Agenda

Standards Committee

11th Meeting, 2003 (Session 2)

Tuesday 16 December 2003

The Committee will meet at 11.00am in Committee Room 4.

1. **Complaints and items in private:** The Committee will consider a discussion paper.

2. **Item in private:** The Committee will consider whether to take item 5 in private.

3. **Work programme:** The Committee will consider a paper.

4. **Acting Scottish Parliamentary Standards Commissioner:** The Committee will be invited to formally confirm that no further assistance will be required from the acting Scottish Parliamentary Standards Commissioner.

5. **Complaint:** The Committee will resume its consideration of a referral from the Scottish Parliamentary Corporate Body.

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Please find attached papers on the following:

- **Complaints and items in private**  
  ST/S2/03/11/1

- **Work programme**  
  ST/S2/03/11/3

- **Acting Scottish Parliamentary Standards Commissioner**  
  ST/S2/03/11/4

- **Complaint**  
  ST/S2/03/11/5
ELEVENTH MEETING OF THE STANDARDS COMMITTEE
ITEMS IN PUBLIC AND PRIVATE

1. At its meeting on 25 November 2003, the Standards Committee agreed to consider whether certain types of Committee business should be considered in public or in private. Specifically, the Committee wished to consider its mode of handling the following:

- Stage 1 Referrals from the Scottish Parliamentary Standards Commissioner
- Referrals from the SPCB under the Allowances Scheme

Stage 1 Referrals from the Scottish Parliamentary Standards Commissioner

2. Under the Scottish Parliamentary Standards Commissioner Act 2002 and Directions made under that Act, the Standards Commissioner is required to refer certain complaints to the Standards Committee to seek a direction as to whether or not he or she should investigate. Such complaints include those with a procedural defect such as anonymous complaints or complaints which fail to name the MSP who is the subject of a complaint. Such referrals to the Standards Committee are at Stage 1 of the investigation, and the Standards Committee may direct the Standards Commissioner either to dismiss the complaint or to proceed to the next stage of investigation.

3. The principle underpinning the Scottish Parliamentary Standards Commissioner Act 2002 and the four stage complaints process set out in the Code of Conduct is that investigations at Stage 1 and 2 should take place in private.

4. In its 4th Report of 2000, Models of Investigation of Complaints, the Standards Committee concluded that:

   in order to establish whether a complaint was of a substantive nature or not, there was justification for conducting the initial stages of an investigation in private. This would offer some protection against speculative publicity and reduce the opportunity for interference with the investigative process.

5. Section 5(2) of the 2002 Act, referring to Stage 1 and Stage 2 of the Commissioner’s investigation into a complaint, states that:

   Each stage of an investigation into a complaint shall be conducted in private.

6. Section 10.1.7 of the Code of Conduct states:

   10.1.7 Members must not disclose, communicate or discuss any complaint or intention to make a complaint with members of the press or other media prior to the lodging of the complaint or during Stages 1 and 2 of the procedure for dealing with complaints. In relation to Excluded Complaints (which are not always subject to the Four-Stage process set out below), this restriction applies until the Standards Committee has confirmed that the Standards Commissioner will not be carrying out
an investigation or, where such an investigation has been carried out, that the Standards Commissioner will not be carrying out any further investigation.

7. In order to comply with the 2002 Act and with the Code of Conduct, Stage 1 referrals from the Standards Commissioner should be taken in private session. Considering such referrals in private reduces the risk of media coverage which might prejudice further investigations into the matter by the Standards Commissioner.

8. The Committee may, of course, direct the Commissioner to dismiss the complaint. Once the complaint has been dismissed by the Commissioner, it will no longer be a Stage 1 complaint and section 10.1.7 will no longer apply.

**Referrals from the SPCB**

9. Under paragraph 10.2.43(b) of the Code of Conduct, complaints about a Member's use of allowances under the Allowances Scheme are Excluded Complaints and should not be made to the Standards Commissioner. Complaints about a Member’s use of allowances should be referred in the first instance to the SPCB. If the SPCB finds that a Member has made improper use of allowances, it may refer the complaint to the Standards Committee together with a recommendation for action.

10. Under section 12 of the 2002 Act and section 10.2.44 of the Code, it is open to the Committee to refer the matter to the Commissioner for investigation. The Committee could also request that the SPCB carry out further inquiries into the matter. Section 10.1.7 of the Code of Conduct makes it clear that Excluded Complaints should be dealt with as a private matter until such time as the Committee has decided that no referral shall be made to the Standards Commissioner.

11. Whilst the Code does not lay out a specific procedure for the Committee in dealing with this type of complaint, the general principle underpinning the complaints process is that initial investigation into allegations of misconduct should take place in private. This is to avoid having the matter discussed in other forums such as the media which risks placing a perception in the minds of the public about a particular MSP before the Committee has established all the facts and made its own decision on the action to be taken.

12. In order to comply with section 10.1.7 of the Code of Conduct, and to preserve the privacy of any possible future investigation, the Committee should take referrals from the SPCB in private. If the Committee decides not to make a referral to the Standards Commissioner, and once the Committee has finally determined the matter, the Committee may choose to make the matter public.
ELEVENTH MEETING OF THE STANDARDS COMMITTEE
FORWARD WORK PROGRAMME

1. This paper sets out some possible areas which the Committee may wish to consider for inclusion in its forward work programme.

Replacing the Members’ Interests Order

2. The current rules on Members’ interests are contained in the Members’ Interests Order¹ (MIO). The MIO was made in May 1999 and sets out the various requirements on the registration and declaration of Members’ interests, prohibits paid advocacy and makes contravention of certain provisions of the Order a criminal offence. Article 10 of the MIO anticipates its eventual replacement by an Act of the Scottish Parliament. The Code of Conduct also highlights the Parliament’s intention to bring forward replacement legislation (see paragraph 1.10 of the Code of Conduct).

3. In July 2002, the previous Standards Committee published its 7th Report 2002, Replacing the Members’ Interests Order: Proposal for a Committee Bill, which set out the Committee’s recommendations on the content of replacement legislation for the MIO and made a proposal for a Committee Bill under Rule 9.15 of Standing Orders. The Committee’s proposals followed an extensive review of the existing provisions of the MIO and their operation. Interim proposals had been published in February 2002 and the Committee invited written and oral submissions on its recommendations.

4. The Committee’s proposal to introduce a Committee Bill was debated and agreed by the Parliament in October 2002. However, due to pressure on the Parliamentary timetable in the final months of the first session, it was not possible to introduce the Committee Bill. However, the Committee published a draft Bill in March 2003 to inform the work of its successors in the new session.

5. 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.

6. The Committee may wish to carry out a review of the draft Bill published in the last session and of the policy which underpins it.
7. The Committee may also wish to give some consideration to the timing of the introduction of any Members’ Interests Bill into the legislative process. Changing the requirements on registration and declaration mid session could be problematic not only in administrative terms but also in promoting awareness of the new rules amongst Members and others. The Committee may wish therefore to consider recommending that any new Members’ interests framework comes into force at the beginning of the next Parliamentary session. To achieve this, the Committee may wish to explore the possibility of introducing the Bill in the second or third year of this session. This would give the Committee and the Non Executive Bills Unit a comfortable safety margin in reviewing the policy set out in the draft Bill from the last session and time for drafting the new legislation.

**Lobbying**

8. 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 (section 7) 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.

9. 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.

10. 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. 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. In particular, a number of members of the previous Committee indicated that an assessment of the operation of the Federal Lobbyists’ Registration Scheme in Canada and the recent establishment of a number of similar schemes at provincial level in Canada might be informative.

11. **The Committee may wish to review the previous Committee’s work on lobbying and its recommendations on regulation and registration. In doing so, the Committee may wish to consider examining the operation of regulatory schemes overseas.**

**Cross-Party Group Review**

12. 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 consultation document 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*).

13. 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. In addition, the Committee agreed to commission objective external research to be carried out into the CPG system. The Conveners’ Group agreed to the Committee’s bid in January 2003. Specifically, the research has three aims:

1. to achieve a better understanding of the role of CPGs as evidenced by current practices;
2. to achieve a better understanding of what people (both within and outside the Parliament) believe should be the role of CPGs;
3. to develop a model (or number of models) which show how the practice of CPGs relates, or could more effectively relate, to the appropriate role(s) of CPGs.

14. It is anticipated that the research team will be able to provide an initial briefing to the Committee in January 2004, with delivery of the final report later that month.
15. **The Committee will wish to consider the inclusion of a review of the CPG system in its forward work programme.**

**MSP Membership of Cross-Party Groups**

16. The Committee may wish to consider reviewing the operation of the rule on the cross-party membership of CPGs which has been rendered ambiguous by the number of parties now represented at the Parliamentary Bureau.

17. Specifically, rule 2 of section 8.3 of the Code of Conduct states that

> The 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.

18. In the new Parliamentary session there are six parties represented at the Parliamentary Bureau. The requirement to have a Member from each of the parties represented in the Bureau could be seen to conflict with the requirement to have a minimum of five MSPs. Whilst the policy intention behind the rule appears to have been to require CPGs to have at least one Member from each of the parties or groups with a seat on the Bureau, as currently drafted the rule could be interpreted as stating that each of the five MSPs must come from one of the six parties at the Bureau. This would seem to undermine the cross-party nature of CPGs. In addition, the requirement for CPGs to have a member from each of the parties represented at the Parliamentary Bureau could be burdensome on the smaller parties.

19. At its meeting on 18 June 2003, the Committee agreed to issue interim guidance on Rule 2. members agreed that the Rule should be interpreted to require each CPG to have

   (a) a minimum of one MSP from each of the larger parties in the Parliament (Labour – 50 MSPs, SNP – 27 MSPs, Conservative – 18 MSPs and Lib Dem – 17 MSPs)

   (b) and one other MSP from any of the other parties or an independent MSP.

The Committee agreed that it would consider a long term solution to the rule 2 issue following the completion of the CPG Review.

20. **The Committee is invited to consider, in the light of the re-registration process and pending the outcome of its CPG Review, whether it wishes to clarify rule 2 of section 8.3 of the Code of Conduct and to include this in its forward work programme.**

**Complaints Concerning Members’ Conduct in the Chamber and in Committee**

21. Under paragraph 10.2.43 of the Code of Conduct, complaints concerning Members’ conduct in the Chamber or in Committee are excluded from the remit of the Standards Commissioner and are to be referred to the Presiding Officer or
the Committee Convener as appropriate. The Presiding Officer or the Committee Convener may refer the complaint to the Standards Committee. Under section 12 of the Scottish Parliamentary Standards Commissioner Act 2002 and paragraph 10.2.44 of the Code, the Committee may then refer the matter to the Standards Commissioner for investigation.

22. The Committee may wish to consider whether these arrangements remain appropriate. For example, as the rules currently stand, a complaint against the conduct of a Committee Convener would fall to be considered by that Convener in the first instance. Whilst it would of course be open to him or her to refer the matter to the Standards Committee without considering the matter, the Code does not specify this as an option. Similarly, a complaint against the Presiding Officer concerning his or her conduct in the Chamber would be referred to the Presiding Officer for his or her consideration in the first instance. Paragraph 10.2.43 does not appear to provide for the Committee Convener or the Presiding Officer to delegate consideration of the complaint to their respective deputies.

23. Even where a complaint does not concern the Convener’s conduct in Committee, the current arrangements may be problematic where there has been an earlier exchange of correspondence between the Convener and the complainer on the issue before the complainer has decided to submit a formal complaint to the Convener. In such circumstances, the Convener may have already commented on the alleged conduct of a committee member which may make any consideration of a subsequent complaint problematic.

24. The Committee is invited to consider whether it wishes to review the arrangements for handling complaints concerning Members’ conduct in the Chamber or in Committee.

Annexe 5 of the Code of Conduct: Relationships Between Constituency and Regional MSPs

25. Annexe 5 of the Code of Conduct sets out various provisions on the relationship between constituency and regional MSPs, for example on the handling of constituency cases. The annexe was introduced following work undertaken in 1999/2000 by a working group under the chairmanship of then Deputy Presiding Officer, George Reid MSP. The rules were further developed by Party Business Managers and agreed by the Parliamentary Bureau. The Bureau asked the Standards Committee to consider incorporating the guidance into the Code of Conduct and the Parliament agreed to this proposal in July 2000. During the first Parliamentary session, the Presiding Officer dealt with a large number of complaints under the annexe, three of which were subsequently referred to the Standards Committee for investigation.

26. In its 3rd Report 2003, The Founding Principles of the Scottish Parliament (otherwise known as the CSG report) published at the end of the first session, the Procedures Committee found evidence of confusion about the distinction between constituency and regional MSPs:
Local authorities were unsure which MSPs they should brief. Individuals were unsure which MSPs they should approach with their concerns. Constituency and regional MSPs sometimes felt resentment against each other about how constituents were represented.2

27. The Procedures Committee noted that there had been a number of disputes in relation to Annexe 5 and recommended that if such tensions continued in the new Parliamentary session ‘there may be a requirement for some external research to identify the scale, and general causes, of the problem, to assist in finding ways to avoid or resolve any difficulties.’3 The Committee also recommended that

.... existing guidance should be reviewed by the Parliamentary authorities, and extended to clarify the various roles of MSPs, and that consideration should be given to how any guidance agreed could be disseminated widely outside the Parliament. [Recommendation 108]4

28. The Procedures Committee also noted that

evidence was received that a ‘job description’ for MSPs would be helpful in pointing up “…the role of an elected Member in the new political culture of power sharing and participation.” The CSG recognised that MSPs would have their own view on this, and it is an issue which we suggest that the Standards Committee might usefully consider.5

29. The Procedures Committee considered that any ‘MSP job description’ would need to take cognisance of the provisions of Annexe 5.

30. The Committee may wish to note that the previous Standards Committee had very limited time available to scrutinise the provisions of Annexe 5 before the Parliament was asked to agree to their incorporation into the Code. Experience of dealing with disputes under Annexe 5 has revealed a number of drafting shortcomings. For example, it is silent on the position of party spokespersons and Committee Conveners.

31. The Committee is invited to consider whether it wishes to undertake a review of Annexe 5 of the Code of Conduct.

ISSUES ARISING FOLLOWING THE CLOSE OF SESSION 1

32. At the close of Session 1, the Standards Committee agreed not to publish a legacy paper to the incoming Committee. The outgoing Committee did not wish to bind its successors to particular courses of action, recognising that fresh issues would naturally arise which the incoming Committee would wish to consider. The Committee may wish to note the following items which were not discussed by the previous Committee. It is also recognised that Committee Members may have other items which warrant the attention of the Committee and the following items are not intended to be exclusive of these.

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2 Paragraph 842
3 Paragraph 844
4 Paragraph 846
5 Paragraph 839
Members’ Presentation to the Public Using Parliamentary Resources

33. The SPCB sometimes receives complaints about the way in which Members present themselves to the public by way of signage at constituency or regional offices, on stationery, websites, in newsletters or circulars etc. The framework of rules and guidance which governs such matters includes the Code of Conduct for MSPs, the Allowances Code and Standards and Procedures for the Use of the Scottish Parliament Logo and Stationery. Annexe 5 of the Code of Conduct, for instance, discourages Members from identifying party affiliation on items paid for out of public funds and also clearly states how Members should describe themselves.

34. In April 2003, the SPCB agreed to conduct a review of how Members present themselves to the public and a working group was recently established. In the course of the review, the working group may seek the views of the Standards Committee in relation to any proposals which might require amendments or additions to the Code of Conduct (Annexe 5 in particular). It is anticipated that the report from the working group will be made to the SPCB before the end of the year.

35. The Committee is invited to note the review and may wish to consider the implications of the timetable in relation to its own review of Annexe 5.

The Complaints Process and the Code of Conduct

36. In 2000, the Standards 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. As the Committee gains experience of the procedures, it is anticipated that the Committee may wish to review aspects of the process. The Committee may also wish to consult with the Scottish Parliamentary Standards Commissioner on aspects of the complaints process.

37. The Committee is invited to consider whether it wishes keep the complaints process and the procedures set out in section 10 of the Code of Conduct under review.

The Equalities Framework and the Code of Conduct

38. In March 2003, the SPCB published the Equalities Framework which contains guidance for both Members and Parliamentary staff across a range of equal opportunities and diversity issues. The Framework aims to set out a comprehensive equal opportunities policy for the Scottish Parliament as both an employer and service provider. The Action Plan which accompanies the Framework suggests that the Standards Committee consider amending paragraph 9.2.2 of the Code of Conduct to encompass the criteria falling within the scope of the Framework. Paragraph 9.2.2 of the Code currently states that:
The Scottish Parliament is an equal opportunities organisation, firmly committed to providing equal opportunities for all staff regardless of age, disability, gender, marital status, sexual orientation, race, colour, nationality, religion, ethnic or national origin. Members and their staff must adhere to this policy in their dealings with all in the Parliament, and behave appropriately.

39. If the Committee wishes to make any changes to the Code to ensure consistency with the Equalities Framework, it may wish to time laying any such revisions before the Parliament with other proposed amendments to the Code, for example in relation to Cross Party Groups.

40. The Committee is invited to consider whether it wishes to consider amending paragraph 9.2.2 of the Code and whether it wishes to examine how the Code of Conduct should interface with the Equalities Framework.

STANDARDS COMMITTEE CLERKS
DECEMBER 2003
ELEVENTH MEETING OF THE STANDARDS COMMITTEE
ACTING SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER

Background

1. In January 2003, William Spence QPM was appointed by the SPCB as acting Scottish Parliamentary Standards Commissioner under section 2(1) of the Scottish Parliamentary Standards Commissioner Act 2002. The appointment was an interim measure until the current Standards Commissioner, Dr Jim Dyer OBE, took up his post on 1 April 2003.

2. The acting Standards Commissioner’s appointment was effective from 30 January 2003 until 31 March 2003. The terms of appointment also provided that Mr Spence would continue to fulfil the functions of acting Commissioner in relation to any complaint or complaints which were outstanding as at 1 April 2003. Mr Spence was to continue to act in this role in relation to any such complaints until the Standards Committee has confirmed that no assistance or further assistance is required.

3. Under the terms of his appointment, the acting Standards Commissioner was remunerated on a salaried basis until 31 March 2003. Thereafter he was paid an hourly rate for any work undertaken in relation to any outstanding complaints.

4. On 1 April 2003, there was one outstanding complaint under investigation which was Dorothy-Grace Elder’s complaint against Kenny MacAskill MSP and Tricia Marwick MSP. The acting Standards Commissioner duly reported on this matter to the Standards Committee at the earliest opportunity in session 2. The Standards Committee completed its consideration of this complaint and the acting Standards Commissioner’s report with the publication of a Committee Report at the conclusion of Stage 3 of the complaints process on 7 October 2003.

Action

5. The Committee is invited to formally confirm to the SPCB that no further assistance is required from the acting Standards Commissioner.

STANDARDS COMMITTEE CLERKS
DECEMBER 2003