

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 39: Members' interests

Purpose and Effect

This section requires the Parliament to make "provision" by or under an Act of the Scottish Parliament for the registration and declaration of members' interests and for the rules which members must comply with when taking part in proceedings of the Parliament. This provision must also prohibit members from advocating any matter on behalf of a person by specified means, or urging other members to do so, in return for payment or benefit. The section also creates a criminal offence where a member is found to be guilty of contravening those provisions. The provisions of this section will apply to the Scottish Law Officers even if they are not members of the Parliament. The section sets out the minimum requirements for the provisions.

General

This section imposes a statutory duty upon the Scottish Parliament to make provision by or under an Act of the Scottish Parliament about members' interests. This is in addition to the provision about corrupt practices which is made by section 43.

Until the Parliament makes such provision, transitional provision is made by the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (S.I. 1999/1350). In *Whaley v Lord Watson of Invergowrie* 2000 SLT 475, a petition was brought by persons who had a financial interest in hunting seeking an interdict to prevent Lord Watson from introducing a Bill to ban hunting on the grounds that this would infringe a provision in that Order. The Court of Session held that the Order did not give rise to rights which could be enforced by members of the public.

A Code of Conduct for Members was agreed to by the Parliament in February 2000.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	29-Jan-98	564
LC	16-Jul-98	476
LC	16-Jul-98	477
LC	16-Jul-98	484
LR	22-Oct-98	1682

Details of Provisions

Subsection (1) requires provision to be made for the establishment of a register of members' interests which is to be published and made available for public inspection.

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Subsection (2) requires provision to be made to require a member with a financial interest to register it in the register and to declare a financial interest before taking part in any proceedings of the Parliament relating to that matter. Apart from the fact that it is indicated that financial interest includes benefits in kind, what is meant by financial interest for either of these purposes is left to the Parliament to define.

Subsection (3) requires the provision made under sub-section (2) about members' interests to include any provision which the Parliament considers appropriate to prevent a member with a financial interest for either of the purposes mentioned in subsection (2) from taking part in proceedings of the Parliament which relate to that matter or to restrict his participation in such proceedings.

Subsection (4) requires provision to be made to prohibit a member from advocating or initiating any cause or matter on behalf of another person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified. It also requires the Parliament to prohibit members from urging other members, in consideration for payment or benefit in kind, to advocate or initiate any cause or matter on behalf of any person by any such means.

Subsection (5) requires the provisions to include such provision as the Parliament considers appropriate to exclude any member who fails to comply with or contravenes the provision made under subsections (1) to (4) from proceedings of the Parliament.

Subsection (6) creates a criminal offence if a member takes part in proceedings without having registered a financial interest or declared a financial interest, in contravention of the provisions made under subsection (2) and (3) or the provisions made under subsection (4).

Subsection (7) provides that a person found guilty of such an offence will be liable to a fine not exceeding level 5 on the standard scale.

Subsection (8) defines "provision" as meaning provision made by or under an Act of the Scottish Parliament and ensures that the section applies to the Lord Advocate and the Solicitor General for Scotland whether or not they are members of the Parliament.