

# **INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT ACT 2006**

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## **EXPLANATORY NOTES**

### **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.
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

*These notes relate to the Interests of Members of the Scottish Parliament  
Act 2006 (asp 12) which received Royal Assent on 13 July 2006*

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 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.