The Committee will meet at 0900 in Committee Room 2.

1. **Item in private:** The Committee will consider whether to take item 4 in private.

2. **Work of the previous Standards Committee:** The Committee will consider a paper on the work of the Standards Committee in Session 1.

3. **Cross-Party Groups:** The Committee will consider a paper on the application of Rule 2 of section 8.3 of the Code of Conduct.

4. **Complaint:** The Committee will undertake its initial consideration of a report from the Acting Scottish Parliamentary Standards Commissioner.

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Please find attached papers on the following:

The work of the Standards Committee in Session 1 ST/S2/03/02/2

The application of Rule 2 of Section 8.3 of the Code of Conduct ST/S2/03/02/3

Report from the Acting Scottish Parliamentary Standards Commissioner (private paper) ST/S2/03/02/4
SECOND MEETING OF THE STANDARDS COMMITTEE
WORK OF THE STANDARDS COMMITTEE IN THE FIRST SESSION

Background

1. At its meeting on 10 June 2003, the Standards Committee asked the Clerks to prepare a short note on the work of its predecessors in the first Parliamentary session.

Code of Conduct

2. In late 1999, the Committee drafted the Code of Conduct. This was approved by the Parliament in February 2000. Since then, the Parliament has been asked to agree to a number of amendments to the Code. These include the following:

   - Use of Parliamentary resources by Cross-Party Groups
   - Guidance on relationships between constituency and regional MSPs (incorporated into the Code as Annexe 5)
   - Registration of Members’ Staff Interests
   - The unauthorised disclosure of draft committee reports and other confidential material ('leaks')
   - The disclosure of complaints to the media
   - Lobbying (see further below)

The Complaints Process

3. In 2000, the Committee conducted an inquiry into possible approaches to handling complaints against MSPs. This work culminated in the Committee’s 4th Report 2000, *Models of Investigation of Complaints*, and a Committee Bill which subsequently became the Scottish Parliamentary Standards Commissioner Act 2002. The four stage complaints process is set out in section 10 of the Code of Conduct and in the introductory briefing material provided separately to Members.

Lobbying

4. The previous Standards Committee carried out an extensive inquiry into lobbying in the Scottish Parliament. In its 1st Report 2002, *Lobbying*, the Committee concluded that whilst lobbying is an integral and legitimate element in the democratic process it is vital that it is carried out on a transparent basis. The Committee argued that this need for transparency was paramount where third parties are representing clients on a commercial basis. The report recommended the following:
• Enhanced guidance in the Code of Conduct for Members on dealing with lobbyists

• The introduction of a statutory registration scheme for commercial lobbyists. *If implemented, this would be the first such scheme in the UK.*

• The development of a voluntary Code of Conduct for all lobbyists engaging with the Parliament.

• The Executive should review the Scottish Ministerial Code to ensure that it has adequate provisions in relation to lobbying. If a statutory registration scheme is introduced, the Executive should also consider extending it to cover commercial lobbyist contacts with Ministers and civil servants.

5. The Committee’s report was debated by the Parliament in October 2002 and the Parliament agreed to make the proposed changes to section 7 of the Code of Conduct. The Minister for Parliamentary Business also agreed to review the Scottish Ministerial Code to ensure that it is consistent with Members’ obligations under the Parliament’s Code.

6. The previous Standards Committee was unable to progress work on introducing either a statutory registration scheme or a voluntary code due to time and workload pressures as well as pressure on the legislative timetable in the final year of the session. Implementation of a statutory registration scheme for commercial lobbyists would require primary legislation, for example through a Committee Bill. The development of a voluntary code for all lobbyists would require extensive consultation with interested parties such as MSPs, lobbyists, the Procedures Committee (in relation to its work on accessibility), the SPCB, the Parliamentary Bureau and others. Whilst some limited comparative work was carried out in reviewing international registration and regulatory schemes, time pressures precluded a more detailed examination of the operation of such schemes such as the Federal Lobbyists Registration Scheme in Canada.

**Members’ Interests**

7. The rules relating to the registration and declaration of Members’ interests and paid advocacy are set out in the Members’ Interests Order (MIO), a Transitional Order made at Westminster in 1999 under the Scotland Act. The MIO anticipates its eventual replacement with an Act of the Scottish Parliament.

8. In 2001/2002, the Standards Committee undertook a comprehensive review of the operation of the MIO, inviting a range of written and oral submissions from Members and other interested organisations and individuals. The Committee published its recommendations for the shape of possible replacement legislation in a proposal for a Committee Bill in June 2002. The Parliament debated this report in October 2002 and agreed that the Committee could introduce a Bill. Unfortunately, pressure on the Parliamentary timetable in the final few months of the Parliamentary session meant that there was little possibility of the Bill being passed by the end of the session. However, the Committee published a draft Bill...
in February 2003 to inform the work of its successors in this area. The Bill includes revised rules on the registration of gifts and shareholdings and clarifies the existing provisions on paid advocacy. The Bill also proposes the mandatory registration of non-pecuniary or non-financial interests such as the membership of professional bodies or trade unions.

9. Key elements in the draft Bill are as follows:

- **Gifts**: Members are currently required to register all gifts worth £250 or more, regardless of source. Members are also required to register any such gifts received by their spouse or partner. This means that gifts from a partner or spouse or other family member, for example, are registrable. The provision has been criticised as an unacceptable invasion of MSPs’ and their families’ privacy. The draft Bill proposes that Members be required to register gifts in excess of 0.5% of an MSP’s salary if they are received in connection with their Parliamentary duties. It also provides that Members’ spouses or partners should only be required to register gifts if they have been received in connection with the Member’s Parliamentary duties.

- **Interest in Shares**: The MIO currently requires Members to register their own or their partner’s shareholdings the nominal value of which (that is, the share price at issue) is greater than 1% of the issued share capital of a company or has a nominal value in excess of £25 000. The draft Bill proposes that Members and their partners should register shareholdings where the market value exceeds £25 000 or is greater than 1% of the issued share capital. This is on the basis that market value may be seen as a more accurate measure of a shareholding than nominal value.

- **Election Expenses**: The draft Bill retains the existing approach in the MIO where Members must register any contributions towards election expenses which exceed 25% of the total election expenses. Contributions from the political party which the Member represents do not need to be registered. However, in its 1st Report 2003, the previous Committee recommended that its successors consider whether the replacement legislation should continue to require MSPs to register election expenses in the light of Members’ obligations to the Electoral Commission under the Political Parties, Elections and Referendums Act 2000.

- **Non-financial Interests**: Members may currently register non-financial interests such as membership of voluntary and charitable organisations or unremunerated directorships on a voluntary basis. In its 7th Report 2002, the previous Standards Committee recommended mandatory registration of such interests. The Committee adopted the approach used in the Ethical Standards etc (Scotland) Act 2000: MSPs should be required to register non-financial interests which the public might reasonably think could influence an MSP’s actions. This would be supplemented by extensive guidance in the Code of Conduct which would also provide illustrative examples.
**Future Interests:** Both the MIO and the Code are currently silent on whether MSPs should declare interests which they expect to have in the future (although the provisions on paid advocacy apply where a Member ‘expects to receive any remuneration’). In its 7th Report 2002, the previous Standards Committee recommended that the replacement legislation should require the declaration of future or expected registrable interests where there is ‘a reasonable expectation’ that the registrable interest will accrue to the Member.

**Paid Advocacy:** The previous Committee proposed that the replacement legislation should clarify the existing provision on paid advocacy – that is, the rule which prohibits Members from carrying out a Parliamentary action such as lodging a motion in return for payment. The draft Bill therefore makes it clear that paid advocacy takes place where there is a nexus between receipt of a payment or benefit which represents a personal gain to the Member and the Member undertaking an action in his/her capacity as an MSP.

**Cross-Party Groups**

10. The Standards Committee is responsible for regulating the operation of Cross Party Groups (CPGs). The rules governing CPGs are set out in section 8 of the Code of Conduct. In May 2002, the previous Standards Committee agreed to carry out a review to evaluate the operation and the effectiveness of the Cross Party Group system. The Committee indicated that it not only wished to explore the role of CPGs in acting as an interface between the Parliament and wider society but that it wished to develop an understanding of ‘best practice’. The Committee published a wide-ranging consultation in July 2002 inviting written submissions from individuals and organisations involved with CPGs (see Standards Committee 6th Report 2002, *Consultation on Cross-Party Groups in the Scottish Parliament*).

11. The Committee reviewed the responses to its consultation in November 2002. Given that the Parliamentary session was drawing to a close, however, the Committee recognised that it would be difficult to complete its review and propose any changes to the Code of Conduct by the end of March 2003. Instead, the Committee agreed to commission external research to be carried out into the CPG system. The Conveners’ Group agreed to the Committee’s bid in January 2003. Robert Gordon University is currently undertaking this research and is due to present its finding to the Committee towards the end of the year.

**The Scottish Parliament and Business Exchange**

12. Following concerns raised by an MSP participating in a Business Exchange placement programme in the summer of 2002, the Committee undertook a short inquiry into the operation of the Exchange. Its report, published in November 2002, made a number of recommendations in relation to the structure and
accountability of the Exchange. The Exchange launched its own stocktaking exercise in February 2003 and as part of this is understood to be examining the Committee’s recommendations.

STANDARDS COMMITTEE CLERKS
JUNE 2003
CROSS-PARTY GROUPS
INTERPRETATION AND APPLICATION OF RULE 2, SECTION 8.3 OF THE CODE OF CONDUCT

Introduction

1. Cross-Party Groups (CPGs) in the Scottish Parliament are regulated by Section 8 of the "Code of Conduct for Members of the Scottish Parliament". Section 8.3 of the Code sets out various rules with which Cross-Party Groups must comply. Failure to comply with the rules on Cross-Party Groups can lead to withdrawal of recognition of a group or to sanctions being imposed on individual Members. A complaint about a Cross-Party Group is dealt with by the Standards Committee (unless the complaint relates to the use of Parliamentary facilities in which case it is dealt with by the SPCB).

2. The consideration of amendments to the Code falls within the remit of the Standards Committee. Near the end of Session 1, the previous Standards Committee commissioned external research into the Cross-Party Group system in the Scottish Parliament. The results of that research will be available at the end of this year. On the basis of some of the findings in the research, the Committee may decide that certain rules regarding the operation of CPGs should be revised. Any changes to the Code must, however, be agreed by the whole Parliament.

Rules 1 and 2 of Section 8.3

3. Rule 1 requires CPGs to be "Parliamentary in character" and to have a purpose which is of "genuine public interest". These may be seen as general and fundamental requirements in relation to CPGs. Rule 2 specifies that the membership of CPGs:

   “…Must be open to all Members of the Parliament and must include at least five MSPs of which at least one Member must be from each of the parties or groups represented in the Parliamentary Bureau. In circumstances where the Standards Committee considers it is merited in relation to a particular group, this rule may be modified or waived.”

4. There are, therefore, several distinct elements to Rule 2:

Open membership

5. The rule specifies that membership must be open to all Members of the Parliament. CPGs cannot, therefore, exclude MSPs from a particular party or group or exclude individual MSPs.

Number of MSP members

6. The rule sets out a requirement in relation to the number of members of the CPG who must be MSPs. The current rule specifies that there must be a minimum of five MSP members.

Parties or groups represented

7. The rule also provides that the membership of CPGs must include representation from each of the parties or groups in the Parliamentary Bureau. When Rule 2 was drafted the number of parties or groups in the Bureau was four.
8. Rule 2 provides that these requirements may be modified or waived in relation to particular groups.

9. The various elements of Rule 2 can be seen as further specification of the general requirement of Rule 1 that CPGs must be “Parliamentary in character”.

**Composition of the Bureau**

10. As a result of the recent Parliamentary election, the composition of the Parliamentary Bureau has changed from Session 1. The six parties now represented in the Bureau are:
    - the Scottish Labour Party,
    - Scottish National Party,
    - the Scottish Conservative Party,
    - the Liberal Democrats,
    - the Scottish Green Party
    - and the Scottish Socialist Party.

11. (In Session 1 the Scottish Green Party and the Scottish Socialist Party were not represented).

12. This result has rendered certain aspects of Rule 2 ambiguous. The rule provides that each CPG should have a membership of at least five MSPs of which at least one Member must be from each of the parties or groups represented in the Parliamentary Bureau. However, the Bureau now comprises six parties as opposed to four parties. It is unclear, therefore, how many MSP members of the CPGs there should be and the number or parties or groups that should be represented in each CPG.

13. Whilst this ambiguity could result in existing CPGs being unsure of how to comply with the Rules, it will also pose a problem for proposed new Groups when applying to the Standards Committee for recognition. When deciding to accord recognition to a proposed Group, the Committee will be required to decide if the Group’s membership complies with the rules (paragraph 8.2.2, “A Group will only be recognised if it complies with the Rules on Cross-Party Groups.”).

**Interpretation of Rule 2**

14. During committee meetings in 1999, the Standards Committee discussed and agreed Section 8 of the *Code of Conduct* (the Code was subsequently agreed by resolution of the Parliament on 24 February 2000).

15. Looking at the Rule as a whole, it is clear that the intention was that CPGs would normally have a MSP from each party represented in the Parliamentary Bureau. This is supported by views expressed by members of the Standards Committee. Karen Gillon MSP said,

    "If all the groups represented in the bureau are involved in a cross-party group, the group would deserve the status of being called cross-party." (OR, 15 September 1999, Column 48).
16. And when the model of all-party groups at Westminster was raised, Des McNulty MSP commented,

“If we are to have genuinely cross-party groups that relate to the Parliament and are not simply vehicles for interests, we require a stronger role for MSPs in the operation of the groups than is implied by the Westminster model.” (OR, 15 September 1999, Column 49)

Guidance
17. Following the Scottish parliamentary election, the Standards Committee Clerks issued guidance to Members regarding CPGs and, in view of the uncertainty regarding the interpretation of Rule 2 of Section 8.3, Members were reminded of the importance of CPGs continuing to be genuinely cross-party in nature. The guidance is attached at Annex A.

18. The Committee is invited to consider the content of further guidance to be issued regarding the composition of CPGs. In particular, the Committee is invited to consider the following questions:

a) As a minimum, how many MSP members of a CPG should there be?

b) How many parties or groups should be represented by those members?

19. Following the decision of the Committee, the Clerks will draft guidance to CPGs on these issues. It will be indicated that a failure to comply with the composition requirements set out in the guidance will be taken into account by the Committee when considering compliance with Rule 1 of Section 8.3 of the Code and in particular the requirement that CPGs be “Parliamentary in character”.

20. It is suggested that the Committee will wish to reserve the power to modify or waive the composition requirements in relation to particular CPGs.

Changes to the Code of Conduct
21. Depending on the decision of the Committee in relation to the specific matters mentioned, above changes to the terms of Rule 2 as currently set out in the Code may be desirable. However, it is suggested that any proposed change to the wording of the Code in this area should be held back pending the wider review of the regulation of CPGs mentioned above.

Conclusion

22. The Committee is invited:

- to note that a change in the composition of the Parliamentary Bureau has resulted in uncertainty regarding certain of the requirements within Rule 2 of Section 8.3;

- to decide for the purposes of guidance how many MSP members of CPGs there should be and how many different parties or groups should be represented in each CPG; and,
to agree that no changes to the Code in relation to this matter should be proposed pending the results of the wider review in relation to the regulation of CPGs.

STANDARDS COMMITTEE CLERKS
JUNE 2003
Dear Mike Rumbles MSP, as Convener of the Standards Committee, wrote to you in February 2003 to outline the procedures to be followed by all Cross-Party Groups prior to and following the election period. I write now to remind you of the procedure should your Group wish to re-register following the election.

RE-REGISTRATION

All Cross-Party Groups wishing to continue their activities must re-register with the Standards Committee Clerks. Rule 14 of Section 8.3 of the Code of Conduct states that:

“Cross-Party Groups will cease to be recognised 90 calendar days after the first meeting of the new Parliament after a general Scottish Parliamentary election...unless a fresh registration is made”.

The first meeting of the Scottish Parliament in Session 2 was held on Wednesday 7 May. To continue to be recognised as a Cross-Party Group you must submit a fresh registration before Tuesday 5 August 2003.

Please note that re-registering is not the same as applying to the Standards Committee to be recognised as a Cross-Party Group. Although the same registration form is to be used, an existing Group does not have to wait for a meeting of the Standards Committee to be ‘recognised’. Cross-Party Groups that were established in the first Session will be able to hold meetings pending re-registration within the 90-day period stated in Rule 14 provided that in arranging meetings CPGs continue to comply with the requirements laid down in Section 8 of the Code of Conduct (e.g. by giving seven days notice of meetings, by ensuring that meetings are open to the public and that the required number of MSPs attend etc).

When considering re-registration, I would be grateful if Groups would pay particular consideration to the past effectiveness of the Group, and whether it would be worthwhile for the Group to continue. Groups are also advised to confirm that:
(1) each MSP listed in the ‘MSP Membership’ section of the form has been elected as a Member of the Scottish Parliament;

and

(2) each MSP listed in the ‘MSP Membership’ section of the form is content to continue as a member of the Group.

CHANGE TO THE COMPOSITION OF THE PARLIAMENTARY BUREAU

As a result of the recent Parliamentary election, the composition of the Parliamentary Bureau has changed. The parties represented in the Bureau are the Scottish Labour Party, Scottish National Party, the Scottish Conservative Party, the Liberal Democrats, the Scottish Green Party and the Scottish Socialist Party.

Members will be aware that Rule 2 of section 8.3 of the Code states that

   The [cross-party] group’s membership must be open to all Members of the Parliament and must include at least five MSPs of which at least one Member must be from each of the parties or groups represented in the Parliamentary Bureau. In circumstances where the Standards Committee considers it is merited in relation to a particular group, this rule may be modified or waived.

Failure to comply with this rule will not prevent a Group from being re-registered. However, the application will be drawn to the attention of the Standards Committee which will consider whether or not to waive the requirement. In the meantime, Members are reminded of the importance of CPGs continuing to be genuinely cross-party in nature.

FAILURE TO RE-REGISTER

Any Groups that have not re-registered by Tuesday 5 August 2003 will cease to be recognised as Cross-Party Groups. Groups which fall and which are still holding funds are advised to give the funding back proportionally to their donors.

Any Group that fails to register by Tuesday 5 August 2003 but which wishes to continue to operate as a Cross-Party Group will be subject to the same rules as any new Cross-Party Group applying for recognition. The Group will have to submit the registration form to the Standards Committee and await a decision of the Committee to recognise the Group before it can call itself a Cross-Party Group in the Scottish Parliament and undertake any Group activities.

If you have any queries in relation to these guidelines or if you require a further copy of the registration forms, please do not hesitate to contact the Standards Committee Clerks.

Yours sincerely

Sarah Robertson
Senior Assistant Clerk to the Standards Committee
CROSS-PARTY GROUPS
INTERPRETATION AND APPLICATION OF RULE 2, SECTION 8.3 OF THE CODE OF CONDUCT

Background information

**Precedents for waiving Rule 2 on previous occasions**
1. Rule 2 has been waived on two occasions during Session 1.

2. At the 8th Meeting 2000 (3 May), the Committee considered an application from a proposed Cross-Party Group on Nuclear Disarmament. Although the proposed Group had been unable to attract any Conservative MSPs, Patricia Ferguson (as a member of the Standards Committee) noted that

   "However, [the Group] has made an attempt to encourage and invite members of that party to join, although those efforts have been rejected. It has taken all reasonable steps." (Official Report, Column 535)

3. The Committee also noted that the Group had support from all other parties in the Parliament including the smaller parties not represented in the Parliamentary Bureau and subsequently approved the application to establish the Group.

4. At the 1st Meeting 2003 (29 January), the Committee considered an application from the Cross-Party Group on Palestine. The Conservative Member of the Group had resigned and despite the Convener of the Group making strenuous efforts, she had failed to attract another Conservative MSP. The Committee felt that the Group was well supported by the other parties and by outside bodies and was on an issue of great topical interest. Therefore, the Committee concluded that it should continue to be recognised as a Cross-Party Group.

STANDARDS COMMITTEE CLERKS
JUNE 2003