



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 70/14

5 February 2014

NIAR 31-14

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Codes of Conduct, contempt and developments in relation to the rules on Members' Interests in UK legislatures

1 Introduction

This briefing paper has been prepared for the Committee on Standards and Privileges to inform its review of the Code of Conduct for Members of the Northern Ireland Assembly. The Committee has asked for information on the following issues:

- Examples of rules in other legislatures not already included in the Northern Ireland Assembly's Code of Conduct
- An overview of the concept of 'contempt' in the UK Parliament
- Any significant developments in the last five years or any significant differences (compared to the Northern Ireland Assembly) in relation to requirements on Members' interests (registration, declaration and advocacy rules) at the other legislatures in the UK

2 Context

A report produced by the Organisation for Security and Cooperation in Europe (OSCE) *Background Study: Professional and Ethical Standards for Parliamentarians (2012)* provided a framework within which reform of parliamentary ethics should take place. The report highlighted that it was important to assess what rules already exist and what other aspects of the context are relevant to reforms. It stated that such a 'context' is defined by four "interrelated layers of norms", three of which are applicable in this context:

1) International norms: there is no global regulation of parliamentary conduct and no right way of setting or enforcing rules. The 1990s and 2000s did see a move towards enshrining certain principles of good practice in democratic governance.

2) Parliamentary norms: any reform of parliamentary standards regulations also needs to take into account existing codes of conduct for legislators or parliamentary staff, rules of procedure, standing orders of the parliament, parliamentary resolutions, and guides and manuals for legislators.

3) Social norms and the role of political parties: The aforementioned layers of codified norms – international, constitutional, parliamentary – rest ultimately on certain specific social norms – customary and uncodified rules that govern behaviour in groups and society. It is also the fact that political parties can exert their role as ethical gatekeepers in various ways by:

- introducing codified ethical standards into their party programmes
- scrutinising ethically sensitive information regarding candidates during the candidate selection process and, as a consequence, acquiring legitimacy in the eyes of the electorate
- creating a mechanism (i.e. party disciplinary committees) to allow the members and electorate to engage directly in the ethical filtering process of its political representatives. In this way political parties could also perform as ethical educators, raising awareness about ethics in the wider society¹.

Rules-based or principles-based?

The same OSCE report highlighted the different approaches to drafting a code of conduct, citing the 'rules-based' or 'principles-based' codes: "A rules-based code sets out specific behavioural prescriptions, and is likely to be lengthy. A principles-based code lists only the principles and values which (Members) should follow and to which they should aspire"².

In a 2011 consultation document, the Parliamentary Commissioner for Standards at the House of Commons noted that a "rules-based approach can be complex and hard to

¹ Background Study: Professional and Ethical Standards for Parliamentarians (2012) <http://www.osce.org/odihr/98924>

² As above

follow, encouraging an overly legalistic approach to standards and running the risk of failing to cover every eventuality”, while a principles-based code “can set a clear and simple framework, but allows room for differences in interpretation which can create uncertainty and controversy”³.

However the OSCE report argues that the two types of code need not be mutually exclusive: “Any code of conduct must be based on certain principles, even if they are implicit, and most will contain some behavioural prescriptions. Moreover, short principles-based codes of conduct are frequently accompanied by manuals or handbooks, which go into great explanatory detail”⁴. The report cites the example of the House of Commons Code of Conduct, which although short, is accompanied by a detailed guide.

3 Rules in other legislatures

Codes of Conduct in EU Member States

In 2011 the Office for the Promotion of Parliamentary Democracy at the European Parliament published a report on parliamentary ethics⁵. The following section provides a summary of some of the key points.

Most national parliaments require their members to declare all outside financial interests. Declaring non-financial outside interests is mandatory in some member states (UK France and most new member states), optional in others (Belgium, Denmark, Finland, the Netherlands) and absent in Luxembourg.

In some countries, such as Greece, MPs must declare property belonging to family members (spouse, children). This obligation can extend to the declaration of other benefits and gifts for family members.

In the UK, Republic of Ireland and Germany, parliamentarians are required to disclose the existence of a potential conflict of interest. So, for example, in the House of Commons “any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, should be declared in debate or other proceedings”. However, British, Irish and German legislators are still allowed to vote on the matter in which they have declared an interest. By contrast, Sweden’s Parliament adopted a prohibition of conflict of interests in 1999, stipulating that a member may not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter which concerns them personally or a close relative.

Regarding registration and declaration of interests, some member states are content with simple declarations, while others require more formal and detailed reporting. In

³ Review of the Code of Conduct, UK Parliament, 2011

⁴ <http://www.osce.org/odihr/98924>

⁵ http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf

some cases, declarations only need to be made at the beginning and end of a term of office, in other cases each time a (significant) change occurs or on the occasion of every parliamentary debate where there is a potential conflict of interest. The register may be kept by a parliamentary committee (UK), or by an external body (Belgium).

The Northern Ireland Assembly's Code of Conduct and accompanying guidance is a comprehensive document in comparison to other examples of similar documents. In the main, Codes of Conduct deal mainly with the declaration and registration of financial interests.

Nevertheless, below are some specific provisions found in other codes that are not included, or not addressed to the same extent, in the Northern Ireland Assembly's Code (notwithstanding that existing law in Northern Ireland may cover some of these provisions):

Provisions in other Codes of Conduct

Table 1: Examples of provisions in other codes of conduct

Scottish Parliament	Duty as a representative 3.1.5 Members should be accessible to the people of the areas for which they have been elected to serve and represent their interests conscientiously.
Scottish Parliament	Section 6 deals with Cross-Party Groups, including registration, operation of cross-party groups and the need to comply with the Code of Conduct. The Northern Ireland Assembly has separate rules on All-Party Groups (APGs) which highlight that failure to comply with those rules could be considered a breach of the Code of Conduct – is there scope for a new provision within the Code emphasising the rules on APGs?
Scottish Parliament	Section 8 deals with engagement with constituents and offers guidance on how to deal with unreasonable and aggressive behaviour. This section also offers guidance on the use of social media, including staff access to social media accounts.
National Assembly for Wales	Prohibition of Voting in Relation to Registrable Interests 8. A Member is prohibited from voting in any proceedings of the Assembly if, in relation to any interest which is required to be registered, a particular decision of the Assembly or a Committee might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally.
United States Congress	Employment of persons 9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any

	individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex (including marital or parental status), handicap, age, or national origin, but may take into consideration the domicile or political affiliation of such individual.
Various	<p>Some Codes contain a specific provision in relation to the unauthorised disclosure of parliamentary documents. This is covered in Standing Orders but is not addressed directly in the existing Code of Conduct.</p> <p>See for example US House of Representatives Code of Conduct:</p> <p>Before any Member, officer, or employee of the House of Representatives may have access to classified information, the following oath (or affirmation) shall be executed:</p> <p>"I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."</p>
New South Wales	<p>Recognition of Independent Members and those aligned to political parties</p> <p>6 Duties as a Member of Parliament</p> <p>It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.</p>

Table 2 overleaf provides an overview of approaches in other countries with regard to regulating the behaviour of elected members. As can be seen, not all Parliaments adopt a Code of Conduct, relying instead on other internal procedures or existing law.

Table 2: Overview of other countries' approach to regulating parliamentary ethics⁶

Country	Legal basis	Regulatory body	Principles
Austria	<ul style="list-style-type: none"> • No Code of Conduct • Federal law on the Rules of procedure of the National Council • Special legislation relating to incompatibilities and financial interests • Penal Code 	<ul style="list-style-type: none"> • The Committees on Incompatibilities of the National and Federal Councils are competent for matters relating to incompatibilities and financial interests • Possible that the President's Conference (advisory body) discuss such matters in an informal manner 	<ul style="list-style-type: none"> • Freedom of speech • Incompatibility with certain commercial activities • Obligation to declare private employment • Anti-corruption principles • Limited transparency of activities
Belgium	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense at the federal level (deontological code for the members of parliament from the Flemish community) • 1931 Federal law on incompatibilities and disqualifications concerning former ministers and former members of parliament • 1995 Federal law relating to the requirement to file a list of previous occupations and a declaration of property 	<ul style="list-style-type: none"> • Joint Committee of Chamber of Representatives and Senate regarding financing of party accounts 	<ul style="list-style-type: none"> • Freedom of speech guaranteed by the Constitution • Limitations to the concurrent holding of offices • Limitations to concurrent sources of public incomes (1.5 x parliamentary salary) • Registration of property
Bulgaria	<ul style="list-style-type: none"> • Constitution of the Republic of Bulgaria • Rules of organisation and procedure of the National Assembly • Law on prevention and disclosure of conflicts of interest • Law for the publicity of the property of persons occupying high state office 	<ul style="list-style-type: none"> • Anti-corruption, Conflict of Interest and Parliamentary Ethics Committee • Court of Auditors 	<ul style="list-style-type: none"> • Freedom of speech • Office of MP incompatible with other elective or government office or position in civil service • Obligation to declare financial interests • Obligation to reveal and avoid conflicts of interest
Finland	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense 	<ul style="list-style-type: none"> • The Speaker 	<ul style="list-style-type: none"> • Independence

⁶ http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf

	<ul style="list-style-type: none"> • Constitution of Finland • Parliament's Rules of Procedure • Criminal Code • 2002 resolution to fight against corruption 	<ul style="list-style-type: none"> • Speaker's Council • Plenary Session 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Voluntary declaration of non-parliamentary activities, paid or unpaid, and financial interests • Transparency with regard to parliamentary behaviour • Dignity and non-offensive behaviour • Conflict of interest: disqualification from consideration of and decision-making in matters pertaining to him/her personally
Germany	<ul style="list-style-type: none"> • Rule 19 of the Rules of Procedure, in conjunction with Annex 1 of the Rules of Procedure setting out the Code of Conduct for members of the Bundestag 	<ul style="list-style-type: none"> • No permanent bodies • The president of the Bundestag has investigative powers and the right to take non-formal regulatory measures, such as admonition of members, their exclusion from meetings and the imposition of coercive fines 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Obligation to declare gifts with a value exceeding 5,000euro • Obligation to declare previous activities and other financial and professional interests • Information provided pursuant to declarations on interests to be made public • Obligation to declare donations with a value exceeding 5,000euro; donations exceeding 10,000euro in one calendar year shall be published by the president, with the amount and origin stated
Netherlands	<ul style="list-style-type: none"> • Law on compensation of members 1968 • Law on Incompatibilities States-General and European Parliament 	<ul style="list-style-type: none"> • Committee of the Integrity of the Kingdom • Self-regulation of institutions • Ordinary courts • Political parties supervision for misdemeanours which are not criminal in nature • Inland Revenue Office 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Integrity • Obligation to declare public or private work, paid or unpaid • Obligation to declare non-parliamentary income over a certain level
Poland	<ul style="list-style-type: none"> • Principles of Deputies' Ethics (applicable only to the Sejm) • 1996 Act on the Exercise of the mandate of a Deputy or Senator 	<ul style="list-style-type: none"> • Deputies' Ethics Committee (Sejm) • Presidium of the Sejm 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Respect for the rule of law • Obligation to declare financial interests • Obligation to notify any additional engagement • Restrictions regarding undertaking any additional engagements

			<ul style="list-style-type: none"> • Obligation to declare any gift • Impartiality • Openness • Conscientiousness • Accountability • Regard for the good name of the Sejm
Spain	<ul style="list-style-type: none"> • Rules of Procedure of the Congress and of the Senate • Institutional Act on electoral regulation • Joint resolution of the Congress and the Senate regarding the registration of interests, 1995 • Penal Code • Act on conflicts of interest by members of the government and high-ranking officials of the state administration • 2009 Joint resolution of the Congress and the Senate on the registration of interests 	<ul style="list-style-type: none"> • Committee on the Status of Deputies • Committee on Incompatibilities • Specialised anti-fraud and anti-corruption units within the State Legal Department • Special Prosecutor for financial offences (bribery) 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibility with other functions • Abusing MP status for private activities prohibited • Declaration of financial and non-financial interests and of property • Respect for the rule of law
Sweden	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense • Act on the registration of MPs' commitments and financial interests 	<ul style="list-style-type: none"> • No dedicated regulatory body 	<ul style="list-style-type: none"> • Promotion of democratic values, fundamental freedoms and rule of law • Non-discrimination • Freedom of speech guaranteed • Obligation to declare contractual and financial interests • MPs' participation in debates in which they have a personal interest is prohibited

This section provides more information on selected Parliaments and their attempts (or lack of) at regulating the conduct of Members.

Australia

Attempts to introduce a code of conduct for parliamentarians have been the subject of much debate in the Australian parliament for over 30 years. In 2008 both the Committee for Privileges and Members' Interests and the Speaker called for the topic to be revisited. The Committee Chair subsequently called for any Code to be "broad in nature and to reflect key principles and values as a guide to conduct, rather than being a detailed, prescriptive code"⁷.

To date, no Code of Conduct has been adopted.

France

Ethical principles and rules of conduct are a recent development within the French Parliament. What rules existed focused on legal prohibitions, such as a ban on Members exploiting their position to promote a financial, industrial or commercial undertaking and the ban on Members receiving France's highest decorative honours.

Code of Conduct

The Assembly adopted a Code of Conduct in April 2011 and appointed a Commissioner for Ethical Standards to enforce the Code. A model declaration of interests was also drafted.

The Code of Conduct comprises a preamble and six articles. It provides that:

...in all circumstances, members of the National Assembly must uphold the public interest for which they have responsibility; compliance with this principle is a precondition for ensuring citizens' confidence in the activities of their representatives in the National Assembly; they are called upon to uphold six principles:

Article 1 - The general interest: Members of the National Assembly must act in the sole interest of the nation and the citizens they represent, to the exclusion of any satisfaction of a private interest or acquisition of a financial or material benefit for themselves or their families;

Article 2 - Independence: Under no circumstances must members of the National Assembly find themselves in a situation of dependence upon a natural or legal person who could divert them from complying with their duties as set out in this Code;

Article 3 - Objectivity: Members of the National Assembly may not take action in a personal situation except in consideration solely of the rights and merits of the person in question;

Article 4 - Accountability: Members of the National Assembly shall be accountable for their decisions and actions to the citizens they represent. To this end, they must act in a transparent manner in the exercise of their duties;

Article 5 - Integrity: Members of the National Assembly have a duty to disclose any personal interest that could interfere with their public activity and take all steps to resolve any such conflict of interest for the sole

⁷ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Conduct

benefit of the general interest;

Article 6 - Exemplarity: All members of the National Assembly shall, in the exercise of their office, promote the principles set out in this Code.

Canada

In 2004, the House of Commons adopted the Conflict of Interest Code for Members of the House of Commons to guide Members in the ethical discharge of their duties. The Code also applies to Ministers, Ministers of State and Parliamentary Secretaries when they are acting as Members of the House and not as public office holders. It sets down what constitutes private interests, potential conflicts of interest and disclosure requirements for both Members and their families. It also establishes the rules of conduct and procedures for resolving conflicts. The Code has four objectives:

- (a) maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the House of Commons as an institution;
- (b) demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
- (c) provide greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and
- (d) foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser⁸.

European Parliament

A Code of Conduct has been in place for Members of the European Parliament since 2012, replacing the previous Rules of Procedure. The Code places obligations on MEPs to declare financial interests and to obtain clearance for any activities with potential to cause a conflict of interest. The introduction of the new Code followed the 'cash for amendments' scandal of 2011.

The Code obliges Members to:

Act with 'disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation'; and

'act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward'.

⁸ <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=2AE20CBE-E824-466B-B37C-8941BBC99C37&sbpid=2A73C573-7A64-4C90-B4AB-72AB7830DBBD&Language=E&Mode=1>

In addition, MEPs shall not:

(a) enter into any agreement to act or vote in the interest of any other legal or natural person that would compromise their voting freedom, as enshrined in Article 6 of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage and Article 2 of the Statute for Members of the European Parliament,

(b) solicit, accept or receive any direct or indirect financial benefit or other reward in exchange for influencing, or voting on, legislation, motions for a resolution, written declarations or questions tabled in Parliament or any of its committees, and shall consciously seek to avoid any situation which might imply bribery or corruption.

The Code goes on to define conflicts of interest and provides more information on declarations of financial interests by Members, gifts and hospitality and the procedure to be followed for investigating alleged breaches of the Code.

United States – House of Representatives

The Constitution of the United States provides each House of Congress with the sole authority to establish rules, judge membership requirements, and punish and expel Members. From 1789 to 1967, the House of Representatives dealt with disciplinary action against Members on a case-by-case basis, usually by way of ad-hoc committees which would investigate alleged cases of wrongdoing. Scandals in the 1960s prompted the creation of permanent ethics committee and the writing of a Code of Conduct for Members, officers, and staff of the House. In 1967, the House first established a permanent ethics committee, the Committee on Standards of Official Conduct, which was renamed the Committee on Ethics in 2011⁹.

The Committee is the only House Committee to contain equal numbers of Democrats and Republicans. It has a staff of 24, many of whom serve as Counsel to the Committee¹⁰.

In 2008 the House created the Office of Congressional Ethics (OCE) to review allegations of impropriety by Members, officers, and employees of the House and, when appropriate, to refer “findings of fact” to the Committee on Standards of Official Conduct. The OCE board of directors comprises six board members and two alternates. Current Members of the House, federal employees, and lobbyists are not eligible to serve on the board¹¹.

The OCE has been reauthorized at the beginning of each subsequent Congress. The Senate has not established a comparable office.

⁹ Congressional Research Service *House Committee on Ethics: A brief history of its evolution and jurisdiction*, 2011
<http://ethics.house.gov/sites/ethics.house.gov/files/HouseCommitteeEthics3%202011%20Straus.pdf>

¹⁰ Committee staff: <http://ethics.house.gov/committee-staff>

¹¹ Congressional Research Service *House Committee on Ethics: A brief history of its evolution and jurisdiction*, 2011
<http://ethics.house.gov/sites/ethics.house.gov/files/HouseCommitteeEthics3%202011%20Straus.pdf>

The Code of Official Conduct applies to Members of the House of Representatives. It is a relatively brief document, but is supported by the very detailed 'House Ethics Manual'¹² which provides guidance for Members on complying with the rules. The first two rules of the Code are:

- 1) A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.
- 2) A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof¹³.

The remaining rules deal with financial disclosure and receipt of gifts and hospitality, official travel, treatment of classified documents etc.

Complaints alleging misconduct or House rules violations by House Members or staff can only be filed with the Committee on Ethics by a Member of the House.

Alternatively, complaints can be filed by a person who is not a Member, but must be accompanied by written certification by a Member that the information is "submitted in good faith and warrants the review and consideration of the committee."

Prior to 1997, members of the public (under certain conditions) as well as Members of the House could file a complaint against a Member, officer, or employee of the House. In September 1997, the House amended the rule to prohibit complaints filed by non-Members.

Discipline and sanctions

There is no precise description in the Rules of the House of Representatives of the specific types of misconduct or ethical improprieties which might subject a Member to the various potential disciplines. The Rules adopted by the House Committee on Ethics provide simply that:

With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege or immunity of a Member is appropriate when the violation bears upon the exercise of holding such a right, power, privilege or immunity¹⁴.

The House can discipline its Members for violations of statutory law, including crimes; for violations of internal congressional rules; or for any conduct which the House of

¹² House Ethics Manual: http://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf

¹³ <http://ethics.house.gov/publication/code-official-conduct>

¹⁴ House Committee on Ethics, Rule 24(g)

Representatives finds has discredited the institution. Each house of Congress has disciplined its Members for conduct which has not necessarily violated any specific rule or law, but which was found to breach its privileges, demonstrate contempt for the institution, or which was found to discredit the House or Senate¹⁵.

4 Contempt of Parliament

The Joint Committee on Parliamentary Privilege reported in 1999 that “Besides the areas in which the House claims a specific privilege—in particular, freedom of speech and freedom from civil arrest—it also claims a jurisdiction in contempt, against those who by their actions interfere improperly with the discharge of its functions¹⁶.

The report then goes on to cite Erskine May's definition of contempt as:

...any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results¹⁷.

Addressing parliament's disciplinary and penal powers in matters of privilege or contempt, the Joint Committee report stated that these:

...are part of the control exercised by Parliament over parliamentary affairs. Parliament has long held these powers, over non-members as well as Members. Most institutions exercise a degree of discipline over their members. So long as the disciplinary offences and the punishments are reasonable, and the procedures are fair, this is unexceptionable.

Parliament is unique in also possessing its own inherent powers of punishment over non-members. This penal jurisdiction derives from the status of the High Court of Parliament and the need for each House to have the means to carry out its functions properly. If non-members improperly interfere with Parliament or its Members or officers in discharging their public duties, Parliament for its own protection must have power to take appropriate action in response.

Such interference, whether by Members or non-members, is known as 'contempt of Parliament'. Violations of Members' rights and privileges are also known as 'breaches of privilege'. In this report we use the expression 'contempt of Parliament', as this

¹⁵ Congressional Research Service Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives, 2013: <http://www.fas.org/sqp/crs/misc/RL31382.pdf>

¹⁶ Joint Committee on Parliamentary Privilege, First Report, 1999
<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

¹⁷ Erskine May p251

focuses attention on the underlying mischief: interfering with Parliament in carrying out its functions¹⁸.

Addressing the issue of contempt further, the Joint Committee report goes on to state that:

Contempts comprise any conduct (including words) which improperly interferes, or is intended or likely improperly to interfere, with the performance by either House of its functions, or the performance by a member or officer of the House of his duties as a member or officer. The scope of contempt is broad, because the actions which may obstruct a House or one of its committees in the performance of their functions are diverse in character. Each House has the exclusive right to judge whether conduct amounts to improper interference and hence contempt. The categories of conduct constituting contempt are not closed¹⁹.

The Joint Committee report also provided the following comprehensive, though not definitive, list of types of contempt:

- interrupting or disturbing the proceedings of, or engaging in other misconduct in the presence of, the House or a committee
- assaulting, threatening, obstructing or intimidating a member or officer of the House in the discharge of the member's or officer's duty
- deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition)
- deliberately publishing a false or misleading report of the proceedings of a House or a committee
- removing, without authority, papers belonging to the House falsifying or altering any papers belonging to the House or formally submitted to a committee of the House
- deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee
- without reasonable excuse, failing to attend before the House or a committee after being summoned to do so
- without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee
- without reasonable excuse, disobeying a lawful order of the House or a committee

¹⁸ Joint Committee on Parliamentary Privilege, First Report, 1999
<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

¹⁹ As above

- interfering with or obstructing a person who is carrying out a lawful order of the House or a committee
- bribing or attempting to bribe a member to influence the member's conduct in respect of proceedings of the House or a committee²⁰

5 Developments within the last five years – Members' Interests

House of Commons

The previous Commissioner recommended in his final annual report (2011-12) several changes to the way in which Members' Interests were recorded:

- reduce the number of registration categories, from 12 to 10 (with one rather than three employment categories);
- rationalise the thresholds in the registration categories to make them simpler and more logical, and express them as rounded cash sums rather than proportions of Members' salary;
- increase the threshold for registering employment payments to £100, but halve the threshold for gifts, benefits and hospitality to £300;
- require all Members to register in a new category the details of any family members involved in public sector lobbying;
- tighten the lobbying rules so that Members receiving outside payment may not initiate parliamentary proceedings or approach Ministers, other Members or public officials in the interests of those from whom they receive such reward or consideration; while continuing to allow Members to take part in (but not initiate) such proceedings and meetings as long as they do not act for the exclusive benefit of those paying them;
- impose restrictions on parliamentary lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and requiring former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials²¹

The Committee on Standards and Privileges accepted most of these recommendations, but to date they have **not** reached the floor of the House.

²⁰ <http://www.publications.parliament.uk/pa/it199899/jtselect/jtpriv/43/4302.htm>

²¹ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomstan/317/317.pdf>

Scottish Parliament

In 2010 the Standards, Procedures and Public Appointments Committee undertook an inquiry into possible changes to the Schedule to the Interests of Members of the Scottish Parliament Act 2006 and Section 2 of the Code of Conduct. It proposed changing the number of categories of registrable interest from 8 to 5 and clarifying the definitions of these 5 categories, for example to amend the definition of remuneration so that members are no longer required to register certain minor interests; remove Electoral Expenses category, since the interests are already captured in members' returns to the Electoral Commission; and to fix the registration threshold for gifts at the start of a session rather than raising it whenever members' salaries increase.

These changes were agreed by the Parliament in January 2011 and came into effect from the start of the subsequent parliamentary session²².

Members' Interests Bill

In April 2013 the Standards, Procedures and Public Appointments Committee launched a consultation on a new Members' Interest Bill. The impetus for this was the passage of the Scotland Act 2012, which gave the Scottish Parliament the power to consider fully the Members' Interest regime. Following the consultation the Committee has agreed not to make any changes to the existing criminal offences for failure to register or declare financial interests. The proposed bill will seek to:

- expand the Parliamentary sanctions available to the Parliament for breaches of the members' interests requirements, including for paid advocacy;
- extend the scope of the criminal offence of paid advocacy; and
- improve the transparency and accessibility of information on MSPs' significant financial interests by requiring certain political activities, currently reported to the Electoral Commission, to be registered with the Scottish Parliament.

The Committee is currently developing the detail of the proposals to inform drafting instructions for the bill²³.

National Assembly for Wales

The last major revision to the guidance on registering Members' Interests was published in 2006.

6 Conclusion

The Code of Conduct for Members of the Northern Ireland Assembly and the accompanying guidance is comprehensive when compared to other Codes. There are

²² <http://archive.scottish.parliament.uk/s3/committees/stanproc/reports-11/stpr11-03.htm>

²³ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62116.aspx>

broad similarities across Codes in relation to freedom of speech, transparency, openness and financial interests. The majority of Codes of Conduct are primarily concerned with the declaration and registration of financial interests and conflicts of interests that could prevent elected representatives from performing their duties effectively.

This paper highlighted some examples of provisions from other codes that are currently absent or not addressed to the same extent in the Northern Ireland Assembly's Code, although provision may exist in law or in other guidelines issued by the Assembly.

The research also addressed the issue of 'contempt'. Contempt in a political context is most closely associated the UK Parliament and forms part of the rights and privileges enjoyed by that institution. It is not replicated in the devolved institutions. The Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales are creatures of statute and have more limited privileges. In the context of unauthorised disclosure of documents, this can be addressed through the Code of Conduct – the Code in the National Assembly for Wales specifically prohibits the unauthorised disclosure of Assembly documents.

There have been some developments in relation to Members' Interests in recent years in UK legislatures. Perhaps the most interesting of these is the current consultation on a new Members' Interests Bill at the Scottish Parliament. If passed, this legislation will expand the sanctions available to the Parliament for breaches of the registration requirements and enhance the transparency and accessibility of information on MSPs financial interests.