

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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).
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.