Declarations of interests

People with significant control of a company
The Committee for Privileges and Conduct

The Committee for Privileges and Conduct is appointed each session by the House of Lords to consider questions regarding its privileges and claims of peerage and precedence and to oversee the operation of the Code of Conduct.

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The Code of Conduct and the up-to-date Register of Lords’ Interests are on the internet at


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## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declarations of interests</td>
<td>3</td>
</tr>
<tr>
<td>The test of relevance</td>
<td>3</td>
</tr>
<tr>
<td>Former interests</td>
<td>4</td>
</tr>
<tr>
<td>Non-financial interests</td>
<td>4</td>
</tr>
<tr>
<td>Form of declaration</td>
<td>5</td>
</tr>
<tr>
<td>Investigations by the Commissioner for Standards</td>
<td>6</td>
</tr>
<tr>
<td>People with significant control of a company</td>
<td>8</td>
</tr>
</tbody>
</table>
Eighth Report

DECLARATIONS OF INTERESTS

1. The Code of Conduct states in paragraph 10(b) that members must “declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion”. This requirement is elaborated in paragraphs 85 to 94 of the Guide to the Code of Conduct.1

2. We have sought to provide greater clarity on what needs to be declared and how. We propose below one amendment to the Code of Conduct and four amendments to the Guide to the Code with that aim.

The test of relevance

3. Members must declare interests if they are relevant. Interests may need to be declared even if they are not registrable. The test of relevance is the same for registration and declaration.

4. The Code of Conduct sets out the test of relevance:

“11. The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the member’s parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.”

5. This is elaborated in the subsequent paragraph:

“12. The test of relevant interest is therefore not whether a member’s actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.”

6. Paragraph 11 of the Code states that an interest is relevant if it “might be thought … to influence” the member. Paragraph 12 states an interest is relevant if a reasonable person “might think that this might be the case”. Therefore there are two uses of the word “might” in paragraph 12.

7. “Might” implies speculation as to whether an interest is relevant. “Would” implies more certainty. We think that the apparent inconsistency between the test of relevance in the Code and its elaboration in paragraph 12 should be resolved in favour of greater certainty.

8. We recommend amending paragraph 12 of the Code be amended as follows (deleted word struck through; new word in bold):

“12. The test of relevant interest is therefore not whether a member’s actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might would

1 Fifth edition: July 2016.
be the case. Relevant interests include both financial and non-financial interests.”

**Former interests**

9. The Guide advises on when future interests should be declared. But no guidance exists on when former interests should be declared.

10. We consider it helpful to introduce a presumption that former interests need to be declared only exceptionally and when the expired interest might be thought to continue to influence the member. **We recommend amending paragraph 94 of the Guide as follows** (deleted words struck through; new words in **bold**):

   “Potential or Future or former interests

94. Declarable interests are usually current interests, but they may occasionally include relevant future interests. For the purposes of declaration of interests, relevant interests include A relevant future interests, that is to say interests where a is declarable if the member’s expectation has passed beyond vague hope or aspiration and reached the stage where there is a clear prospect that the interest will shortly arise. Former interests may exceptionally be declarable if, for example, they are comparatively recently held and might be thought to continue to influence the member in respect of the particular matter under discussion.”

**Non-financial interests**

11. There is often uncertainty about when a non-financial interest is relevant for the purposes of declaration.

12. The Guide sets out the non-financial interests which must be registered (in category 10). They are mainly offices in organisations which involve a degree of influence or decision making. The Guide goes on to state that “other non-financial interests are not normally registered”. Such certainty is absent for declaration.

13. We think it would aid certainty to require only that registered non-financial interests should be declared. Other non-financial interests could be declared if the member thinks it appropriate. This is the position in the House of Commons.** We recommend inserting the following new paragraph into the Guide:

   “Declaration of non-financial interests

94A. Members must declare relevant non-financial interests if they are in the Register of Lords’ Interests. Other relevant non-financial interests may be declared if the member thinks it appropriate.”

14. In consequence, we recommend amending paragraph 83 of the Guide as follows (deleted words struck through; new words in **bold**):

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“83. Other non-financial interests are not **registrable or (unless the member thinks it appropriate) declarable** normally registered, though it may be necessary in certain circumstances to declare them. Such interests include: other trusteeships, for example of private estates; unpaid ordinary membership of voluntary organisations or pressure groups; membership of churches or other religious bodies or organisations. The Registrar is available to advise members in cases of uncertainty.”

**Form of declaration**

15. Paragraphs 90 to 92 of the Guide to the Code advise on the form of declaration. They state that members should not simply refer to their entry in the Register, but go on to set out certain exceptions. We think this guidance could be clarified in two respects. First, it could make clear that a simple reference to a member’s entry in the Register always suffices during proceedings on oral questions, private notice questions and ministerial statements. Secondly, more guidance could be offered on how specific a declaration needs to be when the time available in a debate is limited.

16. **We recommend amending paragraphs 91 and 92 of the Guide as follows** (deleted words struck through; new words in **bold**):

   “90. Members should declare interests briefly, usually at the beginning of their speech. Declarations should wherever possible be comprehensible, specific and unambiguous, without either demanding prior knowledge of their audience or requiring reference to other documents. Members should not normally make a declaration simply by referring to “my interests which are published in the Register”.

91. **However, during proceedings on oral questions, private notice questions and ministerial statements, a brief reference to the member’s interests in the Register suffices.** During other time-limited proceedings, or where the advisory speaking time in a debate is short, members should not take up time by making lengthy declarations of interest. On such occasions if a member has multiple relevant interests it suffices for the declaration to indicate the nature of the interests. An exception to the rule in the preceding paragraph may be made at oral questions or other time-limited proceedings, where it may be for the convenience of the House that members should not take up time by making lengthy or repeated declarations of interest. On such occasions a brief reference to the published Register may be appropriate, but this only suffices for registered interests.

92. Members should not take up the time of the House, particularly during time-limited proceedings, by declaring trivial, frivolous or irrelevant interests. They should bear in mind that the test of relevance is “whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties” (Code, paragraph 11). The test of whether to declare is that set by the Code of Conduct and this Guide and not what other members declare in debate.”

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3 This is similar to the situation in the House of Commons: *ibid.*, paragraph 6(a).
17. In all of the above matters the Registrar of Lords’ Interests is available to advise members in cases of doubt. If a member follows the Registrar’s advice on declaration the member satisfies the requirements of the Code of Conduct.

Investigators by the Commissioner for Standards

18. We have considered the scope of the Commissioner for Standards’ investigations into allegations that a member has failed to declare a relevant interest.

19. Normally the scope of an investigation by the Commissioner is limited to the allegation made. However, in cases of non-declaration this may act as an inappropriate constraint. A complaint may concern a specific instance of non-declaration. If the Commissioner is limited to considering that instance she would not consider previous occasions when the member may have neglected to declare the same interest. Likewise, if the Commissioner considers only the instance complained of she could not take account of a member’s history of diligence in declaring the interest.

20. This may be relevant to the Commissioner’s decision on remedial action. If there is one instance of non-declaration, and it is apparent that it was a simple oversight and the member has apologised, the Commissioner may propose remedial action. If, however, the Commissioner’s investigation leads her to discover previous instances of non-declaration of the interest then remedial action may be unsuitable.

21. This situation could be avoided if the Commissioner were able to take into account previous instances of non-declaration of an interest. Thus if a complaint alleged that a member had not declared a relevant interest in one instance and the Commissioner upheld the complaint, she would then examine the member’s Hansard record to see whether it was the only instance of non-declaration of that interest.

22. If previous instances of possible non-declaration emerge, the Commissioner would seek the member’s response to them. The Commissioner would then reach a formal finding of breach (or non-breach) in each instance. All of the instances would be covered in her report.

23. In order to be proportionate, the Commissioner’s examination for possible previous instances of non-declaration should be limited to the last four years, and to the specific interest that was the subject of the initial complaint. This would be consistent with the Commissioner’s general remit. ⁴

24. In order to ensure consistency, the Commissioner would examine the member’s Hansard record in all cases in which she upholds an allegation of non-declaration.

25. We recommend that the Guide should be amended to provide that when the Commissioner upholds a complaint alleging non-declaration of a relevant interest she should examine whether there were other possible instances of non-declaration of that interest in the four years preceding the complaint. If other possible instances arise the Commissioner would invite the member to respond to them.

⁴ Paragraph 116 of the Guide states that complaints must usually be made within four years of the conduct complained of.
The Commissioner would reach a finding on any such instances identified.

26. **If the above proposal is agreed, we recommend inserting the following new paragraph into the Guide:**

   “129A. If the complaint concerns non-declaration of a relevant interest and the Commissioner upholds the complaint, she will then examine whether there were other possible instances of non-declaration of that interest in the four years preceding the complaint. If other possible instances arise the Commissioner will invite the member to respond to them. The Commissioner will reach a finding on any such instances identified.”
PEOPLE WITH SIGNIFICANT CONTROL OF A COMPANY

27. Part 7 of the Small Business, Enterprise and Employment Act 2015⁵ requires companies⁶ to identify and register “people with significant control” over the company. The objective is to promote greater tax compliance and corporate transparency. A company must provide information to Companies House for entry on a central public Register of People with Significant Control.⁷

28. A person must be entered on the Register of People with Significant Control if the person:

(i) directly or indirectly owns more than 25% of a company’s shares;

(ii) directly or indirectly owns more than 25% of a company’s voting rights;

(iii) directly or indirectly has power to appoint or remove the majority of board directors;

(iv) otherwise exercises, or has the right to exercise, significant influence or control over a company;⁸ or

(v) exercises, or has the right to exercise, significant influence or control over a trust or firm that would, if it were an individual, satisfy one of the above conditions.

29. A company must take reasonable steps to identify those people who satisfy one of the above conditions. The company must take reasonable steps to contact such people and to confirm relevant information with them.

30. Therefore members who are on the Register of People with Significant Control should have been contacted by a company officer about their entry on that Register.

31. We have considered the implications of the new system of registering people with significant control for the registration requirements under the Code of Conduct.

32. We believe that the best way of amending the House’s registration regime is to introduce a new section in the Register of Lords’ Interests in which members would state whether they are on the central Register of People with Significant Control of a company and would list the companies or organisations in question.

33. Members would be required to include that information on the Register of Lords’ Interests within one month of it appearing on the Register of People

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⁵ Part 7 of this Act mostly amends the Companies Act 2006.
⁶ The requirements apply to UK companies, limited liability partnerships and Societaes Europaea. Societaes Europaea are public limited-liability companies registered in accordance with European Union corporate law.
⁷ Information on the central public Register of People with Significant Control must be updated annually. A company must also maintain its own register of people with significant control. This must be updated when the information on it changes. When a new company is proposed, information on people with significant control over the proposed company must be provided with other documents required for incorporation.
⁸ This is elaborated on in Statutory Guidance on the meaning of “significant influence or control” over companies in the context of the Register of People with Significant Control, issued on 14 April 2016 and presented to Parliament.
with Significant Control (rather than within one month of acquiring the interest). Therefore it should be straightforward for members to update the Lords register in consequence of them being informed that the Companies House register has been updated.

34. Category 4(a) and (b) of the Register of Lords’ Interests cover shareholdings. We therefore suggest adding a new a category 4(c) in which the new information would appear.

35. We recommend amending the Guide to the Code of Conduct to include a requirement for members to register in the Register of Lords’ Interests that they are on the central Register of People with Significant Control of a company and to list the companies or organisations in question. Such information should appear on the Lords register within one month of it appearing on the Companies House register.

36. If the above recommendation is agreed the following changes to the Guide to the Code of Conduct will be necessary (new text in **bold**; deleted word **struck through**):

[Before paragraph 63:]

“Category 4: Shareholdings, etc.

(a) Any shareholding either a) amounting to a controlling interest, or b) (b) Any shareholding not amounting to a controlling interest, but exceeding £50,000 in value. (c) If the member is on the central Register of People with Significant Control of a company, a statement to that effect with the name or names of the companies or organisations in question.

[No amendments proposed to paragraphs 63 to 68 of the Guide.]

68A. Members should register in category 4(c) if they are on the central Register of People with Significant Control of a company, which is maintained by Companies House. A statement to that effect should be registered, along with the name or names of the companies or organisations in question.

68B. Information should be registered in category 4(c) within one month of it appearing on the Companies House register.”

37. This new requirement is in addition to the existing rules on registration of shareholdings, which remain unchanged.