

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 1: the Parliament and Its Powers

Section 7: Members' Interests

33. This section amends section 39 of the 1998 Act to give greater flexibility to the Scottish Parliament when making provision for a members' interests regime.
34. [Section 39](#) imposes a statutory duty upon the Scottish Parliament to make provision by or under an Act of the Scottish Parliament about members' interests. Provision is currently made in the [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#).
35. *Subsection (2)* substitutes new subsections for subsections (5) to (7) of section 39.
36. New subsection (4A) confers on the Scottish Parliament the power to create exceptions to the requirements or prohibitions imposed by the provisions made in pursuance of section 39(2) to (4). For example, this would enable the Scottish Parliament to make provision, if an excuse for non-compliance is considered to be reasonable by the Parliament, that there may be a finding that there has not been a failure to comply or a contravention.
37. New subsection (5) allows the Scottish Parliament to make provision to impose on a member such sanctions as it considers appropriate if a member fails to comply with or contravenes any provision made in pursuance of subsections (2) to (5). It continues to be able to make provision to exclude members from the proceedings of the Parliament in similar circumstances.
38. New subsection (5A) allows provision made under subsection (5) to include provision that a sanction is not to be imposed in certain specified circumstances. For example, this would enable the Scottish Parliament to make provision, if it considers it appropriate to do so, for a defence of reasonable excuse where there is a failure to comply or a contravention of the requirements stated under section 39(2) to (5).
39. [Section 39\(6\)](#) currently provides that any Member of Parliament who contravenes provision made in pursuance of subsections (2) to (4) is guilty of an offence. New subsection (6) replaces this with a power for the Parliament to make provision in this regard. The penalty for the offence remains the same (see new subsection (7)).