



## Briefing for the Public Petitions Committee

**Petition Number:** [PE 1491](#)

**Main Petitioner:** Tom Minogue

**Subject:** Secret society membership declaration by decision-makers

Calls on the Parliament to urge the Scottish Government to amend the law or codes of practice to make it compulsory for decision makers such as sheriffs, judges, and juries at their courts, arbiters, and all panel members of tribunals that are convened and held in Scotland and governed by devolved legislation, custom and practice, to declare if they have ever been members of organisations, such as the Masons, that demand fraternal preference to their brethren over non-brethren, or organisations which have constitutions or aims that are biased against any particular sect, religion or race.

That a register of such membership is held by the various bodies that supervise such judicial and quasi-judicial tribunals and that access to these registers is given on demand to the defendant, litigant, or plaintiff wishing to exercise their rights to a fair hearing in accordance with Article 6 of the ECHR.

### Background

#### The reason for the petition

The petitioner previously faced criminal charges which he believed were brought as a result of a business competitor using Masonic influence. The petitioner was found not guilty at the end of the trial. He asked the sheriff presiding at his trial to give a guarantee that she was not a Freemason. The sheriff held that there was no legal authority which required a judge to give assurances of this nature to accused people. Instead, it was a judge's duty to withdraw from the case should there be any reason to doubt their objective impartiality. The sheriff emphasised that she had no concerns about her own impartiality on this occasion<sup>1</sup>.

As a result of his experience, the petitioner petitioned the Scottish Parliament to make it a requirement for certain public servants involved in the justice system to make a declaration about whether they were members of any secret societies (such as the Freemasons) which require loyalty to fellow

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<sup>1</sup> Stott v Minogue 2001 S.L.T. (Sh Ct) 25.

members. The original petition (PE306) was lodged in 2000 and eventually closed by the Justice 2 Committee in March 2003.

The current petition is, according to Mr Minogue, in much the same terms, except that he is calling for the duty to disclose membership of secret societies to be extended to jury members as well as public servants involved in the justice system.

### Freemasonry

The [Grand Lodge of Scotland](#) (the administrative office for Scottish Freemasons in Scotland and abroad) describes Freemasonry as “a society of men concerned with moral and spiritual values”.

Much about the practices of Freemasons is secret, although it is believed that members have to swear an oath of fidelity to one another. This has led some to come to the conclusion that Freemasons may act to benefit other members, sometimes to the detriment of non-members. Others argue that, whether or not Freemasons actually act to benefit each other, their membership of a secret, fraternal organisation raises doubts about their ability to act impartially.

### Speculative Society of Edinburgh

The Speculative Society of Edinburgh is described by its members as an after-dinner debating society linked to the University of Edinburgh. It came to public attention in the early 2000s when Robbie the Pict (a campaigner against tolls on the Skye Bridge) asked for his appeal to be dealt with by judges who were not members. The membership of the society at the time was thought to contain a number of senior judges as well as business men connected with the Skye Bridge<sup>2</sup>.

### Historic legal restrictions on freemasons

The Unlawful Societies Act 1799 made it an offence to be a member of a secret society (one which had a secret membership and where members were required to take an oath not authorised by law). Freemasons were exempt from the law, but only if two members certified before a magistrate that the society was a recognised Freemason organisation, details of the usual times and places of meetings were provided and a list of members was supplied, annually, to the local “clerk of the peace”. These requirements remained in force until 1967.

### Action in England and Wales

The House of Commons Home Affairs Committee undertook two investigations into the influence of Freemasonry. Its report, “Freemasonry in the Police and in the Judiciary” was published in March 1997<sup>3</sup>. The

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<sup>2</sup> Seenan, G. (2003) “[Lifting the lid on judges’ secret society](#)”. *The Guardian*. 19 February 2003.

<sup>3</sup> House of Commons Home Affairs Committee. (1997) *Freemasonry in the Police and the Judiciary*. Third Report Session 1996-97 (HC 192-I). London: The Stationery Office.

Committee's evidence and recommendations were limited to England and Wales. Its key recommendation was (see paragraph 56):

“...that police officers, magistrates, judges and crown prosecutors should be required to register membership of any secret society and that the record should be available publicly.”

The UK Government responded to the recommendation by agreeing that it would be a requirement for all those appointed in the future to the judiciary, magistracy, police, legally qualified staff at the Crown Prosecution Service and, in addition, to the Probation Service and Prison Service, to declare whether they were or became Freemasons. In addition, current staff of the above bodies would be invited to declare membership in a register set up for the purpose<sup>4</sup>.

This resulted in a policy from 1998 to 2007 in England and Wales under which judges, police, members of the Crown Prosecution Service and prison and probation staff were asked to declare whether they were Freemasons. However, no action was taken against individuals who made a “nil” return (ie. failed to declare positively whether they were or were not Freemasons) or individuals who did not respond to the request. In addition, it would appear that registers for the police (and potentially some of the other bodies) were not fully developed due to concerns about arrangements for public access, including data protection laws.

Information from 1998 for the judiciary and magistracy suggested that approximately 5% were Freemasons. This is higher than the estimate made by the Home Affairs Committee in 1997 of membership across the adult male population of 2%<sup>5</sup>. Very few members of the Crown Prosecution Service declared themselves to be Freemasons, but the accuracy of the result was affected by the high number (41%) of staff who did not return the form<sup>6</sup>.

### Freedom of Association

The policy was abandoned for the judiciary and magistracy in 2007 as a result of concerns that it breached the right to freedom of association guaranteed in the Human Rights Act 1998 (which gives the European Convention on Human Rights force of law in the UK courts). In his Written Statement to the House of Commons regarding the change of policy, the Justice Secretary highlighted two cases heard by the European Court of Human Rights<sup>7</sup>.

In the first case ([Grande Oriente D'Italia di Palazzo Guistiniani v Italy](#) (No. 1) Case no. 35972/97), the court held that it was a breach of the right to freedom

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<sup>4</sup> House of Commons Home Affairs Committee. (1998) [Government Reply to the Third Report from the Home Affairs Committee Session 1996-97: Freemasonry in the Police and the Judiciary](#). First Special Report Session 1997-98 (HC 577).

<sup>5</sup> Op cit No. 3. Paragraph 22.

<sup>6</sup> House of Commons Home Affairs Committee. (1999) [Freemasonry in Public Life](#). Second Report Session 1998-99 (HC 467).

<sup>7</sup> [Written Ministerial Statement from the Secretary of State for Justice](#). Hansard HC Deb 5 November 2009. Col 56WS.

of association to prevent people taking up various public appointments on the basis that they were Freemasons. In the second case ([Grande Oriente D'Italia di Palazzo Guistiniani v Italy \(No. 2\)](#) Case no. 26740/02), the court held that treating membership of the Freemasons differently to non-secret societies was unjustified discrimination.

Note that article 11 of the European Convention on Human Rights does not prevent restrictions on freedom of association being placed on the police or those involved in the “administration of the State”. In addition, it is unclear whether a requirement to declare membership of a broad category of organisations which may include the Freemasons would be considered to breach the right to freedom of association.

### **Scottish Government Action**

The Scottish Government has declined to ask the judiciary or other public servants to make a declaration regarding their membership of secret societies such as the Freemasons. In answer to a written parliamentary question (S1W-23539), the then Minister for Justice, Jim Wallace, noted that candidates for judicial office were asked to disclose any potential conflict of interest, covering their personal, professional and social life.

### **Scottish Parliament Action**

The Scottish Parliament has dealt with several petitions which express concern about the influence of Freemasonry:

- [PE693](#) (December 2003) – alleged a Masonic conspiracy which resulted in the petitioner going to prison. It called for a requirement for the parties to legal proceedings to declare membership of secret societies such as the Freemasons. This petition was referred to the Justice 2 Committee for information only and closed.
- [PE652](#) (June 2003) – alleged a Masonic connection to the Dunblane Massacre and the Cullen Inquiry which investigated it. It called for, among other things, a requirement for the judiciary, public servants and elected representatives to register membership of secret societies such as the Freemasons. The Petitions Committee wrote to the Lord Advocate regarding timescales for the release of information in relation to the Cullen Inquiry but not about other aspects of the petition
- [PE306](#) (November 2000) – the original petition put forward by the current petitioner. It called for a requirement on the judiciary to declare membership of the Freemasons and for a register of their declaration to be available to litigants

### Consideration of the petitioner's original petition

The Petitions Committee referred petition PE306 to the Justice 2 Committee. The Justice 2 Committee sought further evidence from the Sheriffs' Association, the Scottish Consumer Council and the Minister for Justice. After

further consideration of the petition, the Committee invited the petitioner to provide additional evidence. The petition was ultimately closed without further action, and the Committee declined to publish the petitioner's additional evidence<sup>8</sup>.

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<sup>8</sup> Scottish Parliament Justice 2 Committee(2003). *Official Report*. [Tuesday 18 March 2003](#).