

**Introductory memorandum for seminar on Parliamentary Standards,  
16 November 2009**

1. Chronology of the recent history of MPs' expenses
2. The Independent Parliamentary Standards Authority: statutory scheme and functions
3. Specific issues raised by the Committee on Standards in Public Life's Report on MPs' expenses and allowances

## **Chronology of the recent history of MPs' expenses**

1 Soon after the Freedom of Information Act 2000 came into effect in 2005, requests for details of MPs' expenses were filed by FOI campaigners and journalists. In April 2005 their requests were rejected by the Commons Authorities and appeals were sent to the Information Commissioner.

2 In February 2007, the Information Commissioner ruled that the Information Tribunal required the Commons to publish a breakdown of MPs' travel expenses. In June 2007 he ruled that the public had the right to know broad details of MPs' spending on second homes, but held, on privacy grounds, that full itemised details did not need to be published.

3 Following revelations about expense claims by Derek Conway in January 2008, the Information Tribunal ruled in favour of the disclosure of details of expenses claims, ordering the Commons to publish documentation relating to 14 MPs within 28 days.

4 In March 2008, the Commons authorities' appeal against the Information Tribunal's ruling was dismissed by the High Court.

5 In January 2009 the Government dropped a motion to exempt Parliament from the FOI Act.

6 In March 2009, Sir Christopher Kelly announced that the Committee of Standards in Public Life (CSPL) would publish a report on MPs' expenses (see below).

7 Beginning in early May 2009, the *Daily Telegraph* published a series of revelations about MPs' expenses claims. In response, several MPs offered to pay back expenses and allowances which they had 'over-claimed', and offers of resignation were made.

8 In May 2009, Gordon Brown pledged to establish external and independent regulators to administer and scrutinise MPs' pay and expenses. He also ordered an audit by Sir Thomas Legg of all MPs' second-home claims over the past four years. This audit was published in October 2009.

9 On 19 May, the Speaker of the House of Commons announced a series of interim measures connected with MPs' allowances to take effect immediately without pre-empting the work of the CSPL. These interim measures related to second homes, capital gains tax, the status of couples both of whom were MPs, mortgages, and staffing.

10 In June 2009, MPs' expenses claims were published by the House of Commons, but with many details blacked out.

# **The Independent Parliamentary Standards Authority (IPSA): statutory scheme and functions**

## **Overview**

1 The IPSA was established by the Parliamentary Standards Act 2009 (“PSA 2009”), which received the Royal Assent on 21 July 2009. The IPSA has functions in relation to MPs’ salaries, expenses, and financial interests. The Act also establishes a separate Commissioner for Parliamentary Investigations.

## **Allowances for MPs**

### *Preparation and revision of the MPs’ allowances scheme (‘regulation functions’):*

1 The IPSA is responsible for preparing and regularly revising the MPs’ allowances scheme. In doing so, the IPSA must consult with certain named individuals and bodies, as listed in s 5(4) of the PSA 2009:

- the Speaker of the House of Commons
- the Committee on Standards in Public Life
- the Leader of the House of Commons
- any committee of the House of Commons nominated by the Speaker
- members of the House of Commons
- the Review Body on Senior Salaries
- Her Majesty’s Revenue and Customs
- the Treasury
- any other person the IPSA considers appropriate

2 The Speaker must lay the scheme or revision before the House of Commons.

3 The scheme may specify what claims are allowed; the conditions on which allowances will be payable; how much is to be paid; and how payment will be administered. (s 7 PSA 2009)

### *Administration of the allowances scheme and payment of MPs’ salaries (‘administration functions’):*

1 The IPSA is to pay the salaries of MPs in accordance with the relevant resolutions of the House of Commons. (s 4 PSA 2009).

2 The IPSA will be responsible for paying allowances to MPs in accordance with the MPs’ allowances scheme. (s 5 (1) and s 6(3) PSA 2009).

3 If the IPSA determines that a claim is to be refused, or that only part of the amount claimed is to be allowed, and the member asks the IPSA to review the claim, then IPSA must review whether the determination was properly made and whether to confirm or alter the determination. (s 6(4) and (5) PSA 2009)

4 The IPSA must also provide general information and guidance to MPs about taxation issues. (s 7 PSA 2009)

5 These administrative functions are to be exercised on the IPSA’s behalf by its chief executive. (Schedule 1, cl 17 PSA 2009)

## **MPs' code of conduct relating to financial interests**

1 The IPSA will be responsible for preparing a code of conduct relating to financial interests. This code will include some matters which are presently covered by the current MPs' Code of Conduct. The code will cover the registration of relevant financial interests and the "no paid advocacy" rule.

2 The code will be subject to approval by resolution of the House of Commons. (s 8(6) PSA 2009)

## **Investigation and enforcement**

1 The Act establishes a Commissioner for Parliamentary Investigations ("the Commissioner") (s 3 (3) PSA 2009)

2 The IPSA must provide the Commissioner with adequate resources for the Commissioner's functions, including providing staff to assist in the carrying out of those functions. (Schedule 2, cl 7).

3 The Commissioner will have the power to investigate any allegations of overpayments under the allowances scheme and failures to comply with requirements in the code relating to the registration of financial interests. (s 9(1) PSA 2009)

4 The Commissioner will be able to initiate such investigations. An investigation may also be conducted at the request of a member, or after an individual complaint. The IPSA must provide any information that the Commissioner reasonably requires for the purposes of an investigation. (s 9(2) PSA 2009)

5 The IPSA must determine procedures for the Commissioner to follow. These procedures must be fair, and must include safeguards for the MP, including that the MP have an opportunity to make representations to the Commissioner during the investigation and in light of the Commissioner's findings, and an opportunity to call and examine witnesses where appropriate. (s 9(9), (10), (11), (12) PSA 2009)

6 If the Commissioner finds that the member was overpaid an allowance or failed to comply with a requirement to register a financial interest, the Commissioner must refer his or her findings to the Committee on Standards and Privileges. However, there are exceptions to this requirement to refer if, amongst other criteria, the MP accepts the Commissioner's findings and takes steps to rectify the matter. The Commissioner may also refer a finding to the Committee on Standards and Privileges if the Commissioner finds that the MP has not provided the Commissioner with information that he or she reasonably requires for the purposes of the investigation.

7 The Act will create a new criminal offence of knowingly providing false or misleading information in a claim for an allowance. (s 10 PSA 2009)

## **Separation of administration functions and regulation functions**

1 So far as possible, the IPSA's administration functions and its regulation functions must be carried out separately, so that one set of functions does not adversely affect the carrying out of the other. (Schedule 1, cl 17(2))

2 The IPSA's administration functions are:

- payment of MPs' salaries (s 4)

- payment of MPs' allowances (s 5(1))
- dealing with allowances claims (s 6)

3 The IPSA's regulation functions are:

- preparing and revising MPs' allowances scheme (s 5(3), (4))
- preparing and revising MPs' code of conduct relating to financial interests (s 8)
- determining procedures for investigations etc (s 9(5)(b), (7)(c), (9), (10))

### **Freedom of Information Act**

1 The IPSA is subject to the FOI Act. (Schedule 1, cl 27)

## **Specific issues raised by the Committee on Standards in Public Life's Report on MPs' expenses and allowances (the "Kelly Report")**

### **Overview**

1 The CSPL launched an inquiry into MPs' expenses in April 2009 with the publication of a consultation paper. It received 732 responses to that paper. In June and July 2009, the CSPL held nine public hearings, hearing from 76 witnesses. It also established eight focus groups consisting of 100 members of the public.

2 The CSPL published its report on 4 November 2009.

3 The Kelly Report made detailed recommendations about reforms of the MPs' expenses and allowances scheme. I will focus here on identifying those recommendations that raise structural or process issues for the IPSA in relation to its regulation and administration functions, and the investigation and enforcement functions.

### **Issues raised by the Kelly Report in relation to the IPSA's regulation functions**

1 The Kelly Report recommends that its proposals are intended to be treated as a package and that "they should now be handed to the independent regulator to be implemented in full, in spirit as well as in detail" (executive summary, para 30). This recommendation seems to conflict with the consultation requirements imposed on the IPSA by s 5(4) PSA 2009 (see above).

2 Recommendation 2 states that IPSA should annually review the maximum amounts claimable in light of inflation, and should conduct a review of the whole scheme at least once every Parliament.

### **Issues raised by the Kelly Report in relation to the IPSA's administration functions**

1 Recommendation 42 states that responsibility for maintaining a register of MPs' financial interests and code of conduct should be removed from the IPSA and returned to the House of Commons.

2 Recommendation 43 states that the IPSA should have statutory responsibility for setting MPs' pay levels and overseeing MPs' pensions (in addition to paying MPs' salaries).

3 The IPSA should provide guidance to MPs on various additional matters, including good employment practice.

4 The IPSA should offer an induction scheme on the expenses scheme to all new MPs. The IPSA should consider deferring payment of expenses claims until the induction scheme has been completed. (Recommendation 55)

### **Issues raised by the Kelly Report in relation to the investigation and enforcement functions**

1 Recommendations 44 and 45 deal with the investigation and enforcement functions of the IPSA.

2 The Kelly Report questions whether it is necessary to establish the new office of Commissioner for Parliamentary Investigations, particularly in light of its recommendation that responsibility for maintaining a register of MPs' financial interests and its accompanying code should be returned to the House of Commons.

3 The Report recommends that the office of Commissioner for Parliamentary Investigations be abolished, and a compliance officer be established within the IPSA. The compliance officer would be tasked with policing the expenses scheme, advising MPs on claims, and promoting best practice. The compliance officer should be able to conduct an investigation on his or her own initiative, at the request of the ISA, or in response to a complaint from a member of the public or an MP.

4 The Report recommends that the enforcement regime be strengthened. In particular, the following powers should be vested in the IPSA:

- the power to compel MPs to cooperate, including through the provision of relevant information
- the power to require the repayment of “wrongly paid or misclaimed sums”, with associated costs if appropriate
- the power to impose, subject to the procedural safeguards set out in the PSA 2009, its own non-parliamentary sanctions for breaches of the expenses regime, without the need to report to the Commissioner for Parliamentary Standards.

### **Other key recommendations**

1 Recommendation 41: the IPSA should be placed under a statutory duty to support MPs efficiently, cost-effectively, and transparently in carrying out their statutory functions.

2 Recommendation 49: the IPSA should be placed under a general duty to act openly and transparently. It should be subject to a requirement to engage directly with the public (eg by open meetings and opinion surveys)

2 Recommendation 60: The IPSA should continue to publish at least quarterly each individual claim for reimbursement made by MPs and the supporting receipts or documentary evidence. The information published should not be restricted to claims actually reimbursed.

3 Recommendation 59: the IPSA should establish whistleblowing procedures.

4 Recommendation 58: the IPSA and the House of Commons should establish a joint audit committee. The chair and majority of the committee should be independent of Parliament.