires this Act to make provision for these sanctions on failure to register or declare certain financial interests.

65. Subsection (2) sets out the circumstances which constitute a failure to register a registrable interest. A member will have failed to register an interest if they have not included that interest in the written statement lodged under sections 3 (initial registration), 5 (registration of registrable interests acquired after the date of return) or 6 (late registration) of the Act. In addition there will be a failure triggering this section where the member lodges a written statement under section 8 claiming the interest to be a ceased interest (that is an interest which no longer requires to be registered) when it is not. Where the interest requires to meet the prejudice test in order to be registered, this would include the case where the member claims that the interest no longer meets that test when it still does.

Section 16: Exclusion from proceedings of the Parliament

66. Section 39(5) of the 1998 Act requires provision to be made in this Act for the Parliament to exclude any member who fails to comply with, or contravenes certain provisions. This section allows the Parliament to exclude any member who fails to comply with, or contravenes, sections:

- 3 (initial registration of registrable interests);
- 5 (registration of registrable interests acquired after date of return);
- 6 (late registrations);
- 13 (declaration of interests);
- 14 (prohibition of paid advocacy etc.); and
- 15 (preventing or restricting participation in proceedings of the Parliament).

67. The exclusion can be for such a period as the Parliament considers appropriate and differs from that under section 15. This section allows exclusion from all proceedings of the Parliament and not just those proceedings to which the interest in question related. It is envisaged allegations would be investigated by the Standards Commissioner who would report to the Standards and Public Appointments Committee who in turn will report to Parliament with a recommendation.

Section 17: Offences

68. By virtue of section 39(6) (a) and (b) of the 1998 Act, contraventions of certain provisions in the Act are automatically criminal offences. The Scottish Parliament is given no discretion in this matter under the 1998 Act. Section 17 specifies the provisions of the Act breach of which constitutes an offence under the 1998 Act in so far as these sections relate to registrable financial interests, declarable financial interests and paid advocacy.

69. Subsection (1) sets out the sections breach of which constitutes an offence in so far as these sections relate to registrable interests or declarable financial interests, these are—

- 3 (initial registration of a registrable interests);
- 5 (registration of registrable interests acquired after date of return);

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- 6 (late registrations);
- 13 (declaration of interests);
- 15 (preventing or restricting participation in proceedings of the Parliament); and
- 16 (exclusion from proceedings of the Parliament).

70. Subsection (2) sets out the sections breach of which constitutes an offence in so far as they relate to paid advocacy, these are—

- 14 (prohibition of paid advocacy etc.); and
- 16 (exclusion from proceedings of the Parliament) (as far as it relates to a failure to comply with a sanction imposed relative to a breach of section 14).

71. Any person found guilty of any of these offences will be liable on summary conviction to a fine not exceeding level five on the standard scale (currently £5,000). The penalties are set out in section 39(7) of the 1998 Act.

Section 18: Scottish Law Officers

72. The Act applies to members of the Parliament and “member” is defined in section 19(1) as including, subject to section 18, a Scottish Law Officer (the Lord Advocate or Solicitor General for Scotland) even where they are not members of the Parliament. Section 18 makes modifications of the Act to apply where a Scottish Law Officer is not a member of the Parliament.

73. Subsection (2) modifies what is meant by “the date on which a member was returned” in relation to such a Scottish Law Officer. Where a Scottish Law Officer continues in post after a general election to the Parliament, subsection (2)(a) provides that “the date on which a member was returned” is the date of the poll of that general election. Where a new Scottish Law Officer is appointed, subsection (2)(b) provides that it means the date of that appointment.

74. Subsection (3) provides that, for the purposes of subsection (2)(a), where a new Scottish Law Officer has not been appointed within 28 days after the poll at a general election, the existing Scottish Law Officer will be regarded as continuing in post.

75. Subsection (4) sets out the period allowed for the Scottish Law Officers to register their interests for the purposes of section 3 (initial registration of a registrable interest). Section 3(4) is disapplied. Instead it is provided that a Scottish Law Officer is allowed, in the case of those continuing in office, 60 days after the poll at the general election and, in the case of a newly appointed Scottish Law Officer, 30 days after the day of their appointment.

76. By subsection (5), section 9(5) which provides for the Clerk to delete a member’s entry in the register when the member ceases to be a member is disapplied. The subsection sets out different provisions for Law Officers – these could be the dates when a Scottish Law Officer ceases to hold office; ceases to continue to hold office; or the date of the dissolution of Parliament, whichever is the earliest.

Section 19: Interpretation

77. Section 19 contains definitions of terms used throughout the Act. Subsection (2) (a) clarifies that any references in the Act to the prejudice test should be interpreted by reference to the definition in section 3(2). Paragraph (b) similarly sets out that any references to a “written statement” should be interpreted in accordance with section 4.

78. Subsection (3) clarifies the point in time when a member is deemed to have registered an interest in the register. An interest is deemed to be registered when the member lodges the written statement with the Clerk for recording in the register, not when it is actually entered into the register. Likewise an interest will be deemed to be a registered interest until a written notice is lodged with the Clerk stating that the interest has ceased. Once that notice saying the interest has ceased has been lodged the member cannot then claim that the interest remains registered.

Section 20: Revocation and saving

79. Article 10 of the Order provides that it will cease to have effect on a day appointed by or under an Act of the Scottish Parliament. Subsection (1) provides that the day will be the day on which this section comes into force.

80. Subsection (2) requires the Clerk to keep copies of the register of interests held under the Order for five years after the day on which this section comes into force. This is consistent with what is to happen with the new register under section 10.

81. Subsection (3) applies section 1(4) to the registers kept under the 1999 Order to allow the Clerk to determine how the previous registers, held under the Order, are to be kept. The Clerk must keep them in a form that he or she thinks is appropriate which, when printed, must be able to show what the register contains.

Section 21: Short title and commencement

82. This section provides for the short title of the Act. It also provides for two distinct commencement dates. Subsection (3) provides for a number of provisions to come into force on the day after Royal Assent but only for a limited purpose. The limited purpose is to enable the Parliament to make determinations under those provisions to come into force when the remainder of the Act comes into force in accordance with subsection (4). The provisions coming into force on the day after Royal Assent are:

- sections 4(1) and (2), which empowers the Parliament to make determinations regarding the form and content of written statements;
- section 11(1) which empowers the Parliament to make determinations regarding the publication of the register;
- section 13(2) which empowers the Parliament to make determinations regarding the circumstances in which an oral or written declaration of interests should be made;
- section 19 which contains definitions of expressions to assist the making of such determinations;

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- this section; and
- the schedule, paragraph 8(1)(b) which empowers the Parliament to make determinations regarding the amount of gross income for the purpose of determining whether a right or interest in heritable property is a registrable interest.

83. Subsection (4) specifies that the remaining provisions of the Act, not already in force, should come into force the day after the date of the first dissolution of the Parliament following the date of Royal Assent. The intention is to start a new session of the Scottish Parliament under the new requirements as set out in this Act. The Act will be binding on members and Scottish Law Officers from this date.

The Schedule: Registrable financial interests

84. The schedule defines the various financial interests which require to be registered. This schedule follows closely the Schedule to the Order. The Act defines those interests under the following headings:

- remuneration;
- related undertakings;
- election expenses;
- sponsorship;
- gifts;
- overseas visits;
- heritable property; and
- interest in shares.

Remuneration

85. Paragraph 2(1) provides for remuneration to be a registrable interest. If a member holds a position that is not remunerated the member does not need to register that interest unless the interest consists of a directorship of a related undertaking or partner in a firm as specified in paragraph 3. Certain remuneration such as remuneration as an MSP (which consists of salary and allowances) is not registrable. Remuneration which is not registrable is set out in paragraph 2(2). The provisions in the Act restate the provision on remuneration in the existing Order.

Related undertakings

86. Paragraph 3 provides for a registrable interest where a member is an unpaid director of a related undertaking or a partner in a firm. The provision applies where a member holds a paid directorship in one undertaking but also has an unpaid directorship in any parent or subsidiary of that undertaking or is a partner in a firm but does not receive remuneration for the position held.

Election expenses

87. Paragraph 4 provides for election expenses to be a registrable interest where a donation or donations from a person in aggregate exceeds 25% of those expenses. Election expenses means

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the same as it does in the order, which is in force for the purpose of the election for which the member is returned, made under section 12 of the 1998 Act. Paragraph 4 also omits a registered political party from the meaning of “person”. This means that any donation, that exceeds 25% of the aggregate of the election expenses, received from a registered political party which the member is connected with will not be required to be registered under the Act.

Sponsorship

88. Paragraph 5 makes provision for sponsorship to be a registrable interest. Sub-paragraph (2) provides that a member is sponsored by receiving, or having received any financial or material support as a member from the same person on more than one occasion which over a parliamentary session amounts in aggregate to more than a specified limit. Services provided by a volunteer are excepted from this definition. “Specified limit” is detailed in sub-paragraph (3) as 1 per cent of a member’s salary as published at the beginning of the parliamentary session (currently £480).

Gifts

89. Paragraph 6 provides for gifts which a member receives, or has received, that exceed 1 per cent of the gross annual salary of the member on the date when the gift was received to be a registrable interest. In addition to exceeding this financial threshold the gift must be one that meets the prejudice test. Thus the member must be satisfied that if after taking into account all the circumstances, that interest would reasonably be considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament. Gifts to the member or a company in which a member has a controlling interest or a partnership of which the member is a partner are all covered by this paragraph. It is expressly provided that it does not apply to the costs of travel and subsistence in connection with the member’s attendance at a conference where these are met, in whole or in part, by the organiser of or one of the parties at the conference.

Overseas visits

90. Paragraph 7 provides for overseas visits. In terms of subparagraph (1) overseas visits are registrable where they meet the prejudice test. Subparagraph (2) sets out the categories of overseas visits that do not require to be registered. Visits do not require to be registered where travel and other costs are wholly met by the member or the member’s spouse, civil partner, cohabitant, mother, father, son or daughter, the Parliamentary Corporation or the Scottish consolidated fund. Additionally visits do not have to be registered if approved prior to the visit by the Parliamentary Corporation. The provisions of the Act restate the exemption categories in the Order except that they are amended to include civil partners.

Heritable property

91 Paragraph 8 makes provision for interests in heritable property to be a registrable interest. Heritable property by virtue of the definition in section 19(1) includes any right or interest in heritage whether in Scotland or elsewhere. Heritable property consists of land including houses and other buildings. The heritable property may be situated in any part of the world. There are two thresholds for such interests to be registrable interests. The first, dealt with in paragraph 8(2) (a), is the market value of the heritable property, which if it exceeds 50 per cent of a member’s salary at the relevant date, requires to be registered. Paragraph 8(2) (b), sets out the

second threshold, which requires a member to register heritable property if the gross income for 12 months prior to the relevant date exceeds an amount determined by the Parliament.

90. Paragraph 8(3) clarifies that holding or owning heritable property covers sole ownership, holding property jointly and holding property in a trust where you have an interest as a beneficiary in that trust.

91. Property which is, or was, used as a residential home by the member, member's spouse, civil partner or cohabitant is excepted under paragraph 8(4)(a) and (b) from the registration requirement (including a former residential home which is, or was, unoccupied and for sale, for a maximum period of 12 months). Paragraph 8(4) (c) clarifies that heritable property forming part of the assets of a partnership does not require to be separately registered where any income from that partnership is registered as remuneration.

92. Paragraph 8 also makes provision as to what is the relevant date for valuation of the right or interest in heritable property. Where the member has, or had, such a right or interest on the date of the member's return as a member, then paragraph 8(6) provides that the relevant date is that date and 5th April in each succeeding year where the heritable property continues to be owned or held. Where the right or interest is acquired after the date of the member's return then paragraph 8(7) provides that the relevant date is the date of acquisition and 5th April in each succeeding year where the heritable property continues to be owned or held. Where the property is disposed off during the year no revaluation is necessary.

93. Accordingly, where a right or interest in heritable property is retained on 5th April in each succeeding year, a member should reassess the value of that right or interest at that time to determine whether it has become, or remains, or ceases to be a registrable interest. A right or interest in heritable property may not initially be a registrable interest because it falls below the valuation threshold on the first relevant date. However, if that right or interest is retained it may become a registrable interest as a result of a revaluation on 5th April in a succeeding year. In that event, the member must register that interest within 30 days of acquiring such a registrable interest in terms of section 5. If a registered right or interest in heritable property falls below the thresholds on 5th April in a succeeding year the member may lodge a statement that it has become a ceased interest and have it deleted from the register.

Interest in shares

94. Paragraph 9 provides that a member has a registrable interest when a member has or had an interest in shares if it meets the criteria in subparagraph (2), irrespective of whether the interest is held by the member or by a relevant person. A relevant person is, in terms of subparagraph (7) (b), a person subject to the member's direction and control. That could include a third party or a member's spouse, civil partner or cohabitant, where, for example, shares are held nominally in their name but with an arrangement in place that allows the member to dictate when they are to be sold or for dividends to be remitted back to the member

95. Paragraph 9(2) provides for two thresholds. The first is that the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body. The second is that the market value of the shares at the relevant date exceeds, or exceeded, 50 per cent of a member's salary on that date (rounded

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down to the nearest £10). Based on a member's salary for 2005/06 the threshold would be £25,850.

96. Paragraph 9(3) clarifies that holding or owning an interest in shares covers sole ownership, holding shares jointly and holding shares in a trust where you have an interest as a beneficiary in that trust. Paragraph 9(4) clarifies that an interest in shares forming part of the assets of a partnership does not require to be separately registered where any income from that partnership is registered as remuneration.

97. As in the case of heritable property, paragraph 9 also makes provision as to what is the relevant date to calculate the interest in shares. That date is the date the member was returned or if later, the date the shares were acquired and, where the interest is retained, each succeeding 5th April. Where shares were disposed of before the member was returned, the relevant date is the date when the interest ceased. Similar considerations apply to shares as they apply to heritable property. Accordingly, where an interest in shares is retained on 5th April in each succeeding year, a member should reassess the value of that interest at that time to determine whether it has become, or remains, or ceases to be a registrable interest.

Modification

98. Paragraph 10 confers a power on the Parliament to modify by resolution any part of the schedule which it considers necessary or expedient. This power is necessary to avoid the need for new primary legislation should there be a requirement to alter the terms of the schedule perhaps in the light of changing circumstances or events. Amendment could be by addition, removal or replacement of provisions.

99. Publication of the resolution by Her Majesty's Stationery Office is provided for under paragraph 10(2) which applies relevant provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) to the resolution.

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PARLIAMENTARY HISTORY

The following table sets, for each Stage of the proceedings in the Scottish Parliament on the Act for this Act, the dates on which the proceedings at the stage took place, the references to the Official Report of those proceedings and the dates on which the Committee Reports and other papers relating to the act were published, and the references to those Reports and other papers.

Proceedings and Reports	Reference
Introduction	
12 September 2005	Act as introduced (SP Act 44)
Stage 1	
<i>(a) Finance Committee</i>	
20th Meeting, 2005	20 September 2005, Col 2828 & Minutes
4th Report 2005 (18 October 2005)	SP Paper 438
<i>(b) Consideration by the Parliament</i>	
14 December 2005	Cols 21704 – 21753
Stage 2	
<i>(a) Interests of Members of the Scottish Parliament Bill Committee</i>	
1st Meeting 2006 (Session 2)	8 March 2006, Cols 1 – 48 & Minutes
2nd Meeting 2006 (Session 2)	15 March 2006, Cols 49 – 78
Act (as Amended at Stage 2)	Act as Amended SP 44A
Stage 3	
<i>Consideration by the Parliament</i>	
Stage 3	26 April 2006, Cols 24918 – 24978
Continuation of Stage 3	8 June 2006, Cols 26491 – 26494
Stage 3 Debate	8 June 2006, Cols 26494 – 26510

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Royal Assent	
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