
STATUTORY INSTRUMENTS

1999 No. 1350

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

**The Scotland Act 1998 (Transitory and Transitional
Provisions) (Members' Interests) Order 1999**

<i>Made</i>	- - - -	<i>12th May 1999</i>
<i>Laid before Parliament</i>		<i>13th May 1999</i>
<i>Coming into force</i>	- -	<i>4th June 1999</i>

The Secretary of State, in exercise of the powers conferred on him by sections 112(1), 113 and 129(1) of the Scotland Act 1998⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 and shall come into force on 4th June 1999.

Interpretation

2.—(1) In this Order—

“the Act” means the Scotland Act 1998;

“the 1985 Act” means the Companies Act 1985⁽²⁾;

“associate” shall be construed in accordance with section 74 of the Bankruptcy (Scotland) Act 1985⁽³⁾;

“the Clerk” means the Clerk of the Parliament;

“cohabitee” in relation to a member includes a person, whether of the opposite sex or not, who is living with that member in a relationship similar to that of husband and wife;

“company” means a company within the meaning of the 1985 Act;

⁽¹⁾ 1998 c. 46.
⁽²⁾ 1985 c. 6.
⁽³⁾ 1985 c. 66.

“member” means a member of the Scottish Parliament and includes the Lord Advocate and the Solicitor General for Scotland even if they are not members of the Scottish Parliament;

“parent undertaking” has the same meaning as in section 258 of the 1985 Act;

“the Register” means the Register of Interests of Members of the Scottish Parliament established under article 3;

“registrable interest” shall be construed in accordance with article 4(1);

“remuneration” includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind;

“shares” includes stock;

“spouse” in relation to a member does not include a former spouse or a spouse who is living separately and apart from the member;

“subsidiary undertaking” has the same meaning as in section 258 of the 1985 Act;

“undertaking” has the same meaning as in section 259 of the 1985 Act.

(2) Any reference in this Order to the date when a person is returned as a member shall, in relation to the Lord Advocate or the Solicitor General for Scotland if he is not a member of the Scottish Parliament, be construed as a reference to the date when he is appointed to that office.

(3) In this Order, unless the context otherwise requires—

- (a) a reference to a numbered section is a reference to the section so numbered in the Act;
- (b) a reference to a numbered article is a reference to the article of this Order so numbered;
- (c) a reference to the Schedule is a reference to the Schedule to this Order; and
- (d) a reference in an article or the Schedule to a numbered paragraph is a reference to the paragraph of that article or of the Schedule so numbered.

Register of Interests of Members of the Scottish Parliament

3.—(1) There shall be a Register of Interests of Members of the Scottish Parliament.

(2) The Register shall contain—

(a) an entry for each member which shall consist of—

(i) in the case of a statement lodged under article 4(2)(a)—

(a) such details as are mentioned in article 4(3)(a) to (d); and

(b) such other information disclosed by a member under article 4(3)(e) as the Presiding Officer may determine;

(ii) in the case of a statement lodged under article 4(2)(b) or (4), such details of that statement as the Presiding Officer may determine; and

(iii) the date on which any such statement was lodged; and

(b) any other matter which the Parliament may decide should be included in the Register.

(3) The Clerk shall, not later than 30 days after a statement is lodged under article 4(2)(a), (2)(b) or (4), enter in the Register the matters specified in paragraph (2)(a) in respect of that statement and shall send to each member a copy of the entry relating to him.

(4) The Register may be amended by the Clerk at any time to take account of a statement lodged under article 4(5), (6) or (7) and the Clerk shall send to each member who has lodged such a statement a copy of the amended entry.

(5) The Clerk may at any time alter the Register to correct any clerical or typographical error in any entry.

(6) The Register shall be printed and published by the Clerk at such intervals and in such manner as the Parliament may determine.

(7) A copy of the Register shall be kept by the Clerk at the office of the Clerk and shall be available for inspection by any person on the days and at the times when the office of the Clerk is open.

(8) The Register may be kept in such form (which need not be documentary form) as the Clerk may consider appropriate and, if it is kept otherwise than in documentary form, it shall be in such form that when printed or displayed it shows the information mentioned in paragraph (2).

Registration of registrable interests

4.—(1) The Schedule sets out the circumstances in which a member has a registrable interest.

(2) Each member shall, not later than the relevant date mentioned in paragraph (8), lodge with the Clerk a written statement—

- (a) giving details of any registrable interest falling within any of the following categories—
 - (i) any registrable interest which he had at the date on which he was returned as a member;
 - (ii) any registrable interest which he has had at any time since that date;
 - (iii) any registrable interest which he has at the date on which he lodges the statement with the Clerk; or
- (b) declaring that—
 - (i) he had no registrable interest on the date on which he was returned as a member;
 - (ii) he has had no registrable interest at any time since that date; and
 - (iii) he has no registrable interest at the date on which he lodges the statement with the Clerk.

(3) A statement lodged under paragraph (2)(a) shall be in such form as may be specified by the Presiding Officer and shall contain—

- (a) such details of any registrable interest and such other information as, in the opinion of the Presiding Officer, are necessary to identify clearly the nature of the interest and, where relevant, its source;
- (b) details of the monetary value of the interest;
- (c) where the registrable interest falls within paragraph 2 or 3 of the Schedule, such details as the Presiding Officer may determine of any clients to whom the member provides services in his capacity as a member where those clients are—
 - (i) clients of an undertaking of which he is a director as mentioned in paragraph 2 or 3 of the Schedule; or
 - (ii) clients of the member (in any capacity) or any employer or firm as mentioned in paragraph 2 of the Schedule;
- (d) where—
 - (i) the registrable interest falls within paragraph 6 of the Schedule; and
 - (ii) any gift is received by the member, his spouse or cohabitee, or a company or partnership as mentioned in that paragraph, from any other person whose principal residence or place of business, as the case may be, is outside the United Kingdom, such details as the Presiding Officer may determine of that person and principal residence or place of business; and
- (e) such other information as the member wishes to disclose.

(4) A member who has an interest which may be relevant to the proceedings of the Parliament but which is not a registrable interest may at any time lodge with the Clerk a written statement giving details of the interest including the date on which he acquired the interest.

(5) If, after lodging a statement under paragraph (2)(a) or (b), a member becomes aware that he has a registrable interest in respect of which he has not lodged a statement under paragraph (2)(a), he shall forthwith lodge a statement under paragraph (2)(a) in respect of that interest.

(6) If, after lodging a statement under—

(a) paragraph (2)(a), a member acquires an additional registrable interest; or

(b) paragraph (2)(b), a member acquires a registrable interest,

the member shall, not later than 30 days after the date on which he acquired that interest, lodge a statement under paragraph (2)(a) in respect of that interest and shall also give notice of that date.

(7) If, after lodging a statement under paragraph (2)(a) or (4), a member ceases to have an interest detailed in that statement he may lodge with the Clerk a written statement—

(a) identifying the interest in question; and

(b) giving the date on which he ceased to have that interest.

(8) The relevant date for the purposes of paragraph (2) is—

(a) in any case where a member has taken the oath of allegiance or made his solemn affirmation before the date of the coming into force of this Order, the date which is 15 days after that date;

(b) in any other case, the date which is 30 days after the date on which he has taken his oath of allegiance or made his solemn affirmation.

Declaration of registrable interest in proceedings of the Parliament

5.—(1) Where a member has a registrable interest in respect of which he has lodged a statement under article 4(2)(a) which would prejudice or give the appearance of prejudicing his ability to participate in a disinterested manner in proceedings of the Parliament relating to any particular matter, he shall, before otherwise participating in those proceedings, make an oral statement in those proceedings declaring the nature of that registrable interest.

(2) For the purpose of paragraph (1), a member participates in proceedings of the Parliament if he takes part in those proceedings in any way other than voting.

Advocacy

6. Where, at any time after the date on which he was returned as a member, a member receives or expects to receive any remuneration, he shall not—

(a) do anything in his capacity as a member in any proceedings of the Parliament which relates directly to the affairs or interests of, or which seeks to confer benefit upon, the person from whom the member received or expects to receive remuneration or to the affairs and interests of a client or an associate of that person; or

(b) encourage any other member to do anything mentioned in paragraph (a).

Participation in proceedings

7.—(1) The Parliament may prevent or restrict any member from participating in proceedings of the Parliament to such extent and for such period as the Parliament may consider appropriate, where those proceedings relate to a matter in which a member has a registrable interest in respect of which the member has failed to—

- (a) lodge a statement under article 4(2)(a); or
- (b) make an oral statement in accordance with article 5(1).

(2) Where any member fails to comply with or contravenes the requirements of article 4(2)(a), 4(6), 5, 6 or paragraph (1), the Parliament may exclude him from proceedings of the Parliament for such period as the Parliament may consider appropriate.

Offences

8.—(1) Any member who takes part in any proceedings of the Parliament without having complied with, or in contravention of, article 4(2)(a), 4(6), 5 or 6 is guilty of an offence.

(2) A member guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Complaints

9. Any person may inform the Presiding Officer if he considers that a member—

- (a) has taken part in any proceedings of the Parliament without having complied with, or in contravention of, article 4(2)(a), 4(5), 5 or 6; or
- (b) has contravened any resolution of the Parliament made in pursuance of article 7.

Duration

10. This Order, unless previously revoked by the Secretary of State, shall cease to have effect on the day appointed by or under an Act of the Scottish Parliament.

St Andrew's House,
Edinburgh
12th May 1999

Henry McLeish
Minister of State, Scottish Office

SCHEDULE

Article 4

REGISTRABLE INTERESTS

1. A member has a registrable interest in the circumstances set out in the following paragraphs.

Remuneration etc.

2.—(1) Where a member receives remuneration by virtue of—

- (a) being employed;
- (b) being self-employed;
- (c) being the holder of an office;
- (d) being a director of an undertaking;
- (e) being a partner in a firm; or
- (f) undertaking a trade, profession or vocation or any other work.

(2) A member does not fall within sub-paragraph (1) solely by virtue of being a member, a member of the Scottish Executive or a junior Scottish Minister or holding the office of Presiding Officer, deputy Presiding Officer or member of the Parliamentary corporation.

Related undertaking

3.—(1) Where a member is a director of a related undertaking but does not receive remuneration as such director.

(2) For this purpose, a related undertaking is a parent or subsidiary undertaking of an undertaking of which the member is a director and receives remuneration as a director as mentioned in paragraph 2(1)(d).

Election expenses

4.—(1) Where contributions towards the election expenses of a member in relation to the election at which he was returned as a member included a donation or donations by a person, the aggregate of which exceeded 25% of those election expenses.

(2) For this purpose—

- (a) the election expenses of a member are the election expenses within the meaning of article 83 of the Scottish Parliament (Elections etc.) Order 1999(4) in relation to that member's candidature where that member stood as a candidate for return as a constituency member or as an individual candidate for return as a regional member;
- (b) "a person" means a single individual or legal person and includes a group of companies; and
- (c) "group of companies" has the same meaning as "group" in section 262(1) of the 1985 Act.

Sponsorship

5.—(1) Where a member is sponsored as a member by any person.

(2) For this purpose, a member is sponsored if he receives any financial or material support on a continuing basis to assist him as a member.

(4) S.I.1999/787.

Gifts

6.—(1) Where a member or his spouse or cohabitee or a company in which the member has a controlling interest or a partnership of which the member is a partner, receives—

- (a) a gift of heritable or moveable property; or
- (b) a gift of a benefit in kind,

the value of which, at the date on which it was received by the member or his spouse or cohabitee or the company or partnership, as the case may be, exceeds £250.

(2) Sub-paragraph (1) does not apply to the costs of travel and subsistence in connection with the member's attendance at a conference or meeting where those costs are borne in whole or in part by the organiser of the conference or by one of the other parties attending the meeting, as the case may be.

(3) For the purposes of sub-paragraph (1), "controlling interest" means, in relation to a company, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the company.

Overseas visits

7.—(1) Where a member has made a visit outside the United Kingdom.

(2) Sub-paragraph (1) does not apply to a visit, the travel and other costs of which—

- (a) are wholly met—
 - (i) by the member;
 - (ii) by the member's spouse or cohabitee;
 - (iii) by the member's mother, father, son or daughter;
 - (iv) by the Parliamentary corporation; or
 - (v) out of the Scottish Consolidated Fund; or
- (b) were approved prior to the visit by the Parliamentary corporation.

Heritable property

8.—(1) Where a member owns or has any other right or interest in heritable property—

- (a) the market value of which, at the relevant date, is greater than £25,000; or
- (b) the income from which for the period of twelve months prior to the relevant date is greater than £4,000.

(2) Sub-paragraph (1) does not apply to heritable property used as a residential home by the member or his spouse or cohabitee.

(3) Where a member owns or has any other right or interest in heritable property at the date on which he was returned as a member, the relevant date is—

- (a) that date; and
- (b) the 5th April immediately following that date and in each succeeding year, where he remains the owner of or retains that right or interest in heritable property on that 5th April.

(4) Where a member becomes the owner of or acquires any other right or interest in heritable property after the date on which he was returned as a member, the relevant date is—

- (a) the date on which he became the owner of or acquired the right or interest; and
- (b) the 5th April immediately following that date and in each succeeding year, where he remains the owner of or retains that right or interest in heritable property on that 5th April.

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(5) For the purposes of this paragraph, “heritable property” means land or any right or interest in or over land.

Interest in shares

9.—(1) Where a member or his spouse or cohabitee has an interest in shares comprised in the share capital of a company or other body, whether that interest is held by the member, his spouse or cohabitee or by a relevant person, and the nominal value of the shares at the relevant date is—

- (a) greater than 1% of the issued share capital of the company or other body; or
- (b) greater than £25,000.

(2) Where a member or his spouse or cohabitee has an interest in shares comprised in the share capital of a company or other body at the date on which he was returned as a member, the relevant date is—

- (a) that date; and
- (b) the 5th April immediately following that date and in each succeeding year, where he retains the interest on that 5th April.

(3) Where a member acquires an interest in shares after the date on which he was returned as a member, the relevant date is—

- (a) the date on which he acquired the interest in shares; and
- (b) the 5th April immediately following that date and in each succeeding year, where he retains the interest on that 5th April.

(4) For the purposes of this paragraph, a “relevant person” is a person who is subject to the control or direction of a member in respect of an interest in shares.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitory and transitional provisions by virtue of section 129(1) of the Scotland Act 1998 (c. 46) (“the Act”) regarding the registration of interests of members of the Scottish Parliament and the Lord Advocate and Solicitor General for Scotland if they are not members of the Parliament.

Article 3 establishes a Register of Interests of Members of the Scottish Parliament. It provides for various details to be entered in the Register by the Clerk of the Parliament and for the Register to be kept and maintained by the Clerk.

Article 4 requires members to lodge a written statement setting out details of any registrable interest contained in the Schedule to the Order. Members may also lodge a statement if they cease to have a registrable interest.

Article 5 requires members who have a registrable interest in proceedings of the Parliament, before participating in those proceedings, to make an oral declaration to that effect.

Article 6 restricts a member’s participation in proceedings of the Parliament where he receives or expects to receive a payment from any person.

Article 7 allows the Parliament to prevent or restrict a member who fails to comply with or contravenes certain provisions of this Order from participating in proceedings of the Parliament and in certain circumstances, to exclude such a member from proceedings of the Parliament.

Article 8 makes it an offence to fail to comply with or to contravene certain provisions of this Order.

Article 9 provides that any person may inform the Presiding Officer if he considers that a member has failed to comply with or has contravened certain provisions of this Order.

Article 10 provides that this Order will cease to have effect on the date appointed by or under an Act of the Scottish Parliament.