SECTION 7: LOBBYING AND ACCESS TO MSPs

Section 7.1: Introduction

7.1.1 In order for the Parliament to fulfil its commitment to being open, accessible, and responsive to the needs of the public it needs to encourage participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Parliament conducts its business.

7.1.2 In order to perform their duties effectively, members will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals. Some of these organisations and individuals will make their views known directly to individual members or committees of the Parliament. Others will choose to employ intermediaries (sometimes known as “commercial lobbyists”) to present their views in what they may consider to be the most effective way.

7.1.3 Members should also note that some organisations and individuals may employ commercial lobbyists (which may include public affairs companies, law firms, management consultancies, investment banks, merchant banks, and other providers of professional services) to devise strategies for lobbying the Parliament. That is, the role of commercial lobbyists is not only limited to the direct representation of a client’s interests to Members but may also include or consist of an advisory role providing strategic advice. Under such arrangements whereby it is the client that undertakes the direct representation element of lobbying the Parliament rather than on the advice of the commercial lobbyist.

7.1.4 Members may also note that it is not only the public affairs companies who lobby on a commercial basis for third party clients but that many professional services companies such as law firms, management consultancies and investment and merchant banks may provide public affairs advice on a commercial basis.
7.1. For many the term “lobbying” is associated with the activities of professional lobbying companies and public relations firms with multiple clients. However, lobbying is not just practised by these persons or organisations. It is undertaken by paid staff and by members of business and trade associations, individual companies, trade unions, charities, churches, voluntary organisations and other individuals and groups, many of whom have no professional staff and comparatively few resources. It is an essential element of the democratic system that any individual should be able to lobby the Parliament or an MSP. Members will therefore come into contact with a wide range of lobbying activities.

7.1.6 There is, nevertheless, some uneasiness about the way in which lobbying may be practised. At the heart of public concern is the nature of the relationship between elected members and those who seek to influence them. It is important, therefore, to ensure that those relationships are handled with complete propriety so as to maintain the confidence of the public in the decision-making and integrity of its representatives in the Parliament. In particular, it is essential that there is transparency in the relationships between Members and commercial lobbyists, in line with the Parliament’s core principles of accessibility and openness.

7.1.7 The rules and standards in this Code set out how members should conduct themselves in their contacts with those who lobby or seek to lobby them. They are designed to encourage proper interaction between members, those they represent and interest groups. As well as setting standards for MSPs’ conduct in relation to lobbyists, they are designed to demonstrate that access to the Parliament or its members is open to all.

Section 7.2: Statutory Rules in relation to Contacts with Lobbyists

7.2.1 Section 39 of the Scotland Act 1998 requires that provision is made for the registration and declaration of members’ interests and to prohibit members from advocating any matter on behalf of a person by specified means or urging other members to do so in return for any remuneration. At present these provisions are contained in the transitional Members’ Interests Order. (Please see the relevant
Sections of this Code on Registration and Declaration of Interests and on Paid Advocacy for details.) Failure to observe the requirements of the Order may constitute a breach of the Order or a criminal offence. Thus the Order already provides a mechanism for the Parliament to regulate the way members relate to others, including lobbyists of any kind.

7.2.2 Members need to bear in mind these statutory obligations in their contacts with anyone who seeks to lobby them, and particularly when considering whether to accept any remuneration, sponsorship, gift, benefit or hospitality from another person.

7.2.3 In addition, members should ensure that they act in accordance with the standards set out below.

**Section 7.3: Other Rules and Guidance**

7.3.1 A member should not, in relation to contact with any person or organisation who lobbies do anything which contravenes this Code of Conduct or any other relevant rule of the Parliament or any statutory provision.

7.3.2 A member should not in relation to contact with any person or organisation who lobbies act in any way which could bring discredit upon the Parliament.

7.3.3 The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, A member should not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients—commercial lobbyists or their employers—compared with that which the member accords any other person or organisation who lobbies or approaches him or her. Nor should commercial lobbyists or their employers those lobbying on a fee basis on behalf of clients be given to understand that preferential access or treatment, compared to that accorded
to any other person or organisation, might be forthcoming from another MSP or group or person within or connected with the Parliament.

7.3.4 Before taking any action as a result of being lobbied, a member should seek to satisfy him or herself about the identity of the person or organisation who is lobbying and the motive for lobbying. A member may choose to act in response to a commercial lobbyist but it is important that an MSP knows the basis on which he or she is being lobbied in order to ensure that any action the member takes in connection with the lobbyist complies with the standards set out in this Code.

7.3.5 In addition, members should:

- consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representations;
- consider keeping a record of all contacts with lobbyists;
- consider arranging for an assistant or researcher to take notes at any meetings with lobbyists.

7.3.6 The Section of the Code on General Conduct (Section 9) sets out the standards expected in relation to acceptance of hospitality, gifts and benefits. In addition to this and the statutory provisions referred to above, members:

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation.
- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.)
• should decline all but the most insignificant or incidental hospitality, benefit or gift if the member is aware that it is offered by a company or individual who lobbies on a fee basis on behalf of clients, and whether it is offered on the company's or individual's own behalf or that of a client. Paragraphs 9.2.7 to 9.2.9 in the section of the Code on General Conduct state that a member should not accept any offer that might reasonably be thought to influence his or her judgement in carrying out Parliamentary duties. Since the basis on which many people believe that those who lobby on a fee basis on behalf of commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might—reasonably be thought that acceptance of a benefit of any significance from such a source could influence a member's judgement in carrying out Parliamentary duties.

(If a member only becomes aware of its source after receiving hospitality, a benefit or gift, then he or she should consider reimbursing the costs of any hospitality or benefit or returning any gift.)

7.3.7 Members may participate in events for which others are charged a fee to attend. Participation, for example, in a conference or seminar for which delegates are charged a fee may be a useful means of a member gathering a range of views on a topic. There could be some concern, however, that events falling into this category could be a means of “buying” access to MSPs. It is important that there should be no grounds for such a perception. No preferential treatment should, therefore, be offered or accorded any person or organisation as a result of having made initial contact with a member at such an event.

7.3.8 Members should not participate in any event if they are aware, or become aware, that the organisers are promoting the event on the basis that those paying to attend the event are “buying” influence over MSPs or that they can expect to receive better subsequent access to, or treatment by MSPs, than would be accorded to any other person or organisation.

7.3.9 If a member has concerns about the approach or methods used by any person or organisation in their contacts with him or her, the member should seek the guidance of the Standards Committee clerks.
7.3.109 Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a member’s behalf or in any Parliamentary connection.

7.3.110 Staff employed by MSPs are in a position to exert influence. It is right that the public have access to information about any interest which might reasonably be thought to influence such staff. A Register of Interests of MSPs’ staff has been established. Members responsibility in relation to the register can be found at Annexe 6 of the code. Members will be held responsible for ensuring that, to the best of their knowledge, any staff working for them fulfil the requirements when introduced.

Section 7.4: Failure to comply with or Contravention of the Rules in relation to Contacts with Lobbyists

7.4.1 Failure to comply with or contravention of the rules in the Members' Interests Order in relation to contacts with any person or organisation who seeks to lobby him or her may constitute a breach of the requirements of the Order or a criminal offence or could lead to sanctions being imposed on a member by the Parliament. In addition, behaviour by an MSP which falls short of the standards established in this Code could lead to penalties being imposed on a member by the Parliament. Enforcement of the Rules in the Code is explained in Section 10.