

AMENDMENT TO THE SCOTTISH PARLIAMENT SALARIES SCHEME

Background

1. The Presiding Officer has asked officials to bring forward urgent advice on the powers available to the Scottish Parliament with regard to any Member who is serving a prison sentence.

2. Publicity relating to a Member who has recently been convicted and is awaiting sentencing has highlighted concerns about how convicted MSPs are treated generally by the Scotland Act 1998 and the Parliament's rules. We have looked at the following areas which have been mentioned to consider what options may be available to the Parliament were a Member of the Parliament (or other salaried office holder) to be imprisoned:

Disqualification. Disqualification from membership of the Parliament is currently regulated by section 15 of the Scotland Act 1998 (the 1998 Act). The current rules correspond broadly with the rules on disqualification of membership of the House of Commons and include disqualification following a prison sentence of more than 12 months. The Scottish Parliament does not have legislative competence to modify, amend or repeal the rules on disqualification in section 15 which is protected from modification by Schedule 4 of the 1998 Act.

Recall. The question of whether it would be competent for the Scottish Parliament to enact recall provision for MSPs is complicated by the fact that the process of recall is not a concept currently recognised by UK election law.

It may, however, be difficult to separate recall from the other rules on elections which are reserved. Even if that were possible, if the result of "recall" is to modify the rules on disqualification this would be likely to take the matter outwith the Scottish Parliament's competence by virtue of Schedule 4.

Code of Conduct. The Code of Conduct for Members of the Scottish Parliament and the associated volumes only cover situations related to the Member's role in relation to carrying out their Parliamentary duties – indeed the Code specifically excludes a Member's private and family life. It is highly unlikely therefore that a complaint in these circumstances under the Code as it stands, would be admissible.

3. In summary therefore, none of these remedies is currently available to the Parliament. This information was shared with the Business Managers on Tuesday 27 August.

4. In the circumstances, the Presiding Officer asked officials to consider what, if anything, the Parliament can do in relation to the salary of any MSP who is serving a prison sentence.

Amendment to the Salaries Scheme

5. This paper therefore considers whether it would be open to the Parliament to vary the Scottish Parliament Salaries scheme to reduce the amount of salary payable to any MSP who is unable to undertake their parliamentary duties because they are in prison.

6. We have looked at the legal implications of this and have concluded that, in principle, the Parliament can modify the current Salary Scheme to provide for a reduction in salary payable to MSPs who are in prison and so unable to fulfil their parliamentary functions. This would be done by resolution of the Parliament under section 81(1) of the 1998 Act as read with section 83(5).

7. There are, however, a number of caveats which should be observed in order to ensure that any change was legally robust.

8. Those caveats are:

- The provision made should respect the principle that salary is payable in return for the performance of functions,
- The provision must not be motivated by punishment, retribution or censure,
- The provision should be proportionate, of general application, and consistent in its treatment of ordinary Members and those office holders and Government ministers who receive a salary supplement,
- Care should be taken by the Parliament to be seen to adhere to these principles in its handling of the matter.

9. A central issue for the SPCB therefore to consider is the amount of any reduction proposed taking account of the availability of a Member to perform his or her parliamentary duties whilst in prison. We have looked at how such a balance might be achieved at Annex A (attached).

10. The SPCB is also invited to consider the scope of the amending resolution. It is suggested it should cover any Member of the Parliament who is in prison. This would include anyone who has been imprisoned for a criminal offence; committed to civil imprisonment, or for contempt of court.

11. The SPCB will wish to consider specifically the position of anyone held on remand awaiting trial (and bearing in mind that decisions on remand are taken by the courts). We consider, on balance, the amendment should include a Member, who is on remand as they are similarly unavailable to undertake the full range of duties.

12. It is suggested persons who are unavailable to undertake the full range of their duties for other reasons outwith their control (such as due to illness or *force majeure*) should not be affected by the proposed salary abatement. In our view this would be a proportionate approach.

Other issues

13. Section 81(1) of the 1998 Act does not include a power to make any consequential amendments necessary as a result of the variation to the Salaries Scheme. It is recognised that such a variation to the Scheme could affect the operation of the Scottish Parliamentary Pension Scheme. Our starting point would be that any change to the salary provision should have a fair and proportionate impact on pensions. However, this is a complex area and our advice is that further consideration is given and proposals brought forward to the SPCB in due course.

14. The SPCB will also wish to discuss its involvement in the parliamentary consideration of any amending resolution. Any amending resolution should be laid by an SPCB Member who would, if necessary, also speak to it during a debate.

Conclusion

15. The SPCB is invited to consider:

15.1. Whether or not it wishes to progress with the amending resolution to the Salaries Scheme

15.2. The amount of any salary reduction proposed within the resolution

15.3. The scope of the amending resolution.

15.4. Its contribution to any debate on this matter

**Clerk/Chief Executive's Office
September 2013**

ANNEX A

1. This paper looks at those duties that are expected to be undertaken by a Parliamentarian for which a salary is being paid and whether or not any of these duties could continue to be undertaken, fully partially or not at all. This will assist to determine the level, if any, of any salary abatement for the period any Member is in prison.

2. In looking at the range of duties to be undertaken we have considered the definition of 'parliamentary duties' which has been agreed by the Parliament and forms part of the Reimbursement of Members' Expenses scheme. The following table provides our assessment against each activity in terms of any Member's availability.

Duty	Can this be undertaken?		
	Yes	No	Partially
Attend Meetings of the Parliament		✓	
Attend parliamentary Committee or sub-Committee meetings or any meeting related to the committee activity		✓	
Undertake research or administrative functions relating to the business of the Parliament			✓
Attend meetings with electors		✓	
Attending party group meetings in Edinburgh		✓	
Attending a meeting, ceremony or official function in connection with the business of the Parliament		✓	
Attending an international conference which relates directly to, or is in connection with the business of the Parliament		✓	

3. It is evident from the above assessment that a considerable amount of a Member's duties relate to the attendance or being available for attendance at a meeting or event relating to the core functions of the Parliament. In dealing with constituents it is also a requirement to be available, more often than not, to assist with issues raised.

4. Prisoners' ability to communicate with the outside world is severely restricted and we therefore consider that any role would be limited to monitoring parliament business through media sources and technically a Member could continue to

undertake some correspondence with constituents and sign off letters on casework. It is also possible that the Member could instruct his staff, by correspondence or if visiting, to lodge a motion or Parliamentary Question which would be permissible under Standing Orders. It is therefore also expected that a Member would continue to employ and manage staff.

Staff

5. While Members' staff are clearly not proxy Members, we consider that staff can continue to have a supporting role. We would expect that a Member's office would remain open for the duration a Member is in prison. Staff can therefore keep the office open and maintain it, which would include signposting constituents to other elected representatives as appropriate. Staff can continue to undertake background work and information gathering on existing casework and in respect of the Parliament, staff can continue to monitor parliamentary business. As mentioned above, if authorised to do so a member of staff could lodge a motion or Parliamentary Question on behalf of a Member.

6. We therefore consider there is no issue in staff continuing to be paid through the Expenses Scheme.

Recess and Dissolution

7. It could be questioned whether any removal of salary should take effect during a recess period. While, in general terms, the Parliament does not sit during recess and the balance shifts more toward the constituency role, there is always the possibility that a meeting of parliament or a specific committee could be held and a Member would need to be available to attend. In addition, constituency cases continue across recesses. It is our view therefore that any removal of salary should cover the recess period.

8. Dissolution is slightly different in that Members are no longer Members until the date of the election if they are returned. However, Members continue to be paid a salary as there is a recognition that Members can continue to deal with any existing casework. We would therefore recommend that if a Member was in prison immediately before dissolution and that their sentence continued during the period of dissolution the arrangements for the removal of salary should remain in effect.

Conclusion

9. This assessment would suggest that a Member might still have a very limited role in respect of parliamentary duties, but probably sufficient not to withdraw the full salary amount. Based on the assessment we would suggest that any salary should be abated by 90% for the duration of the term of imprisonment.