



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 69/14

4 June 2014

NIAR 358-14

Ray McCaffrey

Rules on the receipt of gifts and hospitality

The paper sets out the position on the receipt of gifts and hospitality in other legislatures, the Judiciary and the Civil Service. The Assembly's Committee on Standards and Privileges commissioned this paper to inform its review of the Assembly's Code of Conduct. As part of this review, the Committee is considering issues raised in a report by the Group of States Against Corruption (GRECO).

Overview of the paper

What does the paper do?

The paper sets out the position on the receipt of gifts and hospitality in other legislatures, the Judiciary and the Civil Service.

What is the background to the paper?

The Assembly's Committee on Standards and Privileges commissioned this paper to inform its review of the Assembly's Code of Conduct. As part of this review, the Committee is considering issues raised in a report by the Group of States Against Corruption (GRECO).

What is GRECO and what does it do?

GRECO was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards. As part of its work, it carries out evaluations via questionnaires and visits to countries. It then drafts reports which include recommendations to those countries to improve levels of compliance with the particular areas under consideration. Its latest evaluation explored the prevention of corruption in respect of Members of Parliament, judges and prosecutors. The UK Parliament and the devolved institutions were included as part of this work.

What did the research find?

All of the organisations/institutions that the research was asked to consider place restrictions and provide at least some guidance on the acceptance of gifts and hospitality by office holders. The guidance in some legislatures is more detailed than in others, and the reporting thresholds are set at different levels, but there is a clear desire to ensure that the receipt of gifts and hospitality is monitored to ensure that it does not influence, or be seen to influence, the work of legislators, Ministers, civil servants and the judiciary.

Are Ministers in the Northern Ireland Executive bound by rules on gifts and hospitality?

The Northern Ireland Ministerial Code states that Ministers must ensure they comply with any rules on the acceptance of gifts and hospitality that may be offered. They are also subject to the Assembly's rules on registration, declaration and lobbying in the same way as other Members. The research could not find any publicly available document that elaborates on the rules applicable to Ministers i.e. any thresholds. Gifts and hospitality registers are publicly available for senior management of the Civil

Service, up to and including Permanent Secretaries.

Have the UK legislatures made any changes in light of the GRECO report?

The House of Commons and House of Lords have taken steps to reduce the threshold value for acceptance of gifts and provide clearer guidance for Members. The Lords Committee on Privileges and Conduct has produced two reports in 2014 that proposed changes to certain aspects of the Code of Conduct in relation to, among other things, the receipt of gifts. The reports were approved by the House.

The Commons Committee on Standards published a report in December 2012 with a similar aim to that of the Lords. The report has yet to be debated.

The Scottish Parliament's Standards, Procedures and Public Appointments Committee is currently reviewing the Interests of Members of the Scottish Parliament Act 2006. It will take into account GRECO's recommendations as part of this review.

A July 2013 paper for the National Assembly for Wales' Standards of Conduct Committee addressed the GRECO report. It set out the Assembly's position on gifts and hospitality. Furthermore, the Assembly's Standards Commissioner is undertaking a review of the Code of Conduct and is currently focusing on the registration and declaration of interests guidance for Assembly Members.

What is the situation outside the UK? Are restrictions in place elsewhere?

Dail Eireann, the United States Congress and the General Assembly of Maryland all have in place rules and guidance relating to the acceptance of gifts and hospitality. The House of Representatives and the US Senate have detailed and extensive guidance for its legislators that is not replicated in the other legislatures in terms of its level of detail.

The European Parliament has only relatively recently agreed a Code of Conduct. Subsequent 'Implementing Measures' set the threshold at which gifts must be declared at EUR150.

1 Introduction

This research paper was requested by the Committee on Standards and Privileges as part of its review of the Northern Ireland Assembly's Code of Conduct. The Committee asked for information on the following issues:

- The general ban in relation to gifts and applicable to UK Ministers, civil servants and judges;
- Any rules or guidance for Northern Ireland Executive Ministers in relation to the receipt and recording of details of gifts and hospitality;
- An update on the position at the House of Commons, House of Lords, Scottish Parliament and National Assembly for Wales in relation to the receipt of gifts by Members; and
- The position in Dail Eireann, the US Congress, the European Parliament and the General Assembly of Maryland in relation to the receipt of gifts and hospitality by Members.

2 The general ban in relation to gifts and applicable to UK Ministers, civil servants and judges

UK Ministers

The Ministerial Code contains guidance to Ministers serving in the UK Government on the acceptance of gifts and hospitality¹. The relevant section of the Code is reproduced below:

- It is a well-established and recognised rule that no Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc. are offered to a member of their family.
- This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the advice of their Permanent Secretary and the independent adviser on Ministers' interests where appropriate.
- Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests. Gifts of small value, currently this is set at £140, may be retained by the recipient. Gifts of a higher value should be handed over to the department for disposal unless the recipient wishes to purchase the gift abated by £140. There is usually no customs duty or import VAT payable on the importation of official gifts received overseas. HMRC can advise on any cases of doubt. If a Minister wishes to retain a gift he or she will be liable for any tax it may attract. Departments will publish, at least quarterly, details of gifts received and given by Ministers valued at more than £140.

¹ UK Ministerial Code: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf accessed 21 May 2014

- Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Lords' Interests.
- If a Minister accepts hospitality in a Ministerial capacity, the Minister should notify their Permanent Secretary. Departments will publish, at least quarterly, details of hospitality received by Ministers in a Ministerial capacity. Hospitality accepted as an MP or Peer should be declared in the Register of Members' or Lords' Interests respectively. Registration of hospitality would normally be required for hospitality around £650 in value for the Commons and £500 for the Lords.

Details of the gifts and hospitality received by Ministers is published on a quarterly basis on the website of the Cabinet Office².

Civil Servants

The Constitutional Reform and Governance Act 2010 placed the Civil Service on a statutory footing. The Civil Service Code, published in 2010, sets out the values and expected of civil servants. Under the heading 'Standards of behaviour', the Code states:

You (the civil servant) must not: accept gifts or hospitality or receive other benefits from anyone which might be reasonably be seen to compromise your personal judgement or integrity³.

There is also additional guidance on civil servants receiving hospitality that provides more information on the acceptance of hospitality:

The following should be considered before accepting hospitality:

Purpose

- Accepting hospitality should be in the interests of Departments and help further Government objectives

Proportionality

- Any hospitality accepted should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation could lead to a perception that the work of the department is being influenced by the objectives of a single organisation
- On the same basis, any hospitality accepted should not seem lavish or disproportionate to the nature of the relationship you have with the provider

² See for example: <https://www.gov.uk/government/publications/co-ministerial-gifts-hospitality-travel-and-meetings-october-to-december-2013>

³ Civil Service Code: <http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

Conflict of interest

- There are strict rules in place for those responsible for procurement or management of contracts, but even if you are not directly involved in financial, contractual or regulatory matters connected to the organisation, it is essential to consider the relationship has with Departments
- You should consider whether the organisation is bidding for work or grants from Departments, or if it is under investigation or had criticism
- You should also consider whether it is appropriate to accept hospitality from a source if it is also a taxpayer-funded organisation

*Further guidance on recording hospitality***Recording hospitality**

Staff, including those on short term or agency contracts, should record all instances of hospitality accepted from organisations outside of Government. This includes any instance involving a personal friend where the purpose of the hospitality was to cover business and/or was paid for by the individual's company expense account. When recording instances of hospitality, staff should also record whether they were accompanied by any guests at the expense of the source of the hospitality. There is no need to record minor refreshments or sandwich lunches.

In general, it is not necessary to record hospitality received from others within HM Government or the Devolved Administrations, the Palace, non-departmental public bodies and overseas governments. Hospitality received from universities, local authorities and police forces should be declared. More detailed guidance will be set out in departmental staff handbooks⁴.

Northern Ireland Civil Service

Guidance issued by the Department of Finance and Personnel and applicable to all members of the Civil Service sets out the standards expected of civil servants:

The general principle is that all gifts offered should be refused. However seasonal, promotional or trivial gifts (such as calendars, diaries, pens etc), which bear Company names and/or logos of the provider of the gift and have a value of less than £50, may be accepted by individuals without the need for these to be reported or approved in advance. A token gift may be accepted if it is presented by an organisation, however, these and the acceptance of any other gifts must have been approved by management (see paragraph 2.17) and must be declared by the member of staff in their Departmental/Agency register.

More expensive or substantial items, valued at £50 or more and gifts of lottery tickets, cash, gift vouchers or gift cheques, cannot on any account be accepted. All gifts

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61190/guide-hospitality.pdf

offered (apart from those which are trivial or inexpensive), even if they are declined/returned need to be recorded in the register⁵.

The Judiciary in England and Wales

The Guide to Judicial Conduct provides guidance to members of the Judiciary in England and Wales⁶. It covers a range of topics including independence, impartiality and integrity. Within this, it addresses the receipt of gifts and hospitality and distinguishes between a judge in his or her role as a member of the judiciary and activities that take place outside the court:

8.8 Gifts, Hospitality and Social Activities

8.8.1 Gifts and Hospitality. Caution should be exercised when considering whether to accept any gift or hospitality that may be offered. It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

8.8.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example a judge who makes a speech or participates in some public or private function should feel free to accept a small token of appreciation. It may include a contribution to charity in the manner explained in the Memorandum on Conditions of Appointment and Terms of Service (October 2000).

“The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture. However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, e.g. accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.”

8.8.3 By way of further example, the acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.

8.8.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers' chambers or solicitors' firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients.

8.8.5 It is also axiomatic that judges must not exploit the status and prestige of judicial office to obtain personal favours or benefits.

8.8.6 Where a judge is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of the head of the appropriate jurisdiction.

⁵ Department of Finance and Personnel, Acceptance of gifts and hospitality: http://www.dfpni.gov.uk/index/finance/afmd/afmd-key-guidance/afmd-daos/daodfp1006_revised_sept_09-2.pdf

⁶ Guide to Judicial Conduct: http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf

The Bangalore Principles

The Bangalore Principles of Judicial Conduct were implemented in 2001. They originated from a United Nations initiative with the participation of the UN Special Rapporteur on the Independence of Judges and Lawyers. A group of senior judges from the Commonwealth countries prepared a draft code of judicial conduct which were discussed and revised before being endorsed at the 59th session of the UN Human Rights Commission at Geneva in April 2003⁷. The principles are:

1. Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects
2. Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made
3. Integrity is essential to the proper discharge of the judicial office
4. Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the judge
5. Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office
6. Competence and diligence are prerequisites to the due performance of judicial office

Propriety

Section 4 of the Bangalore Principles provides guidance on propriety. Paragraph 14 states:

(14) A judge and members of the judge's family⁸, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

(15) A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

(16) Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is

⁷ Judiciary of England and Wales, *Guide to Judicial Conduct*, March 2013: http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf

⁸ "Judge's family" is defined as spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household. Judge's spouse is further defined as a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

In Northern Ireland there exists *A Statement of Ethics For the Judiciary in Northern Ireland*⁹. This essentially replicates the Bangalore Principles.

3 Any rules or guidance for Northern Ireland Executive Ministers in relation to the receipt and recording of details of gifts and hospitality

Ministers in the Northern Ireland Executive are bound by the Ministerial Code, which has statutory footing. The Code addresses the issue of the receipt of gifts and hospitality at paragraph 1.5(viii):

1.5 The Ministerial Code of Conduct is as follows. Ministers must at all times:

- (i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;
- (ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
- (iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;
- (iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;
- (v) comply with this Code and with rules relating to the use of public funds;
- (vi) operate in a way conducive to promoting good community relations and equality of treatment;
- (vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
- (viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and**
- (ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public

⁹ A Statement of Ethics for the Judiciary in Northern Ireland:

<https://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/About%20Us/Statement%20of%20Ethics%20revised%205%20August%202011.pdf>

might reasonably think could influence their judgement are listed in the Register of Interests.

The research could not find any evidence of publicly available rules that apply to Ministers.

Ministers are also subject to the Assembly's Code of Conduct:

Northern Ireland Ministers and junior Ministers are subject to the rules of registration, declaration and lobbying in the same way as other Members. The requirements of the Assembly's Code of Conduct also continue to apply to the conduct of Ministers¹⁰.

However, the Assembly will not investigate breaches of the Ministerial Code of Conduct or in circumstances where a breach of the Assembly's Code "in respect of the conduct of Ministers, where such an allegation is essentially an allegation that falls within the scope of the Ministerial Code of Conduct and where the allegation does not clearly overlap with the Minister's conduct and duties as a Member"¹¹.

4 An update on the position at the House of Commons, House of Lords, Scottish Parliament and National Assembly for Wales in relation to the receipt of gifts by Members

House of Commons

What did GRECO say?

GRECO recommends (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts.

What is the current position?

The Code of Conduct together with the Guide to the Rules sets out categories of registerable interests that Members must comply with. Category 5 lists Gifts, benefits and hospitality as items that must be registered:

Category 5

Gifts, benefits and hospitality (UK): Any gift to the Member or the Member's spouse or partner, or any material benefit, of a value greater than one per cent of the current parliamentary salary from any company organisation or person within the UK which in any way relates to membership of the House or to a Member's political activity.

Therefore any gift, or other benefit received by Members, must be registered if it relates to membership of the House and which is given free or at a cost below that generally

¹⁰ <http://www.niassembly.gov.uk/Your-MLAs/Code-of-Conduct/The-Code-of-Conduct-together-with-the-Guide-to-the-Rules-Relating-to-the-Conduct-of-Members-amended-and-reissued-by-the-Committee-on-Standards-and-Privileges-for-2013-14/>

¹¹ As above

available to members of the public, if its value exceeds 1% of the parliamentary salary. Furthermore, Members must register any gift or benefit in kind if it is received by a company in which the Member or his or her spouse/partner has a controlling interest.

The cumulative value of gifts and benefits received from a single source in the course of a calendar year have to be registered, even if each single gift or benefit is of a lesser value.

The guide goes on to outline other instances where gifts and benefits should be registered:

- If they are received by another person on behalf a Member
- If they are received from another MP

Gifts and benefits received in a personal capacity do not have to be registered, although the Member must use their own judgement to ensure that any gifts or benefits could not be construed as being linked to their role as an MP or to political activity.

What has changed since the GRECO recommendations?

The Committee on Standards published a report *Proposed Revisions to the Guide to the Rules relating to the conduct of Members* in December 2012¹², based on proposals from the Parliamentary Commissioner for Standards. The Committee's report took account of what was then the draft GRECO report when making its recommendations.

In relation to gifts, the revised Guide "clarifies and harmonises the rules in relation to registering gifts, benefits and hospitality given to third parties in relation to a Member's membership of the House or a Member's political activities". It would lower the thresholds for registering gifts by over a half. The new requirement would be to register gifts of over £300 received from a single source in a single year. The definition of gifts is wide, and includes hospitality and material benefits.

The report has not yet been debated.

House of Lords

What did GRECO say?

GRECO recommends (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts.

What has changed since the GRECO report was published?

¹² Standards and Privileges Committee - Third Report *Proposed Revisions to the Guide to the Rules relating to the conduct of Members* <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/63602.htm> December 2012

In recent months the House of Lords has approved two reports from the Privileges and Conduct Committee which have proposed amendments to the Code of Conduct. The 13th report of the Committee, *Amendments to the Code of Conduct and the Guide to the Code*¹³, directly addressed the issue of gifts:

The Committee on Standards in Public Life and GRECO both invite the House to consider lowering the threshold for registering gifts. We see merit in this suggestion and we recommend that the threshold for the registration of gifts, benefits and hospitality to Members from third parties should be reduced from £500 to £140. This would bring it into line with the threshold in the Ministerial Code¹⁴.

That report also proposed a revision to the guide to the Code of Conduct to provide clearer guidance to Members on lobbyists:

“Dealing with lobbyists

30A The Committee on Standards in Public Life has concluded that lobbying has an important part to play in securing “the democratic right to make representations to government and to have access to the policymaking process [which] is fundamental to the proper conduct of public life and the development of sound policy.”¹⁰ Many organisations play an important role in informing members of the House of Lords. However, some lobbying can give rise to a suspicion of improper influence over Parliament. Members must have regard to such public perceptions. Members’ dealings with lobbyists should always be governed by the principles of integrity and openness.

30B Members should take particular care not to give the impression of giving greater weight to representations because they come from paid lobbyists; representations should be given such weight as they deserve based on their intrinsic merit. Members must in their dealings with lobbyists observe the prohibitions on paid advocacy and on the provision of parliamentary advice or services for payment or other reward. Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.¹⁵”

The 15th report of the Committee, published in May 2014, addressed GRECO’s recommendation that a Code of Conduct for Members’ staff should be drafted. Within the Code drafted by the Committee, it stated that:

any gift (e.g. jewellery) or benefit (e.g. hospitality, services or facilities) received in the course of a calendar year, if the value of the gift or benefit exceeds £140 and if it

¹³ House of Lords Committee for Privileges and Conduct, 13th Report of session 2013-14: *Amendments to the Code of Conduct and the Guide to the Code*, January 2014: <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldprivi/123/123.pdf>

¹⁴ As above

¹⁵ As above

relates to or arises from the individual's work in Parliament (though excluding gifts or benefits from the member who sponsors the individual)¹⁶.

Scottish Parliament

What did GRECO say?

iii. (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. **The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.**

What is the current position?

Under the categories of registerable interest in the Scottish Parliament's Code of Conduct, it states:

Any gift, the value of which on the date the gift is made, exceeds 1% of a member's salary at the beginning of the current parliamentary session (rounded down to the nearest £10 – currently £570), must be registered where the gift also meets the prejudice test in section 3(2) of the Act. Gifts which exceed the threshold but do not meet the prejudice test do not need to be registered.

This category applies to a gift of any tangible item such as glassware or jewellery, to gifts of money or residential property and to other benefits such as hospitality, or tickets to sporting and cultural events. The category also covers benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

The category covers gifts received directly by a member and gifts received by any company in which a member has a controlling interest, or by a partnership of which the member is a partner. It covers both gifts received in a member's capacity as an MSP and gifts received in a private capacity. However, it does not cover gifts to spouses and cohabitants. It is also expected that most gifts from friends and family will not meet the prejudice test and will therefore not require to be registered.

Sections 5.1.6 and 7.2.6 of the Scottish Parliament's Code of Conduct state:

5.1.6 The Section of the Code on General Conduct (Section 7) sets out the standards expected in relation to acceptance of hospitality, gifts and benefits. In addition to this and the statutory provisions in the Act, members:

¹⁶ House of Lords Committee for Privileges and Conduct, 15th Report of session 2013-14: *Further amendments to the Code of Conduct and the Guide to the Code of Conduct*, May 2014:
<http://www.publications.parliament.uk/pa/ld201314/ldselect/ldpriv/182/182.pdf>

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation;
- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.);
- should decline all but the most insignificant or incidental hospitality, benefit or gift if the member is aware that it is offered by a commercial lobbyist. Section 7 of the Code on General Conduct states that a member should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties. Since the basis on which many people believe that commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a member's judgement in carrying out Parliamentary duties. (If a member only becomes aware of its source after receiving hospitality, a benefit or gift, then the member should consider reimbursing the costs of any hospitality or benefit or returning any gift.)

7.2.6 Over and above compliance with the statutory provisions, members should treat with caution any offer of hospitality, a gift, a favour or benefit. Members are not prohibited from accepting reasonable hospitality or modest tokens of goodwill, particularly where refusal could cause offence. But a member should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties. The value of any benefit, its connection to a member's Parliamentary duties, its source, the transparency of its receipt and the frequency of receipt of similar offers may all be factors which could be relevant to this judgement. (Members should also have regard to the standards in relation to acceptance of hospitality and gifts set out in the section of the Code on lobbying and access to MSPs at paragraph 5.1.6, as well as the requirement to register gifts set out at section 2.3 of the Code.)¹⁷

What has changed since the GRECO recommendations?

The Standards, Procedures and Public Appointments Committee has completed a consultation on a new Bill which would amend the Interests of Members of the Scottish

¹⁷ Code of Conduct for Members of the Scottish Parliament:

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/CodeofConduct-5thEdMay2014_3rdRevision.pdf

Parliament Act 2006. The Committee intends to consider the recommendations of the GRECO report in the report during the course of its consideration of its Members' Interests Bill¹⁸.

National Assembly for Wales

What did Greco say?

iii. (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. **The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.**

What is the current position?

In July 2013 the Standards of Conduct Committee considered a paper on the GRECO report's comments on the devolved institutions, specifically the National Assembly of Wales. The paper set out the approach taken by the Assembly to registering gifts:

The guidance to Assembly Members on registering interests includes a section on registering gifts – category (iv). The Assembly does not take the same approach as the Commons, as every gift is considered separately against the threshold, even if received from the same source. The Standards of Conduct Committee decided in the past not to adopt this 'cumulative' approach to registering gifts. The guidance also asks Assembly Members to note that registration below the prescribed threshold could "lead to unfavourable comparisons being drawn between those who properly meet the requirements of the Act and standing orders and those who choose to exceed them."

Category (v) of the register also requires any remuneration or material benefit from a public or private company to be registered – and there is no threshold for this. Any gifts or hospitality which are not registrable under category (iv) above, but given by a company with contractual links with the Assembly, would need to be identified in this category.

The Welsh Ministerial Code discourages the acceptance of gifts by Welsh Ministers, requires that all gifts are notified to the Ministerial Services Division and that details of gifts over the value of £260 are published (consistent with the threshold for all Assembly Members). Any change to the conditions of the Welsh Ministerial Code is a matter for the First Minister¹⁹.

Guidance on registering interests

¹⁸ See point 2 of the Committee's Work Programme:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/58953.aspx>

¹⁹ <http://www.senedd.assemblywales.org/documents/s18930/SOC4-05-13-Paper%201%20-%20GRECO%20Recommendations.html?CT=2>

The National Assembly for Wales has produced guidance on the registration, declaration and recording of Members' financial and other interests.

Category 4: Gifts, hospitality, material benefits or advantage

Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge the Member's partner or any dependant child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.

The Assembly resolved on 10 May 2006 that the specified financial values above which gifts, hospitality and any other benefits must be registered/declared is 0.5 per cent of the basic gross annual Assembly salary for an Assembly Member.

Apart from gifts and hospitality, other material benefits or advantage might include relief from indebtedness, concessionary loans, provision of services, etc.

Any gift, or benefit, which in any way relates to membership of the Assembly and which is given gratis, or at a cost below that generally available to members of the public, should be registered/declared whenever the value of the gift or benefit is greater than the amount specified above. Any similar gift or benefit which is received by any company or organisation in which the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, has a controlling interest should also be registered.

Gifts and material benefits in this category (and other categories) are exempt from registration/declaration if they do not relate in any way to membership of the Assembly. Consequently, gifts which are received by a Member on behalf of the Assembly as a whole do not need to be registered/declared provided they are handed over to the Assembly and a record is made of the Assembly's ownership of the gift. Whether this exemption applies in any particular case is in the first instance a matter for the individual Member to decide. If there is any doubt it should be registered.

What has changed since the GRECO recommendations?

The Standards Commissioner for National Assembly for Wales is currently undertaking a review of the Code of Conduct. The latest information from the Commissioner is that:

The Commissioner's review of the Code of Conduct for Members is continuing. He is currently focusing on reviewing the Registration and Declaration of Interests guidance for Assembly Members²⁰.

²⁰ National Assembly for Wales Standards Commissioner: <http://standardscommissionerwales.org/>

4 The position in Dail Eireann, the US Congress, the European Parliament and the General Assembly of Maryland in relation to the receipt of gifts and hospitality by Members

Dail Eireann

The Code of Conduct for Members of Dail Eireann other than Office Holders restricts the receipt of gifts:

Paragraph 8 (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their duties.

8 (ii) Members may accept incidental gifts and hospitality²¹.

The accompanying guidelines for Members of Dail Eireann who are not Office Holders expands on the issue of gifts:

5. Gifts

You are required to disclose a gift, or gifts by the same person, given to you during the registration period concerned where the value, or the aggregate value respectively, exceeded EUR650.

“Gift”, for purposes of registration of interests excludes –

- (a) a donation as defined by the Electoral Act 1997 (as amended)
- (b) a gift given to you for purely personal reasons, by a relative or friend of yours, a relative or friend of your spouse or civil partner, relative or friend of your child (meaning a son or daughter of any age) or relative or friend of your spouse’s or civil partner’s child unless acceptance of the gift could have materially influenced you in the performance of your functions as a member
- (c) any political allowances paid out under legislation

Gifts given to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members²².

United States Congress

House of Representatives

The House Gift Rule

²¹ Standards in Public Office Commission: <http://www.sipo.gov.ie/en/Codes-of-Conduct/TDs/>

²² Guidelines for Members (of Dail Eireann) who are not Office Holders:
<http://www.oireachtas.ie/parliament/media/committees/membersinterests/Final-guidelines-2014-for-circulation.pdf>

The House gift rule provides that a Member, officer, employee may not knowingly accept any gift except as provided in the rule. The rule is comprehensive i.e. a House Member or staff person may not accept **anything** of value from **anyone** – whether in one’s personal life or one’s official life – unless acceptance is allowed under one of the rule’s provisions.

The rule includes one general provision on acceptable gifts, and 23 provisions that describe additional, specific kinds of gifts that may be accepted.

- The general gift rule provision states that a Member, officer, or employee may **not** accept a gift from a registered lobbyist, agent or a foreign principal, or private entity that retains or employs such individuals.
- The general provision goes on to state that a Member, officer, or employee may accept from any other source virtually any gift valued below \$50, with a limitation of less than \$100 in gifts from any single source in a calendar year. Gifts having a value of less than \$10 do not count toward the annual limit.
- The other 23 categories of acceptable gifts are descriptive categories, not tied to any specific dollar figure. Among those categories are, for example, international materials, commemorative items, and free attendance at certain kinds of events.

Gifts are defined in broad terms, for example a gratuity, favour, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred²³.

The House has also produced detailed and extensive guidance on the receipt of gifts which cannot be reproduced here²⁴.

US Senate

The Senate rules on the acceptance of gifts and hospitality are in many ways similar to those of the House. A Member, officer or employee may accept a gift, other than cash or cash equivalent, if it is valued at less than \$50, provided that the source of the gift is not a registered lobbyist, foreign agent, or private entity that retains or employs such individuals. The cumulative value of gifts that can be accepted from any one source in a calendar year must be less than \$100, although generally gifts having a value of less than \$10 do not count towards the annual limit.

Gifts from lobbyists are prohibited, unless a specific exemption exists.

²³ House Gift Rule: <http://ethics.house.gov/gifts/house-gift-rule>

²⁴ See Chapter 2 of the House Ethics Manual:

http://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf

Gifts from relatives are permissible, no matter what their value is, as are gifts from friends, unless there is reason to believe that the gift was offered because of the Member's official position.

Gifts from colleagues are acceptable, but gifts offered to more senior members of staff from those of a lower grade are prohibited under federal law. The Senate Ethics Committee has ruled that gifts can be accepted among and between Members, officers or employees when such gifts are given voluntarily or on special occasions when gifts would usually be exchanged.

A Member, officer or employee can accept a gift of personal hospitality (including food, lodging or entertainment) provided by an individual, other than a lobbyist or foreign agent, at that person's residence.

The US Constitution prohibits government officials, including Members of Congress, from accepting any present of any kind from a foreign state or representative without the consent of Congress. Congress relaxed this to an extent via the Foreign Gifts and Donations Act (FDGA) which authorises acceptance of a gift of minimal value (currently no more than \$100, when given as a gift or souvenir. Gifts in excess of \$100 can be accepted, but not retained, when refusal would cause embarrassment, but such gifts are deemed to be accepted on behalf of the United States and must be handed over to the Secretary of the Senate within 60 days for disposal.

The FDGA allows acceptance of foreign travel and related expenses if the travel occurs entirely outside the United States²⁵.

As with the House, the Senate has produced a significant amount of guidance on the issue of gifts. The Senate Manual published in 2003²⁶ is the authority on this, but subsequent updates have also been produced²⁷.

General Assembly of Maryland

The 2014 Ethics Guide²⁸ sets out the position on the receipt of hospitality and gifts:

Acceptance and Prohibition of Gifts

A member of the General Assembly may not solicit any gift for personal use. Solicitations on behalf of charities, community groups, and other non-profit recipients are subject to restrictions that are discussed below.

Unless the gift is specifically exempted, a member may not knowingly accept a gift if the member knows or has reason to know that the gift is from:

²⁵ Us Senate Rules on Gifts: <http://www.ethics.senate.gov/public/index.cfm/gifts>

²⁶ Senate Ethics Manual: http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=f2eb14e3-1123-48eb-9334-8c4717102a6e

²⁷ See for example: <http://www.ethics.senate.gov/public/index.cfm/guidance?ID=4ec521aa-5a1b-4296-98b8-4c5a3bbcac19>

²⁸ General Assembly of Maryland, 2014 Ethics Guide: <http://cdm266901.cdmhost.com/utis/getdownloaditem/collection/p266901coll7/id/4454/filename/4463.pdf/mapsto/pdf>

- A regulated lobbyist (which, by law, includes the direct employer of a lobbyist);
- A person doing business or seeking to do business with the General Assembly; or
- A person who has a specific financial interest that may be affected, in a manner distinguishable from the general public, by an action of the General Assembly.

A member of the General Assembly may accept certain specifically exempted classes of gifts from any source, including lobbyists, so long as the gift would not impair the member's impartiality and independence of judgment. Even if exempted, however, a gift of "significant value" should not be accepted if it gives the appearance of impairing the legislator's impartiality and independence of judgment, or if the legislator believes it was designed to impair his or her impartiality and independence of judgment.

Disclosure of Gifts

Unless exempted from disclosure (such as with meals offered to all members of a legislative unit), a legislator must disclose a gift in excess of \$20 in value or a series of gifts from the same donor totalling \$100 or more during a calendar year. The nature of the gifts, their value (if known), and the donor's identity must be reported on the legislator's annual financial disclosure statement, which must be filed by April 30 each year. A gift to a legislator's spouse or dependent child, made by a donor scrutinized under the Ethics Law, will generally be deemed a gift to the legislator.

There also exist classes of gift that a legislator can accept from any source. These include food and beverages, tickets and free admission to certain events, hospitality associated with conferences, ceremonial or insignificant gifts, gifts from government entities along with other exceptions.

However, even within these categories there are caveats and exemptions that the legislator must be aware of when deciding whether to accept the gift or hospitality. The full guidance on these issues has been reproduced at Appendix 1.

Ethics Opinion

The Joint Committee on Legislative Ethics published an Ethics Opinion (included within the 2014 Guide) which provides context to the rules. Below is a summary of the opinion's key points:

The Maryland Public Ethics Law places various restrictions on gifts offered to a Member of the General Assembly by a person whose interests may be directly affected by legislative action. The reason that some gifts are prohibited by Ethics Law is found in the statement of legislative intent...of the State Government Article, which states that the public's confidence and trust in the impartiality and independence of judgement of governmental officials "is eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence"...

...Some situations are very clearly addressed by the law when it either bans or allows a specific class of gifts. In other cases, however, there are gaps or grey areas in the law. This Opinion is intended to expand upon the provisions of the gift law that are not sufficiently clear.

Members should note, however, that § 15-505(c)(1) absolutely prohibits a gift, even if it would otherwise be allowed under one of the statutory exceptions - if:

(1) the gift would tend to impair the legislator's impartiality and independent judgment; or

(2) as to a gift of significant value:

- acceptance would give the appearance of impairing the legislator's impartiality and independent judgment; or
- the legislator believes that the gift was given with the intent to impair his or her impartiality and independent judgment.

As with other aspects of the Ethics Law, members should consult with the General Assembly's Ethics Advisor if they have any questions about the acceptance or reporting of gifts.

...The Ethics Law is not intended to regulate every gift that a legislator may receive from any source. Instead, the law focuses on circumstances where the donor has a particular interest in legislative actions.

...Any individual or entity that is on the list of regulated lobbyists is explicitly subject to the gift prohibitions²⁹.

European Parliament

In December 2011 the European Parliament approved a Code of Conduct for MEPs. The Code had been drafted following a Sunday Times undercover 'sting' in which four MEPs accepted payments for influencing legislation. Article 5 of the Code addresses the issue of gifts and hospitality:

Article 5 – Gifts or similar benefits

1. Members of the European Parliament shall refrain from accepting, in the performance of their duties, any gifts or similar benefits, other than those with an approximate value of less than EUR150 given in accordance with courtesy usage or those given to them in accordance with courtesy usage when they are representing Parliament in an official capacity.
2. Any gifts presented to Members, in accordance with paragraph 1, when they are representing Parliament in an official capacity shall be handed over to the President and dealt with in accordance with implementing measures to be laid down by the Bureau pursuant to Article 9.
3. The provisions of paragraphs 1 and 2 shall not apply to the reimbursement of travel, accommodation and subsistence expenses of Members, or to the direct payment of such expenses by third parties, when Members attend, pursuant to an

²⁹ General Assembly of Maryland, 2014 Ethics Guide:
<http://cdm266901.cdmhost.com/utills/getdownloaditem/collection/p266901coll7/id/4454/filename/4463.pdf/mapsto/pdf>

invitation and in the performance of their duties, at any events organised by third parties.

The scope of this paragraph, in particular the rules designed to ensure transparency, shall be specified in the implementing measures to be laid down by the Bureau pursuant to Article 9.

In April 2013 the Bureau of the European Parliament published the implementing measures relating to gifts received in an official capacity³⁰. The measures clarify and set out in detail the provisions for accepting gifts and invitations offered to MEPs by third parties. In relation to gifts received in an official capacity, the measures provide guidance on the following:

- **Definitions and scope:** meaning of a gift; meaning of a Member acting in an official capacity
- **Notification, handover and retention of gifts by Members:** timeframe within which the President must be notified of receipt of gift, description of gift; circumstances under which the Member may retain the gift
- **Storage and display of gifts:** storage on Parliament's premises; sale of gifts
- **Register of gifts:** requirement for the Parliament to keep a register of gifts, including description and location of gift; publication of register
- **Rectification clause:** if a Member accepts a gift in good faith but becomes aware that its value exceeds EUR150, he or she must make a notification at the earliest opportunity and deposit the gift with the Parliament if it cannot be returned to the donor (i.e. for reasons of courtesy).

³⁰ Implementing Measures for the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interests, April 2013: http://www.europarl.europa.eu/pdf/meps/926701_1_EN_IM_DEF.pdf

Appendix 1

Guidance on the receipt of gifts and hospitality for Members of the General Assembly of Maryland, excerpt from 2014 Guide on Legislative Ethics

Food and Beverages

- A legislator may accept food and beverages that are part of a reception or meal to which all members of a legislative unit have been invited. “Legislative unit” means the entire General Assembly, an entire chamber, a standing committee, or a county or regional delegation that is on a list issued by a presiding officer. Subcommittees are not legislative units, nor are caucuses. The reception or meal must be attended by the sponsor of the event or a representative of the sponsoring entity. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.
- An individual legislator may accept food or beverages when offered at the time and geographical location of a meeting of a legislative organization that the legislator is attending at the General Assembly’s expense. (The Ethics Committee has allowed members paying their own way to the conference to utilize this exception as well.) The provision applies primarily to a reception sponsored by a lobbyist or interest group at the time of an NCSL or ERC conference. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.
- An individual legislator may accept food or beverages during the interim from a donor (such as a business) that is located in a county that contains the legislator’s district. The meal must also be in a county that contains the legislator’s district, and the donor may not be an individual regulated lobbyist. An example of this would be a lunch that is offered to a legislator as part of a tour at a place of business. A legislator must report such a gift if its value exceeds \$20.
- Food that does not constitute “a meal or alcoholic beverages” is implicitly permitted under a general exception for unsolicited gifts not exceeding \$20. A legislator may accept a snack and/or non-alcoholic beverage in circumstances where it would be awkward for the legislator to pay his or her own cost, such as a meeting at which coffee and pastries were provided. In a restaurant or coffeeshop setting, a legislator should pay his or her own share of the bill. (A legislator may pay a lobbyist’s restaurant tab, but not vice-versa.)

Tickets and Free Admission

- A legislator may accept tickets and free admission for a charitable, cultural, or political event, from the sponsor of the event, if the legislator has been invited as a courtesy or ceremony of office. Sports tickets are never legal gifts from a nongovernmental donor although a legislator may purchase sports tickets for face value. A legislator need not report gifts of tickets and free admission if the value does not exceed \$20, unless the

legislator accepts multiple tickets or free admissions from the same lobbyist with a cumulative value of \$100 or more in a calendar year. If the sponsor of the event invites all members of a legislative unit, a legislator need not report acceptance of a ticket or free admission, regardless of value unless the legislator accepts two or more tickets for free admissions in the calendar year and the cumulative value is \$100 or more.

Conferences

- A legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment associated with a meeting or conference if the legislator is a scheduled speaker or scheduled panel member. If the anticipated value of the expenses is \$500 or more, and is being paid by a lobbyist (including an entity that employs a lobbyist), the legislator must notify the Ethics Committee by letter prior to attending the conference.
- Additionally, a legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment to attend a legislative conference that has been approved by the legislator's presiding officer. The intent of this provision is to allow payment of expenses, by sources other than the State, for attending conferences sponsored by legislative organizations. A legislator need not be a speaker or panel member at the conference in order to accept this gift. An example would be the "scholarships" offered by the American Legislative Exchange Council (ALEC). The provision does not apply to conferences sponsored by interest groups such as trade associations.
- The Ethics Committee has ruled that payment of expenses to attend other meetings and conferences, or to participate in educational travel, will be permitted if the donor is neither a regulated lobbyist nor an entity that has substantial interests before the General Assembly. An example of this would be travel for which the expenses are paid by a foreign government or by a foundation that does not engage in legislative activities in Annapolis.

Ceremonial or Insignificant Gifts

- A legislator may accept ceremonial gifts or awards of insignificant monetary value and trivial items of informational value. A legislator may accept a plaque or similar award that is purely ceremonial regardless of value, but must disclose the gift if the value appears to be greater than \$20. Consumer items valued at more than \$20 are presumed not to be acceptable under this provision.
- A legislator may accept miscellaneous unsolicited gifts (coffee mugs, caps), not exceeding \$20 in cost. Meals, alcoholic beverages, or sports tickets are not allowed under this exception

Gifts from Governmental Entities

- Gifts from governmental entities, whether federal, state or local, are not regulated under the Ethics Law. For example, a legislator may accept and need not report sports tickets from a governmental entity (e.g., the University of Maryland or the Maryland Stadium Authority). Likewise, a government sponsor may provide a meal to an individual legislator.

Other Exceptions

- Gifts that are clearly offered in the context of a member's outside employment, and not because of his or her status as a legislator, are not restricted under the Ethics Law.
- The Ethics Committee may exempt specific classes of gifts that are personal and private in nature.