

PARLIAMENTARY STANDARDS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Bill of Rights

45. *Section 1* provides that nothing in the Act should be construed by any court in the United Kingdom as affecting parliamentary privilege, as set out in Article IX of the Bill of Rights 1689. Article IX provides “that the freedom of speech and debates in Parliament ought not to be impeached or questioned in any court or place out of Parliament”. This section is to remove any doubt about whether any provision in the Act affects Article IX.

Section 2: House of Lords

46. *Section 2* provides that nothing in this Act shall affect the House of Lords with the exception of the matters listed in subsection (2). The references in subsection (2) are to those provisions in the Act where the House of Lords has a role, either explicitly or by implication. For example, paragraph 5(3) and (4) of Schedule 1 provides that the chair or an ordinary member of the IPSA may be removed on an address of both Houses of Parliament.

Section 3: Independent Parliamentary Standards Authority etc

47. *Section 3* 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

48. *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 IPSA.
49. *Paragraph 2* makes provision for the appointment of the chair of the IPSA. The chair is appointed by Her Majesty on 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.

50. *Paragraph 3* provides that the terms and conditions of appointment of members of the IPSA are to be determined by the Speaker.
51. *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.
52. *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 on an address of both Houses of Parliament.
53. *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.
54. *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 CSPL or such other similar principles as the IPSA adopt, and must require members to disclose their interests.
55. *Paragraph 8* provides that all members of the IPSA are disqualified for membership of the House of Commons and the Northern Ireland Assembly.

Part 2: The IPSA

56. *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”.
57. *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.
58. 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.
59. *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.
60. *Paragraph 15* enables 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 appoints a chief executive. This provision will expedite the establishment of an organisation to support the IPSA. It is for the IPSA to determine when the powers exercised by the interim chief executive are to come to an end.
61. *Paragraph 16* provides for the staff of the IPSA to have access to the Principal Civil Service Pension Scheme.
62. *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 and

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determining procedures for investigations and conditions which must be met before the Commissioner need not refer findings to the Committee on Standards and Privileges.

63. *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.
64. *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 the power to contract out functions in relation to the determination of claims for allowances.
65. *Paragraph 21* provides for the chief executive to contract out the arrangements for managing the pensions of the staff of the IPSA.
66. *Paragraph 22* sets out that the IPSA is to be funded by money provided 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.
67. *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.
68. *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.
69. *Paragraph 25* requires the Speaker to lay the IPSA's annual report before Parliament.
70. *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.
71. *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 that Act. In adopting or reviewing a publication scheme, the IPSA must consult the Leader of the House of Commons, the Speaker and the Committee on Standards and Privileges.

Schedule 2: Commissioner for Parliamentary Investigations

72. *Schedule 2* makes provision for the appointment of the Commissioner, for his or her terms and conditions, resignation and removal from office, remuneration and status which is the same as that made for the members of the IPSA in Schedule 1.
73. *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.
74. *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.

75. *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 that Act.

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

76. 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.
77. *Paragraph 1* sets out the membership of the Speaker's Committee. It is 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.

Sections 4-7: Salaries and allowances for MPs

78. *Section 4(1)* provides that MPs' salaries are to be paid by the IPSA, in accordance with the relevant resolutions of the House. *Section 4(2)* ensures that if the House should determine that an MP's salary should be withheld, the IPSA can give effect to that. The function in this section of paying salaries is to be exercised by the chief executive on behalf of the IPSA, see paragraph 17 of Schedule 1.
79. *Section 5* provides that the IPSA is to pay allowances according to an MPs' allowances scheme it prepares and keeps regularly under review. *Section 5(4)* provides that during preparation or revision of the scheme, the IPSA is required to consult the Speaker of the House of Commons, the CSPL, the Leader of the House of Commons, any committee of the House nominated by the Speaker, members of the House of Commons, the SSRB, Her Majesty's Revenue and Customs and the Treasury. 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.
80. *Section 5(7)* sets out 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. *Section 5(8)* makes it clear that the allowances which may be included in the allowances scheme and paid by the IPSA include resettlement grants payable to MPs. This is the allowance which is paid to an MP when he or she loses his or her seat or steps down from the House of Commons. It is intended to be the equivalent of redundancy pay for an employed person.
81. *Section 5(10)* is a consequential amendment. Section 3A of the European Parliament (Pay and Pensions) Act 1979 ("the 1979 Act") enables an order to be made bringing the provisions about resettlement grants for members of the European Parliament ("MEPs") into line with the equivalent provisions for MPs in resolutions of the House of Commons. If this power is to be available in future, where resettlement grants may be provided for in the MPs' allowances scheme rather than in resolutions, section 3A of the 1979 Act needs to be amended to refer to provision under the allowances scheme.
82. *Section 6* 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.

83. *Section 6(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, *section 6(2)*. *Section 6(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. *Section 6(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.
84. *Section 6(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.
85. *Section 6(7)* provides that an allowance to which a member is entitled under the scheme may be paid to another person at the member's direction.
86. Under *section 7* the IPSA must provide to MPs details of any general information or guidance about taxation issues published by Her Majesty's Revenue and Customs that it considers MPs should be aware of. The IPSA must also provide MPs with any other general information or guidance about taxation issues that it considers appropriate.

Section 8: MPs' code of conduct relating to financial interests

87. *Section 8* 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 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.
88. *Subsections (7) and (8)* set out the provisions which must be included in the code. *Subsection (7)* sets out a framework requiring MPs to register financial interests with the IPSA. *Subsection (8)* sets out that the code must prohibit paid advocacy. It covers both the actions of the MP in advocating or initiating any cause or matter for any consideration, whether financial or in kind, and also urging another member to advocate any cause or matter on his or her behalf.
89. *Subsection (9)* requires the IPSA to publish the register in any way that it considers appropriate.
90. *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 as his or her staff.

Sections 9-10: Investigation and enforcement

91. *Section 9(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 a requirement relating to the registration of financial interests in the code of conduct relating to financial interests.
92. The Commissioner is not to have an investigation function in relation to the prohibition on paid advocacy. This is because any breach of the code as it relates to paid advocacy is likely to involve proceedings in Parliament. It is thought undesirable to place the

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Commissioner in the position where he or she is unable to investigate a breach of the code without investigating proceedings in Parliament.

93. *Section 9(2)* sets out who may initiate an investigation. This can be either the Commissioner on his or her own initiative, at the request of the member concerned or as the result of a complaint from an individual.
94. *Section 9(3)* requires the IPSA to provide any information reasonably required by the Commissioner for the purposes of the investigation.
95. *Section 9(4) to (8)* concerns what the Commissioner is to do after making a finding following an investigation. Under *section 9(4)*, if the Commissioner finds that an MP has been overpaid an amount under the allowances scheme, the Commissioner must refer these findings to the Committee on Standards and Privileges. However, under *section 9(5)*, the Commissioner need not refer these findings if the MP has accepted the findings, such other conditions as may be specified by the IPSA are met and the MP repays the IPSA such amount as the Commissioner considers reasonable.
96. Under *section 9(6)*, if the Commissioner finds that an MP has failed to comply with the code as it concerns registration of financial interests, the Commissioner must also refer these findings to the Committee on Standards and Privileges. However, under *section 9(7)*, the Commissioner need not refer these findings if the MP accepts the findings, the interest was minor or the infringement inadvertent, such other conditions as may be specified by the IPSA are met and the MP takes steps to rectify the register.
97. The third circumstance specified in the Act relating to references by the Commissioner to the Committee on Standards and Privileges is set out in *section 9(8)*. The Commissioner may refer a finding to the Committee on Standards and Privileges if the MP has not provided information which the Commissioner reasonably requires for the purposes of the investigation. This gives the Commissioner a method of informing the Committee that an MP is undermining an investigation by not co-operating with it.
98. *Section 9(9)* 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 findings of the Commissioner are to be published.
99. *Section 9(10)* requires the IPSA to consult the Leader of the House of Commons, the Committee on Standards and Privileges, the Commissioner and any other person the IPSA considers appropriate, in determining its procedures. The IPSA must also consult those persons and that committee when determining the additional conditions which must be met before the Commissioner need not refer his or her findings of an overpayment or breach of the registration requirements to the Committee on Standards in Privileges (those conditions mentioned in *section 9(5)(b)* and *(7)(c)*).
100. *Section 9(11)* requires that such procedures must be fair and must afford any member of the House of Commons subject to an investigation the opportunity to make representations to the Commissioner, and to make representations in light of the Commissioner's findings before they are referred to the Committee on Standards and Privileges. The investigation and complaint procedures must give an MP an opportunity to be heard in person and an opportunity where appropriate to call and examine witnesses, see *section 9(12)*.
101. *Section 10* establishes a new offence in relation to claims made under the allowances scheme. *Section 10(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.

102. *Section 10(2) and (3)* sets out the penalties for this offence. It can be tried either summarily or on indictment. If it is tried summarily, the maximum penalty is 6 months imprisonment (12 months in Scotland and 12 months in England and Wales on the 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 on indictment, the maximum penalty is 12 months imprisonment or a fine or both.

Sections 11-15: Final provisions

103. *Section 11(1)* provides that the Speaker, after consulting the Commissioner and the 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 section 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.
104. *Section 11(4)* provides a similar power by which the Speaker, after consulting the IPSA and the 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 Act. This subsection permits the Commissioner to take on additional functions which are at present exercised by the Standards Commissioner.
105. *Section 12* sets out the interpretation of terms used in the Act. It provides for the Speaker to make the final determination of which body would best be substituted for certain bodies named in the Act if one of those bodies changes its name or if the functions of the body become functions of a different body.
106. *Section 13* 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.
107. *Section 13(1)* provides that a Minister of the Crown may by order make supplementary, incidental, transitional, transitory or saving provision in connection with this Act.
108. *Section 13(2)* provides that an order made under this section may include certain transitional provisions to facilitate the transition from the current system of allowances and rules 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 Act. 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.
109. *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.
110. *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 section 10 (offence of providing false or misleading information for allowances claims). This means that the offence set out in section 10 cannot take effect in relation to allowances under subsection (2).
111. *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.
112. *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

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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.

113. *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.
114. *Subsections (8) and (9)* provide that an order under section 13 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.
115. *Section 15* set out a review mechanism for the Act. It provides that two years after section 8 comes into force, sections 3(3) and (4) and 8 to 11 (and Schedule 2) will expire. These provisions relate to the Commissioner, the functions of the Commissioner, the code of conduct relating to financial interests and the offence. A Minister of the Crown may by order extend these provisions for a further period (or periods) of two years. Such an order is subject to the affirmative procedure in both Houses.