

Proposed Restriction of Outside Remuneration etc. of MSPs Bill

Proposal for a Bill to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent on certain activities.



**Consultation by
Neil Findlay MSP (Lothian)**

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Foreword

The purpose of the proposed Restriction of Outside Remuneration etc. of MSPs Bill is to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent on certain activities. It is therefore entirely consistent with the founding principles of the Scottish Parliament, in particular that of accountability:



Neil Findlay MSP (Lothian)

"The Scottish Government should be accountable to the Scottish Parliament and the Parliament and executive should be accountable to the people of Scotland."

2nd founding principle of the Scottish Parliament (1999)

The outside employment and use of time of democratically elected Parliamentarians is of direct relation to this principle, and there is a requirement to define what form any limitation should take.

By limiting outside employment, the aim is to help reduce the potential for MSPs holding conflicts of interest, as where outside employment exists it is

perceived to engender conflicts of interest and/or neglect of the politician's parliamentary duties. Though data on the Scottish Parliament is thin, a 2015 survey of the UK showed that the public were overwhelmingly against their political representatives having second jobs

(60% of those questioned felt this was the case, 54% said they would support a ban on second jobs).¹ In that same poll Scottish voters were more likely than voters in other UK regions to be against representatives having second jobs, 67% of those questioned. Thus, underpinning my proposed Bill is a desire to enhance and re-build trust in politics and the political process. Not least as, today, trust in politicians, governments and the wider political process is, arguably, at an all-time low.²

The legislation on MSPs' interests and the code of conduct for MSPs state that members must register and then declare (in relevant circumstances) certain categories of interests, including most forms of remuneration valued at more than 0.5% of an MSP's salary³.

My proposal seeks to introduce legislation to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent on certain activities, it does not seek to ban all outside interests outright.

The proposal aims to complement the pioneering work of the Scottish Government in the global Open Government Partnership (OGP). The OGP is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance⁴. In seeking to do so it is important to implement the highest standards of professional integrity throughout the Parliament, which includes transparency and stated consequences for those who could be seen to be less than committed to their work as an elected representative. The proposal also aims to enhance the openness and accountability of Parliament and complement the Scottish Government's 2016 lobbying Act. This Bill would also build on the existing Register of Members Interests and the Code of Conduct requirements.

¹ (2015) Voters support ban on second jobs for MPs <https://yougov.co.uk/news/2015/02/25/voters-support-ban-second-jobs-mps/>

² (2017) Ipsos Mori Veracity Index <https://www.ipsos.com/ipsos-mori/en-uk/politicians-remain-least-trusted-profession-britain>

³ MSPs Code of Conduct <http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

⁴ Open Government Partnership <http://www.gov.scot/Topics/Government/OGP>

Transparency is an area that I have a longstanding commitment to and interest in. In 2013 I lodged a proposal for a Member's Bill⁵ to introduce a register of lobbying activities to increase clarity and accountability within the Scottish Parliament. The intended outcome of the bill was to ensure certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, have to record relevant information about their lobbying activity in a published register. The bill was then adopted by the Scottish Government who introduced their own version of my proposal. The register only recently went live.

The next logical step is to address the vexed issue of 'second jobs.' Whereas before my hope was to reveal the influences on MSPs' decision making within the Parliament, it is now imperative that we also shine a light on how MSPs use their time outside the Parliament and whether they are doing so to increase their remuneration.

As an elected representative I have been contacted by constituents concerning the remuneration elected representatives receive outwith their formal work as MSPs and the time they spend on that work. In some cases this remuneration is for activities that draw representatives away from their commitments to their constituents.

I am hopeful that the proposed Bill will attract cross-party support in the Scottish Parliament and, more broadly, from across Scottish civic society. I would urge all interested stakeholders from the political, professional, voluntary and any other interested sectors to respond to this consultation to ensure that any proposed bill is developed in a way that benefits the Parliament, politics and the people we represent.

⁵ Proposed Lobbying Transparency (Scotland) Bill
<http://www.parliament.scot/parliamentarybusiness/Bills/52990.aspx>

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1. How the Consultation Process Works

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament.

The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

A minimum **12-week** consultation period is required; however, I intend to extend the period. The consultation deadline will therefore be Thursday 2 May, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses.

If that final proposal secures the support of at least 18 other MSPs from three or more political parties, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act of the Scottish Parliament.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose. The responses to this consultation will be highlighted as evidence of the general public appetite for such a bill.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. The Non-

Government Bills Unit will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document. Additional copies of this paper can be requested by contacting me at:

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Enquiries about the consultation in any language other than English or in alternative formats should also be sent to me.

An online copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

2. Background Information

Today, trust in politicians, governments and the wider political process is, arguably, at an all-time low. In 2017 politicians were again recorded as the least trusted profession in the UK, according to the Ipsos Mori Veracity Index.⁶ The expenses scandal, cash for questions, lobbying, and cash for honours have all eroded faith and confidence in politicians and raised questions about their motives in recent years. Now however it is outside employment that is beginning to erode confidence in elected politicians more than expenses, which have come under greater scrutiny and control and in the wake of the 2009 UK Parliament expenses scandal.⁷ In particular, the level of remuneration politicians receive for outside employment and how much time they spend on that work has become of significant interest. The existence of 'second jobs' calls into question how they can represent their constituents at the same time as holding such significant outside interests.

When elected representatives have additional employment outside their parliamentary duties, it can create the perception of a conflict of interests, or that parliamentary duties are being neglected. This undermines the credibility and standing of parliamentarians. An example of this in the Scottish Parliament was when in 2016 Douglas Ross MSP missed a Justice Committee meeting in order to act as an assistant referee in Portugal.⁸ Labour Party research in 2015 found that the 20 highest earning MPs spoke on average in 22% fewer debates than their colleagues, and submitted 39% fewer written questions.⁹ Thus, underpinning this proposed Bill is a desire to enhance and re-build trust in politics and the political process by reaffirming the primacy of Parliamentary work in the role of an MSP.

⁶ (2017) Ipsos Mori Veracity Index <https://www.ipsos.com/ipsos-mori/en-uk/politicians-remain-least-trusted-profession-britain>

⁷ (a) http://www.heraldscotland.com/news/15826844.Outrage_over_Tory_MSP_who_gets_14k_a_day_from_his_second_job_alone/ (b) <https://inews.co.uk/news/politics/ruth-davidson-paid-3000-essay-rebooting-capitalism/> (c)

⁸ <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38078341>

⁹ Highest earning MPs ask less questions <https://www.theguardian.com/politics/2015/mar/10/mps-with-highest-outside-earnings-are-less-active-in-parliament-study-finds>

2.1 The Role of Parliamentarians

The Committee on Standards in Public Life report on ‘MPs’ Outside Interests’¹⁰ published in July 2018 states that the seven principles of public life, which were published originally in 1995¹¹, are:

Selflessness - Holders of public office should act solely in terms of the public interest.

Integrity - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty - Holders of public office should be truthful.

Leadership - Holders of public office should exhibit these principles in their own behaviour.

These are principles which I agree with and believe they set a strong foundation for reform of the Scottish Parliament also.

The purpose of the proposed Bill is in part to highlight the importance of these principles and reinforce in particular the principles of selflessness, integrity and accountability. Where elected politicians are seen to be drawn away from their public responsibilities, in particular in the pursuit of financial reward, there is a distinct potential conflict with these principles.

The report mentioned above made a number of recommendations including the following:

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721697/CSPL_MPs_outside_interests_-_full_report.PDF

¹¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

The Code of Conduct of MPs should be updated to state that:

Any outside activity undertaken by a MP, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties.

This is a welcome report which adds weight to the growing interest in how elected representatives spend their time and any remuneration they make during their period as representatives. However, the Scottish Parliament has consistently been at the forefront of democratic reform in the UK since it was established in 1999. It is the position of this proposal that the Scottish Parliament should once again push that necessary change and fully commit to legislation that restricts the time spent on, and remuneration made from, outside employment.

2.2 The Work of a Member of the Scottish Parliament

MSPs are fundamentally elected to represent their constituents and assist them where possible with matters devolved to Scotland. This can take a number of different forms yet for the most part falls under one of the following themes:

- Lodging motions to allow other MSPs to show their support for an issue or to gather support from MSPs to have the issue debated in the Parliament;
- Attending committee meetings which focus on particular areas of legislation (e.g. the Local Government and Communities Committee);
- Speaking in Parliamentary debates and voting on issues that are to be decided by the Parliament;
- Seeking to change the law, including by lodging proposals for Member's Bills such as this one;
- Proposing amendments to Government Bills passing through the Parliament;
- Asking the Scottish Government a question or writing to the relevant Cabinet Secretary or Minister;

- Referring matters to, or asking questions of, another person or organisation (for example local councils, housing associations, health boards) on behalf of constituents;
- Attending events, meetings, and forums within the constituency to best represent and understand the views of constituents;
- Using their influence to help raise the profile of an issue in the media.

MSPs are paid £62,149 per year. Here is how that compares to other jurisdictions currently:

UK Parliament MP	£77,379 ¹²
Welsh Assembly AM	£66,847 ¹³
Scottish Parliament MSP	£62,149 ¹⁴
London Assembly AM	£56,270 ¹⁵
Northern Irish Assembly MLA	£50,000 ^{16 17}

2.3 The Scottish Parliament

The Scottish Parliament has received a much greater breadth of powers since 2016, and it is expected that this trend towards further devolution will continue. As such the requirement to have a focused and committed legislature is paramount. The legitimacy of the Scottish Parliament rests on it creating solutions for Scotland, scrutinising the work of the Scottish Government, and scrutinising the solutions out of its control that come from other legislatures. In order to achieve this, fostering a culture of public service that is unquestionably dedicated to the concerns of that Parliament and the people of Scotland is of the utmost importance.

¹² <http://www.theipsa.org.uk/mp-costs/mps-pay-and-pensions/>

¹³ <http://www.assembly.wales/Job%20Documents/Cams/Determination/Determination-2018-19-en.PDF>

¹⁴ The pay of MSPs is set to increase to £63,579 from April 2019

http://www.parliament.scot/Membersguidance/MSP_and_Office_Holders_Salaries_as_at_1_April_2018.pdf

¹⁵ <https://www.london.gov.uk/about-us/governance-and-spending/spending-money-wisely/salaries-expenses-benefits-and-workforce-information>

¹⁶ <http://www.niassembly.gov.uk/your-mlas/members-salaries-and-expenses/>

¹⁷ Currently the pay scales for members of the Northern Ireland Assembly are restricted due to the suspension of business http://www.niassembly.gov.uk/globalassets/documents/your_mlas/salaries-expenses/salary-and-expenses-2018-determination.pdf

2.4 The Current System

Under the current system, MSPs have an obligation to submit a form within 30 days of being elected which contains the details of any financial interests they have (see the example below). This includes, for example, the amount of any remuneration they have received through employment. Thereafter, if the member acquires a new interest they must notify the Clerks of any change within 30 calendar days of acquiring the new interest. Greater detail is provided on what must be recorded and when in the section below outlining the current legislation and rules.

Example:

An MSP carries out legal advocacy work earning them £1,000, they must then register that interest by lodging a written statement within 30 days beginning from the day they received the payment. This is then published on the MSP's Parliamentary web page¹⁸.

In addition to registering these financial interests, Members are then required to declare (in relevant circumstances) any 'declarable' interest. An example of a declarable interest would be an MSP who has worked for an oil and gas firm in the past and wants to speak in a debate or committee session which directly influences the business performance of that firm. In this case, the MSP would be required to make an oral declaration of the interest at the beginning of his/her speech or during the committee session. Similarly, a member would need to make a written declaration before introducing a Bill that relates to an interest that the member has.¹⁹

The system is based on transparency, with Members responsible for providing the required information as stipulated and declaring interests (in relevant circumstances). Sanctions can be imposed for failing to comply (see below for details). Under the current system, provided they comply with the rules, there is no limitation on MSPs holding outside employment,

¹⁸ <http://www.parliament.scot/msps/currentmsps/98705.aspx>

¹⁹ MSPs Code of Conduct <http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

earning additional remuneration or spending time on other activities outside of their parliamentary duties.

This consultation seeks to better understand public perceptions of the current system, and whether the public do indeed find it to be sufficient.

Some may argue that MSPs having second jobs can be beneficial, such as bringing real-life experience to the Chamber, and a practical, professional understanding of how particular professions/vocations operate. This consultation is also an opportunity to assess the merits of these views.

I would argue that the main focus of an MSP should be their role as a Parliamentarian and carrying out the wishes of the constituents they have been sent to Holyrood to represent. Naturally the efficiency of members in carrying out these duties can vary considerably, but it remains that the public should decide to what extent time away from work, particularly in pursuit of other financial interests, draws an MSP away from their primary commitments.

There are various recess periods (time when the Parliament does not sit and most MSPs are carrying out work in their constituencies) throughout the Parliamentary year and during the Summer there is a recess which lasts around 2 months. This however is not time off for Parliamentarians and should be used to facilitate contact and advocacy on behalf of their constituents.

As regards serious neglect of duty, there is already an existing mechanism to deal with this. Members of the public can complain to the Commissioner for Ethical Standards in Public Life regarding their MSPs but this is a last resort and a rectifying measure. There is no more general preventative measure to address secondary employment or how much time MSPs spend away from their role. I believe that restrictions should be introduced to ensure this is as accountable, transparent and robust as possible.

This proposal therefore seeks to introduce legislation to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent

on certain activities. Parliamentarians are a varied group and some have professional skills that require a minimum number of hours practice to maintain membership of a professional body or registered status, such as nurses. Later in the document I will set out some options which I believe could work in the context of the Scottish Parliament and would welcome your views.

Ministers, who receive additional income for carrying out their post, would not have that additional income covered by these restrictions. It is understood that this payment is part of the democratic process in the same way that MSPs receive a salary. However, like other MSPs, any additional work that Ministers do that is not part of their ministerial or MSP role would be covered by the restrictions.

The proposal and consultation are solely for the purposes of gathering evidence to better understand whether such a Bill is worthwhile.

2.5 Current Legislation, Rules and Regulations Linked to Outside Employment

This section outlines the legislation, rules and regulations that are relevant for our understanding of what MSPs are currently able to do and information they are required to provide in terms of their outside interests.

The Code of Conduct²⁰ for Members of the Scottish Parliament (the Code) gives effect to the requirement of Rule 1.6 of the Parliament's Standing Orders.²¹ In addition to providing a set of principles and standards for Members of the Scottish Parliament it incorporates statutory requirements including those set out in the Interests of Members of the Scottish Parliament Act 2006 (the 2006 Act)²². The Act was updated in 2016 by the Interests of Members of the Scottish Parliament (Amendment) Act 2016²³ (the 2016 Act) and this is also reflected in the Code.

²⁰ <http://parliament.scot/Parliamentaryprocedureandguidance/CCEd07201708.pdf>

²¹ <http://www.parliament.scot/Parliamentaryprocedureandguidance/SOEd05Rev06201805.pdf>

²² <http://www.legislation.gov.uk/asp/2006/12/contents>

2.6 Interests of Members of the Scottish Parliament Act 2006²⁴

The 2006 Act places a requirement on Members to register any financial interests for specific categories within specified timescales if the remuneration involved is greater than 0.5% (reduced from 1% by the 2016 Act) of the current MSP salary. Any remuneration from employment is required to be registered regardless of amount. Paragraph 2 of the schedule to the 2006 Act sets out what these interests are—

(1) Where a member receives, or has received, remuneration by virtue of—

- (a) being employed;
- (b) being self-employed;
- (c) being the holder of an office;
- (d) being a director of an undertaking;
- (e) being a partner in a firm; or
- (f) undertaking a trade, profession or vocation.

(1A) Where a member is, or was—

- (a) a director in a related undertaking; or
- (b) a partner in a firm,

but does, or did, not receive remuneration by virtue of being such a director or partner.

The 2006 Act defines remuneration as “any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind”. This proposal intends on using a similar definition. This does not include Parliamentary expenses such as claims for travel etc.

The detail of what MSPs register is published in a Register of Interest.²⁵ For each entry, a Member can specify an exact figure or can register a gross amount per annum within a range

²⁴ <http://www.legislation.gov.uk/asp/2016/4/contents>

²⁵ <http://www.parliament.scot/msps/register-of-interests.aspx>

of bandwidths: up to £500; between £501 - £1,000; between £1,001 - £2,000; between £2,001 - £3,000; between £3,001 - £5,000 and thereafter in intervals of £5,000.

In terms of sanctions, section 17 of the 2006 Act makes it an offence for a Member to take part in Parliamentary proceedings if they have not complied with the registration requirements set out in the Act. A Member who commits such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000). The 2006 Act also provides the Parliament with a range of sanctions, namely:

- preventing or restricting Members from participating in Parliamentary proceedings relating to the matter that should have been registered (under section 15);
- excluding them from the proceedings (under section 16), with the additional option to disallow payment of the salary and/or allowances that would otherwise be payable to the member (for a period not exceeding the duration of the exclusion) (under section 17A – added by the 2016 Act);
- excluding them from the premises, withdrawing their access to facilities, or censuring them²⁶ (under section 17A – added by the 2016 Act).

Section 13 of the 2006 Act also requires Members to declare any financial interest before taking part in Parliamentary proceedings relating to the matter. The same range of sanctions applies to a failure to declare interests as applies to failures in relation to the registration of interests.

2.7 Paid Advocacy

The provisions of the 2006 Act relating to the registration and declaration of interests are designed to ensure transparency and (so long as they are complied with) do not prevent people who have substantial – i.e. declarable – interests from continuing to act as MSPs. The provision of the Act relating to paid advocacy (section 14) provides that a member may not, in consideration of any payment or benefit in kind, advocate or initiate any cause, or matter,

²⁶ <http://www.legislation.gov.uk/asp/2016/4/contents>

on behalf of any person or urge any other member to advocate or initiate any cause, or matter, on behalf of any person.

Section 16 of the 2006 Act provides the sanction that the Parliament may exclude a Member from proceedings of the Parliament for such period as it may consider appropriate if a Member contravenes section 14 (which prohibits paid advocacy). In addition, a Member may also be guilty of a criminal offence in terms of section 17 of the Act. A Member found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

2.8 The Code of Conduct²⁷

<http://www.parliament.scot/Parliamentaryprocedureandguidance/CCEd07201708.pdf>

The Code is intended to provide specific standards to cover most situations encountered by members. However, the Code states that it does not cover the activities of members in other circumstances, for example a Member's private and family life. It covers a range of issues including:

- Registration of interests
- Categories of registrable interest (with detail of what should be reported)
- Declaration of interests
- Paid advocacy
- Lobbying and access to MSPs
- Cross Party Groups
- MSP's General Conduct
- Engaging with Constituents
- Enforcement of the Rules

²⁷ The Code draws on the recommendations of the Code of Conduct Working Group of the Consultative Steering Group and is consistent with the principles established in the First Report of the Committee on Standards in Public Life (the "Nolan Committee") published in May 1995

The Code underpins the approach that Members are required to take in carrying out their Parliamentary duties. It explains the rules for members' conduct and guides them in interpretation of the rules. It also offers advice to members in relation to their conduct.

2.9 Commissioner for Ethical Standards in Public Life in Scotland

The Commissioner for Ethical Standards in Public Life has statutory responsibility for investigating complaints about the conduct of MSPs.²⁸ The Commissioner's webpage²⁹ sets out what they can and cannot investigate in relation to MSPs.

The types of complaint that the Commissioner can investigate include:

- failure to register certain financial interests – remuneration: gifts: loans: overseas visits: heritable property and interest in shares.
- failure to register appropriate information on election expenditure.
- failure to declare financial or non-financial interests in any proceedings of Parliament.
- misconduct relating to Paid Advocacy, lobbying and access to MSPs, and
- failure to observe confidentiality requirements.

The Commissioner can also investigate certain breaches by an MSP of the Parliament's Standing Orders (the rules for the regulation of parliamentary business) or any other conduct matter referred to the Commissioner by the Parliament's Standards, Procedures and Public Appointments Committee.

In circumstances where the alleged breach would constitute a criminal offence, the Crown Office and Procurator Fiscal Service may also become involved.

²⁸ <http://legislation.gov.uk/asp/2010/11/contents>

²⁹ <http://www.publicstandardscommissioner.org.uk/about-us/overview/>

2.10 Previous Parliamentary Consideration of Banning Paid Consultancy Work and Directorships

On 24 February 2015, Jim Murphy MP, the then Leader of the Scottish Labour Party, wrote to the then Presiding Officer asking her to consider beginning the process of banning paid consultancy work and directorships. The Presiding Officer's response made reference to the existing regime for Members. It also pointed out that 'of a very limited number of MSPs that hold a second paid role, the majority receive a small amount of income for a limited amount of their time'.

The Presiding Officer passed the correspondence to the Scottish Parliament's Standards, Procedures and Public Appointments (SPPA) Committee to see if it wished to consider the issues being raised. The SPPA Committee considered the correspondence³⁰ in public at its meeting on 12 March 2015.³¹ It agreed to look at how the issue could be considered as part of its work on Members Interests (which ultimately led to the 2016 Act) and its scrutiny of the Lobbying (Scotland) Bill (which ultimately became the Lobbying (Scotland) Act 2016.)³² In respect of the work being undertaken on Members' Interests the issue was raised during the debate on the SPPA Committee's report³³ on 22 April 2015.

The matter was raised in an oral evidence session on 19 November 2015³⁴ with the Minister for Parliamentary Business as part of Stage 1 scrutiny of the Lobbying Bill. While the issue itself did not appear to be explicitly referred to in the Stage 1 Report, paragraph 69 of the report states--

³⁰ Copies of both letters can be found here

http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Meeting%20Papers/papers_20150312.pdf

³¹ Standards, Procedures and Public Appointments Committee. Official Report, 12 March 2015, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9832&mode=pdf>

³² <http://www.legislation.gov.uk/asp/2016/16/contents>

³³ <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9908&mode=pdf>

³⁴ Standards, Procedures and Public Appointments Committee. Official Report, 19 November 2015, Col <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10224&mode=pdf>

“The Minister felt that any provision that placed employment restrictions on MSPs, whose job security is subject to the outcome of elections, would be disproportionate”.

2.11 Potential Legislative Competence Issues

In terms of potential legislative competence issues there is the reservation of employment rights and duties in section H1 of Part II of Schedule 5 to the Scotland Act 1998 which would have to be considered in more detail as the policy develops to ensure the proposal did not attempt to affect employment rights and duties.

Also, further consideration would need to be given to human rights considerations depending on how the proposed Bill sought to affect/restrict existing second jobs to ensure that, for example, property rights under Article 1 of Protocol 1 of ECHR are not being unreasonably infringed.

3. Outside Employment: How Do Things Stand Currently?

In order to accurately evidence the existence of this problem it is important to look at the number of MSPs engaging in outside employment of one form or another over the course of the Scottish Parliament’s recent history, to consider the nature of the work undertaken and the levels of remuneration received.

To assess this information we have done an analysis of the information available from Registers of Interests of MSPs from 2007 at the start of Session 3.³⁵ Unfortunately accurate data is only available post 2006, when the Interests of Members of the Scottish Parliament Act was introduced. I have included anything registered according to Paragraph 2 of the Schedule of the Interests of Members of the Scottish Parliament Act 2006, ‘Remuneration and related undertaking’.³⁶

³⁵ Parliamentary sessions: Session 1(1999-2003), Session 2(2003-2007), Session 3(2007-2011), Session 4(2011-2016), Session 5 (2016-)

³⁶ <http://www.legislation.gov.uk/asp/2006/12/schedule/crossheading/remuneration>

This evidence shows that a number of MSPs are earning substantial amounts from secondary roles and work gained, in some cases due to influence afforded to them as MSPs. The problem this consultation seeks to address therefore is identifying whether the public see this as an issue worthy of redress, and if so what alternative system they would see as suitable to address the problem.

3.1 Numbers of MSPs with Outside Employment

An initial overview of the numbers can be seen in the table below.

Table 1: Number of MSPs who have/had outside employment during tenure, six months after becoming an MSP (based on the Register of Interests of MSPs)			
	Session		
	3 (2007-2011)	4 (2011-2016)	5 (2016-)
Number	20	44	31
Percentage of total	16%	34%	24%

Six months has been chosen as a reasonable time period within which someone taking on a potentially unexpected role of becoming an MSP can terminate their previous employment, particularly if they have a role that is difficult for their commitment to be filled by someone else (for example a school teacher).

To fully understand the figures, it is important to note that this data also includes dual mandates i.e. the holding of two elected roles at once, most commonly that of an MSP and councillor. Elections to the Scottish Parliament in 2007 (session 3) took place on the same day as local council elections. In sessions 4 and 5, local council elections took place approximately one year after elections to the Scottish Parliament (in May 2012 and 2017). So within the category of MSPs holding dual mandates for a period of time, there are MSPs who decided to stand down as councillors immediately after (or shortly after) election to the Scottish Parliament; some who decided to continue as councillors for the period until the following local elections (in sessions 4 and 5); and some who decided to maintain the dual mandate.

Though dual mandates may be seen as a commonplace aspect of our democratic process it is still fundamentally a choice that MSPs take which can afford them greater remuneration. This is a choice most people do not have in their own employment and thus must be open to greater transparency and scrutiny from the public.

Table 2 provides the numbers of MSPs that have registered outside employment, excluding dual mandates. For example, in Session 4 (2011-16), there were 24 members who were also councillors for a period of their time as elected MSPs, however this does not include those who stepped down as councillors within two months of their election to the Scottish Parliament.

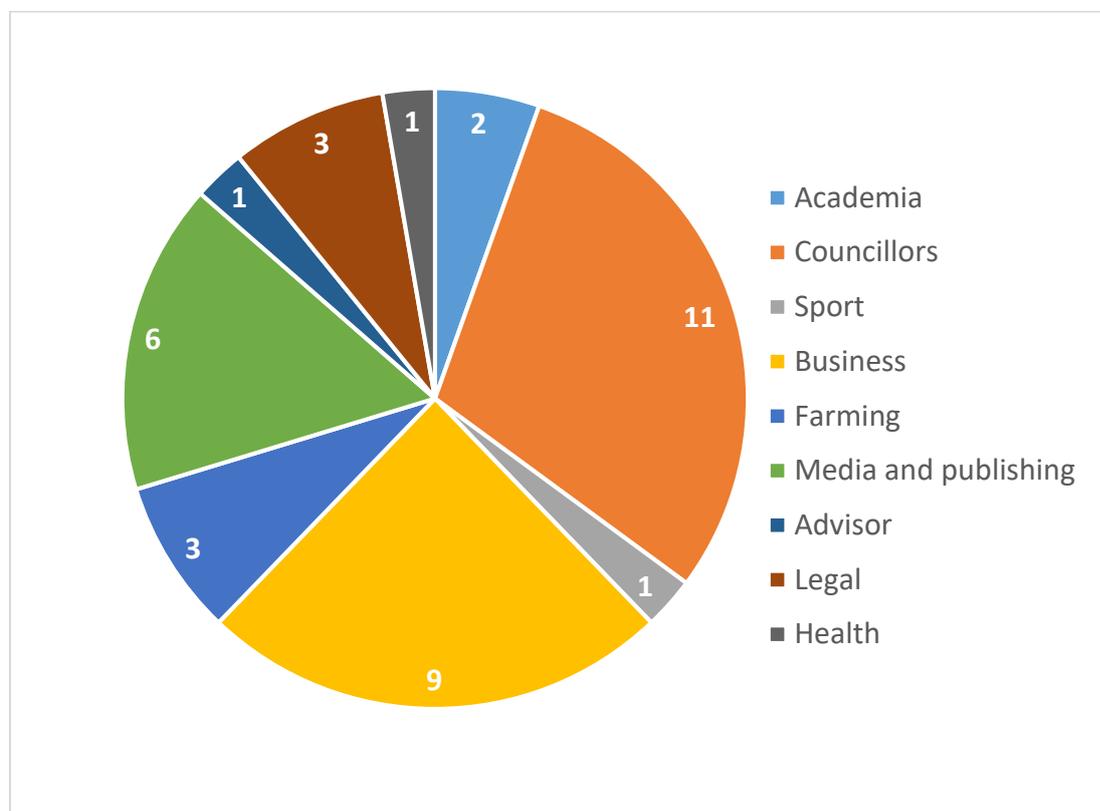
An analysis of the data shows a consistent proportion/slight upward trend of MSPs with outside employment.

Table 2: Number of MSPs who have/had outside employment during tenure, six months after becoming an MSP. (Excluding dual mandates)			
	Session		
	3 (2007-2011)	4 (2011-2016)	5 (2016-)
Number	18	20	22
Percentage of total	14%	16%	17%

3.2 MSPs' Outside Employment in 2016, Six Months after Becoming an MSP

Six months has been chosen as a cut off due to the fact that most by-elections are held in the Spring and Autumn, and political parties prefer sitting councillors to stand down to coincide with these periods. The pie chart below illustrates the nature of the outside employment (corresponding to Paragraph 2 of the Schedule of the 2006 Act, Remuneration and related undertaking) held by MSPs elected to the Scottish Parliament in 2016, six months after election.

Figure 1: Outside employment of 2016 cohort, six months after becoming an MSP (including dual mandates)



***Note. Some MSPs have more than one position. 6 MSPs did not accept their payment, 5 of whom were councillors. 1 MSP donated their media and publishing remuneration to charity.**

3.3 Overview of Outside Remuneration

MSP	2018	2017	2016
1	£10,000	£55,000	
2	£40,000		
3	£20,000	£20,000	£20,000
4	£5,000	£5,000	£5,000
5	£500	£1,400	£500
6	£40,000	£50,000	£40,000
7	£8,000	£94,000	£8,000
8			£20,000
9	£20,000	£20,000	£23,000
10			£427
11		£20,000	£20,000
12			£20,000
13		£15,303.47	
14	£10,000	£10,000	£10,000
15	£39,000	£39,000	£39,000
16	£60,000	£60,000	£60,000
17	£6,000	£9,562.54	£21,150
18		£20,000	£20,000
19	£10,000		
20	£6,000	£6,000	
21		£20,000	£20,000
22		£25,000	£25,000
23		£55,000	
24		£3,000	£25,986
25		£20,000	£20,000
26		£20,000	£20,000
27	£25,000	£25,000	£25,000
28			£20,000
29	£2,000	£2,000	£2,000
30	£3,000	£3,000	£4,000
31		£25,000	£25,000
32	£15,000	£15,000	£15,000
33		£20,000	£20,000
34	£178,273	£178,273	£178,273
35		£25,000	£25,000

Table 3 gives an overview of the amounts of remuneration received from the same categories as Table 1, as registered by MSPs for the current session up until July 2018. It provides for the total outside remuneration of the 35 currently sitting MSPs who have taken on extra jobs since their election in 2016 (and those elected afterwards), or carried on previous roles, broken down by year. This includes those holding dual mandates.

Notes

- The first two months after the 2016 election are excluded, if that remuneration was annulled in that period.
- Money that was entirely donated is highlighted in **GREEN**, money that was partially donated is highlighted in **BLUE**.
- Where an MSP stated a range of possible remuneration, the highest figure was added to the calculation.
- In order to not make a party political point the data has been anonymised and the rows placed in a random order.
- Some MSPs were returned to the Parliament after May 2016 due to resignations.
- Some of this remuneration would fall under the Stated Exceptions in Appendix 1

- This data can be accessed at <http://www.scottish.parliament.uk/mmps/current-mmps.aspx>

The clear detail here is rarely laid out so comprehensively, giving a much better understanding of the amount of remuneration some MSPs are receiving for work outside their Parliamentary remit.

3.4 Developing Restrictions on Outside Employment

The above analysis shows that, excluding MSPs with only a dual mandate, the number of MSPs participating in outside employment is increasing slowly session on session.

Whilst the number of MSPs participating in outside employment (other than dual mandates) is less than one in five, one overarching theme of the Scottish Parliament's work has been preventative. If there is not a clear signal that outside employment is not in the spirit of public office, we can only assume that these numbers are likely to increase further still.

This proposal is a proactive step to avoid any future reputational damage to the Parliament's standing. This consultation seeks to better understand public perceptions of this data, and whether the public do indeed find the current system to be sufficient.

Further, if there is indeed a general consensus that the situation laid out here is not acceptable – then equally there is a need to present alternative potential rules and sanctions that can be implemented to address this disparity.

To avoid unintended consequences and unnecessary cost, I would not envisage any restrictions applying to members with a dual mandate (for example an MSP who is also an elected councillor), assuming the dual mandate is for a limited period only.

4. Comparative Examples

4.1 US House of Representatives

As an example of a minimum standard for outside employment in terms of restricting remuneration, in the USA, members of the House of Representatives have been restricted in their outside earnings to 15% of “the rate of basic pay for Executive Level II”, which according to the House Ethics Committee and Senate Ethics Committee, represents for 2016 a limit of \$27,495³⁷. Since this legislation was introduced in 1978 it has effectively limited remuneration and prevented members of the lower House from taking up second jobs beyond a set level of remuneration.

The U.S House of Representatives gave the following justification for this action:

“Many citizens perceive outside earned income as providing Members with an opportunity to ‘cash in’ on their positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.”³⁸

This proposal aims to reflect this sentiment, yet construct a solution unique to the Scottish Parliament to address any issues highlighted by the consultation. The bill will seek to complement the pioneering work of the Scottish Government in the global Open Government Programme. It also seeks to enhance the openness and accountability of the Parliament and complement the Lobbying (Scotland) Act 2016. The proposed bill would also build on the existing Register of Members’ Interests and the Code of Conduct requirements.

³⁷ <https://www.senate.gov/CRSpubs/9c14ec69-c4e4-4bd8-8953-f73daa1640e4.pdf>

³⁸ <https://www.commoncause.org/new-york/press-release/legislators-outside-income-report/>

4.2 Westminster

The UK Committee on Standards in Public Life conducted an inquiry into MP's expenses in 2018 their report³⁹ contained a number of recommendations related to outside interests of members. These include:

Recommendation 1: The Code of Conduct for MPs should be updated to state that: Any outside activity undertaken by a MP, whether remunerated or unremunerated, should be within reasonable limits and should not prevent them from fully carrying out their range of duties.

Recommendation 3: The Code of Conduct for MPs and Guide to the Rules should be revised to state that MPs should register any non-pecuniary interests on the public Register of Interests, on the same basis as pecuniary interests: that the interest might reasonably be thought by others to influence actions taken in their capacity as a Member of Parliament.

The UK Committee on Standards in Public Life also conducted a similar inquiry into MP's expenses in 2009. Their 2009 Report⁴⁰ contained a recommendation related to outside interests of members which is of relevance to the proposed Bill. This was:

Recommendation 36: MPs should be required to register positions of responsibility in voluntary or charitable organisations, even if unpaid, together with an indication of the amount of time spent on them.

39

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721697/CSPL_MPs_outside_interests_-_full_report.PDF

40

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336904/MP_expenses_exec_summary.pdf

This is significant of the existence of official discussions surrounding this subject, yet it is the intention of this bill to go further to implement the highest standards of professional integrity throughout the Scottish Parliament by enhancing the openness and accountability of our legislative body. Scotland can lead the world on this issue.

5. Aims of the Proposed Bill

The proposal is for a Bill to —

to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent on certain activities.

The purpose of the proposal is to—

- maximise commitment to parliamentary activities
- increase transparency
- prevent erosion of trust in the institution of the Scottish Parliament

I would therefore like to seek your views on the following:

A complete ban on second jobs, excluding stated exceptions (see Appendix 1).

- This includes all long and short term additional employment
- There is no lower limit on the level of remuneration drawn from this employment applicable
- This also includes self-employment
- This also includes employment where any remuneration is donated
- The time of the week/month/year when a second job is carried out does not alter the ban

A restriction on outside remuneration up to a certain % of an MSP's annual salary

- This would cover all additional work (including the stated exceptions) and impose a limit on remuneration in the form of a total limit for the year expressed as a % of an MSP's annual salary.
- It may be seen that an MSP could simply take on additional work but the upper limit on remuneration and time restriction would in effect make this not worthwhile.

- This does not affect remuneration earned prior to becoming an MSP
- Pension income would be exempt.

A restriction on X amount of time spent on activities that MSPs have a financial interest in (including stocks, shares, dividends etc)

- This would limit the amount of time spent on any additional work and/or activities per month.
- This would not include personal projects such as home improvements, education, and recreation, which may see a financial return that is difficult to define further down the line.
- The upper limit on outside remuneration prevents MSPs earning a great deal in a short amount of time.
- This does not include time spent on the stated exceptions (Annex, p35)

5.1 Legislation and Enforcement

I propose maintaining similar enforcement processes for the new provisions to those set out in the 2006 Act. In practice, this means that Members will be required to report on the new provisions in the same way they report outside earnings currently, within one month of the relevant action.

In the event of a member of the public wishing to complain about an MSP, I would envisage this being subject to certain requirements, such as that the complaint should:

- be in writing in letter format, sent in by post;
- name the MSP being complained about;
- outline the basis for the complaint (including any supporting evidence); and
- stating the complainer's address and including a signature.

Given some activities may not garner a financial interest until further down the line, reporting of time spent on such activities is undoubtedly a more difficult aspect of this proposal than

outside remuneration is. As such it is hoped this consultation will act as a means to see what the public think of a range of different options to address that, including:

- The time limitation being subject to a complaints procedure rather than self-reporting
- A self-reporting mechanism which is then subject to scrutiny via public transparency
- The removal of a limitation on time altogether

If a member is deemed to have contravened the Act the situation will be assessed by the Commissioner for Ethical Standards in Public Life (CESPL).

5.2 Sanctions

In terms of the remuneration limit, there could be a mechanism for flagging a breach of the earnings limit. A member would then have one month during which they could choose to repay or donate the excess amount to a suitable charity

If a member neither repays or donates the money then the procedure for determining a sanction would be followed and a decision taken on a sanction to apply.

In terms of the limit on time Members who have contravened the time stipulation could receive written warning regarding their conduct, and full formal sanction following a repeat offence.

Example:

Hypothetically, if there is an outside remuneration limit of £10 and an MSP has carried out additional work to the total of £7, they then subsequently earn £5 taking their total remuneration to £12 – they can simply donate the excess £2 to charity or return it.

Formal Sanctions

- The parliamentary sanctions could, for example, involve members being excluded from the premises, and having their access to Parliamentary facilities withdrawn, with the additional option to disallow payment of their salary and/or allowances that would otherwise be payable to the member (for a period not exceeding the duration of the exclusion)

The purpose of the bill is to clearly define what constitutes an inappropriate (further defined by Appendix 1) use of an elected member's time and to define what is an acceptable level of additional remuneration an elected member can receive on top of their salary. The consultation responses will of course present differing views on this point but the purpose of the exercise is to answer those questions and move forward with an agreed upon solution that can receive support across the political spectrum.

5.3 Practicalities of Commencement

If successful, the legislation could commence at the start of the next parliamentary session (this session is expected to end in 2021).

6. Sustainable Development and Equalities Impact Assessments

Sustainable Development

The outcome of an initial sustainable development impact assessment suggests that the proposed Bill could be sustainably delivered.

It is unlikely to have any significant environmental impacts.

The Bill may affect individual MSPs' ability to meet their needs, in particular if theirs is the only household income, in the event that they are unable to continue with a second job. At the same time, it is acknowledged that an MSP salary is considerably higher than the national average and should be sufficient to meet fundamental human needs. The Bill may impinge on the autonomy of MSPs to choose how to spend their leisure time, if this involves financial gain. It may have implications for the right to private and family life under the European Convention on Human Rights.

The Bill could result in a more equal time commitment by MSPs to constituency work, if all are subject to the same rules on second jobs and time spent on other activities. This may be difficult to measure as there is no data on how time is currently spent and there will be a variation in how individual MSPs approach work and their efficiency. Some may consider it unfair to apply such restrictions to MSPs and not to other groups, also paid by the taxpayer and undertaking public service. Others may consider it appropriate as MSPs are a specific group, accountable to the public as elected representatives. The Bill may dissuade some individuals from becoming an MSP if it would mean taking a reduction in salary with no opportunity to supplement it.

There could be costs to society where some MSPs have second jobs that contribute to society or wider employment. Some may see the ability of MSPs to earn additional income on top of a decent salary as contributing to greater inequality. Others may consider it unfair to prevent this.

There may be an impact on MSPs' connections with certain groups, if for example if they have to give up outside employment, and it may also affect their ability to mitigate the risks of not

being re-elected. The proposal may affect some employers and organisations if they no longer have access to the MSP's experience and expertise. The proposed Bill could enable MSPs to dedicate a higher time commitment to their constituents, which could in turn strengthen their community connections and relationships.

The Bill may increase transparency as to how MSPs use their time, and reduce the risks of conflicts of interest. It may increase participation in the democratic process if more trust is placed in MSPs,

Equalities

An initial equalities impact assessment has been carried out by the Non-Government Bills Unit and has identified a potential issue in relation to disability. For example, a disabled MSP may depend on an external source of income from a second job to cover the cost of support they require, in addition to what they could receive in grants/benefits. This additional income may be essential to their being able to continue in their role.

I am sympathetic to this and would envisage provisions to ensure that the Bill did not result in any such disadvantage.

7. Conclusion

The Scottish Parliament was set up with the aim of being an open and transparent institution. It was also created with the intention of being innovative and ethical - an exemplar of best practice and a model for a new politics. There has been much to be proud of in terms of realising these principles, it remains the case that there is more that could be done: the proposed restriction of outside employment is a contribution to this founding mission.

The proposal aims to complement the pioneering work of the Scottish Government in the global Open Government Programme. It aims to enhance the openness and accountability of Parliament and complement the Scottish Government's Lobbying Act. This Bill would also build on the existing Register of Members Interests and the Code of Conduct requirements.

The current rules of the Scottish Parliament and MSPs code of conduct states that members ought to register any 'declarable interest' especially if it involves remuneration valued at more than 0.5% of an MSP's salary. This Bill seeks only to ban MSPs from certain categories of remunerated work, restrict remuneration from any additional work, and limit the time spent on certain activities, it does not seek to ban outside interests outright.

Interested parties and individuals are invited to comment on the following questions and issues.

The following section poses questions in relation to the general principles and details of the proposed Bill.

8. Appendix 1

Proposed stated Exceptions:

- 1.** Dual mandates – as long as the MSP in question stands down within a certain time period from their election and does not accept a salary for the second role.
- 2.** Professionals who must carry out a certain number of hours per year in order to keep their professional credentials (i.e. a nurse or teacher), but only when working those hours.
- 3.** Writing for regular publications in a political capacity. The reason for this exception is due to the nature of an MSP's role. For example, in many cases MSPs are asked to provide a column for a local newspaper in which they represent the concerns of their constituents. For the most part this is unpaid work and provides an important democratic role.
- 4.** Working as a carer for friends or family in which support payments are received, or as an unpaid carer.
- 5.** Receiving payment for work carried out prior to becoming an MSP.
- 6.** Voluntary charity work. This does not include employment for a charity.

9. Questions

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the

response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

General Aims and Approach of the Bill

1. Which of the following best describes your view of the principle that being an MSP is a full-time job and that being elected to the Scottish Parliament should commit MSPs not to undertake other remunerated activities, while they are an MSP?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. What (if any) restrictions on MSPs outside employment should there be?

- A — An outright ban on non-MSP work, with some specified exceptions
- B — A restriction on total earnings from non-MSP work
- C — A restriction on the number of hours that can be spent on non-MSP work
- A and B

- A and C
- B and C
- A, B and C
- None of A, B and C
- Unsure

Please explain the reasons for your response

Banning certain categories of remunerated work

3. The proposal is to ban MSPs doing any additional remunerated work, apart from the exceptions listed in Annex 1.

Which of the following best describes your view?

- There should be a ban on MSPs doing any additional remunerated work with no exceptions.
- There should be a ban on MSPs doing any additional remunerated work, apart from the exceptions listed in Annex 1.
- There should be a ban on MSPs doing any additional remunerated work with some exceptions, but not those listed in Annex 1. (please specify)
- There should not be a ban on MSPs doing additional remunerated work.
- Unsure

Please explain the reasons for your response.

Limiting outside earnings

4. The proposal is that there should be an overall cumulative limit, for any calendar year, on the amount that an MSP can earn from additional remunerated work. The proposal is to express this as a % of an MSP's salary (currently £62,149). In your view, what should that overall limit be?

- There should be a complete ban on MSPs earning anything in addition to their salary as MSPs (or Ministers).
- The limit on how much MSPs can earn in addition to their salary as MSPs (or Ministers) should be set at 10% of an MSP's salary (i.e. £6,215).
- The limit on how much MSPs can earn in addition to their salary as MSPs (or Ministers) should be set at 25% of an MSP's salary (i.e. £15,537).
- The limit on how much MSPs can earn in addition to their salary as MSPs (or Ministers) should be set at 50% of an MSP's salary (i.e. £31,075)
- The limit on how much MSPs can earn in addition to their salary as MSPs (or Ministers) should be set at 100% of an MSP's salary (i.e. £62,149).
- There should be a limit, but this should be set at some other % of an MSP's salary or in some other way (please specify).
- There should be no overall limit on how much MSPs can earn in addition to their salary as MSPs (or Ministers) in a calendar year.
- Unsure

Please explain the reasons for your response.

Limiting time spent on activities where MSPs have a financial interest

5. The proposal is to restrict the amount of time (each month) that MSPs can spend on activities in which they have a financial interest. (This would not apply to the exceptions listed in Annex 1). Which of the following best describes your view?

(NB: A "Parliamentary sitting week" is any working week (Mon-Fri) when the Scottish Parliament is not in recess. In a typical year, the Parliament is in recess for a week in February, 2 weeks at Easter, 9 weeks in the summer, 2 weeks in October and 2 weeks over Christmas and New Year.)

- There should be a complete ban on MSPs spending any time on activities in which they have a financial interest.
- There should be a ban on MSPs spending any time on activities in which they have a financial interest, but only during Parliamentary sitting weeks.
- There should be a limit on the amount of time (measured in hours each month) MSPs can spend on activities in which they have a financial interest (including time spent during weekends and recesses).
- There should be no restriction on how much time MSPs spend on activities in which they have a financial interest.
- Unsure
- Other (please specify)

Please explain the reasons for your answer, or indicate if you believe another approach would be better.

6. If there were to be a year-round limit on the amount of time (each month) that MSPs can spend on activities in which they have a financial interest, what should it be? (This would not apply to the exceptions listed in Annex 1).

- MSPs should not be allowed to spend any time on activities in which they have a financial interest.
- A limit of 8 hours per month.
- A limit of 24 hours per month.
- A limit of 40 hours per month.
- There should be no restriction on how much time MSPs spend on activities in which they have a financial interest.
- Unsure
- Other (please specify)

Please explain the reasons for your answer.

Reporting and Enforcement Procedures

7. In order to enforce restrictions, what should be the next step following the self-reporting by MSPs on their outside earnings and time spent, and the publication by Parliament of that data?

- The publication of the data is sufficient. There should be no formal process for investigating or punishing any alleged breach of the restrictions.
- Existing procedures should be followed (i.e. investigation by an external Commissioner of any complaint and decision by a Parliamentary committee). Any breach should be punished with Parliamentary sanctions.

- Breach of the restrictions should be a criminal offence, so any breach would be investigated by the police and enforced through the courts.
- Other (please specify)
- Unsure

Please explain the reasons for your answer.

8. Which of the following best expresses your view of whether/how to sanction an MSP for exceeding the limit for outside earnings?

- The MSP should face sanctions in any case, whether or not the excess earnings have been returned or donated to charity.
- The MSP should face sanctions in any case, but if excess earnings have been returned or donated to charity, this should be taken into account in deciding on appropriate sanctions.
- The MSP should face sanctions only if the excess earnings have not been returned or donated to charity.
- The MSP should not face sanctions for any excess earnings.
- Unsure
- Other (please specify)

Please explain the reasons for your answer.

Financial implications

9. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have?

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response, and/or detail any other financial implications you believe the Bill may have.

Equalities

10. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

Sustainability

11. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

12. Could the aims of this Bill be better delivered in another way (rather than by means of a Bill in the Scottish Parliament)?

- Yes
- No
- Unsure

Please explain the reason for this response.

13. Do you have any other comments or suggestions on the proposal?

10. HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:
<http://www.smartsurvey.co.uk/s/MSPSecondJobs/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Neil.Findlay.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Neil Findlay MSP
Room M1.06
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6896.

Deadline for responses

All responses should be received no later than **Thursday 2 May 2019**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website www.neilfindlaymsp.com. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA)

Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then the information that we would normally publish – including all your answers to questions about the proposal (unless your response is "not for publication") and your name (unless you requested anonymity), but not your contact details – may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was "not for publication"), together with your

name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members' Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so. Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 28 June 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance
The Scottish Parliament
Edinburgh
EH99 1SP
Telephone: 0131 348 6913 (Text Relay calls welcome)
Textphone: 0800 092 7100
Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113