

*These notes refer to the Parliamentary Standards Bill
as brought from the House of Commons on 2nd July 2009 [HL Bill 60]*

PARLIAMENTARY STANDARDS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Parliamentary Standards Bill as brought from the House of Commons on 2nd July 2009. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

3. A background to the Bill as a whole and a summary of the Bill is provided below. Commentary on each Part is then set out in number order, with the commentary on the various Schedules included in the section to which each relates.

BACKGROUND

Outline of the current system of MPs' allowances

4. Allowances for MPs have been set by a series of resolutions approved by the House of Commons over many years. The first allowances schemes related to stationery and travel. The scheme has grown over the years and the matters for which allowances are claimable have similarly expanded.

5. In January 2008, the Review Body on Senior Salaries ("the SSRB") produced a *Review of parliamentary pay, pensions and allowances 2007* (January 2008) Cm 7270-I. That report made a range of recommendations concerning the way in which MPs' allowances should be paid. The House considered the SSRB report on 24th January 2008, resolving to accept some of the recommendations and referring others to the Members Estimate Committee. The Members Estimate Committee published its report on the review of allowances on 25th June 2008.¹ It described its report as a "root and branch review" driven by the objectives of adequately equipping MPs and "to meet public expectations for clearer audit and transparency".

¹ Members Estimate Committee, *Review of Allowances* (Third report, 2007-08) HC 578-I.

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6. The House of Commons debated this report on 2nd July 2008, accepting some of the recommendations but not others, and tasked the Advisory Panel on Members' Allowances with setting out the conclusions of the House of Commons in a revised system of allowances. The Advisory Panel's work was contained in a January 2009 report of the Members Estimate Committee.² On 22nd January 2009, the House resolved that the revised system of allowances should govern all expenditure on MPs' allowances for claims on or after 1st April 2009 and empowered the Members Estimate Committee to make such modifications to previous House resolutions relating to MPs' allowances "as are necessary to ensure that they are consistent with the provisions in the Green Book".³

7. Also on 22nd January 2009, the House resolved to accept the arrangements for audit and assurance of MPs' allowances set out in the report of the Members Estimate Audit Committee to the Members Estimate Committee (contained as annex 3 to the January 2009 report).⁴ Amongst other things, the Members Estimate Committee recommended that the current limitation on the scope of the audit by the National Audit Office should be removed. The effect of this is to bring about full scope audit, the same level of audit provided by the National Audit Office for other public sector bodies.

8. The current system of allowances is set out in *The Green Book: A guide to Members' allowances* ("the *Green Book*"). The allowances scheme is designed to ensure MPs are able to work effectively in Parliament and in their constituencies. It provides support for employing staff, servicing MPs' offices, overnight stays away from home while on Parliamentary duties, communicating with constituents, House stationery and postage, and travel.

9. The *Green Book* sets out certain principles, derived from the MPs' Code of Conduct, which MPs are to adhere to when making claims against parliamentary allowances. The principles are as follows.

- a) Claims should be above reproach and must reflect actual usage of the resources being claimed.
- b) Claims must only be made for expenditure that it was necessary for a Member to incur to ensure that he or she could properly perform his or her parliamentary duties.

² Members Estimate Committee, *Revised Green Book and audit of Members' allowances* (First Report, 2008-09) HC 142 (<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmmemest/142/142.pdf>).

³ Set out in the Members Estimate Committee, *Consolidated list of provisions of the Resolutions of the House relating to expenditure charged to the Estimate for House of Commons: Members* (Second Report, 2008-09) HC 281.

⁴ House of Commons Hansard, 22nd January 2009, col 970 (<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090122/debtext/90122-0015.htm#09012244000014>).

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- c) Allowances are reimbursed only for the purpose of a member carrying out his or her parliamentary duties. Claims cannot relate to party political activity of any sort, nor must any claim provide a benefit to a party political organisation.
- d) It is not permissible for a Member to claim under any parliamentary allowance for anything that the Member is claiming from any other source.
- e) Members must ensure that claims do not give rise to, or give the appearance of giving rise to, an improper personal financial benefit to themselves or anyone else.
- f) Members are committed to openness about what expenditure has been incurred and for what purposes.
- g) Individual Members take personal responsibility for all expenses incurred, for making claims and for keeping records, even if the administration of claims is delegated by them to others.
- h) The requirement of ensuring value for money is central in claiming for accommodation, goods or services – Members should avoid purchases which could be seen as extravagant or luxurious.
- i) Claims must be supported by documentary evidence, except where the House has agreed that such evidence is not necessary.

10. Parliamentary oversight of the *Green Book* is currently provided by two House of Commons committees: the Members Estimate Committee and the Committee on Members' Allowances. The Members Estimate Committee has the same membership as the House of Commons Commission, and is chaired by the Speaker of the House of Commons.

11. The functions of the Members Estimate Committee are: to codify and keep under review Commons resolutions and the *Green Book*; modify those provisions in the interests of clarity, consistency, accountability and effective administration, and conformity with current circumstances; and consider appeals against determinations by the Committee on Members' Allowances.

12. The functions of the Committee on Members' Allowances are: to advise the Members Estimate Committee on the discharge of its functions; advise the Speaker, the Members Estimate Committee and the Leader of the House on the development of the arrangements concerning MPs' allowances; approve practice notes on MPs' allowances; and determine (subject to an appeal to the Members Estimate Committee) the application of the rules as may be referred to them by Members.

13. The scheme set out in the *Green Book* is administered by the Commons Department of Resources, often referred to as the "Fees Office". As set out in the Standing Orders, if an MP's expenses claim is refused by the Fees Office, the MP may appeal to the Committee on Members' Allowances. The MP may make a further appeal to the Members Estimate Committee.

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Recent and ongoing developments concerning MPs' allowances

14. There have been a number of recent developments concerning MPs' allowances.
15. By motion dated 30th April 2009, the House has agreed that staff who work for MPs should be employed by the House "as a personal appointment and managed by the hon. Member". The House asked the House of Commons Commission to consider how the transfer can be made and to make recommendations by 29th October 2009.⁵
16. The Committee on Standards in Public Life ("the CSPL") has launched a review of MPs' expenses, publishing an issues and questions paper on 23rd April 2009.⁶ The CSPL asked for submissions of evidence, with a closing date of 5th June 2009 and intends to hold public meetings in June and July.
17. The Speaker of the House of Commons announced a series of interim measures connected with MPs' allowances to take effect immediately without pre-empting the work of the CSPL.⁷ These interim measures relate to second homes, capital gains tax, the status of couples both of whom are MPs, mortgages, and staffing.

Outline of the current system of salaries for MPs

18. MPs have received a regular salary since 1911. For many years, these salaries were set by the House of Commons by resolution, although since the 1970s the SSRB has advised on the level of these salaries.
19. The origins of the current system lie in the Government's response to the January 2008 SSRB report *Review of Parliamentary Pay, Pensions and Allowances 2007*. In response to this review, the Government announced that it considered it "inappropriate that MPs should vote on their own pay and pensions."⁸
20. Sir John Baker, retiring chairman of the SSRB, was accordingly asked to conduct a review. He was asked to "make recommendations for a mechanism for independently determining the pay and pensions of MPs which does not involve MPs voting on their own pay".⁹ His report, published in June 2008, recommended that MPs' pay should be uprated annually in line with the Public Sector Average Earnings Index, with a review by the SSRB each Parliament.

⁵ See House of Commons Hansard, 30th April 2009, col 1133 (<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090430/debtext/90430-0019.htm#09043030000013>).

⁶ Available at http://www.public-standards.gov.uk/Library/I_Q_paper_13th_Inquiry_Final_copy.pdf.

⁷ See House of Commons Hansard, 19th May 2009, col 1421 (<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090519/debtext/90519-0016.htm#090519107000002>).

⁸ See House of Commons Hansard, 16th January 2008, col 32WS.

⁹ Sir John Baker CBE, *Review of Parliamentary Pay and Pensions* (June 2008) Cm 7416.

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21. The current system for MPs' salaries is set out in the Commons resolutions of 3rd July 2008. The House resolved that MPs' salaries are to be increased annually through an uprating formula. Rather than using the Public Sector Average Earnings Index, the uprating formula is derived from the increase in a package of salaries for certain public sector workers. The increase in salary is achieved by the SSRB notifying the Speaker of the House of Commons of the percentage increase. The SSRB must also conduct a more general review of MPs' salaries in the first year of each new Parliament.

22. These salaries are separate from what an MP might additionally receive by virtue of holding ministerial office, as provided for in the Ministerial and other Salaries Act 1975.

Outline of the current mechanisms for regulating standards in the House of Commons including the registration and declaration of MPs' financial interests

23. The Code of Conduct for MPs, which is based on the seven general principles identified by the Committee on Standards in Public Life, includes requirements for MPs to register and declare interests in the Register of Members' Financial Interests. The function of administering and applying the Code of Conduct is presently split between the Committee on Standards and Privileges, the Parliamentary Commissioner for Standards ("the Standards Commissioner") and the House of Commons itself.

24. The current version of the Code of Conduct was agreed by the House of Commons in July 2005.¹⁰ The purpose of the Code is to provide "guidance on the standards of conduct expected of Members in discharging their parliamentary and public duties". It sets out the public duties undertaken by MPs, as well as the seven general principles identified by the Committee on Standards in Public Life.¹¹

25. Amongst other standards, the Code requires that MPs must "ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services". MPs must also fulfil the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests.

26. The Committee on Standards and Privileges is established under Standing Order No. 149. The functions of the Committee are to: consider specific matters relating to privileges referred to it by the House; oversee the work of the Standards Commissioner, examine the arrangements for the Register of Members' Financial Interests and other registers of interest and to consider any specific complaints made concerning registering or declaring of interests

¹⁰ Contained, together with the version of the Guide to the Rules relating to the conduct of Members approved by the House of Commons on 9th February 2009, in HC 735 (<http://www.publications.parliament.uk/pa/cm200809/cmcode/735/735.pdf>).

¹¹ Cm 2850-I, p 14.

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referred to it by the Standards Commissioner; consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to its attention by the Standards Commissioner; and recommend any modification to the Code of Conduct.

27. The Standards Commissioner is an Officer of the House, appointed by the House. Standing Order No. 150 provides that the Standards Commissioner is to: maintain the Register of Members' Financial Interests and any other register established by the House; provide confidential advice to MPs and other persons subject to registration; advise the Committee on Standards and Privileges and any MPs on the interpretation of the Code of Conduct or on questions of propriety; monitor the operation of the Code of Conduct and make recommendations on it; and "receive and, if he thinks fit, investigate specific complaints from Members and from members of the public in respect of: (i) the registration or declaration of interests, or, (ii) other aspects of the propriety of a Member's conduct, and to report to the Committee on Standards and Privileges".

28. At the conclusion of any investigation, the Standards Commissioner reports to the Committee on Standards and Privileges with a finding of fact and an opinion on whether there has been a breach of the Code. The Committee does not have to accept the Standards Commissioner's conclusions and can conduct its own investigation before issuing its report to the House of Commons.

29. Standing Order No. 150(3) provides that no report is to be made to the Committee on Standards and Privileges at the conclusion of an investigation if the Standards Commissioner considers that the interest involved is minor, or the failure inadvertent and the MP has taken appropriate action. In addition, the Standards Commissioner must not report if the Commissioner and MP have agreed on how to secure "appropriate financial reimbursement" and the MP has made such reimbursement within a reasonable period of time.

30. It is the Committee, and not the Commissioner, that makes any recommendation to the House of Commons about the sanctions that should be imposed on an MP. The House of Commons is the ultimate arbiter in these matters and may choose not to accept the recommended sanction.

31. Although complaints relating to the conduct of Members are usually brought under the procedure described above, the House retains a power to deal with conduct that is not necessarily related to financial propriety (for example, disorderly behaviour or conduct wholly related to the privileges of Parliament).

32. The House of Commons has a range of disciplinary powers in the event of misconduct by an MP. The House may resolve to reprimand or admonish an MP, withhold his or her salary, or suspend or expel him or her.

SUMMARY

33. The Bill will establish a new Independent Parliamentary Standards Authority (“IPSA”) as a body corporate. The IPSA will have functions in relation to MPs’ salaries, allowances and financial interests. The Bill will also establish a separate Commissioner for Parliamentary Investigations to investigate breaches of the rules on allowances and the code of conduct relating to financial interests.

Salaries and allowances for MPs

34. The IPSA is to take over paying the salaries of MPs in accordance with the relevant resolutions of the House of Commons.

35. The IPSA will also be responsible for drawing up the MPs’ allowances scheme. In doing so, it is expected that the IPSA will draw on the outcome of the current work of the CSPL in reviewing MPs’ allowances. The Bill lays out certain matters which the IPSA may include in the scheme, such as specifying the types of expenditure or the limits on the amounts to be paid. The IPSA will also take over responsibility for authorising and making payments under the allowances scheme (these administrative functions are to be exercised on the IPSA’s behalf by its chief executive).

Code of conduct relating to financial interests

36. The IPSA will be responsible for preparing a code of conduct relating to financial interests. This code would include some matters which are presently covered by the current MPs’ Code of Conduct. The code would cover the registration of relevant financial interests and the “no paid advocacy” rule. The code would be subject to approval by resolution of the House of Commons.

Investigation and enforcement

37. The Bill will establish a Commissioner for Parliamentary Investigations (“the Commissioner”). The Commissioner will have the power to investigate any overpayments under the allowances scheme or breaches of the code. The Commissioner will be able to initiate such investigations. An investigation may also be conducted at the request of the IPSA or after an individual complaint or at the request of the member. An MP must provide any information that the Commissioner reasonably requires.

38. The IPSA must determine procedures for the Commissioner to follow. These must include safeguards for the MP, including that the MP have an opportunity to make representations to the Commissioner during the investigation and to the IPSA in light of the Commissioner’s report.

39. The IPSA will have a range of sanctions available in response to a Commissioner’s report. It may direct the repayment of allowances which have been incorrectly paid; it may direct the MP to amend his or her entries in the register of financial interests. It may also

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recommend to the Commons Committee on Standards and Privileges that the House should impose other sanctions, including withholding an MP's salary for a period or suspending or expelling that MP. If the IPSA proposes to give a direction or make a recommendation, it must give the MP concerned an opportunity to make further representations to the IPSA.

40. The Bill will create new criminal offences of knowingly providing false or misleading information in a claim for an allowance, of failing to comply with the rules on registration, and of breaching the rules which prohibit paid advocacy.

The appointment of the IPSA

41. The IPSA will consist of a Chair and four members. The members will be appointed by the Queen upon an Address of the House of Commons. A motion may only be made with the agreement of the Speaker for a candidate selected on merit on the basis of fair and open competition and approved by a Speaker's Committee. Members will be removable only in response to an Address of both Houses. There will be requirements that one member of the IPSA should have accountancy experience, that one member should have Parliamentary experience, and that one member have held (but no longer hold) high judicial office.

The appointment of the Commissioner

42. The Commissioner will be appointed by the same process for appointing members of the IPSA. There will be a duty on the IPSA to provide the Commissioner with adequate resources and staffing to carry out the Commissioner's functions.

The Speaker's Committee for the Independent Parliamentary Standards Authority

43. There will be a Speaker's Committee for the Independent Parliamentary Standards Authority charged with exercising the functions given to it under the Bill – in particular, approving the selection of persons to be members of the IPSA and the Commissioner.

TERRITORIAL EXTENT

44. The Bill extends to the United Kingdom. Because this Bill concerns the UK Parliament, the subject matter of this Bill is reserved, for the purpose of the Scotland Act 1998, and excepted, for the purpose of the Northern Ireland Act 1998.

COMMENTARY ON CLAUSES

Clause 1: Independent Parliamentary Standards Authority etc

45. *Clause 1* establishes the Independent Parliamentary Standards Authority, an officer to be known as the Commissioner for Parliamentary Investigations, and a committee to be known as the Speaker's Committee for the Independent Parliamentary Standards Authority.

Schedule 1: Independent Parliamentary Standards Authority

Part 1: Members of the IPSA

46. *Paragraph 1* makes provision for the membership of the IPSA. The IPSA is to consist of five members – one chair and four ordinary members. One of the five members must have held (but no longer hold) high judicial office; one must be qualified to be an auditor for the National Audit Office; and one must have been (but no longer be) a member of the House of Commons. Apart from this last-mentioned Parliamentary member, *paragraph 1* bars from appointment to the IPSA anyone who has been a member of the House of Commons within the last five years. There is no bar on members of the House of Lords being members of the Authority.

47. *Paragraph 2* makes provision for the appointment of the chair of the IPSA. The chair is appointed by Her Majesty upon an Address of the House of Commons. The motion for an Address may be made only with the agreement of the Speaker for a candidate selected by the Speaker on merit on the basis of a fair and open competition and approved by the Speaker's Committee. *Paragraph 2* also provides that the same selection and appointment process is to apply for ordinary members of the IPSA.

48. *Paragraph 3* provides that the terms and conditions of appointment of members of the IPSA are to be determined by the Speaker.

49. *Paragraph 4* deals with the term of office of members of the IPSA, and re-appointment to the IPSA. Members of the IPSA are to be appointed for a fixed term not exceeding five years. They may be re-appointed once only, for a term not exceeding three years.

50. *Paragraph 5* makes provision for the resignation and removal from office of members of the IPSA. Members of the IPSA may resign by giving written notice to the Speaker. They may be removed from office by Her Majesty upon an Address of both Houses of Parliament.

51. *Paragraph 6* makes provision enabling the terms and conditions of appointment to the IPSA to provide for payment by the IPSA of remuneration and allowances, and for the provision of a pension.

52. *Paragraph 7* requires the IPSA to issue and periodically to revise a code of conduct for its members. The code must incorporate the seven general principles of public life set out by the Committee on Standards in Public Life or such other similar principles as the IPSA adopt, and must require members to disclose their interests.

53. *Paragraph 8* provides that all members of the Authority are disqualified for membership of the House of Commons and the Northern Ireland Assembly.

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Part 2: The IPSA

54. *Paragraph 9* makes it clear that the IPSA, its members and staff are not to be regarded as the servants or agents of the Crown, and that its property is not to be regarded as held on behalf of the Crown. This means that the IPSA is not to have “Crown status”.

55. *Paragraph 12* enables the IPSA to establish such committees as it sees fit, and the committees to establish such sub-committees as they see fit. The members of such committees and sub-committees must be drawn from the membership of the IPSA.

56. Under *Paragraph 13(2)* the validity of proceedings of the IPSA, or any of its committees or sub-committees, is not affected by a vacancy among the members of the IPSA or a defect in the appointment of a member. This is to enable the normal functioning of the IPSA should such circumstances arise.

57. *Paragraph 14* requires the appointment of a chief executive, and enables the appointment of other staff by the IPSA. Their terms and conditions of appointment are to be determined by the IPSA, but the IPSA is to have regard to the desirability of keeping such terms and conditions broadly in line with civil service terms and conditions.

58. *Paragraph 15* makes provision enabling the Speaker to appoint an interim chief executive, to act in the name of and on behalf of the IPSA, until such time as the IPSA appoint a chief executive. This provision will expedite the establishment of an organisation to support the new Authority. It is for the IPSA to determine when the powers exercised by the interim chief executive are to come to an end.

59. *Paragraph 16* provides for the staff of the IPSA to have access to the Principal Civil Service Pension Scheme.

60. *Paragraphs 17 and 18* separate the IPSA’s administration and regulation functions. *Paragraph 17* requires that the administration functions of the IPSA be carried out separately from the regulation functions insofar as possible, and that the administration functions are to be carried out by the chief executive. *Paragraph 18* sets out the division. Administration functions are those relating to the payment of MPs’ salaries, the payment of allowances, the processing of allowances claims and publishing and maintaining the register of interests. The regulation functions are the preparation and revision of the MPs’ allowances scheme, preparation and revision of the code, determining procedures for investigations and the functions of making directions or recommendations and making the protocol in clause 7(7).

61. *Paragraph 19* enables the IPSA to delegate functions to any of its members, any committee it establishes, or any of its staff, with the exception of the regulation functions and the appointment of a chief executive. *Paragraph 19* also enables the chief executive to delegate his or her statutory functions to any of the staff of the IPSA.

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62. *Paragraph 20* provides for the IPSA to contract out its payment functions. This means that it would not be necessary for the processing of payments to be carried out by the staff of the IPSA. It could instead be contracted out to another body. *Paragraph 20(4)* makes it clear that the power to contract out functions does not include any powers in relation to the determination of claims for allowances.

63. *Paragraph 21* provides for the chief executive to contract out the arrangements for managing the pensions of the staff of the IPSA.

64. *Paragraph 22* sets out that the IPSA is to be funded by money voted by Parliament. This means that it will be voted annually by Parliament in the same way as departmental resources. It is for the IPSA to prepare an estimate of the resources it will require. It is to submit this to the Speaker's Committee. The estimate is to be laid before the House of Commons by the Speaker after a process of review in which the Committee must involve the Treasury.

65. *Paragraph 23* requires the IPSA to prepare accounts in accordance with the directions given to it by the Treasury. *Paragraph 23(4)* appoints the chief executive as the accounting officer for the IPSA.

66. *Paragraph 24* requires the IPSA to submit its accounts annually to the Comptroller and Auditor General. The Comptroller and Auditor General is to examine and certify the accounts and lay a copy before each House of Parliament.

67. *Paragraph 25* requires the Speaker to lay the IPSA annual report before Parliament.

68. *Paragraph 26* provides for the application of the seal of the IPSA which is to be authenticated by the signature of any member of the IPSA or its staff who has been authorised for the purpose.

69. *Paragraph 27* extends the Freedom of Information Act 2000 to cover the IPSA. This will mean that the IPSA will have to introduce a publication scheme explaining how it intends to handle the information in its possession, as well as being obliged to consider requests for information in accordance with the provisions of the Act. In adopting or reviewing a publication scheme, the IPSA must consult the Leader of the House of Commons, the Speaker and the Commons Committee on Standards and Privileges.

Schedule 2: Commissioner for Parliamentary Investigations

70. *Schedule 2* makes provision for the appointment of the Commissioner, for his or her terms and conditions, resignation and removal from office, remuneration, status, and annual reporting which is the same as that made for the members of the IPSA in Schedule 1.

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71. *Paragraph 3* sets limits to the term of office of the Commissioner. The Commissioner will be appointed for a single fixed term not exceeding five years. A person appointed as the Commissioner may not be reappointed to that office.

72. *Paragraph 7* lays a duty on the IPSA to provide the Commissioner with adequate resources to fulfil his or her functions, and in particular the staff to assist in carrying out those functions. Because his or her resources will be provided by the IPSA, there is no separate requirement on the Commissioner to prepare annual accounts. *Paragraph 8* requires the Commissioner to prepare an annual report which the Speaker must lay before each House of Parliament. The Commissioner is to publish the report in any manner he or she considers appropriate.

73. *Paragraph 10* extends the Freedom of Information Act 2000 to cover the Commissioner. This will mean that the Commissioner will have to introduce a publication scheme explaining how he or she intends to handle the information in his or her possession, as well as being obliged to consider requests for information in accordance with the provisions of the Act.

Schedule 3: Speaker's Committee for the Independent Parliamentary Standards Authority

74. This Schedule makes provision for the Speaker's Committee which is to have the functions set out in this Act – in particular, the function of approving the selection of candidates for appointment as a member of the IPSA or as the Commissioner.

75. *Paragraph 1* sets out the membership of the Speaker's Committee. They are to be the Speaker of the House of Commons, the Leader of the House of Commons, the chair of the Committee on Standards and Privileges and five MPs who are not Ministers of the Crown.

Clauses 2-4: Salaries and allowances for MPs

76. *Clause 2(1)* provides that MPs' salaries are to be paid by the IPSA, in accordance with the relevant resolutions of the House. *Clause 2(2)* ensures that if the House should determine that an MP's salary should be withheld, the IPSA can give effect to that. The functions in this clause are to be exercised by the chief executive on behalf of the IPSA, see paragraph 17 of Schedule 1.

77. *Clause 3* provides that the IPSA is to pay allowances according to an MPs' allowances scheme it prepares and keeps regularly under review. *Clause 3(4)* provides that during preparation or revision of the scheme, the IPSA is required to consult the Leader of the House of Commons, the Speaker of the House of Commons, any committee of the House nominated by the Speaker, the SSRB, Her Majesty's Revenue and Customs, the Treasury, the CSPL and members of the House of Commons. The IPSA may also consult with any other person it considers appropriate. Once the scheme has been prepared or revised, the Speaker must lay it before the House of Commons, but the scheme does not require the formal agreement of the House.

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78. *Clause 3(7)* sets out the matters which the scheme may include. These include for what types of expenditure and in what circumstances allowances may be payable; the conditions under which allowances may be paid (for example on the receipt of documentary evidence); and imposing limits on the amounts which can be paid.

79. *Clause 4* sets a formal framework for dealing with claims under the allowances scheme, and sets out that further provision for dealing with claims may be included within the allowances scheme prepared by the IPSA. These functions are to be exercised by the chief executive on behalf of the IPSA, see *paragraph 17* of Schedule 1.

80. *Clause 4(1)* requires a claim to be made to the IPSA before any allowance is paid to an MP. Those claims must usually be made by the MP, *clause 4(2)*. *Clause 4(3)* requires the IPSA to determine whether to allow or refuse the claim, and, if it is allowed, how much should be paid, and to pay it accordingly. *Clause 4(4) and (5)* provide for a review mechanism if the IPSA determines that a claim should be refused or paid only in part. If an MP asks for a review, the IPSA must review its determination and decide whether or not to alter its decision.

81. *Clause 4(6)* provides that the scheme may make further provision as to how claims are to be dealt with. This could include such matters as the sort of evidence required, or the format in which a claim must be made. This subsection also provides that the scheme may contain a mechanism through which overpayments may be recovered by permitting the setting off of payments to which an MP is not entitled against payments to which the MP is entitled.

82. *Clause 4(7)* also provides that an allowance to which a member is entitled under the scheme may be paid to another person at the member's direction.

Clause 5: code of conduct relating to financial interests

83. *Clause 5* requires the IPSA to prepare, regularly review, and revise as appropriate a code of conduct relating to MPs' financial interests. *Subsection (4)* provides that during preparation or revision of the code, the IPSA is required to consult with the Speaker of the House of Commons, the Leader of the House of Commons, the House of Commons Committee on Standards and Privileges, and members of the House of Commons. The IPSA may also consult with any other person it considers appropriate. Once the code has been prepared or revised, the Speaker must lay it before the House of Commons. *Subsection (6)* provides that the code must be approved by a resolution of the House of Commons before it is to have effect.

84. *Subsections (7) and (8)* set out the provisions which must be included in the code. It sets out a formal framework requiring MPs to register financial interests with the IPSA.

85. *Subsection (8)* sets out that the rules must prohibit paid advocacy. It covers both the actions of the MP in advocating or initiating any cause or matter for any consideration,

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whether financial or in kind, and also urging another member to advocate any cause or matter on his or her behalf.

86. *Subsection (9)* requires the IPSA to publish the register in any way that it considers appropriate.

87. *Subsection (10)* defines “financial interest” as including a benefit in kind or an indirect financial interest (such as a financial interest of a member of the family of the member). So, for example, an MP could be required to include on the register information about employing a member of his or her family or his or her staff.

Clauses 6-8: Investigation and enforcement

88. *Clause 6(1)* provides that the Commissioner may conduct an investigation if he or she has reason to believe that a member of the House of Commons may have been overpaid an allowance under the allowances scheme or may have failed to comply with the code of conduct relating to financial interests.

89. *Clause 6(2)* sets out who may initiate an investigation. This can be either the member concerned, the Commissioner on his or her own initiative, the IPSA, or as the result of a complaint from an individual.

90. *Clause 6(3)* requires members of the House of Commons and the IPSA to provide any information reasonably required by the Commissioner for the purposes of the investigation.

91. *Clause 6(4)* requires the Commissioner to make a report to the IPSA of his or her findings. The Commissioner will determine the facts of the case and it will be for the IPSA to decide what action to take in the light of the Commissioner’s findings

92. *Clause 6(5)* says that the Commissioner shall not make any report where the member has accepted that he has failed to register an interest, if the Commissioner is satisfied that the omission was minor or inadvertent, and the member has already taken the necessary remedial action. It also provides that where a member has made a claim for allowances, there should be no report if the member has already agreed to make the necessary repayment.

93. *Clause 6(6)* requires the IPSA to determine procedures for the conduct of investigations by the Commissioner and the handling of complaints from individuals. This may include procedures for refusing to conduct an investigation in response to a complaint, for example, where the complaint is vexatious or is frivolous. The IPSA must also determine procedures about the circumstances in which a report of findings to the IPSA is to be published.

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as brought from the House of Commons on 2nd July 2009 [HL Bill 60]*

94. *Clause 6(7)* requires the IPSA to consult the Leader of the House of Commons, the Committee on Standards and Privileges and any other person the IPSA considers appropriate, in determining its procedures.

95. *Clause 6(8)* requires that such procedures afford any member of the House of Commons subject to an investigation the opportunity to make representations to the Commissioner, and to make representations to the IPSA following the Commissioner's report.

96. *Clause 7* sets out the options for the IPSA in the light of the Commissioner's report. *Clause 7(1)* gives powers to the IPSA to direct a member of the House of Commons to repay amounts paid under the allowances scheme that should not have been paid, and to correct omissions or inaccuracies in the register of financial interests.

97. *Clause 7(2)* makes provision for the IPSA to recommend to the House of Commons Committee on Standards and Privileges that the House exercise any of its disciplinary powers. Examples of those disciplinary powers are set out in *clause 7(11)*, discussed below. *Clause 7(3)* makes clear that it is a matter for the Committee on Standards and Privileges to accept, modify or reject any recommendation as it sees fit. *Clause 7(4)* provides that if the IPSA proposes to give a direction or to make a recommendation, the MP in question must be given the opportunity to make further representations to the IPSA. This will ensure that the MP has a right to comment on the way in which the IPSA proposes to exercise its powers (in addition to the MP's right to participate in investigations and comment on the findings of the Commissioner, see *clause 6(8)*). The IPSA may publish a direction or recommendation that it has given.

98. *Clauses 7(5) and (6)* provide that if a member fails to comply with the code, the duty to provide information reasonably requested by the Commissioner or a direction by the IPSA, the House of Commons may exercise any of its disciplinary powers. Apart from this, such failures are to have no legal effect. This preserves to the House of Commons the right to discipline its members unless there has been a breach of the criminal law.

99. *Clause 7(7)* requires that the IPSA must, with the agreement of the Committee on Standards and Privileges, prepare a protocol setting out how the IPSA, the Commissioner, the Director of Public Prosecutions, the Commissioner of Police of the Metropolis, and any other person the IPSA considers appropriate are to work together concerning the conduct of MPs. *Clause 7(8)* provides that in drawing up the protocol, the IPSA is to consult each of the other parties.

100. *Clause 7(9)* preserves the right of the House of Commons to exercise any disciplinary powers which it may have. It is not to be limited to acting only following an investigation by the Commissioner or a recommendation from the IPSA.

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101. *Clause 7(10)* provides that where the MP has been, or is, subject to criminal proceedings in relation to conduct, whether or not convicted of an offence, this does not stop an investigation under *clause 6* or enforcement in accordance with *clause 7*. This means, for example, that if an MP is found innocent of a criminal offence, he or she may still be disciplined in accordance with the provisions of the Bill for the conduct the subject of the criminal charge.

102. *Clause 7(11)* sets out examples of the disciplinary powers which the House could exercise after a recommendation is made to the Committee on Standards and Privileges by the IPSA. These include the power to determine that a member's salary should be withheld for a certain period; the power to suspend a member; and the power to expel a member. These are all powers which the House already possesses and they are not conferred by the Bill. They are referred to in the Bill in order to indicate the scope of the IPSA's recommendation function. The House's powers of discipline are not limited to these three instances.

103. *Clause 8* establishes a series of new offences in relation to claims made under the allowances scheme and compliance with the code. The offences which relate to the code are based on similar offences which exist in Scotland concerning the Scottish Parliament. These offences are set out in section 39 of the Scotland Act 1998 (c. 46) and the Interests of Members of the Scottish Parliament Act 2006 (asp 12).

104. *Clause 8(1)* sets out that an MP commits an offence if he or she provides information which he or she knows to be false or misleading in a material respect in support of a claim for allowances.

105. *Clause 8(2)* provides that an MP commits an offence if, without reasonable excuse, he or she fails to comply with the code as it relates to registration of financial interests.

106. *Clause 8(3)* provides that an MP commits an offence if he or she breaches the code insofar as it prohibits paid advocacy.

107. *Clause 8(4) and (5)* sets out the penalties. Knowingly providing false or misleading information in support of a claim for allowances can be tried either in a magistrates' court or in a Crown Court. If it is tried in a magistrates' court, the maximum penalty is 6 months imprisonment (12 months in Scotland and 12 months in England and Wales on coming into force of section 154(1) of the Criminal Justice Act 2003) or a fine not exceeding the statutory maximum, or both. If it is tried in the Crown Court, the maximum penalty is 12 months imprisonment or a fine or both. *Clause 8(5)* provides that the offences of failing to register an interest, or breaching the no paid advocacy rule, are triable only in a magistrates' court. The maximum penalty is a fine not exceeding level 5 on the standard scale (currently £5000).

Clauses 9-12: Final provisions

108. *Clause 9(1)* provides that the Speaker, after consulting the Commissioner and the House of Commons Committee on Standards and Privileges, may agree with the IPSA that the IPSA is to carry out agreed registration functions. These registration functions are functions performed by the Standards Commissioner which relate to registration. This clause would permit the IPSA to take over the functions of the Standards Commissioner concerning other registers held by the Standards Commissioner, for example, the Register of Interests of Members' Secretaries and Research Assistants.

109. *Clause 9(4)* provides a similar power by which the Speaker, after consulting the IPSA and the House of Commons Committee on Standards and Privileges, may agree with the Commissioner that the Commissioner is to carry out agreed functions. Those functions are functions of the Standards Commissioner and which the Commissioner could not carry out under any provision of this Bill. This paragraph permits the Commissioner to take on additional functions which are at present exercised by the Standards Commissioner.

110. *Clause 10* sets out the interpretation of terms used in the Bill. It provides for the Speaker to make the final determination of which body would best be substituted for certain bodies named in the Bill if one of those bodies is replaced by another body carrying out the same functions.

111. *Clause 11* sets out the powers to make transitional provision. It confers the functions on a Minister of the Crown so that it is possible for them to be exercised by the Leader of the House of Commons.

112. *Clause 11(1)* provides that a Minister of the Crown may by order make supplementary, incidental, transitional, transitory or saving provision in connection with this Bill.

113. *Clause 11(2)* provides that an order made under this clause may include certain transitional provisions to facilitate the transition from the current system of allowances and scheme governing financial interests to the new system. *Subsection (2)(a)* enables an order to provide that the current rules of the House of Commons relating to allowances are to have effect for specified purposes as if they were set out in accordance with the provisions of this Bill. This is to ensure that there is a valid system of rules relating to allowances in place as soon as possible after the IPSA is established.

114. *Subsection (2)(b)* makes similar provision for the current rules relating to the registration of members' interests. *Subsection (2)(c)* makes similar provision for the current rules concerning the prohibition of paid advocacy.

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115. *Subsection (3)* makes clear that the specified purposes for which any of the current rules are to have effect, does not include the purposes of clause 8 (offences). This means that the offences regime for MPs set out in clause 8 cannot take effect in relation to allowances or rules under subsection (2).

116. *Subsection (4)* enables consequential changes to be made to the relevant existing rules to substitute the Commissioner or the IPSA for references to an officer or committee of the House of Commons.

117. *Subsection (5)* enables provision to be made whereby payments of allowances to which a member of the House of Commons was not entitled may be set off against other claims for allowances made by that member. This would mean that where previous overpayments were being recouped against later claims for allowances under the current scheme, this setting off could continue even after the transition to the new scheme.

118. *Subsection (6)* enables provision to be made to transfer staff, property, rights, liabilities, documents and information from the House of Commons to the IPSA in accordance with a scheme. Such a scheme would be made by a Minister of the Crown and would have to be agreed with the Speaker in his or her capacity as the chair of the House of Commons Commission.

119. *Subsections (8) and (9)* provide that an order under clause 11 is to be made by statutory instrument and may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

FINANCIAL EFFECTS

120. The Bill is expected to have minimal financial effects. The schemes which the new Authority and Commissioner are to administer are already in existence and are financed through the House of Commons. Most of the resources, both financial and other, are therefore already being provided from public funds. There will be a small cost to public funds for setting up the new Authority and Commissioner as bodies outside Parliament.

PUBLIC SECTOR MANPOWER

121. The Bill will have a minimal impact on public sector manpower.

SUMMARY OF IMPACT ASSESSMENTS

122. It is not anticipated that there will be any impact on business or the third sector. An interim impact assessment has been completed and published. That impact assessment states

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that because of the short timescale between announcement of the Bill and introduction it is not possible to submit an accurate estimate of the cost of establishing the Authority as a body separate to Parliament. The schemes which the IPSA and the Commissioner are to administer are, however, already in existence and financed through the House of Commons. Most of the resources, both financial and other, are therefore already being provided from public funds. This is against the background of the Government's intention that the new system should reduce the overall cost to the taxpayer.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

123. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with Convention rights (as defined by section 1 of that Act). The Leader of the House of Lords has made a statement under section 19(1)(a) of the Human Rights Act 1998 that in her view the provisions of the Bill are compatible with the Convention rights.

124. The provisions of the Bill which relate to the functions of the IPSA in making directions or recommendations may engage Article 6 ECHR (right to fair trial). That Article provides that where there is a determination of a civil right or obligation, everyone is entitled to certain procedural safeguards. Here, it is considered that the better view is that the direction or recommendation functions of the IPSA do not involve the determination of civil rights or obligations. In particular, conduct and discipline concerning a member of the legislature is regarded for the purposes of the ECHR as a matter of "public law" rather than private law rights (see, in particular, *Pierre-Bloch v France* (1997)). In addition, the IPSA's functions are limited to giving directions and making recommendations. Sanctions are ultimately left to the House of Commons. Even were a civil right or obligation found to be determined, there are a range of safeguards in place to ensure the fairness of the procedures of the IPSA. For example, members of the IPSA and the Commissioner are to be appointed by a process involving the Speaker and the House of Commons and removable only on an address of both Houses – processes to ensure the independence of the members and Commissioner. Before a sanction can be applied, an MP will have the opportunity to make representations at all stages of the process – during the investigation, in light of the Commissioner's findings and before the IPSA issues a direction or makes a recommendation.

125. It may be argued that the sanction functions engage Article 1 of the First Protocol (protection of property). That article provides that no one is to be deprived of his or her possessions except in the public interest and subject to conditions provided by law. Although it may be that none of the sanction functions involves a deprivation of a possession, any interference would in any event be in accordance with the law and would be in the public interest. This is because it is manifestly in the public interest for there to be a mechanism for ensuring the correct payment of allowances to MPs. In any event, the sanction functions of the IPSA are to be discretionary and are capable of being exercised compatibly.

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126. It may also be argued that the provisions which create criminal offences engage Article 7 ECHR (no punishment without law). That article requires that the criminal law be sufficiently clear and precise to enable individuals to regulate their behaviour. Some elements of the criminal offences created by this Bill would be defined in the allowances scheme and the code. However, it is considered that there is sufficient certainty concerning these criminal offences. First, the key requirements are set out in statute. Second, the class of persons affected is extremely limited – members of the House of Commons. Third, in the case of the offences where aspects are set out in the code, that code is subject to the approval of the House of Commons.

127. There are several provisions in the Bill which would involve MPs being required to provide personal information: (a) the provisions relating to providing information for the purposes of the code; and (b) the provision which would require an MP to provide information to the Commissioner which the Commissioner reasonably requires to pursue an investigation. These provisions may engage Article 8 ECHR (right to respect for private and family life) where they involve the provision of personal information. Even so, it is considered that both provisions are justified in the interests of ensuring the propriety of those who participate in Parliament.

COMMENCEMENT DATES

128. Clauses 10 to 12 of the Bill will come into force on the day it is passed. The other provisions come into force on the day appointed by a Minister of the Crown by order made by statutory instrument; and different days may be appointed for different purposes.

PARLIAMENTARY STANDARDS BILL

EXPLANATORY NOTES

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